TENDER DOCUMENTS

Procurement of Major Roads

Public Procurement Board

Accra, Ghana

October 2003
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INTRODUCTION

This Tender Document for Roads (Major), TDR(M), has been prepared by the Public Procurement Board of the Republic of Ghana for use by Procurement Entities in the procurement of admeasurement (unit price or rate) type of works contracts through International Competitive Tendering (ICT) in accordance with the Public Procurement Act, 2003 (Act 663) of the Republic of Ghana.

The procedures and practices reflected in them have been developed through broad international experience. They are mandatory for use in roads contracts, which are estimated to cost more than GHC 70 billion ¹ (including contingency allowance) financed in whole or in part from the Public Funds of the Republic of Ghana, unless the Public Procurement Board agrees to the use of other Tender Documents on a case-by-case basis.

In the preparation of Tender Documents by Procurement Entities for a particular procurement, two of the sections in this TDR(M) are to be used without modification by simply copying them:

- **Section II, Instructions to Tenderers**, and
- **Section IV, Part I—General Conditions of Contract**

Data and provisions specific to each procurement and contract shall be included in:

- **Section III, Tender Data**, in
- **Section V, Part II—Conditions of Particular Application**, and in
- **Appendix to Tender included in Section VII.**

The tender documents also require **Technical Specifications (Section VI), Drawings (Section X), Bill of Quantities (Section VIII), and other materials**, which should be incorporated in the appropriate sections. **Sample forms** to be used are provided where necessary.

This TDR(M) has been prepared for Tender when prequalification has taken place. The process of prequalification shall follow the procedure indicated in the **Document for Pre-qualification of Consultants, Suppliers and Contractors**, issued by the Public Procurement Board. Prequalification shall be followed for all major works. Exceptionally, in the absence of prequalification, postqualification shall be followed, with prior agreement by the Public Procurement Board. Postqualification procedures are covered in Section XI.

Care should be taken to check the relevance of the TDR(M) against the requirements of the specific works to be procured. The following general directions should be observed when using the document:

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¹ Or the equivalent threshold level as revised in accordance with the Public Procurement Act, 2003 (Act 663).
(a) Specific details, such as the “name of the Employer or address for Tender submission”, should be furnished in the space provided in the Tender Data, and in the Conditions of Particular Application or Appendix to Tender.

(b) Amendments, if any, to the Instructions to Tenderers and to the General Conditions of Contract, can only be made through the Tender Data and Conditions of Particular Application, respectively.

(c) Except where indicated as mandatory, clauses included in the Conditions of Particular Application are illustrative of the provisions that should be drafted by the Employer for each procurement.

This Tender Document is not suitable for lump sum contracts without substantial changes to the method of payment and price adjustment, and to the Bill of Quantities, Schedules of Activities, and so forth.
TENDER DOCUMENT
Issued on: ________________________

for

Procurement of

ICT No: _________________________

Employer:

Republic of Ghana
SECTION I. INVITATION FOR TENDERS (IFT)
Invitation for Tenders

To: ______________
________
________
________

Contract Name, and Identification No. ________ / ________

Dear Sirs:

We hereby inform you that you are prequalified for Tender for the above cited contract. A list of prequalified and conditionally prequalified Applicants is attached to this invitation.

On the basis of information submitted in your application, you would [not] appear eligible for application of the domestic Tenderer price preference in Tender evaluation. Eligibility is subject to confirmation at Tender evaluation.

We now invite you and other prequalified Applicants to submit sealed Tenders for the execution and completion of the contract cited as follows:

__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
_________

[Include a concise description of the works as applicable. State size and principal quantities. Provide location, estimated duration].

You may obtain further information from, and inspect and purchase the Tender Documents at the address given below.

A complete set of Tender Documents may be purchased by you upon payment of a nonrefundable fee of US$_____.

Sealed Tenders must be accompanied by a security in the form and amount specified in the Tender Documents, and must be delivered to the address indicated in the Tender Documents on or before 10.00 hrs GMT on_______. Tenders will be opened immediately thereafter in the presence of Tenderers’ representatives who choose to attend.
Please confirm receipt of this letter immediately in writing by cable, fax, or telex. If you do not intend to tender, we would appreciate being so notified also in writing at your earliest opportunity.

Yours truly,

Authorized signature
Name and title
Employer

Address for obtaining additional information, inspecting and purchasing Tender Documents

Contact Name:

Name of Office:

Street Address:

Floor/Room Number:

City:

Region:

Country:

Telephone Number:

Facsimile Number:

Email Address:
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Instructions to Tenderers

A. General

1. Scope of Tender

1.1 The Employer, as defined in the Tender Data and Appendix to Tender, hereinafter “the Employer,” wishes to receive Tenders for the construction of Works, as described in Sections V, VI, VII, VIII, and X and summarized in the Tender Data, hereinafter referred to as “the Works.”

1.2 The successful Tenderer will be expected to complete the Works within the period stated in the Tender Data and Appendix to Tender from the date of commencement of the Works.

1.3 Throughout these Tender Documents, the terms “Tender ” and “tender” and their derivatives (“Tenderer/tenderer”, “Tender/tendered”, “Tendering/tendering”, etc.) are synonymous, and day means calendar day. Singular also means plural.

2. Source of Funds

2.1 The Procurement Entity (hereinafter called “Employer”) named in the Tender Data Sheet shall fund this procurement from part of its budgetary allocation toward the realization of the project named in the TDS.

2.2 Payments will be made only at the request of the Employer and upon approval by a designated official of the Republic of Ghana in accordance with the terms and conditions of the contract agreement between the Employer and the Contractor (hereinafter called the Contract Agreement), and will be subject in all respects to the Financial Administration Act, 2003 (Act 654) of the Republic of Ghana. No party other than the Contractor shall derive any rights from the Contract Agreement or have any claim to the funds.

3. Eligible Tenderers

3.1 This invitation to Tender is open to any Tenderer (including all members of a joint venture and all subcontractors of a Tenderer) meeting all four of the following requirements:

(a) A Tenderer shall be from an eligible source country as specified in Section XII, Eligible Countries, of this Tender Document.

(b) A Tenderer shall not be affiliated with a firm or entity

(i) that has provided consulting services related to the
Works to either the Employer or the Government of Ghana during the preparatory stages of the Works or of the Project of which the Works form a part, or

(ii) that has been hired (or is proposed to be hired) by the Employer or the Government of Ghana as Engineer for the contract.

(c) A Tenderer shall be prequalified for the contract as notified by the Employer.

(d) A Tenderer shall not be under a declaration of ineligibility for corrupt or fraudulent practices issued by the Public Procurement Board or the Government of the Republic of Ghana in accordance with Clause 39.2.

3.2 Tenderers shall provide such evidence of their continued eligibility satisfactory to the Employer as the Employer shall reasonably request.

3.3 Majority publicly owned enterprises may be eligible to qualify if, in addition to meeting all the above requirements, they are also legally and financially autonomous and operate under commercial law.

4. Eligible Materials, Plant, Supplies, Equipment, and Services

4.1 The materials, Plant or Contractor’s Equipment, other supplies, and services to be supplied under the Contract, shall have their origin in eligible source countries, as specified in Section XIV, Eligible Countries, of this Tender Document, and all expenditures made under the Contract will be limited to such materials, Plant or Contractor’s Equipment, other supplies, and services.

4.2 For purposes of Sub-Clause 4.1 above, “origin” means the place where the materials, Plant, equipment, and other supplies are mined, grown, produced, or manufactured, and from which the services are supplied.

5. Qualification of the Tenderer

5.1 Tenderers shall, as part of their Tender:

(a) submit a written power of attorney authorizing the signatory of the Tender to commit the Tenderer; and

(b) update any information submitted with their applications for prequalification, which has changed, and update in any case the information indicated in the Tender Data, and continue to meet the minimum threshold criteria set out in
As a minimum, Tenderers shall update the following information:

(a) evidence of access to lines of credit and availability of other financial resources;

(b) financial predictions for the current year and the two following years, including the effect of known commitments;

(c) work commitments acquired since prequalification;

(d) current litigation information; and

(e) availability of critical equipment.

5.2 Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements:

(a) the Tender shall include all the information listed in Sub-Clause 5.1 above;

(b) the Tender security, the Tender, and in case of a successful Tender, the Agreement, shall be signed so as to be legally binding on all partners;

(c) one of the partners shall be nominated as being in charge, and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners;

(d) the partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture and the entire execution of the Contract, including payment, shall be done exclusively with the partner in charge;

(e) all partners of the joint venture shall be liable jointly and severally for the execution of the Contract in accordance with the contract terms, and a statement to this effect shall be included in the authorization mentioned under (c) above, as well as in the Tender and in the Agreement (in case of a successful Tender); and

(f) a copy of the Joint Venture Agreement entered into by all partners shall be submitted with the Tender.

5.3 Tenderers shall also submit proposals of work methods and
schedule in sufficient detail to demonstrate the adequacy of the Tenderers’ proposals to meet the technical specifications and the completion time referred to in Sub-Clause 1.2 above.

5.4 Domestic Tenderers, individually or in joint ventures, applying for eligibility for a 7½ percent margin of preference in Tender evaluation shall supply all information required to satisfy the additional criteria for eligibility as described in Clause 32.

6. One Tender per Tenderer

6.1 A firm shall submit only one Tender in the same Tender process, either individually as a Tenderer or as a partner in a joint venture. No firm can be a subcontractor while submitting a Tender individually or as a partner of a joint venture in the same Tender process. A firm, if acting in the capacity of subcontractor in any Tender, may participate in more than one Tender, but only in that capacity. A Tenderer who submits or participates in more than one Tender will cause all the proposals in which the Tenderer has participated to be disqualified.

7. Cost of Tendering

7.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Employer will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Tender process.

8. Site Visit

8.1 The Tenderer is advised to visit and examine the Site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the Tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Tenderer’s own expense.

8.2 The Tenderer and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Tenderer, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.

8.3 The Employer may conduct a Site visit concurrently with the pre-Tender meeting referred to in Clause 19.
B. Tender Documents

9. Content of Tender Documents

9.1 The Tender Documents are those stated below and should be read in conjunction with any Addenda issued in accordance with Clause 11:

Section I. Invitation for Tenders
Section II. Instructions to Tenderers
Section III. Tender Data
Section IV. Part I—General Conditions of Contract
Section V. Part II—Conditions of Particular Application
Section VI. Technical Specifications
Section VII. Form of Tender, Appendix to Tender, and Tender Security
Section VIII. Bill of Quantities
Section IX. Form of Agreement, Forms of Performance Security, and Bank Guarantee for Advance Payment
Section X. Drawings
Section XI. Explanatory Notes
Section XII. Postqualification
Section XIII. Disputes Settlement Procedure

10. Clarification of Tender Documents

10.1 A prospective Tenderer requiring any clarification of the Tender Documents may notify the Employer in writing or by cable (hereinafter, the term “cable” is deemed to include telex, facsimile, and email) at the Employer’s address indicated in the Tender Data. The Employer will respond to any request for clarification that he receives earlier than 28 days prior to the deadline for submission of Tenders. Copies of the Employer’s response will be forwarded to all purchasers of the Tender Documents, including a description of the inquiry but without identifying its source.

11. Amendment of Tender Documents

11.1 At any time prior to the deadline for submission of Tenders, the Employer may amend the Tender Documents by issuing Addenda.

11.2 Any Addendum thus issued shall be part of the Tender Documents pursuant to Sub-Clause 9.1 and shall be communicated in writing or by cable to all purchasers of the Tender Documents. Prospective Tenderers shall promptly acknowledge receipt of each Addendum by cable to the Employer.
11.3 To give prospective Tenderers reasonable time in which to take an Addendum into account in preparing their Tenders, the Employer shall extend as necessary the deadline for submission of Tenders, in accordance with Clause 22.

C. Preparation of Tenders

12. Language of Tender

12.1 The Tender, and all correspondence and documents related to the Tender exchanged by the Tenderer and the Employer, shall be written in the Tender language stipulated in the Tender Data and Conditions of Particular Application. Supporting documents and printed literature furnished by the Tenderer may be in another language provided they are accompanied by an accurate translation of the relevant passages in the above stated language, in which case, for purposes of interpretation of the Tender, the translation shall prevail.

13. Documents Comprising the Tender

13.1 The Tender submitted by the Tenderer shall comprise the following: duly filled-in Form of Tender and Appendix to Tender, Tender Security, priced Bill of Quantities, alternative offers where invited, and any information or other materials required to be completed and submitted by Tenderers in accordance with these Instructions to Tenderers. The documents listed under Sections VII and VIII shall be filled in without exception, subject to extensions thereof in the same format and to the provisions of Sub-Clause 17.2 regarding the alternative forms of Tender security.

13.2 If so indicated in the Tender Data, Tenderers tendering for this contract, together with other contracts to form a package, will so indicate in the Tender, together with any discounts offered for the award of more than one contract.

14. Tender Prices

14.1 Unless stated otherwise in the Tender Documents, the Contract shall be for the whole Works as described in Sub-Clause 1.1, based on the unit rates and prices in the Bill of Quantities submitted by the Tenderer.

14.2 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Tenderer will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bill of Quantities.

14.3 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days
prior to the deadline for submission of Tenders, shall be included in the rates and prices and the total Tender Price submitted by the Tenderer.

14.4 Unless otherwise provided in the Tender Data and Conditions of Particular Application, the rates and prices quoted by the Tenderer are subject to adjustment during the performance of the Contract in accordance with the provisions of Clause 70 of the Conditions of Contract. The Tenderer shall furnish the indices and weightings for the price adjustment formulae in the Appendix to Tender, and shall submit with its Tender such other supporting information as required under Clause 70 of the Conditions of Contract. The Employer may require the Tenderer to justify its proposed weightings.

15. Currencies of Tender and Payment

15.1 The currency of the Tender shall follow Alternative A or B, as specified in the Tender Data.

Alternative A: Tenderers quote entirely in Ghanaian Cedis (GHC)

15.2 The unit rates and the prices shall be quoted by the Tenderer entirely in Ghanaian Cedis (GHC). A Tenderer expecting to incur expenditures in other currencies for inputs to the Works supplied from outside the Republic of Ghana (referred to as “the foreign currency requirements”) shall indicate in the Appendix to Tender the percentage(s) of the Tender Price (excluding Provisional Sums) needed by him for the payment of such foreign currency requirements, limited to no more than three foreign currencies of any eligible country.

15.3 The rates of exchange to be used by the Tenderer in arriving at the Ghanaian Cedis (GHC) equivalent and the percentage(s) mentioned in Sub-Clause 15.2 above shall be specified by the Tenderer in the Appendix to Tender, and shall apply for all payments under the Contract so that no exchange risk will be borne by the successful Tenderer.

The rates of exchange to be used by Tenderers shall be the interbank selling rate published by the Bank of Ghana prevailing 28 days prior to the date of submission of tenders

15.4 Tenderers shall indicate their expected foreign currency requirements in the Appendix to Tender.

15.5 Tenderers may be required by the Employer to clarify their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Appendix to Tender are reasonable and responsive to Sub-Clause
15.2, in which case a detailed breakdown of its foreign currency requirements shall be provided by the Tenderer.

15.6 During the progress of the Works, the foreign currency portions of the outstanding balance of the Contract Price may be adjusted by agreement between the Employer and the Contractor in order to reflect any changes in foreign currency requirements for the Contract, in accordance with Sub-Clause 72.4 of the Conditions of Particular Application. Any such adjustment shall be effected by comparing the percentages quoted in the Tender with the amounts already used in the Works and the Contractor’s future needs for imported items.

**Alternative B:**

**Tenderers quote in local and foreign currencies**

15.2 The unit rates and prices shall be quoted by the Tenderer separately in the following currencies:

(a) for those inputs to the Works that the Tenderer expects to supply from within the Republic of Ghana, in the currency of Republic of Ghana specified in the Tender Data and Conditions of Particular Application; and

(b) for those inputs to the Works that the Tenderer expects to supply from outside the Republic of Ghana (referred to as “the foreign currency requirements”) in up to any three currencies of any eligible country.

15.3 Tenderers shall indicate their expected foreign currency requirements in the Appendix to Tender.

15.4 Tenderers may be required by the Employer to clarify their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Appendix to Tender are reasonable and responsive to Sub-Clause 15.2, in which case a detailed breakdown of its foreign currency requirements shall be provided by the Tenderer.

15.5 During the progress of the Works, the foreign currency portions of the outstanding balance of the Contract Price may be adjusted by agreement between the Employer and the Contractor in order to reflect any changes in foreign currency requirements for the Contract, in accordance with Sub-Clause 72.4 of the Conditions of Particular Application. Any such adjustment shall be effected by comparing the amounts quoted in the Tender with the amounts already used in the Works and the Contractor’s future needs for imported items.

**16. Tender**

16.1 Tenders shall remain valid for the period stipulated in the Tender
Validity

Data after the deadline for Tender submission as specified in Clause 22.

16.2 In exceptional circumstances, prior to expiry of the original Tender validity period, the Employer may request that the Tenderers extend the period of validity for a specified additional period. The request and the responses thereto shall be made in writing or by cable. A Tenderer may refuse the request without forfeiting its Tender security. A Tenderer agreeing to the request will not be required or permitted to modify its Tender, but will be required to extend the validity of its Tender security for the period of the extension and in compliance with Clause 17 in all respects.

16.3 In the case of contracts in which the Contract Price is fixed (not subject to price adjustment), if the period of Tender validity is extended beyond eight weeks, the amounts payable in local and foreign currency to the Tenderer selected for award shall be increased by applying to both the local and the foreign currency component of the payments, respectively, the factors specified in the Tender Data or in the request for extension, for the period of delay beyond eight weeks after the expiry of the initial Tender validity, up to the notification of award. Tender evaluation will be based on the Tender prices without taking into consideration the above correction.

17. Tender Security

17.1 The Tenderer shall furnish, as part of its Tender, a Tender security in the amount stipulated in the Tender Data in the currency of the Republic of Ghana, or the equivalent amount in a freely convertible currency.

17.2 The Tender security shall:

(a) at the Tenderer’s option, be in the form of either a certified check, letter of credit, or a bank guarantee from a banking institution, or a bond issued by an insurance or bonding institution;

(b) be issued by a reputable institution located in an eligible country, and acceptable to the Employer whose acceptance may not be unreasonably withheld;

(c) be substantially in accordance with one of the forms of Tender security included in Section VII or other form approved by the Employer prior to Tender submission;

(d) be payable promptly upon written demand by the employer
in case any of the conditions listed in Sub-Clause 17.7 are invoked;

(e) be submitted in its original form; copies will not be accepted;

(f) remain valid for a period of 28 days beyond the original validity period of Tenders, or beyond any period of extension subsequently requested under Sub-Clause 16.2.

17.3 The Tender security of a joint venture shall be issued so as to commit fully all partners to the proposed joint venture.

17.4 Any Tender not accompanied by an acceptable Tender security shall be rejected by the Employer as nonresponsive.

17.5 The Tender securities of unsuccessful Tenderers will be returned as promptly as possible, but not later than 28 days after the expiration of the original period, or any subsequently extended period, of Tender validity.

17.6 The Tender security of the successful Tenderer will be returned when the Tenderer has signed the Agreement and furnished the required performance security.

17.7 The Tender security may be forfeited

(a) if the Tenderer withdraws its Tender, except as provided in Sub-Clause 24.2;

(b) if the Tenderer does not accept the correction of its Tender Price, pursuant to Sub-Clause 29.2; or

(c) in the case of a successful Tender, if he fails within the specified time limit to

(i) sign the Agreement, or

(ii) furnish the required performance security.

18. Alternative Proposals by Tenderers

18.1 When alternative times for completion are explicitly invited, a statement to that effect will be included in the Tender Data, as will the method of evaluating different times for completion.

18.2 Except as provided under Sub-Clause 18.3 below, Tenderers wishing to offer technical alternatives to the requirements of the
18.3 When Tenderers are permitted to submit alternative technical solutions for specified parts of the Works, such parts shall be described in Section VI, Technical Specifications.

19. Pre-Tender Meeting

19.1 The Tenderer’s designated representative is invited to attend a pre-Tender meeting, which, if convened, will take place at the venue and time stipulated in the Tender Data.

19.2 The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

19.3 The Tenderer is requested, as far as possible, to submit any questions in writing or by cable, to reach the Employer not later than one week before the meeting. It may not be practicable at the meeting to answer questions received late, but questions and responses will be transmitted in accordance with the following sub-clause.

19.4 Minutes of the meeting, including the text of the questions raised and the responses given, together with any responses prepared after the meeting, will be transmitted without delay to all purchasers of the Tender Documents. Any modification of the Tender Documents listed in Sub-Clause 9.1 that may become necessary as a result of the pre-Tender meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to Clause 11 and not through the minutes of the pre-Tender meeting.

19.5 Nonattendance at the pre-Tender meeting will not be a cause for disqualification of a Tenderer.

20. Format and Signing of Tender

20.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in Clause 13 of these Instructions to Tenderers clearly marked “original.” In addition, the Tenderer shall submit copies of the Tender, in the number specified in the Tender Data and clearly marked “copies.” In the
event of discrepancy between them, the original shall prevail.

20.2 The original and all copies of the Tender shall be typed or written in indelible ink (in the case of copies, photocopies are also acceptable) and shall be signed by a person or persons duly authorized to sign on behalf of the Tenderer, pursuant to Paragraphs 5.1 (a) or 5.2 (c), as the case may be. All pages of the Tender where entries or amendments have been made shall be initialed by the person or persons signing the Tender.

20.3 The Tender shall contain no alterations, omissions, or additions, unless such corrections are initialed by the person or persons signing the Tender.

20.4 The Tenderer shall furnish information as described in paragraph 7 of the Form of Tender on commissions or gratuities, if any, paid or to be paid to agents relating to this Tender, and to contract execution if the Tenderer is awarded the Contract.

D. Submission of Tenders

21. Sealing and Marking of Tenders

21.1 The Tenderer shall seal the original and each copy of the Tender in separate envelopes, duly marking the envelopes as “original” and “copies.” The envelopes shall then be sealed in an outer envelope.

21.2 The inner and outer envelopes shall

(a) be addressed to the Employer at the address provided in the Tender Data;

(b) bear the name and identification number of the Contract as defined in the Tender Data; and

(c) provide a warning not to open before the time and date for Tender opening, as specified in the Tender Data.

21.3 In addition to the identification required in Sub-Clause 21.2, the inner envelopes shall indicate the name and address of the Tenderer to enable the Tender to be returned unopened in case it is declared “late” pursuant to Clause 23, and for matching purposes under Clause 24.

21.4 If the outer envelope is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or
premature opening of the Tender. If the outer envelope discloses the Tenderer’s identity, the Employer will not guarantee the anonymity of the Tender submission, but this shall not constitute grounds for rejection of the Tender.

22. Deadline for Submission of Tenders

22.1 Tenders must be received by the Employer at the address specified in Sub-Clause 21.2 no later than the time and date stipulated in the Tender Data.

22.2 The Employer may, in exceptional circumstances and at its discretion, extend the deadline for submission of Tenders by issuing an Addendum in accordance with Clause 11, in which case all rights and obligations of the Employer and the Tenderers previously subject to the original deadline will thereafter be subject to the deadline as extended.

23. Late Tenders

23.1 Any Tender received by the Employer after the deadline for submission of Tenders prescribed in Clause 22 will be returned unopened to the Tenderer.

24. Modification and Withdrawal of Tenders

24.1 The Tenderer may modify or withdraw its Tender after Tender submission, provided that written notice of the modification or withdrawal is received by the Employer prior to the deadline for submission of Tenders.

24.2 The Tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with the provisions of Clause 21, with the outer and inner envelopes additionally marked “modification” or “withdrawal,” as appropriate.

24.3 No Tender may be modified by the Tenderer after the deadline for submission of Tenders, except in accordance with Sub-Clauses 24.2 and 29.2.

24.4 Except as provided in Sub-Clause 24.2, withdrawal of a Tender during the interval between the deadline for submission of Tenders and expiration of the period of Tender validity specified in Clause 16 may result in the forfeiture of the Tender security pursuant to Sub-Clause 17.6.
E. Tender Opening and Evaluation

25. Tender Opening

25.1 The Employer will open the Tenders, including withdrawals and modifications made pursuant to Clause 24, in the presence of Tenderers’ designated representatives who choose to attend, at the time, date, and location stipulated in the Tender Data. The Tenderers’ representatives who are present shall sign a register evidencing their attendance.

25.2 Envelopes marked “WITHDRAWAL” shall be opened first, and the name of the Tenderer shall be read out. Tenders for which an acceptable notice of withdrawal has been submitted pursuant to Clause 24 shall not be opened. Subsequently, all envelopes marked “MODIFICATION” shall be opened and the submissions therein read out in appropriate detail.

25.3 The Tenderers’ names, the Tender Prices, including any alternative Tender Price or deviation, any discounts, Tender modifications and withdrawals, the presence (or absence) and amount of Tender security, and any such other details as the Employer may consider appropriate, will be announced by the Employer at the opening. No Tender shall be rejected at Tender opening except for late Tenders pursuant to Clause 23.

25.4 The Employer shall prepare minutes of the Tender opening, including the information disclosed to those present in accordance with Sub-Clause 25.3.

25.5 Tenders not opened and read out at Tender opening shall not be considered further for evaluation, irrespective of the circumstances.

26. Process to Be Confidential

26.1 Information relating to the examination, clarification, evaluation, and comparison of Tenders, and recommendations for the award of a contract, shall not be disclosed to Tenderers or any other persons not officially concerned with such process until the award to the successful Tenderer has been announced. Any effort by a Tenderer to influence the Employer’s processing of Tenders or award decisions may result in the rejection of the Tenderer’s Tender.

27. Clarification of Tenders and Contacting the

27.1 To assist in the examination, evaluation, and comparison of Tenders, the Employer may, at its discretion, ask any Tenderer for clarification of its Tender, including breakdowns of unit
Employer rates. The request for clarification and the response shall be in writing or by cable, but no change in the price or substance of the Tender shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Tenders in accordance with Clause 29.

27.2 From the time of Tender opening to the time of Contract award, if any Tenderer wishes to contact the Employer on any matter related to the Tender, it should do so in writing.

27.3 Any effort by the Tenderer to influence the Employer in the Employer’s Tender evaluation, Tender comparison, or Contract award decisions may result in the rejection of the Tenderer’s Tender.
28. Examination of Tenders and Determination of Responsiveness

28.1 Prior to the detailed evaluation of Tenders, the Employer will determine whether each Tender (a) meets the eligibility criteria of the Public Procurement Board of the Republic of Ghana; (b) has been properly signed; (c) is accompanied by the required securities; (d) is substantially responsive to the requirements of the Tender Documents; and (e) provides any clarification and/or substantiation that the Employer may require to determine responsiveness pursuant to Sub-Clause 28.2. Furthermore, the Tenderer shall, if required, provide substantiation that the Employer may require, pursuant to Sub-Clause 15.5.

28.2 A substantially responsive Tender is one that conforms to all the terms, conditions, and specifications of the Tender Documents without material deviation or reservation. A material deviation or reservation is one (a) that affects in any substantial way the scope, quality, or performance of the Works; (b) that limits in any substantial way, inconsistent with the Tender Documents, the Employer’s rights or the Tenderer’s obligations under the contract; or (c) whose rectification would affect unfairly the competitive position of other Tenderers presenting substantially responsive Tenders.

28.3 If a Tender is not substantially responsive, it will be rejected by the Employer and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

29. Correction of Errors

29.1 Tenders determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Errors will be corrected by the Employer as follows:

(a) where there is a discrepancy between the amounts in figures and in words, the amount in words will govern; and

(b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern, unless in the opinion of the Employer there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted will govern and the unit rate will be corrected.

29.2 The amount stated in the Tender will be adjusted by the Employer in accordance with the above procedure for the correction of errors and, with the concurrence of the Tenderer, shall be considered as binding upon the Tenderer. If the Tenderer does not accept the corrected amount of Tender, its
Tender will be rejected, and the Tender security may be forfeited in accordance with Paragraph 17.6 (b).

30. Conversion to Single Currency for Comparison of Tenders

Option 1: To be used with Clause 15, Alternative A

30.1 For comparison of Tenders, the Tender Price, corrected pursuant to Clause 29, shall first be broken down into the respective amounts payable in various currencies by using the exchange rates specified by the Tenderer in accordance with Sub-Clause 15.3.

30.2 In the second step, the Employer will convert the amounts in various currencies in which the Tender Price is payable (excluding Provisional Sums but including Daywork where priced competitively) to either:

(a) the currency of the Republic of Ghana at the selling rates established for similar transactions by the authority specified in the Tender Data on the date stipulated in the Tender Data;

or

(b) a currency widely used in international trade, such as the U.S. dollar, stipulated in the Tender Data, at the selling rate of exchange published in the international press as stipulated in the Tender Data on the date stipulated in the Tender Data, for the amounts payable in foreign currency; and, at the selling exchange rate established for similar transactions by the same authority specified in Paragraph 30.2 (a) above on the date specified in the Tender Data for the amount payable in the currency of the Republic of Ghana

Option 2: To be used with Clause 15, Alternative B

30.1 The Employer will convert the amounts in various currencies in which the Tender Price, corrected pursuant to Clause 29, is payable (excluding Provisional Sums but including Daywork where priced competitively) to either:

(a) the currency of the Republic of Ghana at the selling rates established for similar transactions by the authority specified in the Tender Data on the date stipulated in the Tender Data;

or
31. Evaluation and Comparison of Tenders

31.1 The Employer will evaluate and compare only the Tenders determined to be substantially responsive in accordance with Clause 28.

31.2 In evaluating the Tenders, the Employer will determine for each Tender the Evaluated Tender Price by adjusting the Tender Price as follows:

(a) making any correction for errors pursuant to Clause 29;

(b) excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities, but including Daywork, where priced competitively;

(c) converting the amount resulting from applying (a) to (b) above and (f) below, if relevant, to a single currency in accordance with Clause 30;

(d) making an appropriate adjustment on sound technical and/or financial grounds for any other quantifiable acceptable variations, deviations, or alternative offers;

(e) making an allowance for varying times for completion offered by Tenderers, if permitted in the Tender Data and in the manner prescribed therein; and

(f) applying any discounts offered by the Tenderer for the award of more than one contract, if Tender for this Contract is being done concurrently with other Contracts (Sub-Clause 13.2).

31.3 The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, alternative offers, and other factors that are in excess of the requirements of
the Tender Documents shall not be taken into account in Tender evaluation.

31.4 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in Tender evaluation.

31.5 If the Tender, which results in the lowest Evaluated Tender Price, is seriously unbalanced or front loaded in relation to the Engineer’s estimate of the items of work to be performed under the Contract, the Employer may require the Tenderer to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the performance security set forth in Clause 37 be increased at the expense of the Tenderer to a level sufficient to protect the Employer against financial loss in the event of default of the successful Tenderer under the Contract.

32. Preference for Domestic Tenderers

32.1 If so indicated in the Tender Data, domestic Tenderers may receive a margin of preference in Tender evaluation for which this clause shall apply.

32.2 Domestic Tenderers shall provide all evidence necessary to establish that they meet the following criteria to be eligible for a ten percent (10%) margin of preference in the comparison of their Tenders with those of Tenderers who do not qualify for the preference.

32.3 A domestic Tenderer is one that meets the following criteria:
   (a) for an individual firm:
      (i) is registered in the Ghana;
      (ii) has more than 50 percent ownership by Ghanaians;
      (iii) does not subcontract more than 10 percent of the Contract Price, excluding Provisional Sums, to foreign contractors.
   (b) for a joint venture (JV) of domestic firms:
      (i) individual member firms shall satisfy Sub-Paragraphs 32.3 (a) (i) and (a) (ii) above;
(ii) the JV shall be registered in the country of the Borrower;

(iii) the JV shall not subcontract more than 10 percent of the Contract Price, excluding Provisional Sums, to foreign firms.

32.4 The following procedure will be used to apply the margin of preference:

(a) After Tenders have been converted to a single currency in accordance with the provisions of Paragraphs 31.2 (c) above, responsive Tenders will be classified into the following groups:

(i) Group A: Tenders offered by domestic Tenderers and joint ventures meeting the criteria set out in the above Sub-Clause 32.3; and

(ii) Group B: all other Tenders.

(b) For the purpose of further evaluation and comparison of Tenders only, an amount equal to 7½ percent of the evaluated Tender Price determined in accordance with the provisions of Paragraphs 31.2 (a), (b), (c), and, where applicable, (f), will be added to all Tenders classified in Group B.

32.5 Alternative offers, where solicited or permitted, will be evaluated separately, in accordance with the provisions of Clause 18, and shall be subject to the margin of preference in accordance with Sub-Clause 32.4.

33. Preference for Foreign Tenderers Associating with Domestic Contractors

33.1 If so indicated in the Tender Data, foreign Tenderers may receive a margin of preference in Tender evaluation for which this clause shall apply.

33.2 Foreign Tenderers shall provide all evidence necessary to establish that they meet the following criteria to be eligible for a two and one-half percent (2.5%) margin of preference in the comparison of their Tenders with those of Tenderers who do not qualify for the preference.

33.3 A Foreign Tenderer shall be eligible for the margin of preference if the firm meets either of the criteria listed below.

(a) either the firm sub-contracts not less than twenty per cent (20%) of the value of the works to a Domestic Contractor(s);
or

(b) the firm associates with a Domestic Contractor(s) where the participation of the Domestic Contractor(s) is not less than twenty per cent (20%) of the value of the works.

33.4 A Domestic Contractor is defined as in Clause 32.3 (a) above

F. Award of Contract

34. Award

34.1 Subject to Clause 36, the Employer will award the Contract to the Tenderer whose Tender has been determined to be substantially responsive to the Tender Documents and who has offered the lowest Evaluated Tender Price pursuant to Clauses 31, 32, 33 and 34, provided that such Tenderer has been determined to be (a) eligible in accordance with the provisions of Sub-Clause 3.1; and (b) qualified in accordance with the provisions of Clause 5.

34.2 If, pursuant to Sub-Clause 13.2, this Contract is being let on a “slice and package” basis, the lowest evaluated Tender Price will be determined when evaluating this Contract in conjunction with other contracts to be awarded concurrently, taking into account any discounts offered by the Tenderers for the award of more than one contract.

35. Employer’s Right to Accept Any Tender and to Reject Any or All Tenders

35.1 The Employer reserves the right to accept or reject any Tender, and to annul the Tender process and reject all Tenders, at any time prior to award of Contract, without thereby incurring any liability to the affected Tenderer or Tenderers or any obligation to inform the affected Tenderer or Tenderers of the grounds for the Employer’s action.

36. Notification of Award

36.1 Prior to expiration of the period of Tender validity prescribed by the Employer, the Employer will notify the successful Tenderer by cable confirmed by registered letter that its Tender has been accepted. This letter (hereinafter and in the Conditions of Contract called the “Letter of Acceptance”) shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the Works and the remedying of any defects therein by the Contractor as prescribed by the Contract (hereinafter and in the Conditions of Contract called “the Contract Price”).

36.2 The notification of award will constitute the formation of the
36.3 Upon the successful Tenderer’s furnishing of the performance security pursuant to ITT Clause 38, the Employer will promptly notify the name of the winning Tenderer to each unsuccessful Tenderer and will discharge the Tender security of the unsuccessful Tenderers, pursuant to ITT Clause 17.

36.4 If, after notification of award, a Tenderer wish to ascertain the grounds on which it’s Tender was not selected, it should address its request in writing to the Employer. The Employer will promptly respond in writing to the unsuccessful Tenderer.

37. Signing of Agreement

37.1 At the same time that the Employer notifies the successful Tenderer that its Tender has been accepted, the Employer will send the Tenderer the Agreement in the form provided in the Tender Documents, incorporating all agreements between the parties.

37.2 Within 28 days of receipt of the Agreement, the successful Tenderer shall sign the Agreement and return it to the Employer, together with the required performance security.

37.3 Upon fulfillment of Sub-Clause 37.2, the Employer will promptly notify the other Tenderers that their Tenders have been unsuccessful and their Tender security will be returned as promptly as possible, in accordance with Sub-Clause 17.5.

38. Performance Security

38.1 Within 28 days of receipt of the Letter of Acceptance from the Employer, the successful Tenderer shall furnish to the Employer a performance security in the form stipulated in the Tender Data and the Conditions of Contract. The form of performance security provided in Section IX of the Tender Documents may be used or some other form acceptable to the Employer.

38.2 If it is stipulated in the Tender Data that the performance security is to be provided by the successful Tenderer in the form of a bank guarantee, it shall be issued either (a) at the Tenderer’s option, by a bank located in the country of the Employer or by a foreign bank through a correspondent bank located in the country of the Employer, or (b) with the prior agreement of the Employer directly by a foreign bank acceptable to the Employer.

38.3 If it is stipulated in the Tender Data that the performance security may also be provided by the successful Tenderer in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Tenderer to be acceptable to the Employer.
38.4 Failure of the successful Tenderer to comply with the requirements of Clauses 37 or 38 shall constitute a breach of Contract, cause for annulment of the award, forfeiture of the Tender security, and any such other remedy the Employer may take under the Contract, and the Employer may resort to awarding the Contract to the next ranked Tenderer.

39. Disputes Review Method

39.1 The disputes review method (i.e., the Disputes Review Board or the Disputes Review Expert) is indicated in the Tender Data. The Employer and the successful Tenderer will select Disputes Review Board members or the Disputes Review Expert, as the case may be, according to the procedure set forth in Clause 67 of the Conditions of Particular Application.

40. Corrupt or Fraudulent Practices

40.1 The Government of Ghana (GOG) requires that all Procurement Entities as well as Tenderers, Suppliers, Contractors and Consultants participating in contracts financed from the public funds of the Republic of Ghana, adhere to the highest ethical standards, both during the tendering process and throughout the execution of such contracts. The list of definitions set forth below involves the most common types of corrupt practices, but is not exhaustive. For this reason, the Public Procurement Board will also consider claims of similar nature involving alleged acts of corruption, in accordance with the established procedure.

(a). “Bribery” means the act of unduly offering, giving, receiving or soliciting anything of value to influence the process of procuring goods or services, selecting consultants, or executing contracts.

(b). “Extortion” or “Coercion” means the act attempting to influence the process of procuring goods or services, selecting consultants, or executing contracts by means of threats of injury to person, property or reputation.

(c). “Fraud” means the misrepresentation of information or facts for the purpose of influencing the process of procuring goods or services, selecting consultants, or executing contracts, to the detriment of the Procurement Entity/Purchaser or other participants.

(d). “Collusion” is an agreement between tenderers designed to result in tenders at artificial prices that are not competitive.

40.2 If, in accordance with the administrative procedures of the Public Procurement Board, it is demonstrated that a government/public
official, or anyone acting on his or her behalf, and/or a Tenderer in a procurement process or supplier/contractor during the execution of the contract carried out in connection with a project financed from the public funds of the Republic of Ghana has committed corrupt practices, the Public Procurement Board or the appropriate Tender Review Board will:

(a). reject a proposal to award a contract in connection with the respective procurement process; and/or

(b). declare a firm and/or its personnel directly involved in corrupt practices, temporarily or permanently ineligible to be awarded future contracts financed from the public funds of the Republic of Ghana.

40.3 The Tenderer shall disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents with respect to the tendering process or execution of the contract. The information disclosed must include at the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee. The information must be included in the Tender Submission Sheet.

40.4 Furthermore, Tenderers shall be aware of the provision stated in Sub-Clause 26.2 and Sub-Clause 63.5 of the General Conditions of Contract, Part II – Conditions of Particular Application.

40.5 Any communications between the Tenderer and the Purchaser related to matters of alleged fraud or corruption must be made in writing.

SECTION III. TENDER DATA
**Tender Data**

Whenever there is a conflict, the provisions herein shall prevail over those in the Instructions to Tenderers.

<table>
<thead>
<tr>
<th>1.1</th>
<th>Summary of the Works:</th>
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<tr>
<th>1.1</th>
<th>Name &amp; Address of the Employer:</th>
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<tbody>
<tr>
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<td>Attention: _____________________</td>
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<tr>
<td></td>
<td>Name of Employer/Procurement Entity: _____________________</td>
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<tr>
<td></td>
<td>Address: _______________</td>
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<tr>
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<td>Floor/Room number: ____________</td>
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<td>City: ____________</td>
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<td>Region: ____________</td>
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<td>Country: _______________</td>
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<td>Telephone: _______________</td>
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<td>Facsimile number: ____________</td>
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<td></td>
<td>Electronic mail address: _______________</td>
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| 1.2 | Period of Completion: _______________|

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<thead>
<tr>
<th>2.1</th>
<th>Name and description of the Project and amount, source and type of financing:</th>
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<tr>
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<tr>
<th>5.1</th>
<th>Prequalification information to be updated:</th>
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<p>| 12.1 | Tender language is English |</p>
<table>
<thead>
<tr>
<th>Paragraph</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.2</td>
<td>This contract ______ being tendered simultaneously with other contracts on a “slice and package” basis:</td>
</tr>
<tr>
<td>14.4</td>
<td>The contract ______ subject to price adjustment.</td>
</tr>
<tr>
<td>15.1</td>
<td>The currency(ies) of the Tender _____ (_______) in accordance with Alternative __________ of Clause 15.</td>
</tr>
<tr>
<td>15.2</td>
<td>Currency of the Republic of Ghana is the Cedi (GHC).</td>
</tr>
<tr>
<td>16.1</td>
<td>The Tender validity period shall be _____ days.</td>
</tr>
<tr>
<td>16.3</td>
<td>Percentage annual increase for foreign costs to adjust Tender Price shall be __________%. Percentage annual increase for local costs shall be ________%.</td>
</tr>
<tr>
<td>17.1</td>
<td>The amount of Tender security shall be _______________.</td>
</tr>
<tr>
<td>18.1</td>
<td>Tenders are invited for alternative times for completion between _____ days minimum and _______ days maximum. The method of evaluation is indicated in Paragraph 31.2 (e). The time for completion offered by the successful Tenderer shall be the contractual time for completion.</td>
</tr>
</tbody>
</table>
| 19.1      | Venue, time, and date of the pre-Tender meeting.  
Venue: ___________________________  
Time: ___________________________  
Date: ___________________________ |
| 20.1      | Number of copies of the Tender to be completed and returned: ___________________________. |
| 21.2      | For Tender submission purposes only, the Employer’s Address is:  
Attention: ___________________________  
Street Address: ___________________________  
Floor/Room number: ___________________________  
City: ___________________________  
Region: ___________________________  
Country: ___________________________ |
| 21.2      | Number of the Contract: |
| 22.1      | The deadline for Tender submission is: |
|   | Date: ________________  
|   | Time ________________  
| 25.1 | The Tender opening shall take place at:  
|     | Street Address: ________________________________  
|     | Floor/Room number: ________________________________  
|     | City: ________________________________  
|     | Region: ________________________________  
|     | Country: ________________________________  
|     | Date: ________________________________  
|     | Time: ________________________________  
| 30.2 | The currency that shall be used for tender evaluation and comparison purposes to convert all tender prices expressed in various currencies into a single currency is: ________________________________  
|     | The source of exchange rate shall be: ________________________________  
|     | The exchange rate date shall be: ________________________________  
| 31.2(e) | Alternative times for completion will be evaluated as follows:  
|         | ________________________________________________  
|         | ________________________________________________  
|         | ________________________________________________  
|         | ________________________________________________  
|         | ________________________________________________  
| 32.1 | A margin of preference ________________ apply.  
| 33.1 | A margin of preference shall apply  
| 37 | The form and amount of performance security acceptable to the Employer shall be:  
|    | Form: ________________________________________________  
|    | Amount: ________________________________________________  
| 38 | The Disputes Review Method shall be ________________________________.
SECTION IV. GENERAL CONDITIONS OF CONTRACT
General Conditions of Contract

Name of Employer: _______________________________________________

Name of Contract: _______________________________________________

CONDITIONS OF CONTRACT

PART I: GENERAL CONDITIONS


Copies of the FIDIC Conditions of Contract* can be obtained from:

FIDIC Secretariat
P.O. Box 86
1000 Lausanne 12
Switzerland
Facsimile: 41 21 653 5432
Telephone: 41 21 653 5003

*[A Complimentary Copy has been included for purposes of illustration]*
CONDITIONS OF CONTRACT
FOR WORKS OF CIVIL ENGINEERING CONSTRUCTION

PART I GENERAL CONDITIONS
WITH FORMS OF TENDER AND AGREEMENT
FOREWORD

The terms of the Fourth Edition of the Conditions of Contract for Works of Civil Engineering Construction have been prepared by the Fédération Internationale des Ingénieurs Conseils (FIDIC) and are recommended for general use for the purpose of construction of such works where tenders are invited on an international basis. The Conditions, subject to minor modifications, are also suitable for use on domestic contracts.

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

In the preparation of the Conditions it was recognised that while there are numerous Clauses, which will be generally applicable, there are some Clauses, which must necessarily vary to take account of the circumstances and locality of the Works. The Clauses of general application have been grouped together in this document and are referred to as Part I - General Conditions. They have been printed in a form, which will facilitate their inclusion as printed in the contract documents normally prepared.

The General Conditions are linked with the Conditions of Particular Application, referred to as Part II, by the corresponding numbering of the Clauses, so that Parts I and II together comprise the Conditions governing the rights and obligations of the parties.

Part II must be specially drafted to suit each individual Contract.

When dredging and certain types of reclamation work are involved special consideration must be given to Part II.

To assist in the preparation of Part II explanatory material and example clauses are published with the Conditions in a separately bound document entitled “Conditions of Contract for Works of Civil Engineering Construction, Part II - Conditions of Particular Application, with Guidelines for preparation of Part II Clauses, Fourth Edition”.

FIDIC has published a "Guide to the Use of FIDIC Conditions of Contract for Works of Civil Engineering Construction" which includes comments on the provisions of the Fourth Edition of the Conditions. Users of the Fourth Edition may find it helpful to refer to this Guide.

It may also be helpful for users to refer to other FIDIC publications, such as:

Tendering Procedure (First Edition 1982)
Construction, Insurance and Law (1986)

FIDIC gratefully acknowledges the suggestions and comments it has received during the preparation of this edition from European International Contractors (E1Q as mandatory of Confederation of International Contractors Associations (CICA) with participation of Associated General Contractors of America (AGC).
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GENERAL CONDITIONS

Definitions and Interpretation

In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them, except where the context otherwise requires:

(a) (i) “Employer” means the person named as such in Part II of these Conditions and the legal successors in title to such person, but not (except with the consent of the Contractor) any assignee of such person.
(ii) “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.
(iii) “Subcontractor” means any person named in the Contract as a Subcontractor for a part of the Works or any person to whom a part of the Works has been subcontracted with the consent of the Engineer and the legal successors in title to such person, but not any assignee of any such person.
(iv) “Engineer” means the person appointed by the Employer to act as Engineer for the purposes of the Contract and named as such in Part II of these Conditions.
(v) “Engineer’s Representative” means a person appointed from time to time by the Engineer under Sub-Clause 2.2.

(b) (i) “Contract” means these Conditions (Parts I and II), the Specification, the Drawings, the Bill of Quantities, the Tender, 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).
(ii) “Specification” means the specification of the Works included in the Contract and any modification thereof or addition thereto made under Clause 51 or submitted by the Contractor and approved by the Engineer.
(iii) “Drawings” means all drawings, calculations and technical information of a like nature provided by the Engineer to the Contractor under the Contract and all drawings, calculations, samples, patterns, models, operation and maintenance manuals and other technical information of a like nature submitted by the Contractor and approved by the Engineer.
(iv) “Bill of Quantities” means the priced and completed bill of quantities forming part of the Tender.
(v) “Tender” means the Contractor’s priced offer to the Employer for the execution and completion of the Works and the remedying of any defects therein in accordance with the provisions of the Contract, as accepted by the Letter of Acceptance.
(vi) “Letter of Acceptance” means the formal acceptance by the Employer of the Tender.
(vii) “Contract Agreement” means the contract agreement (if any) referred to in Sub-Clause 9.1.
(viii) “Appendix to Tender” means the appendix comprised in the form of Tender annexed to these Conditions.

(c) (i) “Commencement Date” means the date upon which the Contractor receives the notice to commence issued by the Engineer pursuant to Clause 41.
(ii) “Time for Completion” means the time for completing the execution of and passing the Tests on Completion of the Works or any Section or part thereof as stated in the Contract (or as extended under Clause 44) calculated from the Commencement Date.
General Conditions of Contract

Section IV

(d) (i) “Tests on Completion” means the tests specified in the Contract or otherwise agreed by the Engineer and the Contractor which are to be made by the Contractor before the Works or any Section or part thereof are taken over by the Employer.


e) (i) “Contract Price” means the sum stated in the Letter of Acceptance as payable to the Contractor for the execution and completion of the Works and the remedying of any defects therein in accordance with the provisions of the Contract.

(ii) “Retention Money” means the aggregate of all monies retained by the Employer pursuant to Sub-Clause 60.2(a).

(iii) “Interim Payment Certificate” means any certificate of payment issued by the Engineer other than the Final Payment Certificate.

(iv) “Final Payment Certificate” means the certificate of payment issued by the Engineer pursuant to Sub-Clause 60.8.

(f) (i) “Works” means the Permanent Works and the Temporary Works or either of them as appropriate.

(ii) “Permanent Works” means the permanent works to be executed (including Plant) in accordance with the Contract.

(iii) “Temporary Works” means all temporary works of every kind (other than Contractor’s Equipment) required in or about the execution and completion of the Works and the remedying of any defects therein.

(iv) “Plant” means machinery, apparatus and the like intended to form or forming part of the Permanent Works.

(v) “Contractor’s Equipment” means all appliances and things of whatsoever nature (other than Temporary Works) required for the execution and completion of the Works and the remedying of any defects therein, but does not include Plant, materials or other things intended to form or forming part of the Permanent Works.

(vi) “Section” means a part of the Works specifically identified in the Contract as a Section.

(vii) “Site” means the places provided by the Employer where the Works are to be executed and any other places as may be specifically designated in the Contract as forming part of the Site.

g) (i) “cost” means all expenditure properly incurred or to be incurred, whether on or off the Site, including overhead and other charges properly allocable thereto but does not include any allowance for profit.

(ii) “day” means calendar day.

(iii) “foreign currency” means a currency of a country other than that in which the Works are to be located.

(iv) “writing” means any hand-written, type-written, or printed communication, including telex, cable and facsimile transmission.

The headings and marginal notes in these Conditions shall not be deemed part thereof or be taken into consideration in the interpretation or construction thereof or of the Contract.

Words importing persons or parties shall include firms and corporations and any organisation having legal capacity.

Words importing the singular only also include the plural and vice versa where the context requires.
Wherever in the Contract provision is made for the giving or issue of any notice, consent, approval, certificate or determination by any person, unless otherwise specified such notice, consent, approval, certificate or determination shall be in writing and the words “notify”, “certify” or “determine” shall be construed accordingly. Any such consent, approval, certificate or determination shall not unreasonably be withheld or delayed.

**Engineer and Engineer’s Representative**

(a) The Engineer shall carry out the duties specified in the Contract.

(b) The Engineer may exercise the authority specified in or necessarily to be implied from the Contract, provided, however, that if the Engineer is required, under, the terms of his appointment by the Employer, to obtain the specific approval of the Employer before exercising any such authority, particulars of such requirements shall be set out in Part II of these Conditions. Provided further that any requisite approval shall be deemed to have been given by the Employer for any such authority exercised by the Engineer.

(c) Except as expressly stated in the Contract, the Engineer shall have no authority to relieve the Contractor of any of his obligations under the Contract.

**Engineer’s Representative**

The Engineer’s Representative shall be appointed by and be responsible to the Engineer and shall carry out such duties and exercise such authority as may be delegated to him by the Engineer under Sub-Clause 2.3.

**Engineer’s Authority to Delegate**

The Engineer may from time to time delegate to the Engineer’s Representative any of the duties and authorities vested in the Engineer and he may at any time revoke such delegation. Any such delegation or revocation shall be in writing and shall not take effect until a copy thereof has been delivered to the Employer and the Contractor.

Any communication given by the Engineer’s Representative to the Contractor in accordance with such delegation shall have the same effect as though it had been given by the Engineer. Provided that:

(a) any failure of the Engineer’s Representative to disapprove any work, materials or Plant shall not prejudice the authority of the Engineer to disapprove such work, materials or Plant and to give instructions for the rectification thereof, and

(b) if the Contractor questions any communication of the Engineer’s Representative he may refer the matter to the Engineer who shall confirm, reverse or vary the contents of such communication.

**Appointment of Assistants**

The Engineer or the Engineer’s Representative may appoint any number of persons to assist the Engineer’s Representative in the carrying out of his duties under Sub-Clause 2.2. He shall notify to the Contractor the names, duties and scope of authority of such persons. Such assistants shall have no authority to issue any instructions to the Contractor save in so far as such instructions may be necessary to enable them to carry out their duties and to secure their acceptance of materials, Plant or workmanship as being in accordance with the Contract, and any instructions given by any of them for those purposes shall be deemed to have been given by the Engineer’s Representative.

Instructions given by the Engineer shall be in writing, provided that if for any reason the Engineer considers it necessary to give any such instruction orally, the Contractor shall comply with such instruction. Confirmation in writing of such oral instruction given by the Engineer, whether before or after the carrying out of the instruction, shall be deemed to be an instruction within the meaning of this Sub-Clause. Provided further that if the Contractor, within 7 days, confirms in writing to the Engineer any oral instruction of the Engineer and such confirmation is not contradicted in writing within 7 days by the Engineer, it shall be deemed to be an instruction of the Engineer.
The provisions of this Sub-Clause shall equally apply to instructions given by the Engineer's Representative and any assistants of the Engineer or the Engineer's Representative appointed pursuant to Sub-Clause 2.4.

**Engineer to Act Impartially**

2.6 Wherever, under the Contract, the Engineer is required to exercise his discretion by:

(a) giving his decision, opinion or consent,
(b) expressing his satisfaction or approval,
(c) determining value, or
(d) otherwise taking action which may affect the rights and obligations of the Employer or the Contractor

he shall exercise such discretion impartially within the terms of the Contract and having regard to all the circumstances. Any such decision, opinion, consent, expression of satisfaction, or approval, determination of value or action may be opened up, reviewed or revised as provided in Clause 67.

**Assignment and Subcontracting**

The Contractor shall not, without the prior consent of the Employer (which consent, notwithstanding the provisions of Sub-Clause 1.5, shall be at the sole discretion of the Employer), assign the Contract or any part thereof, or any benefit or interest therein or thereunder, otherwise than by

(a) a charge in favour of the Contractor’s bankers of any monies due or to become due under the Contract, or
(b) assignment to the Contractor’s insurers (in cases where the insurers have discharged the Contractor's loss or liability) of the Contractor's right to obtain relief against any other party liable.

The Contractor shall not subcontract the whole of the Works. Except where otherwise provided by the Contract, the Contractor shall not subcontract any part of the Works without the prior consent of the Engineer. Any such consent shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any Subcontractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen.

Provided that the Contractor shall not be required to obtain such consent for:

(a) the provision of labour,
(b) the purchase of materials which are in accordance with the standards specified in the Contract, or
(c) the subcontracting of any part of the Works for which the Subcontractor is named in the Contract.

In the event of a Subcontractor having undertaken towards the Contractor in respect of the work executed, or the goods, materials, Plant or services supplied by such Subcontractor, any continuing obligation extending for a period exceeding that of the Defects Liability Period under the Contract, the Contractor shall at any time, after the expiration of such Period, assign to the Employer, at the Employer’s request and cost, the benefit of such obligation for the unexpired duration thereof.

**Contract Documents**

There is stated in Part II of these Conditions:

(a) the language or languages in which the Contract documents shall be drawn up, and
(b) the country or state the law of which shall apply to the Contract and according to which the Contract shall be construed.

If the said documents are written in more than one language, the language according to which the Contract shall be construed and interpreted is also stated in Part II of these Conditions, being therein designated the “Ruling Language”.

**Assignment of Contract**

3.1 The Contractor shall not, without the prior consent of the Employer (which consent, notwithstanding the provisions of Sub-Clause 1.5, shall be at the sole discretion of the Employer), assign the Contract or any part thereof, or any benefit or interest therein or thereunder, otherwise than by

(a) a charge in favour of the Contractor’s bankers of any monies due or to become due under the Contract, or
(b) assignment to the Contractor’s insurers (in cases where the insurers have discharged the Contractor's loss or liability) of the Contractor's right to obtain relief against any other party liable.

**Subcontracting**

4.1 The Contractor shall not subcontract the whole of the Works. Except where otherwise provided by the Contract, the Contractor shall not subcontract any part of the Works without the prior consent of the Engineer. Any such consent shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any Subcontractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen.

Provided that the Contractor shall not be required to obtain such consent for:

(a) the provision of labour,
(b) the purchase of materials which are in accordance with the standards specified in the Contract, or
(c) the subcontracting of any part of the Works for which the Subcontractor is named in the Contract.

In the event of a Subcontractor having undertaken towards the Contractor in respect of the work executed, or the goods, materials, Plant or services supplied by such Subcontractor, any continuing obligation extending for a period exceeding that of the Defects Liability Period under the Contract, the Contractor shall at any time, after the expiration of such Period, assign to the Employer, at the Employer’s request and cost, the benefit of such obligation for the unexpired duration thereof.

**Assignment of Subcontractors' Obligations**

4.2 In the event of a Subcontractor having undertaken towards the Contractor in respect of the work executed, or the goods, materials, Plant or services supplied by such Subcontractor, any continuing obligation extending for a period exceeding that of the Defects Liability Period under the Contract, the Contractor shall at any time, after the expiration of such Period, assign to the Employer, at the Employer’s request and cost, the benefit of such obligation for the unexpired duration thereof.

**Language/s and Law**

5.1 There is stated in Part II of these Conditions:

(a) the language or languages in which the Contract documents shall be drawn up, and
(b) the country or state the law of which shall apply to the Contract and according to which the Contract shall be construed.

If the said documents are written in more than one language, the language according to which the Contract shall be construed and interpreted is also stated in Part II of these Conditions, being therein designated the “Ruling Language”.
### Priority of Contract Documents

5.2 The several documents forming the Contract are to be taken as mutually explanatory of one another, but in case of ambiguities or discrepancies, the same shall be explained and adjusted by the Engineer who shall thereupon issue to the Contractor instructions thereon and in such event, unless otherwise provided in the Contract, the priority of the documents forming the Contract shall be as follows:

1. The Contract Agreement (if completed);
2. The Letter of Acceptance;
3. The Tender;
4. Part II of these Conditions;
5. Part I of these Conditions; and
6. Any other document forming part of the Contract.

### Custody and Supply of Drawings and Documents

6.1 The Drawings shall remain in the sole custody of the Engineer, but two copies thereof shall be provided to the Contractor free of charge. The Contractor shall make at his own cost any further copies required by him. Unless it is strictly necessary for the purposes of the Contract, the Drawings, Specification and other documents provided by the Employer or the Engineer shall not, without the consent of the Engineer, be used or communicated to a third party by the Contractor. Upon issue of the Defects Liability Certificate, the Contractor shall return to the Engineer all Drawings, Specification and other documents provided under the Contract.

The Contractor shall supply to the Engineer four copies of all Drawings, Specification and other documents submitted by the Contractor and approved by the Engineer in accordance with Clause 7, together with a reproducible copy of any material, which cannot be reproduced to an equal standard by photocopying. In addition the Contractor shall supply such further copies of such Drawings, Specification and other documents as the Engineer may request in writing for the use of the Employer, who shall pay the cost thereof.

### One Copy of Drawings to be Kept on Site

6.2 One copy of the Drawings, provided to or supplied by the Contractor as aforesaid, shall be kept by the Contractor on the Site and the same shall at all reasonable times be available for inspection and use by the Engineer and by any other person authorised by the Engineer in writing.

### Disruption of Progress

6.3 The Contractor shall give notice to the Engineer, with a copy to the Employer, whenever planning or execution of the Works is likely to be delayed or disrupted unless any further drawing or instruction is issued by the Engineer within a reasonable time. The notice shall include details of the drawing or instruction required and of why and by when it is required and of any delay or disruption likely to be suffered if it is late.

If, by reason of any failure or inability of the Engineer to issue, within a time reasonable in all the circumstances, any drawing or instruction for which notice has been given by the Contractor in accordance with Sub-Clause 63, the Contractor suffers delay and/or incurs costs then the Engineer shall, after due consultation with the Employer and the Contractor, determine:

(a) any extension of time to which the Contractor is entitled under Clause 44, and
(b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer.

### Failure by Contractor to Submit Drawings

6.5 If the failure or inability of the Engineer to issue any drawings or instructions is caused in whole or in part by the failure of the Contractor to submit Drawings, Specification or other documents, which he is required to submit under the Contract, the Engineer shall take such failure, by the Contractor into account when making his determination pursuant to Sub-Clause 6.4.

### Supplementary Drawings and Instructions

7.1 The Engineer shall have authority to issue to the Contractor, from time to time, such supplementary Drawings and instructions as shall be necessary for the purpose of the proper and adequate execution and completion of the Works and the remedying of any defects therein. The Contractor shall carry out and be bound by the same.

### Permanent Works Designed by

7.2 Where the Contract expressly provides that part of the Permanent Works shall be designed by the Contractor, he shall submit to the Engineer, for approval:
Contractor

(a) such drawings, specifications, calculations and other information as shall be necessary to satisfy the Engineer as to the suitability and adequacy of that design, and

(b) operation and maintenance manuals together with drawings of the Permanent Works as completed, in sufficient detail to enable the Employer to operate, maintain, dismantle, reassemble and adjust the Permanent Works incorporating that design. The Works shall not be considered to be completed for the purposes of taking over in accordance with Clause 48 until such operation and maintenance manuals, together with drawings on completion, have been submitted to and approved by the Engineer.

Responsibility Unaffected by Approval

7.3 Approval by the Engineer, in accordance with Sub-Clause 7.2, shall not relieve the Contractor of any of his responsibilities under the Contract.

General Obligations

The Contractor shall, with due care and diligence, design (to the extent provided for by the Contract), execute and complete the Works and remedy any defects therein in accordance with the provisions of the Contract. The Contractor shall provide all superintendence, labour, materials, Plant, Contractor’s Equipment and all other things, whether of a temporary or permanent nature, required in and for such design, execution, completion and remedying of any defects, so far as the necessity for providing the same is specified in or is reasonably to be inferred from the Contract.

The Contractor shall give prompt notice to the Engineer, with a copy to the Employer, of any error, omission, fault or other defect in the design of or Specification for the Works which he discovers when reviewing the Contract or executing the Works.

The Contractor shall take full responsibility for the adequacy, stability and safety of all Site operations and methods of construction. Provided that the Contractor shall not be responsible (except as stated hereunder or as may be otherwise (agreed) for the design or specification of Permanent Works, or for the design or specification of any Temporary Works not prepared by the Contractor. Where the Contract expressly provides that part of the Permanent Works shall be designed by the Contractor, he shall be fully responsible for that part of such Works, notwithstanding any approval by the Engineer.

The Contractor shall, if called upon so to do, enter into and execute the Contract Agreement, to be prepared and completed at the cost of the Employer, in the form annexed to these Conditions with such modification as may be necessary.

If the Contract requires the Contractor to obtain security for his proper performance of the Contract, he shall obtain and provide to the Employer such security within 28 days after the receipt of the Letter of Acceptance, in the sum stated in the Appendix to Tender. When providing such security to the Employer, the Contractor shall notify the Engineer of so doing. Such security shall be in the form annexed to these Conditions or in such other form as may be agreed between the Employer and the Contractor. The institution providing such security shall be subject to the approval of the Employer. The cost of complying with the requirements of this Clause shall be borne by the Contractor, unless the Contract otherwise provides.
Period of Validity of Performance Security

10.2 The performance security shall be valid until the Contractor has executed and completed the Works and remedied any defects therein in accordance with the Contract. No claim shall be made against such security after the issue of the Defects Liability Certificate in accordance with Sub-Clause 62.1 and such security shall be returned to the Contractor within 14 days of the issue of the said Defects Liability Certificate.

Claims under Performance Security

10.3 Prior to making a claim under the performance security the Employer shall, in every case, notify the Contractor stating the nature of the default in respect of which the claim is to be made.

Inspection of Site

11.1 The Employer shall have made available to the Contractor, before the submission by the Contractor of the Tender, such data on hydrological and sub-surface conditions as have been obtained by or on behalf of the Employer from investigations undertaken relevant to the Works but the Contractor shall be responsible for his own interpretation thereof.

The Contractor shall be deemed to have inspected and examined the Site and its surroundings and information available in connection therewith and to have satisfied himself (so far as is practicable, having regard to considerations of cost and time) before submitting his Tender, as to:

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

and, in general, shall be deemed to have obtained all necessary information, subject as above mentioned, as to risks, contingencies and all other circumstances which may influence or affect his Tender. The Contractor shall be deemed to have based his Tender on the data made available by the Employer and on his own inspection and examination all as aforementioned.

Sufficiency of Tender

12.1 The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Tender and of the rates and prices stated in the Bill of Quantities, all of which shall, except insofar as it is otherwise provided in the Contract, cover all his obligations under the Contract (including those in respect of the supply of goods, materials, Plant or services or of contingencies for which there is a Provisional Sum) and all matters and things necessary for the proper execution and completion of the Works and the remedying of any defects therein.

Not Foreseeable Physical Obstructions or Conditions

12.2 If, however, during the execution of the Works the Contractor encounters physical obstructions or physical conditions, other than climatic conditions on the Site, which obstructions or conditions were, in his opinion, not foreseeable by an experienced contractor, the Contractor shall forthwith give notice thereof to the Engineer, with a copy to the Employer. On receipt of such notice, the Engineer shall, if in his opinion such obstructions or conditions could not have been reasonably foreseen by an experienced contractor, after due consultation with the Employer and the Contractor, determine:

(a) any extension of time to which the Contractor is entitled under Clause 44, and
(b) the amount of any costs which may have been incurred by the Contractor by reason of such obstructions or conditions having been encountered, which shall be added to the Contract Price,

and shall notify the Contractor accordingly, with a copy to the Employer. Such determination shall take account of any instruction, which the Engineer may issue to the Contractor in connection therewith, and any proper and reasonable measures acceptable to the Engineer, which the Contractor may take in the absence of specific instructions from the Engineer.

The Contractor shall be deemed to have based his Tender on the data made available by the Employer and on his own inspection and examination all as aforementioned.
### Work to be in Accordance with Contract

13.1 Unless it is legally or physically impossible, the Contractor shall execute and complete the Works and remedy any defects therein in strict accordance with the Contract to the satisfaction of the Engineer. The Contractor shall comply with and adhere strictly to the Engineer’s instructions on any matter, whether mentioned in the Contract or not, touching or concerning the Works. The Contractor shall take instructions only from the Engineer (or his delegate).

### Programme to be Submitted

14.1 The Contractor shall, within the time stated in Part II of these Conditions after the date of the Letter of Acceptance, submit to the Engineer for his consent a programme, in such form and detail as the Engineer shall reasonably prescribe, for the execution of the Works. The Contractor shall, whenever required by the Engineer, also provide in writing for his information a general description of the arrangements and methods, which the Contractor proposes to adopt for the execution of the Works.

14.2 If at any time it should appear to the Engineer that the actual progress of the Works does not conform to the programme to which consent has been given under Sub-Clause 14.1, the Contractor shall produce, at the request of the Engineer, a revised programme showing the modifications to such programme necessary to ensure completion of the Works within the Time for Completion.

14.3 The Contractor shall, within the time stated in Part II of these Conditions after the date of the Letter of Acceptance, provide to the Engineer for his information a detailed cash flow estimate, in quarterly periods, of all payments to which the Contractor will be entitled under the Contract and the Contractor shall subsequently supply revised cash flow estimates at quarterly intervals, if required to do so by the Engineer.

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

### Contractor's Superintendence

15.1 The Contractor shall provide all necessary superintendence during the execution of the Works and as long thereafter as the Engineer may consider necessary for the proper fulfilling of the Contractor's obligations under the Contract. The Contractor, or a competent and authorised representative approved of by the Engineer, which approval may at any time be withdrawn, shall give his whole time to the superintendence of the Works. Such authorised representative shall receive, on behalf of the Contractor, instructions from the Engineer.

15.2 If approval of the representative is withdrawn by the Engineer, the Contractor shall, as soon as is practicable, having regard to the requirement of replacing him as hereinafter mentioned, after receiving notice of such withdrawal, remove the representative from the Works and shall not thereafter employ him again on the Works in any capacity and shall replace him by another representative approved by the Engineer.

### Contractor's Employees

16.1 The Contractor shall provide on the Site in connection with the execution and completion of the Works and the remedying of any defects therein

(a) only such technical assistants as are skilled and experienced in their respective callings and such foremen and leading hands as are competent to give proper superintendence of the Works, and

(b) such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely fulfilling of the Contractor's obligations under the Contract.

16.2 The Engineer shall be at liberty to object to and require the Contractor to remove forthwith from the Works any person provided by the Contractor who, in the opinion of the Engineer, misconducts himself, or is incompetent or negligent in the proper performance of his duties, or whose presence on Site is otherwise considered by the Engineer to be undesirable, and such person shall not be again allowed upon the Works without the consent of the Engineer. Any person so removed from the Works shall be replaced as soon as possible.

### Setting-out

17.1 The Contractor shall be responsible for:

(a) the accurate setting-out of the Works in relation to original points, lines and levels of reference given by the Engineer in writing.
(b) the correctness, subject as above mentioned, of the position, levels, dimensions and alignment of all parts of the Works, and

c) the provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities.

If, at any time during the execution of the Works, any error appears in the position, levels, dimensions or alignment of any part of the Works, the Contractor, on being required so to do by the Engineer, shall, at his own cost, rectify such error to the satisfaction of the Engineer, unless such error is based on incorrect data supplied in writing by the Engineer, in which case the Engineer shall determine an addition to the Contract Price in accordance with Clause 51 and shall notify the Contractor accordingly, with a copy to the Employer.

The checking of any setting-out or of any level by the Engineer shall not in any way relieve the Contractor of his responsibility for the accuracy thereof and the Contractor shall carefully protect and preserve all bench-marks, sight-rails, pegs and other things used in setting-out the Works.

If, at any time during the execution of the Works, the Engineer requires the Contractor to make boreholes or to carry out exploratory excavation, such requirement shall be the subject of an instruction in accordance with Clause 51, unless an item or a Provisional Sum in respect of such work is included in the Bill of Quantities.

The Contractor shall, throughout the execution and completion of the Works and the remedying of any defects therein:

(a) have full regard for the safety of all persons entitled to be upon the Site and keep the Site (so far as he has control) and the Works (so far as the same are not completed or occupied by the Employer) in an orderly state appropriate to the avoidance of danger to such persons,

(b) provide and maintain at his own cost all lights, guards, fencing, warning signs and watching, when and where necessary or required by the Engineer or by any duly constituted authority, for the protection of the Works or for the safety and convenience of the public or others, and

(c) take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of his methods of operation.

If under Clause 31 the Employer shall carry out work on the Site with his own workmen he shall, in respect of such work:

(a) have full regard to the safety of all persons entitled to be upon the Site, and

(b) keep the Site in an orderly state appropriate to the avoidance of danger to such persons.

If under Clause 31 the Employer shall employ other contractors on the Site he shall require them to have the same regard for safety and avoidance of danger.

The Contractor shall take full responsibility for the care of the Works and materials and Plant for incorporation therein from the Commencement Date until the date of issue of the Taking-Over Certificate for the whole of the Works, when the responsibility for the said care shall pass to the Employer. Provided that:

(a) if the Engineer issues a Taking-Over Certificate for any Section or part of the Permanent Works the Contractor shall cease to be liable for the care of that Section or part from the date of issue of the Taking-Over Certificate, when the responsibility for the care of that Section or part shall pass to the Employer, and

(b) the Contractor shall take full responsibility for the care of any outstanding Works and materials and Plant for incorporation therein which he undertakes to finish during the Defects Liability Period until such outstanding Works have been completed pursuant to Clause 49.

If any loss or damage happens to the Works, or any part thereof, or materials or Plant for incorporation therein, during the period for which the Contractor is responsible for the care thereof, from any cause whatsoever, other than the risks
defined in Sub-Clause 20.4, the Contractor shall, at his own cost, rectify such loss or damage so that the Permanent Works conform in every respect with the provisions of the Contract to the satisfaction of the Engineer. The Contractor shall also be liable for any loss or damage to the Works occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations under Clauses 49 and 50.

In the event of any such loss or damage happening from any of the risks defined in Sub-Clause 20.4, or in combination with other risks, the Contractor shall, if and to the extent required by the Engineer, rectify the loss or damage and the Engineer shall determine an addition to the Contract Price in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the Employer. In the case of a combination of risks causing loss or damage any such determination shall take into account the proportional responsibility of the Contractor and the Employer.

**Employer’s Risks 20.4**

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 thereof,

(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 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 Permanent Works, except as may be provided for in the Contract,

(g) loss or damage to the extent that it is due to the design of the Works, other than any part of the design provided by the Contractor or for which the Contractor is responsible, and

(h) any operation of the forces of nature against which an experienced contractor could not reasonably have been expected to take precautions

The Contractor shall, without limiting his or the Employer’s obligations and responsibilities under Clause 20, insure:

(a) the Works, together with materials and Plant for incorporation therein, to the full replacement cost (the term "cost" in this context shall include profit),

(b) an additional sum of 15 per cent of such replacement cost, or as may be specified in Part II of these Conditions, to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature, and

(c) the Contractor’s Equipment and other things brought onto the Site by the Contractor, for a sum sufficient to provide for their replacement at the Site.

The insurance in paragraphs (a) and (b) of Sub-Clause 21.1 shall be in the joint names of the Contractor and the Employer and shall cover:

(a) the Employer and the Contractor against all loss or damage from whatsoever cause arising, other than as provided in Sub-Clause 21.4, from the start of work at the Site until the date of issue of the relevant Taking-Over Certificate in respect of the Works or any Section or part thereof as the case may be, and

(b) the Contractor for his liability:

(i) during the Defects Liability Period for loss or damage arising from a
Responsibility for Amounts not Recovered

21.3 Any amounts not insured or not recovered from the insurers shall be borne by the Employer or the Contractor in accordance with their responsibilities under Clause 20.

Exclusions 21.4

There shall be no obligation for the insurances in Sub-Clause 21.1 to include loss or damage caused by:

(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, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof,
(d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

Damage to Persons and Property

22.1 The Contractor shall, except if and so far as the Contract provides otherwise, indemnify the Employer against all losses and claims in respect of:

(a) death of or injury to any person, or
(b) loss of or damage to any property (other than the Works),

which may arise out of or in consequence of the execution and completion of the Works and the remedying of any defects therein, and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, subject to the exceptions defined in Sub-Clause 22.2.

Exceptions 22.2

The “exceptions” referred to in Sub-Clause 22.1 are:

(a) the permanent use or occupation of land by the Works, or any part thereof,
(b) the right of the Employer to execute the Works, or any part thereof, on, over, under, in or through any land,
(c) damage to property which is the unavoidable result of the execution and completion of the Works, or the remedying of any defects therein, in accordance with the Contract, and
(d) death of or injury to persons or loss of or damage to property resulting from any act or neglect of the Employer, his agents, servants or other contractors, not being employed by the Contractor, or in respect of any claims, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto or, where the injury or damage was contributed to by the Contractor, his servants or agents, such part of the said injury or damage as may be just and equitable having regard to the extent of the responsibility of the Employer, his servants or agents or other contractors for the injury or damage.

Indemnity by Employer

22.3 The Employer shall indemnify the Contractor against all claims, proceedings, damages, costs, charges and expenses in respect of the matters referred to in the exceptions defined in Sub-Clause 22.2.

Third Party Insurance (including Employer’s Property)

23.1 The Contractor shall, without limiting his or the Employer's obligations and responsibilities under Clause 22, insure, in the joint names of the Contractor and the Employer, against liabilities for death of or injury to any person (other than as provided in Clause 24) or loss of or damage to any property (other than the Works) arising out of the performance of the Contract, other than the exceptions defined in paragraphs (a), (b) and (c) of Sub-Clause 22.2.

Minimum Amount of insurance

23.2 Such insurance shall be for at least the amount stated in the Appendix to Tender.

Cross Liabilities 23.3

The insurance policy shall include a cross liability clause such that the insurance...
shall apply to the Contractor and to the Employer as separate insured.

The Employer shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of the Contractor or any Subcontractor, other than death or injury resulting from any act or default of the Employer, his agents or servants. The Contractor shall indemnify and keep indemnified the Employer against all such damages and compensation, other than those for which the Employer is liable as aforesaid, and against all claims, proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.

The Contractor shall insure against such liability and shall continue such insurance during the whole of the time that any persons are employed by him on the Works. Provided that, in respect of any persons employed by any Subcontractor, the Contractor’s obligations to insure as aforesaid under this Sub-Clause shall be satisfied if the Subcontractor shall have insured against the liability in respect of such persons in such manner that the Employer is indemnified under the policy, but the Contractor shall require such Subcontractor to produce to the Employer, when required, such policy of insurance and the receipt for the payment of the current premium.

The Contractor shall provide evidence to the Employer prior to the start of work at the Site that the insurances required under the Contract have been effected and shall, within 84 days of the Commencement Date, provide the insurance policies to the Employer. When providing such evidence and such policies to the Employer, the Contractor shall notify the Engineer of so doing. Such insurance policies shall be consistent with the general terms agreed prior to the issue of the Letter of Acceptance. The Contractor shall effect all insurances for which he is responsible with insurers and in terms approved by the Employer.

The Contractor shall notify the insurers of changes in the nature, extent or programme for the execution of the Works and ensure the adequacy of the insurances at all times in accordance with the terms of the Contract and shall, when required, produce to the Employer the insurance policies in force and the receipts for payment of the current premiums.

If the Contractor fails to effect and keep in force any of the insurances required under the Contract, or fails to provide the policies to the Employer within the period required by Sub-Clause 25.1, then and in any such case the Employer may effect and keep in force any such insurances and pay any premium as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or to become due to the Contractor, or recover the same as a debt due from the Contractor.

In the event that the Contractor or the Employer fails to comply with conditions imposed by the insurance policies effected pursuant to the Contract, each shall indemnify the other against all losses and claims arising from such failure.
Compliance with Statutes, Regulations 26.1

The Contractor shall conform in all respects, including by the giving of all notices and the paying of all fees, with the provisions of:

(a) any National or State Statute, Ordinance, or other Law, or any regulation, or bye-law of any local or other duly constituted authority, in relation to the execution and completion of the Works and the remedying of any defects therein, and

(b) the rules and regulations of all public bodies and companies whose property or rights are affected or may be affected in any way by the Works, and the Contractor shall keep the Employer indemnified against all penalties and liability of every kind for breach of any such provisions. Provided always that the Employer shall be responsible for obtaining any planning, zoning or other similar permission required for the Works to proceed and shall indemnify the Contractor in accordance with Sub-Clause 22.3.

Fossils 27.1

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 Employer and the Contractor, be deemed to be the absolute property of the Employer. The Contractor shall take reasonable precautions to prevent his workmen or any other persons from removing or damaging any such article or thing and shall, immediately upon discovery thereof and before removal, acquaint the Engineer of such discovery and carry out the Engineer’s instructions for dealing with the same. If, by reason of such instructions, the Contractor suffers delay and/or incurs costs then the Engineer shall, after due consultation with the Employer and the Contractor, determine:

(a) any extension of time to which the Contractor is entitled under Clause 44, and

(b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer.

Patent Rights 28.1

The Contractor shall save harmless and indemnify the Employer from and against all claims and proceedings for or on account of infringement of any patent rights, design trademark or name or other protected rights in respect of any Contractor’s Equipment, materials or Plant used for or in connection with or for incorporation in the Works and from and against all damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, except where such infringement results from compliance with the design or Specification provided by the Engineer.

Royalties 28.2

Except where otherwise stated, the Contractor shall pay all tonnage and other royalties, rent and other payments or compensation, if any, for getting stone, sand, gravel, clay or other materials required for the Works.

Interference with Traffic and Adjoining Properties 29.1

All operations necessary for the execution and completion of the Works and the remedying of any defects therein shall, so far as compliance with the requirements of the Contract permits, be carried on so as not to interfere unnecessarily or improperly with:

(a) the convenience of the public, or

(b) the access to, use and occupation of public or private roads and footpaths to or of properties whether in the possession of the Employer or of any other person.

The Contractor shall save harmless and indemnify the Employer in respect of all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of, or in relation to, any such matters insofar as the Contractor is responsible therefor.
Avoidance of Damage to Roads

30.1 The Contractor shall use every reasonable means to prevent any of the roads or bridge communicating with or on the routes to the Site from being damaged or injured by any traffic of the Contractor or any of his Subcontractors and, in particular, shall select routes, choose and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of materials, Plant, Contractor’s Equipment or Temporary Works from and to the Site shall be limited, as far as reasonably possible, and so that no unnecessary damage or injury may be occasioned to such roads and bridges.

Transport of Contractor’s Equipment or Temporary Works

30.2 Save insofar as the Contract otherwise provides, the Contractor shall be responsible for and shall pay the cost of strengthening any bridges or altering or improving any road communicating with or on the routes to the Site to facilitate the movement of Contractor’s Equipment or Temporary Works and the Contractor shall indemnify and keep indemnified the Employer against all claims for damage to any such road or bridge caused by such movement, including such claims as may be made directly against the Employer, and shall negotiate and pay all claims arising solely out of such damage.

Transport of Materials or Plant

30.3 If, notwithstanding Sub-Clause 30.1, any damage occurs to any bridge or road communicating with or on the routes to the Site arising from the transport of materials or Plant, the Contractor shall notify the Engineer with a copy to the Employer, as soon as he becomes aware of such damage or as soon as he receives any claim from the authority entitled to make such claim. Where under any law or regulation the haulier of such materials or Plant is required to indemnify the road authority against damage the Employer shall not be liable for any costs, charges or expenses in respect thereof or in relation thereto. In other cases the Employer shall negotiate the settlement of and pay all sums due in respect of such claim and shall indemnify the Contractor in respect thereof and in respect of all claims, proceedings, damages, costs, charges and expenses in relation thereto. Provided that if and so far as any such claim or part thereof is, in the opinion of the Engineer, due to any failure on the part of the Contractor to observe and perform his obligations under Sub-Clause 30.1, then the amount, determined by the Engineer, after due consultation with the Employer and the Contractor, to be due to such failure 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 and the Engineer shall notify the Contractor accordingly, with a copy to the Employer. Provided also that the Employer shall notify the Contractor whenever a settlement is to be negotiated and, where any amount may be due from the Contractor, the Employer shall consult with the Contractor before such settlement is agreed.

Waterborne Traffic

30.4 Where the nature of the Works is such as to require the use by the Contractor of waterborne transport the foregoing provisions of this Clause shall be construed as though “road” included a lock, dock, sea wall or other structure related to a waterway and “vehicle” included craft, and shall have effect accordingly.

Opportunities for Other Contractors

31.1 The Contractor shall, in accordance with the requirements of the Engineer, 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 duly constituted authorities who may be employed in the execution on or near the Site of any work not included in the Contract or of any contract which the Employer may enter into in connection with or ancillary to the Works.

If however, pursuant to Sub-Clause 31.1 the Contractor shall, on the written request of the Engineer:

(a) make available to any such other contractor, or to the Employer or any such authority, any roads or ways for the maintenance of which the Contractor is responsible,
(b) permit the use, by any such, of Temporary Works or Contractor’s Equipment on the Site, or
(c) provide any other service of whatsoever nature for any such, the Engineer
shall determine an addition to the Contract Price in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the Employer.

**Labour**

**Contractor to Keep Site Clear**

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

**Clearance of Site on Completion**

33.1 Upon the issue of any Taking-Over Certificate the Contractor shall clear away and remove from that part of the Site to which such Taking-Over Certificate relates all Contractor's Equipment, surplus material, rubbish and Temporary Works of every kind, and leave such part of the Site and Works clean and in a workmanlike condition to the satisfaction of the Engineer. Provided that the Contractor shall be entitled to retain on Site, until the end of the Defects Liability Period, such materials, Contractor’s Equipment and Temporary Works as are required by him for the purpose of fulfilling his obligations during the Defects Liability Period.

**Engagement of Staff and Labour**

34.1 The Contractor shall, unless otherwise provided in the Contract, make his own arrangements for the engagement of all staff and labour, local or other, and for their payment, housing, feeding and transport.

**Returns of Labour and Contractor’s Equipment**

35.1 The Contractor shall, if required by the Engineer, deliver to the Engineer a return in detail, in such form and at such intervals as the Engineer may prescribe, showing the staff and the numbers of the several classes of labour from time to time employed by the Contractor on the Site and such information respecting Contractor’s Equipment as the Engineer may require.

**Materials, Plant and Workmanship**

**Quality of Materials, Plant and Workmanship**

36.1 All materials, Plant and workmanship shall be:

(a) of the respective kinds described in the Contract and in accordance with the Engineer’s instructions, and

(b) subjected from time to time to such tests as the Engineer may require at the place of manufacture, fabrication or preparation, or on the Site or at such other place or places as may be specified in the Contract, or at all or any of such places.

The Contractor shall provide such assistance, labour, electricity, fuels, stores, apparatus and instruments as are normally required for examining, measuring and testing any materials or Plant and shall supply samples of materials, before incorporation in the Works, for testing as may be selected and required by the Engineer.

**Cost of Samples**

36.1 All samples shall be supplied by the Contractor at his own cost if the supply thereof is clearly intended by or provided for in the Contract.

The cost of making any test shall be borne by the Contractor if such test is:

(a) clearly intended by or provided for in the Contract, or

(b) particularised in the Contract (in cases only of a test under load or of a test to ascertain whether the design of any finished or partially finished work is appropriate for the purposes which it was intended to fulfil) in sufficient detail to enable the Contractor to price or allow for the same in his Tender.
Cost of Tests not Provided for 36.4

If any test required by the Engineer which is:

(a) not so intended by or provided for,
(b) (in the cases above mentioned) not so particularised, or
(c) (though so intended or provided for) required by the Engineer to be carried out at any place other than the Site or the place of manufacture, fabrication or preparation of the materials or Plant tested, shows the materials, Plant or workmanship not to be in accordance with the provisions of the Contract to the satisfaction of the Engineer, then the cost of such test shall be borne by the Contractor, but in any other case Sub-Clause 36.5 shall apply.

Engineer's Determination where Tests not Provided for 36.5

Where, pursuant to Sub-Clause 36.4, this Sub-Clause applies the Engineer shall, after due consultation with the Employer and the Contractor, determine:

(a) any extension of time to which the Contractor is entitled under Clause 44, and
(b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer.

Inspection of Operations 37.1

The Engineer, and any person authorised by him, shall at all reasonable times have access to the Site and to all workshops and places where materials or Plant are being manufactured, fabricated or prepared for the Works and the Contractor shall afford every facility for and every assistance in obtaining the right to such access.

Inspection and Testing 37.2

The Engineer shall be entitled, during manufacture, fabrication or preparation to inspect and test the materials and Plant to be supplied under the Contract. If materials or Plant are being manufactured, fabricated or prepared in workshops or places other than those of the Contractor, the Contractor shall obtain permission for the Engineer to carry out such inspection and testing in those workshops or places. Such inspection or testing shall not release the Contractor from any obligation under the Contract.

Dates for Inspection And Testing 37.3

The Contractor shall agree with the Engineer on the time and place for the inspection or testing of any materials or Plant as provided in the Contract. The Engineer shall give the Contractor not less than 24 hours notice of his intention to carry out the inspection or to attend the tests. If the Engineer, or his duly authorised representative, does not attend on the date agreed, the Contractor may, unless otherwise instructed by the Engineer, proceed with the tests, which shall be deemed to have been made in the presence of the Engineer. The Contractor shall forthwith forward to the Engineer duly certified copies of the test readings. If the Engineer has not attended the tests, he shall accept the said readings as accurate.

Rejection 37.4

If, at the time and place agreed in accordance with Sub-Clause 37.3, the materials or Plant are not ready for inspection or testing or if, as a result of the inspection testing referred to in this Clause, the Engineer determines that the materials or Plant are defective or otherwise not in accordance with the Contract, he may reject the materials or Plant and shall notify the Contractor thereof immediately. The notice shall state the Engineer's objections with reasons. The Contractor shall then promptly make good the defect or ensure that rejected materials or Plant comply with the Contract. If the Engineer so requests, the tests of rejected materials or Plant shall be made or repeated under the same terms and conditions. All costs incurred by the Employer by the repetition of the tests shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer and may be deducted from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.
Independent Inspection 37.5

The Engineer may delegate inspection and testing of materials or Plant to an independent inspector. Any such delegation shall be effected in accordance with Sub-Clause 2.4 and for this purpose such independent inspector shall be considered as an assistant of the Engineer. Notice of such appointment (not being less than 14 days) shall be given by the Engineer to the Contractor.

Examination of Work before Covering up 38.1

No part of the Works shall be covered up or put out of view without the approval of the Engineer and the Contractor shall afford full opportunity for the Engineer to examine and measure any such part of the Works which is about to be covered up or put out of view and to examine foundations before any part of the Works is placed thereon. The Contractor shall give notice to the Engineer whenever any such part of the Works or foundations is or are ready or about to be ready for examination and the Engineer shall, without unreasonable delay, unless he considers it unnecessary and advises the Contractor accordingly, attend for the purpose of examining and measuring such part of the Works or of examining such foundations.

Uncovering and Making Openings 38.2

The Contractor shall uncover any part of the Works or make openings in or through the same as the Engineer may from time to time instruct and shall reinstate and make good such part. If any such part has been covered up or put out of view after compliance with the requirement of Sub-Clause 38.1 and is found to be executed in accordance with the Contract, the Engineer shall, after due consultation with the Employer and the Contractor, determine the amount of the Contractor’s costs in respect of such uncovering, making openings in or through, reinstating and making good the same, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer. In any other case all costs shall be borne by the Contractor.

Removal of Improper Work, Materials or Plant 39.1

The Engineer shall have authority to issue instructions from time to time, for:
(a) the removal from the Site, within such time or times as may be specified in the instruction, of any materials or Plant which, in the opinion of the Engineer, are not in accordance with the Contract,
(b) the substitution of proper and suitable materials or Plant, and
(c) the removal and proper re-execution, notwithstanding any previous test thereof or interim payment therefore, of any work which, in respect of
   (i) materials, Plant or workmanship, or
   (ii) design by the Contractor or for which he is responsible, is not, in the opinion of the Engineer, in accordance with the Contract.

In case of default on the part of the Contractor in carrying out such instruction within the time specified therein or, if none, within a reasonable time, the Employer shall be entitled to employ and pay other persons to carry out the same and all costs consequent thereon or incidental thereto shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and 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 and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

Suspension 40.1

The Contractor shall, on the instructions of the Engineer, suspend the progress of the Works or any part thereof for such time and in such manner as the Engineer may consider necessary and shall, during such suspension, properly protect and secure the Works or such part thereof so far as is necessary in the opinion of the Engineer. Unless such suspension is:
(a) otherwise provided for in the Contract,
(b) necessary by reason of some default of or breach of contract by the Contractor or for which he is responsible,
(c) necessary by reason of climatic conditions on the Site, or
(d) necessary for the proper execution of the Works or for the safety of the Works or any part thereof (save to the extent that such necessity arises from any act or default by the Engineer or the Employer or from any of the risks defined in Sub-
Clause 20.4), Sub-Clause 40.2 shall apply.

Where, pursuant to Sub-Clause 40.1, this Sub-Clause applies the Engineer shall after due consultation with the Employer and the Contractor determine:

(a) any extension of time to which the Contractor is entitled under Clause 44, and
(b) the amount, which shall be added to the Contract Price, in respect of the cost incurred by the Contractor by reason of such suspension, and shall notify the Contractor accordingly, with a copy to the Employer.

Suspension following Suspension, 40.2

If the progress of the Works or any part thereof is suspended on the instructions of the Engineer and if permission to resume work is not given by the Engineer within a period of 84 days from the date of suspension then, unless such suspension is within paragraph (a), (b), (c) or (d) of Sub-Clause 40.1, the Contractor may give notice to the Engineer requiring permission, within 28 days from the receipt thereof, to proceed with the Works or that part thereof in regard to which progress is suspended. If, within the said time, such permission is not granted, the Contractor may, but is not bound to, elect to treat the suspension, where it affects part only of the Works, as an omission of such part under Clause 51 by giving a further notice to the Engineer to that effect, or, where it affects the whole of the Works, treat the suspension as an event of default by the Employer and terminate his employment under the Contract in accordance with the provisions of Sub-Clause 69.1, whereupon the provisions of Sub-Clauses 69.2 and 69.3 shall apply.

Commencement and Delays

Commencement of Works 41.1

The Contractor shall commence the Works as soon as is reasonably possible after the receipt by him of a notice to this effect from the Engineer, which notice shall be issued within the time stated in the Appendix to fender after the date of the Letter of Acceptance. Thereafter, the Contractor shall proceed with the Works with due expedition and without delay.

Possession of Site and Access Thereto 42.1

Save insofar as the Contract may prescribe:

(a) the extent of portions of the Site of which the Contractor is to be given possession from time to time
(b) the order in which such portions shall be made available to the Contractor, and, subject to any requirement in the Contract as to the order in which the Works shall be executed, the Employer will, with the Engineer's notice to commence the Works, give to the Contractor possession of
(c) so much of the Site, and
(d) such access as, in accordance with the Contract, is to be provided by the Employer as may be required to enable the Contractor to commence and proceed with the execution of the Works in accordance with the programme referred to in Clause 14, if any, and otherwise in accordance with such reasonable proposals as the Contractor shall, by notice to the Engineer with a copy to the Employer, make. The Employer will, from time to time as the Works proceed, give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to proceed with the execution of the Works with due dispatch in accordance with such programme or proposals, as the case may be.
Failure to Give Possession 42.2

If the Contractor suffers delay and/or incurs costs from failure on the part of the Employer to give possession in accordance with the terms of Sub-Clause 42.1, the Engineer shall, after due consultation with the Employer and the Contractor, determine:

(a) any extension of time to which the Contractor is entitled under Clause 44, and
(b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer.

Rights of Way and Facilities 42.3

The Contractor shall bear all costs and charges for special or temporary rights of way required by him in connection with 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.

Time for Completion 43.1

The whole of the Works and, if applicable, any Section required to be completed within a particular time as stated in the Appendix to Tender, shall be completed in accordance with the provisions of Clause 48, within the time stated in the Appendix to Tender for the whole of the Works or the Section (as the case may be), calculated from the Commencement Date, or such extended time as may be allowed under Clause 44.

Extension of Time for Completion 44.1

In the event of:

(a) the amount or nature of extra or additional work;
(b) any cause of delay referred to in these Conditions;
(c) exceptionally adverse climatic conditions;
(d) any delay, impediment or prevention by the Employer, or
(e) other special circumstances which may occur, other than through a default of or breach of contract by the Contractor or for which he is responsible,

being such as fairly to entitle the Contractor to an extension of the Time for Completion of the Works, or any Section or part thereof, the Engineer shall, after due consultation with the Employer and the Contractor, determine the amount of such extension and shall notify the Contractor accordingly, with a copy to the Employer.

Contractor to Provide Notification and Detailed Particulars 44.2

Provided that the Engineer is not bound to make any determination unless the Contractor has

(a) within 28 days after such event has first arisen notified the Engineer with a copy to the Employer, and
(b) within 28 days, or such other reasonable time as may be agreed by the Engineer, after such notification submitted to the Engineer detailed particulars of any extension of time to which he may consider himself entitled in order that such submission may be investigated at the time.

Interim Determination of Extension 44.3

Provided also that where an event has a continuing effect such that it is not practicable for the Contractor to submit detailed particulars within the period of 28 days referred to in Sub-Clause 44.2(b), he shall nevertheless be entitled to an extension of time provided that he has submitted to the Engineer interim particulars at intervals of not more than 28 days and final particulars within 28 days of the end of the effects resulting from the event. On receipt of such interim particulars, the Engineer shall, without undue delay, make an interim determination of extension of time and, on receipt of the final particulars, the Engineer shall review all the circumstances and shall determine an overall extension of time in regard to the event. In both such cases the Engineer shall make his determination after due consultation with the Employer and the Contractor and shall notify the Contractor of the determination, with a copy to the Employer. No final review shall result in a decrease of any extension of time already determined by the Engineer.
Restriction on Working Hours

45.1 Subject to any provision to the contrary contained in the Contract, none of the Works shall, save as hereinafter provided, be carried on during the night or on locally recognised days of rest without the consent of the Engineer, except when work is unavoidable or absolutely necessary for the saving of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer. Provided that the provisions of this Clause shall not be applicable in the case of any work which it is customary to carry out by multiple shifts.

Rate of Progress

46.1 If for any reason, which does not entitle the Contractor to an extension of time, the rate of progress of the Works or any Section is at any time, in the opinion of the Engineer, too slow to comply with the Time for Completion, the Engineer shall so notify the Contractor who shall thereupon take such steps as are necessary, subject to the consent of the Engineer, to expedite progress so as to comply with the Time for Completion. The Contractor shall not be entitled to any additional payment for taking such steps. If, as a result of any notice given by the Engineer under this Clause, the Contractor considers that it is necessary to do any work at night or on locally recognised days of rest, he shall be entitled to seek the consent of the Engineer so to do. Provided that if any steps, taken by the Contractor in meeting his obligations under this Clause, involve the Employer in additional supervision costs, such costs shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and 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

47.1 If the Contractor fails to comply with the Time for Completion in accordance with Clause 48, for the whole of the Works or, if applicable, any Section within the relevant time prescribed by Clause 43, then the Contractor shall pay to the Employer the relevant sum stated in the Appendix to Tender as liquidated damages for such default and not as a penalty (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 a Taking-Over Certificate of the whole of the Works or the relevant Section, subject to the applicable limit 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. 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 obligations and liabilities under the Contract.

Reduction of Liquidated Damages

47.2 If, before the Time for Completion of the whole of the Works or, if applicable, any Section, a Taking-Over Certificate has been issued for any part of the Works or of a Section, the liquidated damages for delay in completion of the remainder of the Works or of that Section shall, for any period of delay after the date stated in such Taking-Over Certificate, and in the absence of alternative provisions in the Contract, be reduced in the proportion which the value of the part so certified bears to the value of the whole of the Works or Section, as applicable. The provisions of this Sub-Clause shall only apply to the rate of liquidated damages and shall not affect the limit thereof.
Taking-Over Certificate

48.1 When the whole of the Works have been substantially completed and have satisfactorily passed any Tests on Completion prescribed by the Contract, the Contractor may give a notice to that effect to the Engineer, with a copy to the Employer, accompanied by a written undertaking to finish with due expedition any outstanding work during the Defects Liability Period. Such notice and undertaking shall be deemed to be a request by the Contractor for the Engineer to issue a Taking-Over Certificate in respect of the Works. The Engineer shall, within 21 days of the date of delivery of such notice, either issue to the Contractor, with a copy to the Employer, a Taking-Over Certificate, stating the date on which, in his opinion, the Works were substantially completed in accordance with the Contract, or give instructions in writing to the Contractor specifying all the work which, in the Engineer's opinion, is required to be done by the Contractor before the issue of such Certificate. The Engineer shall also notify the Contractor of any defects in the Works affecting substantial completion that may appear after such instructions and before completion of Taking Over Certificate within 21 days of completion, to the satisfaction of the Engineer, of the Works so specified and remedying any defects so notified.

Taking Over of Sections or Parts

48.2 Similarly, in accordance with the procedure set out in Sub-Clause 48.1, the Contractor may request and the Engineer shall issue a Taking-Over Certificate in respect of:

(a) any Section in respect of which a separate Time for Completion is provided in the Appendix to Tender,

(b) any substantial part of the Permanent Works which has been both completed to the satisfaction of the Engineer and, otherwise than as provided for in the Contract, occupied or used by the Employer, or

(c) any part of the Permanent Works which the Employer has elected to occupy or use prior to completion (where such prior occupation or use is not provided for in the Contract or has not been agreed by the Contractor as a temporary measure).

If any part of the Permanent Works has been substantially completed and has satisfactorily passed any Tests on Completion prescribed by the Contract, the Engineer may issue a Taking-Over Certificate in respect of that part of the Permanent Works before completion of the whole of the Works and, upon the issue of such Certificate, the Contractor shall be deemed to have undertaken to complete with due expedition any outstanding work in that part of the Permanent Works during the Defects Liability Period.

Provided that a Taking-Over Certificate given in respect of any Section or part of the Permanent Works before completion of the whole of the Works shall not be deemed to certify completion of any ground or surfaces requiring reinstatement, unless such Taking-Over Certificate shall expressly so state.

Defects Liability

49.1 In these Conditions the expression “Defects Liability Period” shall mean the defects liability period named in the Appendix to Tender, calculated from:

(a) the date of completion of the Works certified by the Engineer in accordance with Clause 48, or

(b) in the event of more than one certificate having been issued by the Engineer under Clause 48, the respective dates so certified,

and in relation to the Defects Liability Period the expression “the Works” shall be construed accordingly.
Completion of Outstanding Work and Remediying Defects

49.2 To the intent that the Works shall, at or as soon as practicable after the expiration of the Defects Liability Period, be delivered to the Employer in the condition required by the Contract, fair wear and tear excepted, to the satisfaction of the Engineer, the Contractor shall:

(a) complete the work, if any, outstanding on the date stated in the Taking-Over Certificate as soon as practicable after such date, and
(b) execute all such work of amendment, reconstruction, and remediying defects, shrinkages or other faults as the Engineer may, during the Defects Liability Period or within 14 days after its expiration, as a result of an inspection made by or on behalf of the Engineer prior to its expiration, instruct the Contractor to execute.

Cost of Remediying Defects

49.3 All work referred to in Sub-Clause 49.2 (b) shall be executed by the Contractor at his own cost if the necessity thereof is, in the opinion of the Engineer, due to:

(a) the use of materials, Plant or workmanship not in accordance with the Contract,
(b) where the Contractor is responsible for the design of part of the Permanent works, any fault in such design, or
(c) he neglect or failure on the part of the Contractor to comply with any obligation, expressed or implied, on the Contractor's part under the Contract.

If, in the opinion of the Engineer, such necessity is due to any other cause, he shall determine an addition to the Contract Price in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the Employer.

Contractor's Failure to Carry Out Instructions

49.4 In case of default on the part of the Contractor in carrying out such instruction within a reasonable time, the Employer shall be entitled to employ and pay other persons to carry out the same and if such work is work which, in the opinion of the Engineer, the Contractor was liable to do at his own cost under the Contract, then all costs consequent thereon or incidental thereto shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and 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 and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

Contractor to Search

50.1 If any defect, shrinkage or other fault in the Works appears at any time prior to the end of the Defects Liability Period, the Engineer may instruct the Contractor, with copy to the Employer, to search under the directions of the Engineer for the cause thereof. Unless such defect, shrinkage or other fault is one for which the Contractor is liable under the Contract, the Engineer shall, after due consultation with the Employer and the Contractor, determine the amount in respect of the costs of such search incurred by the Contractor, which shall be added to the Contract Price and shall notify the Contractor accordingly, with a copy to the Employer. If such defect, shrinkage or other fault is one for which the Contractor is liable, the cost of the work carried out in searching as aforesaid shall be borne by the Contractor and he shall in such case remedy such defect, shrinkage or other fault at his own cost in accordance with the provisions of Clause 49.

Alterations, Additions and Omissions

Variations

51.1 The Engineer shall make any variation of the form, quality or quantity of the Works or any part thereof that may, in his opinion, be necessary and for that purpose, or if for any other reason it shall, in his opinion, be appropriate, he shall have the authority to instruct the Contractor to do and the Contractor shall do any of the following:

(a) increase or decrease the quantity of any work included in the Contract,
(b) omit any such work (but not if the omitted work is to be carried out by the Employer or by another contractor),
(c) change the character or quality or kind of any such work,
(d) change the levels, lines, position and dimensions of any part of the Works,
(e) execute additional work of any kind necessary for the completion of the Works,
or

(f) change any specified sequence or timing of construction of any part of the Works.

No such variation shall in any way vitiate or invalidate the Contract, but the effect, if any, of all such variations shall be valued in accordance with Clause 52. Provided that where the issue of an instruction to vary the Works is necessitated by some default or breach of contract by the Contractor or for which he is responsible, any additional cost attributable to such default shall be borne by the Contractor.

Instructions for Variations

51.2 The Contractor shall not make any such variation without an instruction of the Engineer. Provided that no instruction shall be required for increase or decrease in the quantity of any work where such increase or decrease is not the result of an instruction given under this Clause, but is the result of the quantities exceeding or being less than those stated in the Bill of Quantities.

Valuation of Variations

52.1 All variations referred to in Clause 51 and any additions to the Contract Price which are required to be determined in accordance with Clause 52 (for the purposes of this Clause referred to as “varied work”), shall be valued at the rates and prices set out in the Contract if, in the opinion of the Engineer, the same shall be applicable. If the Contract does not contain any rates or prices applicable to the varied work, the rates and prices in the Contract shall be used as the basis for valuation so far as may be reasonable, failing which, after due consultation by the Engineer with the Employer and the Contractor, suitable rates or prices shall be agreed upon between the Engineer and the Contractor. In the event of disagreement the Engineer shall fix such rates or prices as are, in his opinion, appropriate and shall notify the Contractor accordingly, with a copy to the Employer. Until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on-account payments to be included in certificates issued in accordance with Clause 60.

Provided also that no varied work instructed to be done by the Engineer pursuant to Clause 51 shall be valued under Sub-Clause 52.1 or under this Sub-Clause unless, within 14 days of the date of such instruction and, other than in the case of omitted work, before the commencement of the varied work, notice shall have been given either:

(a) by the Contractor to the Engineer of his intention to claim extra payment or a varied rate or price, or

(b) by the Engineer to the Contractor of his intention to vary a rate or price.

Variations Exceeding 15 per cent

52.3 If, on the issue of the Taking-Over Certificate for the whole of the Works, it is found that as a result of:

(a) all varied work valued under Sub-Clauses 52.1 and 52.2, and

(b) all adjustments upon measurement of the estimated quantities set out in the Bill of Quantities, excluding Provisional Sums, dayworks and adjustments of price made under Clause 70,

but not from any other cause, there have been additions to or deductions from the Contract Price which taken together are in excess of 15 per cent of the “Effective Contract Price” (which for the purposes of this Sub-Clause shall mean the
Contract Price, excluding Provisional Sums and allowance for dayworks, if any, then and in such event (subject to any action already taken under any other Sub-Clause of this Clause), after due consultation by the Engineer with the Employer and the Contractor, there shall be added to or deducted from the Contract Price such further sum as may be agreed between the Contractor and the Engineer or, failing agreement, determined by the Engineer having regard to the Contractor’s Site and general overhead costs of the Contract. The Engineer shall notify the Contractor of any determination made under this Sub-Clause, with a copy to the Employer. Such sum shall be based only on the amount by which such additions or deductions shall be in excess of 15 per cent of the Effective Contract Price.

Daywork 52.4

The Engineer may, if in his opinion it is necessary or desirable, issue an instruction that any varied work shall be executed on a daywork basis. The Contractor shall then be paid for such varied work under the terms set out in the daywork schedule included in the Contract and at the rates and prices affixed thereto by him in the Tender.

The Contractor shall furnish to the Engineer such receipts or other vouchers as may be necessary to prove the amounts paid and, before ordering materials, shall submit to the Engineer quotations for the same for his approval.

In respect of such of the Works executed on a daywork basis, the Contractor shall, during the continuance of such work, deliver each day to the Engineer an exact list in duplicate of the names, occupation and time of all workmen employed on such work and a statement, also in duplicate, showing the description and quantity of all materials and Contractor’s Equipment used thereon or therefore other than Contractor’s Equipment which is included in the percentage addition in accordance with such daywork schedule. One copy of each list and statement will, if correct, or when agreed, be signed by the Engineer and returned to the Contractor.

At the end of each month the Contractor shall deliver to the Engineer a priced statement of the labour, materials and Contractor’s Equipment, except as aforesaid, used and the Contractor shall not be entitled to any payment unless such lists and statements have been fully and punctually rendered. Provided always that if the Engineer considers that for any reason the sending of such lists or statements by the Contractor, in accordance with the foregoing provision, was impracticable he shall nevertheless be entitled to authorise payment for such work, either as daywork, on being satisfied as to the time employed and the labour, materials and Contractor’s Equipment used on such work, or at such value therefore as shall, in his opinion, be fair and reasonable.

Procedure for Claims

Notice of Claims 53.1

Notwithstanding any other provision of the Contract, if the Contractor intends to claim any additional payment pursuant to any Clause of these Conditions or otherwise, he shall give notice of his intention to the Engineer, with a copy to the Employer, within 28 days after the event giving rise to the claim has first arisen.

Contemporary Records 53.2

Upon the happening of the event referred to in Sub-Clause 53.1, the Contractor shall keep such contemporary records as may reasonably be necessary to support any claim he may subsequently wish to make. Without necessarily admitting the Employer’s liability, the Engineer shall, on receipt of a notice under Sub-Clause 53.1, inspect such contemporary records and may instruct the Contractor to keep any further contemporary records as are reasonable and may be material to the claim of which notice has been given. The Contractor shall permit the Engineer to inspect all records kept pursuant to this Sub-Clause and shall supply him with copies thereof as and when the Engineer so instructs.

Substantiation of Claims 53.3

Within 28 days, or such other reasonable time as may be agreed by the Engineer, of giving notice under Sub-Clause 53.1, the Contractor shall send to the Engineer an account giving detailed particulars of the amount claimed and the grounds upon which the claim is based. Where the event giving rise to the claim has a continuing effect, such account shall be considered to be an interim account and the Contractor shall, at such intervals as the Engineer may reasonably require, send further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. In cases where interim accounts are sent to
the Engineer, the Contractor shall send a final account within 28 days of the end of the effects resulting from the event. The Contractor shall, if required by the Engineer so to do, copy to the Employer all accounts sent to the Engineer pursuant to this Sub-Clause.

**Failure to Comply** 53.4

If the Contractor fails to comply with any of the provisions of this Clause in respect of any claim which he seeks to make, his entitlement to payment in respect thereof shall not exceed such amount as the Engineer or any arbitrator or arbitrators appointed pursuant to Sub-Clause 67.3 assessing the claim considers to be verified by contemporary records (whether or not such records were brought to the Engineer's notice as required under Sub-Clauses 53.2 and 53.3).

**Payment of Claims** 53.5

The Contractor shall be entitled to have included in any interim payment certified by the Engineer pursuant to Clause 60 such amount in respect of any claim as the Engineer, after due consultation with the Employer and the Contractor, may consider due to the Contractor provided that the Contractor has supplied sufficient particulars to enable the Engineer to determine the amount due. If such particulars are insufficient to substantiate the whole of the claim, the Contractor shall be entitled to payment in respect of such part of the claim as such particulars may substantiate to the satisfaction of the Engineer. The Engineer shall notify the Contractor of any determination made under this Sub-Clause, with a copy to the Employer.

**Contractor's Equipment, Temporary Works and Materials**

**Contractor's Equipment, Temporary Works and Materials; Exclusive Use for the Works**

54.1 All Contractor's Equipment, Temporary Works and materials provided by the Contractor shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the Works and the Contractor shall not remove the same or any part thereof, except for the purpose of moving it from one part of the Site to another, without the consent of the Engineer. Provided that consent shall not be required for vehicles engaged in transporting any staff, labour, Contractor's Equipment, Temporary Works, Plant or materials to or from the Site.

**Employer not Liable for Damage**

54.2 The Employer shall not at any time be liable, save as mentioned in Clauses 20 and 65, for the loss of or damage to any of the said Contractor's Equipment, Temporary Works or materials.

**Customs Clearance**

54.3 The Employer will use his best endeavours in assisting the Contractor, where required, in obtaining clearance through the Customs of Contractor's Equipment, materials and other things required for the Works.

**Re-export of Contractor's Equipment**

54.4 In respect of any Contractor's Equipment which the Contractor has imported for the purposes of the Works, the Employer will use his best endeavours to assist the Contractor, where required, in procuring any necessary Government consent to the re-export of such Contractor's Equipment by the Contractor upon the removal thereof pursuant to the terms of the Contract.
| **Conditions of Hire of Contractor’s Equipment** 54.5 | With a view to securing, in the event of termination under Clause 63, the continued availability, for the purpose of executing the Works, of any hired Contractor’s Equipment, the Contractor shall not bring on to the Site any hired Contractor’s Equipment unless there is an agreement for the hire thereof (which agreement shall be deemed not to include an agreement for hire purchase) which contains a provision that the owner thereof will, on request in writing made by the Employer within 7 days after the date on which any termination has become effective, and on the Employer undertaking to pay all hire charges in respect thereof from such date, hire such Contractor’s Equipment to the Employer on the same terms in all respects as the same was hired to the Contractor save that the Employer shall be entitled to permit the use thereof by any other contractor employed by him for the purpose of executing and completing the Works and remediying any defects therein, under the terms of the said Clause 63. |
| **Costs for the Purpose of Clause 63** 54.6 | In the event of the Employer entering into any agreement for the hire of Contractor’s Equipment pursuant to Sub-Clause 54.5, all sums properly paid by the Employer under the provisions of any such agreement and all costs incurred by him (including stamp duties) in entering into such agreement shall be deemed, for the purpose of Clause 63, to be part of the cost of executing and completing the Works and the remediying of any defects therein. |
| **Incorporation of Clause in Subcontracts** 54.7 | The Contractor shall, where entering into any subcontract for the execution of any part of the Works, incorporate in such subcontract (by reference or otherwise) the provisions of this Clause in relation to Contractor’s Equipment, Temporary Works or materials brought on to the Site by the Subcontractor. |
| **Approval of Materials not Implied** 54.8 | The operation of this Clause shall not be deemed to imply any approval by the Engineer of the materials or other matters referred to therein nor shall it prevent the rejection of any such materials at any time by the Engineer. |
| **Measurement** | |
| **Quantities** 55.1 | The quantities set out in the Bill of Quantities are the estimated quantities for the Works, and they 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. |
| **Work to be Measured** 56.1 | The Engineer, shall except as otherwise stated, ascertain and determine by measurement the value of the Works in accordance with the Contract and the Contractor shall be paid that value in accordance with Clause 60. The Engineer shall, when he requires any part of the Works to be measured, give reasonable notice to the Contractor’s authorised agent, who shall: |
|  | (a) forthwith attend or send a qualified representative to assist the Engineer in making such measurement, and |
|  | (b) supply all particulars required by the Engineer. |
|  | Should the Contractor not attend, or neglect or omit to send such representative, then the measurement made by the Engineer or approved by him shall be taken to be the correct measurement of such part of the Works. For the purpose of measuring such Permanent Works as are to be measured by records and drawings, the Engineer shall prepare records and drawings as the work proceeds and the Contractor, as and when called upon to do so in writing, shall, within 14 days, attend to examine and agree such records and drawings with the Engineer and shall sign the same when so agreed. If the Contractor does not attend to examine and agree such records and drawings, they shall be taken to be correct. If, after examination of such records and drawings, the Contractor does not agree the same or does not sign the same as agreed, they shall nevertheless be taken to be correct, unless the Contractor, within 14 days of such examination, lodges with the Engineer notice of the respects in which such records and drawings are claimed by him to be incorrect. On receipt of such notice, the Engineer shall review the records and drawings and either confirm or vary them. |
| **Method of Measurement** 57.1 | The Works shall be measured net, notwithstanding any general or local custom, except where otherwise provided for in the Contract. |
| **Breakdown of** 57.2 | For the purposes of statements submitted in accordance with Sub-Clause 60.1, the |
Lump Sum Items

Contractor shall submit to the Engineer, within 28 days after the receipt of the Letter of Acceptance, a breakdown for each of the lump sum items contained in the Tender. Such breakdowns shall be subject to the approval of the Engineer.

Provisional Sums

Definition of “Provisional Sum”

58.1 “Provisional Sum” means a sum included in the Contract and so designated in the Bill of Quantities for the execution of any part of the Works or for the supply of goods, materials, Plant or services, or for contingencies, which sum may be used, in whole or in part, or not at all, on the instructions of the Engineer. The Contractor shall be entitled to only such amounts in respect of the work, supply or contingencies to which such Provisional Sums relate as the Engineer shall determine in accordance with this Clause. The Engineer shall notify the Contractor of any determination made under this Sub-Clause, with a copy to the Employer.

Use of Provisional Sums

58.2 In respect of every Provisional Sum the Engineer shall have authority to issue instructions for the execution of work or for the supply of goods, materials, Plant or services by:

(a) the Contractor, in which case the Contractor shall be entitled to an amount equal to the value thereof determined in accordance with Clause 52, and

(b) a nominated Subcontractor, as hereinafter defined, in which case the sum to be paid to the Contractor therefore shall be determined and paid in accordance with Sub-Clause 59.4.

Production of Vouchers

58.3 The Contractor shall produce to the Engineer all quotations, invoices, vouchers and accounts or receipts in connection with expenditure in respect of Provisional Sums, except where work is valued in accordance with rates or prices set out in the Tender.

Nominated Subcontractors

Definition of “Nominated Subcontractors”

59.1 All specialists, merchants, tradesmen and others executing any work or supplying any goods, materials, Plant or services for which Provisional Sums are included in the Contract, who may have been or be nominated or selected or approved by the Employer or the Engineer, and all persons to whom by virtue of the provisions of the Contract the Contractor is required to subcontract shall, in the execution of such work or the supply of such goods, materials, Plant or services, be deemed to be subcontractors to the Contractor and are referred to in this Contract as “nominated Subcontractors”.

Nominated Subcontractors; Objection to Nomination

59.2 The Contractor shall not be required by the Employer or the Engineer, or be deemed to be under any obligation, to employ any nominated Subcontractor against whom the Contractor may raise reasonable objection, or who declines to enter into a subcontract with the Contractor containing provisions:

(a) that in respect of the work, goods, materials, Plant or services the subject of the subcontract, the nominated Subcontractor will undertake towards the Contractor such obligations and liabilities as will enable the Contractor to discharge his own obligations and liabilities towards the Employer under the terms of the Contract and will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection therewith, or arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities, and

(b) that the nominated Subcontractor will save harmless and indemnify the Contractor from and against any negligence by the nominated Subcontractor, his agents, workmen and servants and from and against any misuse by him or them of any Temporary Works provided by the Contractor for the purposes of the Contract and from all claims as aforesaid.

Design Requirements to
be Expressed Stated

Plant to be incorporated therein, such requirement shall be expressly stated in the Contract and shall be included in any nominated Subcontract. The nominated Subcontract shall specify that the nominated Subcontractor providing such services will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities.

Payments to Nominated Subcontractors

For all work executed or goods, materials, Plant or services supplied by any nominated Subcontractor, the Contractor shall be entitled to:

(a) the actual price paid or due to be paid by the Contractor on the instructions of the Engineer, and in accordance with the subcontract;

(b) in respect of labour supplied by the Contractor, the sum, if any, entered in the Bill of Quantities or, if instructed by the Engineer pursuant to paragraph (a) of Sub-Clause 58.2, as may be determined in accordance with Clause 52; and

(c) in respect of all other charges and profit, a sum being a percentage rate of the actual price paid or due to be paid calculated, where provision has been made in the Bill of Quantities for a rate to be set against the relevant Provisional Sum, at the rate inserted by the Contractor against that item or, where no such provision has been made, at the rate inserted by the Contractor in the Appendix to Tender and repeated where provision for such is made in a special item provided in the Bill of Quantities for such purpose.

Certification of Payments to Nominated Subcontractors

Before issuing, under Clause 60, any certificate, which includes any payment in respect of work done or goods, materials, Plant or services supplied by any nominated Subcontractor, the Engineer shall be entitled to demand from the Contractor reasonable proof that all payments, less retentions, included in previous certificates in respect of the work or goods, materials, Plant or services of such nominated Subcontractor have been paid or discharged by the Contractor. If the Contractor fails to supply such proof then, unless the Contractor:

(a) satisfies the Engineer in writing that he has reasonable cause for withholding or refusing to make such payments, and

(b) produces to the Engineer reasonable proof that he has so informed such nominated Subcontractor in writing,

the Employer shall be entitled to pay to such nominated Subcontractor direct, upon the certificate of the Engineer, all payments, less retentions, provided for in the nominated Subcontract, which the Contractor has failed to make to such nominated Subcontractor and to deduct by way of set-off the amount so paid by the Employer from any sums due or to become due from the Employer to the Contractor.

Provided that, where the Engineer has certified and the Employer has paid direct as aforesaid, the Engineer shall, in issuing any further certificate in favour of the Contractor, deduct from the amount thereof the amount so paid, direct as aforesaid, but shall not withhold or delay the issue of the certificate itself when due to be issued under the terms of the Contract.
Certificates and Payment

The Contractor shall submit to the Engineer after the end of each month six copies, each signed by the Contractor’s representative approved by the Engineer in accordance with Sub-Clause 15.1, of a statement, in such form as the Engineer may from time to time prescribe, showing the amounts to which the Contractor considers himself to be entitled up to the end of the month in respect of:

(a) the value of the Permanent Works executed,
(b) any other items in the Bill of Quantities including those for Contractor’s Equipment, Temporary Works, dayworks and the like,
(c) the percentage of the invoice value of listed materials, all as stated in the Appendix to Tender, and Plant delivered by the Contractor on the Site for incorporation in the Permanent Works but not incorporated in such Works,
(d) adjustments under Clause 70, and
(e) any other sum to which the Contractor may be entitled under the Contract or otherwise.

The Engineer shall, within 28 days of receiving such statement, deliver to the Employer an Interim Payment Certificate stating the amount of payment to the Contractor which the Engineer considers due and payable in respect of such statement, subject:

(a) firstly, to the retention of the amount calculated by applying the Percentage of Retention stated in the Appendix to Tender, to the amount to which the Contractor is entitled under paragraphs (a), (b), (c), and (e) of Sub-Clause 60.1 until the amount so retained reaches the Limit of Retention Money stated in the Appendix to Tender, and
(b) secondly, to the deduction, other than pursuant to Clause 47, of any sums which may have become due and payable by the Contractor to the Employer.

Provided that the Engineer shall not be bound to certify any payment under this Sub-Clause if the net amount thereof, after all retentions and deductions, would be less than the Minimum Amount of Interim Payment Certificates stated in the Appendix to Tender.

Notwithstanding the terms of this Clause or any other Clause of the Contract no amount will be certified by the Engineer for payment until the performance security, if required under the Contract, has been provided by the Contractor and approved by the Employer.

(a) Upon the issue of the Taking-Over Certificate with respect to the whole of the Works, one half of the Retention Money, or upon the issue of a Taking-Over Certificate with respect to a Section or part of the Permanent Works only such proportion thereof as the Engineer determines having regard to the relative value of such Section or part of the Permanent Works, shall be certified by the Engineer for payment to the Contractor.

(b) Upon the expiration of the Defects Liability Period for the Works the other half of the Retention Money shall be certified by the Engineer for payment to the Contractor. Provided that, in the event of different Defects Liability Periods having become applicable to different Sections or parts of the Permanent Works pursuant to Clause 48, the expression “expiration of the Defects Liability Period” shall, for the purposes of this Sub-Clause, be deemed to mean the expiration of the latest of such periods. Provided also that if at such time there shall remain to be executed by the Contractor any work instructed, pursuant to Clauses 49 and 50, in respect of the Works, the Engineer shall be entitled to withhold certification until completion of such work of so much of the balance of the Retention Money as shall, in the opinion of the Engineer, represent the cost of the work remaining to be executed.

The Engineer may by any Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificate, which shall have been issued by him and shall have authority, if any work is not being carried out to his satisfaction, to omit or reduce the value of such work in any Interim Payment Certificate.

Not later than 84 days after the issue of the Taking-Over Certificate in respect of the
Completion

Whole of the Works, the Contractor shall submit to the Engineer six copies of the Statement at Completion with supporting documents showing in detail, in the form approved by the Engineer:

(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 Engineer shall certify payment in accordance with Sub-Clause 60.2.

Final Statement 60.6

Not later than 56 days after the issue of the Defects Liability Certificate pursuant to Sub-Clause 62.1, the Contractor shall submit to the Engineer for consideration six copies of a draft final statement with supporting documents showing in detail, in the form approved by the Engineer:

(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 Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer 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 Engineer the final statement as agreed (for the purposes of these Conditions referred to as the “Final Statement”).

If, following discussions between the Engineer 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 Engineer shall deliver to the Employer an Interim Payment Certificate for those parts of the draft final statement, if any, which are not in dispute. The dispute may then be settled in accordance with Clause 67.

Discharge 60.7

Upon submission of the Final Statement, the Contractor shall give to the Employer, with a copy to the Engineer, a written discharge confirming that the total of the Final Statement represents full and final settlement of all monies due to the Contractor arising out of or in respect of the Contract. Provided that such discharge shall become effective only after payment due under the Final Payment Certificate issued pursuant to Sub-Clause 60.8 has been made and the performance security referred to in Sub-Clause 10.1, if any, has been returned to the Contractor.

Final Payment Certificate 60.8

Within 28 days after receipt of the Final Statement, and the written discharge, the Engineer shall issue to the Employer (with a copy to the Contractor) a Final Payment Certificate stating:

(a) the amount which, in the opinion of the Engineer, is finally due under the Contract or otherwise, 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 Clause 47, the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer as the case may be.

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 in respect thereof in his Final Statement and (except in respect of matters or things arising after the issue of the Taking-Over Certificate in respect of the whole of the Works) in the Statement at Completion referred to in Sub-Clause 60.5.

Time for Payment 60.10

The amount due to the Contractor under any Interim Payment Certificate issued by the Engineer pursuant to this Clause, or to any other term of the Contract, shall, subject to Clause 47, be paid by the Employer to the Contractor within 28 days after such Interim Payment Certificate has been delivered to the Employer, or, in the case of the Final Payment Certificate referred to in Sub-Clause 60.8, within 56 days after such Final Payment Certificate has been delivered to the Employer.
event of the failure of the Employer to make payment within the times stated, the Employer shall pay to the Contractor interest at the rate stated in the Appendix to Tender upon all sums unpaid from the date by which the same should have been paid. The provisions of this Sub-Clause are without prejudice to the Contractor’s entitlement under Clause 69 or otherwise.

Only the Defects Liability Certificate, referred to in Clause 62, shall be deemed to constitute approval of the Works.

**Approval only by Defects Liability Certificate**

61.1 The Contract shall not be considered as completed until a Defects Liability Certificate shall have been signed by the Engineer and delivered to the Employer, with a copy to, the Contractor, stating the date on which the Contractor shall have completed his obligations to execute and complete the Works and remedy any defects therein to the Engineer’s satisfaction. The Defects Liability Certificate shall be given by the Engineer within 28 days after the expiration of the Defects Liability Period, or, if different defects liability periods shall become applicable to different Sections or parts of the Permanent Works, the expiration of the latest such period, or as soon thereafter as any works instructed, pursuant to Clauses 49 and 50, have been completed to the satisfaction of the Engineer. Provided that the issue of the Defects Liability Certificate shall not be a condition precedent to payment to the Contractor of the second portion of the Retention Money in accordance with the conditions set out in Sub-Clause 60.3.

Notwithstanding the issue of the Defects Liability Certificate the Contractor and the Employer shall remain liable for the fulfilment of any obligation incurred under the provisions of the Contract prior to the issue of the Defects Liability Certificate which remains unperformed at the time such Defects Liability Certificate is issued and, for the purposes of determining the nature and extent of any such obligation, the Contract shall be deemed to remain in force between the parties to the Contract.

**Remedies**

63.1 If the Contractor is deemed by law unable to pay his debts as they fall due, or enters into voluntary or involuntary bankruptcy, liquidation or dissolution (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or becomes insolvent, or makes an arrangement with, or assignment in favour of, his creditors, or agrees to carry out the Contract under a committee of inspection of his creditors, or if a receiver, administrator, trustee or liquidator is appointed over any substantial part of his assets, or if, under any law or regulation relating to reorganization, arrangement or readjustment of debts, proceedings are commenced against the Contractor or resolutions passed in connection with dissolution or liquidation or if any steps are taken to enforce any security interest over a substantial part of the assets of the Contractor, or under any applicable law has a substantially similar effect to any of the foregoing acts or events, or if the Contractor has contravened Sub-Clause 3.1, or has an execution levied on his goods, or if the Engineer certifies to the Employer, with a copy to the Contractor, that, in his opinion, the Contractor:

(a) has repudiated the Contract,

(b) without reasonable excuse has failed

(i) to commence the Works in accordance with Sub-Clause 41.1, or

(ii) to proceed with the Works, or any Section thereof, within 28 days after receiving notice pursuant to Sub-Clause 46.1,

(c) has failed to comply with a notice issued pursuant to Sub-Clause 37.4 or an instruction issued pursuant to Sub-Clause 39.1 within 28 days after having received it,

(d) despite previous warning from the Engineer, in writing, is otherwise persistently or flagrantly neglecting to comply with any of his obligations under the Contract, or

(e) has contravened Sub-Clause 4.1,

then the Employer may, after giving 14 days’ notice to the Contractor, enter upon
Valuation at Date of Termination 63.2

The Engineer shall, as soon as may be practicable after any such entry and termination by the Employer, fix and determine ex parte, or by or after reference to the parties or after such investigation or enquiries as he may think fit to make or institute, and shall certify:

a) what amount (if any) had, at the time of such entry and termination, been reasonably earned by or would reasonably accrue to the Contractor in respect of work then actually done by him under the Contract, and

b) the value of any of the said unused or partially used materials, any Contractor's Equipment, and any Temporary Works.

Payment after Termination 63.3

If the Employer terminates the Contractor's employment under this Clause, he shall not be liable to pay to the Contractor any further amount (including damages) in respect of the Contract until the expiration of the Defects Liability Period and there after until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any) and all other expenses incurred by the Employer have been ascertained and the amount thereof certified by the Engineer. The Contractor shall then be entitled to receive only such sum (if any) as the Engineer may certify would have been payable to him upon due completion by him after deducting the said amount. If such amount exceeds the sum which would have been payable to the Contractor on due completion by him, then the Contractor shall, upon demand, pay to the Employer the amount of such excess and it shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly.

Assignment of Benefit of Agreement 63.4

Unless prohibited by law, the Contractor shall, if so instructed by the Engineer within 14 days of such entry and termination referred to in Sub-Clause 63.1, assign to the Employer the benefit of any agreement for the supply of any goods, materials or services and/or for the execution of any work for the purposes of the Contract, which the Contractor may have entered into.

Urgent Remedial Work 64.1

If, by reason of any accident, or failure, or other event occurring to, in, or in connection with the Works, or any part thereof, either during the execution of the Works, or during the Defects Liability Period, any remedial or other work is, in the opinion of the Engineer, urgently necessary for the safety of the Works and the Contractor is unable or unwilling at once to do such work, the Employer shall be entitled to employ and pay other persons to carry out such work as the Engineer may consider necessary. If the work or repair so done by the Employer is work which, in the opinion of the Engineer, the Contractor was liable to do at his own cost under the Contract, then all costs consequent thereon or incidental thereto shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and 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 and the Engineer shall notify the Contractor accordingly, with a copy to the Employer. Provided that the Engineer shall, as soon after the occurrence of any such emergency as may be reasonably practicable, notify the Contractor thereof.

Special Risks

No Liability for Special Risks 65.1

The Contractor shall be under no liability whatsoever in consequence of any of the special risks referred to in Sub-Clause 65.2, whether by way of indemnity or otherwise, for or in respect of:

(a) destruction or damage to the Works, save to work condemned under the provisions of Clause 39 prior to the occurrence of any of the said special risks,

(b) destruction or damage to property, whether of the Employer or third parties, or

(c) injury or loss of life.

Special Risks 65.2

The special risks are:
Damage to Works by Special Risks 65.3

If the Works or any materials on Plant or near in transit to the Site, or any of the Contractor's Equipment, sustain destruction or damage by reason of any of the said special risks, the Contractor shall be entitled to payment in accordance with the Contract for any Permanent Works duly executed and for any materials or Plant so destroyed or damaged and, so far as may be required by the Engineer or as may be necessary for the completion of the Works, to payment for:

(a) rectifying any such destruction or damage to the Works, and

(b) replacing or rectifying such materials or Contractor’s Equipment, and the Engineer shall determine an addition to the Contract Price in accordance with Clause 52 (which shall in the case of the cost of replacement of Contractor's Equipment include the fair market value thereof as determined by the Engineer) and shall notify the Contractor accordingly, with a copy to the Employer.

(c) Projectile, Missile 65.4

Destruction, damage, injury or loss of life caused by the explosion or impact, whenever and wherever occurring, of any mine, bomb, shell, grenade, or other projectile, missile, munition, or explosive of war, shall be deemed to be a consequence of the said special risks.

Increased Costs arising from Special Risks 65.5

Save to the extent that the Contractor is entitled to payment under any other provision of the Contract, the Employer shall repay to the Contractor any costs of the execution of the Works (other than such as may be attributable to the cost of reconstructing work condemned under the provisions of Clause 39 prior to the occurrence of any special risk) which are howsoever attributable to or consequent on or the result of or in any way whatsoever connected with the said special risks, subject however to the provisions in this Clause hereinafter contained in regard to outbreak of war, but the Contractor shall, as soon as any such cost comes to his knowledge, forthwith notify the Engineer thereof. The Engineer shall, after due consultation with the Employer and the Contractor, determine the amount of the Contractor’s costs in respect thereof which shall be added to the Contract Price and shall notify the Contractor accordingly, with a copy to the Employer.

Outbreak of War 65.6

If, during the currency of the Contract, there is an outbreak of war, whether war is declared or not, in any part of the world which, whether financially or otherwise, materially affects the execution of the Works, the Contractor shall, unless and until the Contract is terminated under the provisions of this Clause, continue to use his best endeavours to complete the execution of the Works. Provided that the Employer shall be entitled, at any time after such outbreak of war, to terminate the Contract by giving notice to the Contractor and, upon such notice being given, the Contract shall, except as to the rights of the parties under this Clause and Clause 67, terminate, but without prejudice to the rights of either party in respect of any antecedent breach thereof.
65.7 Removal of Contractor's Equipment on Termination

If the Contract is terminated under the provisions of Sub-Clause 65.6, the Contractor shall, with all reasonable dispatch, remove from the Site all Contractor’s Equipment and shall give similar facilities to his Subcontractors to do so.

65.8 Payment if Contract Terminated

If the Contract is terminated as aforesaid, the Contractor shall be paid by the Employer, insofar as such amounts or items have not already been covered by payments on account made to the Contractor, for all work executed prior to the date of termination at the rates and prices provided in the Contract and in addition:

(a) the amounts payable in respect of any preliminary items referred to in the Bill of Quantities, so far as the work or service comprised therein has been carried out or performed, and a proper proportion of any such items which have been partially carried out or performed;

(b) the cost of materials, Plant or goods reasonably ordered for the Works which have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery, such materials, Plant or goods becoming the property of the Employer upon such payments being made by him;

(c) a sum being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works insofar as such expenditure has not been covered by any other payments referred to in this Sub-Clause;

(d) any additional sum payable under the provisions of Sub-Clauses 65.3 and 65.5;

(e) such proportion of the cost as may be reasonable, taking into account payments made or to be made for work executed, of removal of Contractor’s Equipment under Sub-Clause 65.7 and, if required by the Contractor, return thereof to the Contractor’s main plant yard in his country of registration or to other destination at no greater cost and

(f) the reasonable cost of repatriation of all the Contractor’s staff and workmen employed on or in connection with the Works at the time of such termination.

Provided that against any payment due from the Employer under this Sub-Clause, the Employer shall be entitled to be credited with any outstanding balances due from the Contractor for advances in respect of Contractor's Equipment, materials and Plant and any other sums which, at the date of termination, were recoverable by the Employer from the Contractor under the terms of the Contract. Any sums payable under this Sub-Clause shall, after due consultation with the Employer and the Contractor, be determined by the Engineer who shall notify the Contractor accordingly, with a copy to the Employer.

66.1 Release from Performance

If any circumstance outside the control of both parties arises after the issue of the Letter of Acceptance which renders it impossible or unlawful for either or both parties to fulfil his or their contractual obligations, or under the law governing the Contract the parties are released from further performance, then the parties shall be discharged from the Contract, except as to their rights under this Clause and Clause 67 and without prejudice to the rights of either party in respect of any antecedent breach of the Contract, and the sum payable by the Employer to the Contractor in respect of the work executed shall be the same as that which would have been payable under Clause 65 if the Contract had been terminated under the provisions of Clause 65.
Settlement of Disputes

Engineer’s Decision

67.1 If a dispute of any kind whatsoever arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after repudiation or other termination of the Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation of the Engineer, the matter in dispute shall, in the first place, be referred in writing to the Engineer, with a copy to the other party. Such reference shall state that it is made pursuant to this Clause. No later than the eighty-fourth day after the day on which he received such reference the Engineer shall give notice of his decision to the Employer and the Contractor. Such decision shall state that it is made pursuant to this 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 such decision of the Engineer unless and until the same shall be revised, as hereinafter provided, in an amicable settlement or an arbitral award.

If either the Employer or the Contractor be dissatisfied with any decision of the Engineer, or if the Engineer fails to give notice of his decision on or before the Eighty-fourth day after the day on which he received the reference, then either the Employer or the Contractor may, on or before the seventieth day after the day on which he received notice of such decision, or on or before the seventieth day after the day on which the said period of 84 days expired, as the case may be, give notice to the other party, with a copy for information to the Engineer, of his intention to commence arbitration, as hereinafter provided, as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to Sub-Clause 67.4, no arbitration in respect thereof may be commenced unless such notice is given.

If the Engineer has given notice of his decision as to a matter in dispute to the Employer and the Contractor and no notice of intention to commence arbitration as to such dispute has been given by either the Employer or the Contractor on or before the seventieth day after the day on which the parties received notice as to such decision from the Engineer, the said decision shall become final and binding upon the Employer and the Contractor.

Amicable Settlement

67.2 Where notice of intention to commence arbitration as to a dispute has been given in accordance with Sub-Clause 67.1, the parties shall attempt to settle such dispute amicably before the commencement of arbitration. Provided that, unless the parties otherwise agree, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of intention to commence arbitration of such dispute was given, even if no attempt at amicable settlement thereof has been made.

Any dispute in respect of which:
(a) the decision, if any, of the Engineer has not become final and binding pursuant to Sub-Clause 67.1, and
(b) amicable settlement has not been reached within the period stated in Sub-Clause 67.2,

shall be finally settled, unless otherwise specified in the Contract, under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed under such Rules. The said arbitrator/s shall have full power to open up, review and revise any decision, opinion, instruction, determination, certificate or valuation of the Engineer related to the dispute.

Neither party shall be limited in the proceedings before such arbitrator/s to the evidence or arguments put before the Engineer for the purpose of obtaining his said decision pursuant to Sub-Clause 67.1. No such decision shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrator/s on any matter whatsoever relevant to the dispute.

Arbitration may be commenced prior to or after completion of the Works, provided that the obligations of the Employer, the Engineer and the Contractor shall not be altered by reason of the arbitration being conducted during the
Failure to Comply with Engineer’s Decision 67.4

Where neither the Employer nor the Contractor has given notice of intention to commence arbitration of a dispute within the period stated in Sub-Clause 67.1 and the related decision 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 to arbitration in accordance with Sub-Clause 67.3. The provisions of Sub-Clauses 67.1 and 67.2 shall not apply to any such reference.

Notices

Notice to Contractor 68.1

All certificates, notices or instructions to be given to the Contractor by the Employer or the Engineer under the terms of the Contract shall be sent by post, cable, telex or facsimile transmission to or left at the Contractor’s principal place of business or such other address as the Contractor shall nominate for that purpose.

Notice to Employer and Engineer 68.2

Any notice to be given to the Employer or to the Engineer under the terms of the Contract shall be sent by post, cable, telex or facsimile transmission to or left at the respective addresses nominated for that purpose in Part II of these Conditions.

Change of Address 68.3

Either party may change a nominated address to another address in the country where the Works are being executed by prior notice to the other party, with a copy to the Engineer, and the Engineer may do so by prior notice to both parties.

Default of Employer 69.1

In the event of the Employer:

(a) failing to pay to the Contractor the amount due under any certificate of the Engineer within 28 days after the expiry of the time stated in Sub-Clause 60.10, within which payment is to be made, subject to any deduction that the Employer is entitled to make under the Contract,

(b) interfering with or obstructing or refusing any required approval to the issue of any such certificate,

(c) becoming bankrupt or, being a company, going into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation, or

(d) giving notice to the Contractor that for unforeseen economic reasons it is impossible for him to continue to meet his contractual obligations, the Contractor shall be entitled to terminate his employment under the Contract by giving notice to the Employer, with a copy to the Engineer. Such termination shall take effect 14 days after the giving of the notice.

Upon the expiry of the 14 days’ notice referred to in Sub-Clause 69.1, the Contractor shall, notwithstanding the provisions of Sub-Clause 54.1, with all reasonable despatch, remove from the Site all Contractor’s Equipment brought by him thereon.

In the event of such termination the Employer shall be under the same obligations to the Contractor in regard to payment as if the Contract had been terminated under the provisions of Clause 65, but, in addition to the payments specified in Sub-Clause 65.8, the Employer shall pay to the Contractor the amount of any loss or damage to the Contractor arising out of or in connection with or by consequence of such termination.
Without prejudice to the Contractor's entitlement to interest under Sub-Clause 60.10 and to terminate under Sub-Clause 69.1, the Contractor may, if the Employer fails to pay the Contractor the amount due under any certificate of the Engineer within 28 days after the expiry of the time stated in Sub-Clause 60.10 within which payment is to be made, subject to any deduction that the Employer is entitled to make under the Contract, after giving 28 days' prior notice to the Employer, with a copy to the Engineer, suspend work or reduce the rate of work. If the Contractor suspends work or reduces the rate of work in accordance with the provisions of this Sub-Clause and thereby suffers delay or incurs costs the Engineer shall, after due consultation with the Employer and the Contractor, determine:

(a) any extension of time to which the Contractor is entitled under Clause 44, and

(b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer.

Where the Contractor suspends work or reduces the rate of work, having given notice in accordance with Sub-Clause 69.4, and the Employer subsequently pays the amount due, including interest pursuant to Sub-Clause 60.10, the Contractor's entitlement under Sub-Clause 69.1 shall, if notice of termination has not been given, lapse and the Contractor shall resume normal working as soon as is reasonably possible.

Changes in Cost and Legislation

Increase or Decrease of Cost

70.1 There shall be added to or deducted from the Contract Price such sums in respect of rise or fall in the cost of labour and/or materials or any other matters affecting the cost of the execution of the Works as may be determined in accordance with Part II of these Conditions.

Subsequent Legislation

70.2 If, after the date 28 days prior to the latest date for submission of tenders for the Contract there occur in the country in which the Works are being or are to be executed changes to any National or State Statute, Ordinance, Decree or other Law or any regulation or bye-law of any local or other duly constituted authority, or the introduction of any such Statute, Ordinance, Decree, Law, regulation or bye-law which causes additional or reduced cost to the Contractor, other than under Sub-Clause 70.1, in the execution of the Contract, such additional or reduced cost shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be added to or deducted from the Contract Price and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

Currency and Rates of Exchange

If, after the date 28 days prior to the latest date for submission of tenders for the Contract, the Government or authorised agency of the Government of the country in which the Works are being or are to be executed imposes currency restrictions and/or transfer of currency restrictions in relation to the currency or currencies in which the Contract Price is to be paid, the Employer shall reimburse any loss or damage to the Contractor arising therefrom, without prejudice to the right of the Contractor to exercise any other rights or remedies to which he is entitled in such event.

Where the Contract provides for payment in whole or in part to be made to the Contractor in foreign currency or currencies, such payment shall not be subject to variations in the rate or rates of exchange between such specified foreign currency or currencies and the currency of the country in which the Works are to be executed.
Currency Proportions

Where the Employer has required the Tender to be expressed in a single currency but with payment to be made in more than one currency and the Contractor has stated the proportions or amounts of other currency or currencies in which he requires payment to be made, the rate or rates of exchange applicable for calculating the payment of such proportions or amounts shall, unless otherwise stated in Part II of these Conditions, be those prevailing, as determined by the Central Bank of the country in which the Works are to be executed, on the date 28 days prior to the latest date for the submission of tenders for the Contract, as has been notified to the Contractor by the Employer prior to the submission of tenders or as provided for in the Tender.

Currencies of Payment for Provisional Sums

Where the Contract provides for payment in more than one currency, the proportions or amounts to be paid in foreign currencies in respect of Provisional Sums shall be determined in accordance with the principles set forth in Sub-Clausules 72.1 and 72.2 as and when these sums are utilised in whole or in part in accordance with the provisions of Clauses 58 and 59.

REFERENCE TO PART II

As stated in the Foreword at the beginning of this document, the FIDIC Conditions comprise both Part I and Part II. Certain Clauses, namely Sub-Clausules 1.1 paragraph (a) (i) and (v), 5.1 (part), 14.1, 14.3, 68.2 and 70.1 must include additional wording in Part II for the Conditions to be complete. Other Clauses may require additional wording to supplement Part I or to cover particular circumstances or the type of work (dredging is an example).

Part II Conditions of Particular Application with guidelines for the preparation of Part II are printed in a separately bound document.
PART I - GENERAL CONDITIONS

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TENDER

NAME OF CONTRACT: ______________________________

TO ____________________________________________

Gentlemen,

1. Having examined the Conditions of Contract, Specification, Drawings, and Bill of Quantities and Addenda Nos______ for the execution of the above-named Works, we, the undersigned, offer to execute and complete such Works and remedy any defects therein in conformity with the Conditions of Contract, Specification, Drawings, Bill of Quantities and Addenda for the sum of

( ______________________________________________________ )

or such other sum as may be ascertained in accordance with the said Conditions.

2. We acknowledge that the Appendix forms part of our Tender.

3. We undertake, if our Tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Engineer's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Tender.

4. We agree to a Tender by this Tender for the period of *______days from the date fixed for receiving the same and it shall remain binding upon us and maybe accepted at any time before the expiration of that period.

5. 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.

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

Dated this________________________ day of______________19_____

Signature ________________________ in the capacity of_____________
duly authorised to sign tenders for and on behalf of __________________

___________________________________________________________

(IN BLOCK CAPITALS)

Address ______________________________________________

Witness ______________________________________________

Address ______________________________________________

Occupation__________________________________________________

(Note: All details marked * shall be inserted before issue of Tender documents.)
Appendix

Sub – Clause

Amount of security (if any) ______________________ 10.1 per cent of the Contract Price

Minimum amount of third party insurance ____________ 23.2 per occurrence, with the number of occurrences unlimited

Time for issue of notice to commence ______________ 41.1 days

Time for Completion ______________________________ 43.1 days

Amount of liquidated damages ______________________ 47.1 per day

Limit of liquidated damaged _______________________ 47.1

Defects Liability Period __________________________ 49.1 days

Percentage for adjustment of Provisional Sums 59.4(a) per cent

Percentage of invoice value of listed materials and Plant ______________________________ 60.1(c) per cent

Percentage of Retention __________________________ 60.2 per cent

Limit of Retention Money _________________________ 60.2

Minimum Amount of Interim Payment Certificates __________________________ 60.2

Rate of interest upon unpaid sums _________________ 60.10 per cent per annum

Initials of Signatory of Tender ______________________

(Notes: All details in the list above, other than percentage figure against Sub-Clause 59.4, shall be inserted before issue of Tender documents. Where a number of days is to be inserted, it is desirable, for consistency with the Conditions, that the number should be a multiple of seven.

Additional entries are necessary where provision is included in the Contract for:

(a) completion of Sections (Sub-Clauses 43.1 and 48.2(a))
(b) liquidated damages for Sections (Sub-Clause 47.1)
(c) a bonus (Sub-Clause 47.3 - Part II)
(d) payment for materials on Site (Sub-Clause 60.1 (c))
(e) payment in foreign currencies (Clause 60 - Part II)
(f) an advance payment (Clause 60 - Part II)
(g) adjustments to the Contract Price on account of Specified Materials (Sub-Clause 70.1 - Part II)
(h) rates of exchange (Sub-Clause 72.2 - Part II)
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 is desirous that certain Works should be executed by the

Contractor, viz _______________________________________________________

and has accepted a Tender by the Contractor for the execution and completion of such

Works and the remedying of any defects therein

Now this Agreement witnesses 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, viz:

   (a) The Letter of Acceptance;
   (b) The said Tender;
   (c) The Conditions of Contract (Parts I and II);
   (d) The Specification;
   (e) The Drawings; and
   (f) The Bill of Quantities.

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

execute and complete the Works and remedy any defects therein in conformity in

all respects with the provisions of the Contract.

4. The Employer hereby covenants to pay the Contractor in consideration of the

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.

The Common Seal of _______________________________________________________

was hereunto affixed in the presence of:-

or

Signed Sealed and Delivered by the

said ________________________________________________________________

in the presence of:
EDITORIAL AMENDMENTS IN 1988

Following publication of the Fourth Edition in 1987 of the Conditions of Contract for Works of Civil Engineering Construction, a number of editorial amendments were agreed by FIDIC. The amendments were incorporated during a 1988 reprinting and the list below clarifies the differences between the 1988 reprint and the original document.

**Foreword**

The last sentence of the first paragraph previously read “The Conditions are equally suitable for use on domestic contracts.”

**Page 6** Sub-Clause 10.1. A comma has been inserted after the word “Contract” in the second line.

The third sentence previously read “Such security shall be in such form as may be agreed between the Employer and the Contractor.”

**Page 11** Sub-Clause 22.1 (b) was previously one complete paragraph, i.e. there was no space between the words “…other than the Works)“ and the remainder of the Sub-Clause.

**Page 15** Sub-Clause 31.2 (c) was previously one complete paragraph, i.e. there was no space between the words “… nature for any such,” and the remainder of the Sub-Clause.

**Page 20** Sub-Clause 44.3. The penultimate sentence was previously, “In both such cases the Engineer shall notify the Contractor accordingly, with a copy to the Employer.”

**Page 21** Sub-Clause 49.1 (a). The word “substantial” has been deleted.

**Page 29** Sub-Clause 60.3 (b) was previously two paragraphs, the second beginning with the words “Provided also that if at such time…”

**Page 30** Sub-Clause 60.5. The word “The” has been inserted at the beginning of the final paragraph.

**Page 35** Sub-Clause 67.1. In the eighth line of the third paragraph, a comma has been inserted after the word “provided”. In the second line of the fourth paragraph, the word “notice” replaces the word “notification”.

**Page 38** Reference to Part II. In the third line, the words “and (iv)” have been inserted after paragraph (a) (i).

**Tender Item 3.** The word “Works” has been capitalised.

**Agreement**

**Line 4** Inverted commas have been inserted following the words “the Employer”.

**Line 6** Inverted commas have been inserted before the word "the" instead of before the word “Contractor”.

**Line 8** The word “Contractor” has been capitalised.

**Line 9** The words “Tender by the Contractor” were previously “Tender by Contractor”.

**Line 11** The word “Agreement” has been capitalised.

**Last lines** The Agreement previously ended with the words “Binding Signature of Employer” and “Binding Signature of Contractor”.

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FURTHER AMENDMENTS IN 1992

The following amendments have been made to the 1988 Reprint of the Fourth Edition of the Conditions of Contract for Works of Civil Engineering Construction. The amendments of the 1988 Reprint are shown on the previous page. In addition, some minor changes in the use of punctuation marks (commas, semicolons, colons and stops), as well as the use of the words “or” and “and”, have been introduced to attain uniformity in the style of all Clauses. These minor changes which improve the style, but which have no effect on the meaning of Clauses, have not been listed below.

FOREWORD

The eighth paragraph previously referred to the anticipated publication of the “Guide to the Use of FIDIC Conditions of Contract for Works of Civil Engineering Construction”.

Page 2 Sub-Clause 1.1, sub-para (e). Definitions (iii) “Interim Payment Certificate” and (iv) “Final Payment Certificate” have been added.

Page 6 Sub-Clause 8.1. Second paragraph has been added.

Page 7 Sub-Clause 12.2. Marginal note. The word “Adverse” has been changed to read “Not Foreseeable” (also amended in the Contents and Index).

Page 8 Sub-Clause 13.1. Last sentence has been shortened by deleting the words “or, subject to the provisions of Clause 2, from the Engineer’s Representative.”, and adding the words “(or his delegate)”.

Sub-Clause 15.1, para 1. Last sentence has been shortened by placing a full stop after the word “Engineer”, deleting the words “or subject to the provisions of Clause 2, the Engineer’s Representative”.

Page 10 Sub-Clause 21.1, sub-para (a). The words “(the term “cost” in this context shall include profit)” have been added.

Page 11 Sub-Clause 21.4, sub-para (a). The word “where” has been corrected to read “whether”.

Page 18 Sub-Clause 40.3. The word “written” has been deleted at the end of the first line.

Page 19 Sub-Clause 42.3. The word “wayleaves” has been changed to read “rights of way” in the text and marginal note (also amended in the Contents and Index).

Page 29 Sub-Clause 60.1, sub-para (e). The words “or otherwise” have been added at the end.

Sub-Clause 60.2. The words “certify to the Employer” have been changed to read “deliver to the Employer an Interim Payment Certificate stating”, the word “thereof” has been changed to read “of such statement” and the word “he” has been changed to read “the Engineer”. Sub-para (b). The words “Interim Certificates” have been changed to read “Interim Payment Certificates”. Sub-Clause 60.3, sub-para (b). In the eighth line, the word “ordered” has been changed to read “instructed”. Sub-Clause 60.4. The words “interim certificate” in the first and fourth lines, and the word “certificate” in the second line, have been changed to read “Interim Payment Certificate”.

Page 30 Sub-Clause 60.5. In the second line, after the word “Engineer”, the words “six copies of” have been added.

Sub-Clause 60.6. In the second line, after the word “consideration”, the words “six copies of” have been added. Sub-para (b). The words “or otherwise” have been added at the end. At the end of the sub-clause, the final paragraph has been added.
Sub-Clause 60.7 and Sub-Clause 60.8 (text and marginal note). The words “Final Certificate” have been changed to read “Final Payment Certificate” (also amended in the Contents and the Index).

Sub-Clause 60.8 (a). The words “or otherwise” have been added. Sub-Clause 60.8 (b). The words “under the Contract other than Clause 4V have been changed to read “other than under Clause 47.

Sub-Clause 60.10. In the first and fourth lines, the words “interim certificate” have been changed to read “Interim Payment Certificate”. In the fifth and sixth lines, the words “Final Certificate” have been changed to read “Final Payment Certificate”. The words “or otherwise” have been added at the end.

Sub-Clause 65.6. In the ninth line, the words “and to the operation of Clause 67 have been changed to read “and Clause 67”.

Sub-Clause 66.1. In the second line the word “party” has been changed to read “or both Parties”, in the third line between the words “his” and “contractual” the words “or their” have been added. In the fourth line after the word “then”, the words “the parties shall be discharged from the Contract, except as to their rights under this Clause and Clause 67 and without prejudice to the rights of either party in respect of any antecedent breach of the Contract, and “ have been added.

Sub-Clause 67.2. The words “arbitration of such dispute shall not be commenced unless an attempt has first been made by the parties to settle such dispute amicably” have been changed to read “the parties shall attempt to settle such dispute amicably before the commencement of arbitration.” The words “whether or not any attempt at amicable settlement thereof has been made” have been changed to read “even if no attempt at amicable settlement thereof has been made”.

Sub-Clause 69.1. Sub-para (d). The words “unforeseen reasons, due to economic dislocation” have been changed to read “unforeseen economic reasons”.

Sub-Clause 69.4. In the second line of the second paragraph, the word “cost” has been changed to read “costs”.

REFERENCE TO PART II. In the third line, the words “5.1 part” have been changed to read “5.1 (part)”.

TENDER Paragraph 1. In the last line, the word “sums” has been changed to read “sum”.

Appendix In the ninth line, the words “and Plant” have been added.

In the twelth line, the word “Payment has been added.

In the thirteenth line, the words “per annum” have been added.

EDITORIAL For page 35, after the words “Sub-Clause 67.1” the first sentence has been inserted.
SECTION V. CONDITIONS OF PARTICULAR APPLICATION (COPA)
Conditions of Particular Application

The conditions contained in this Part supplement or modify conditions in Section IV and contain Conditions of Particular Application (COPA) not contained in Section IV.

Definitions and Interpretation

Sub-Clause 1.1 Definitions

(a) (i) The Employer is the party stipulated in the Appendix to Tender.

(a) (iv) The Engineer is the party stipulated in the Appendix to Tender or any other competent.

Amend Subpara. (a) (iv) also by adding the following words after the word “Conditions”:

“or any other competent person appointed by the Employer, and notified to the Contractor, to act in replacement of the Engineer.”

Amend Subpara. (b) (v) of Sub-Clause 1.1 by adding the following words at the end:

“The word ‘tender’ is synonymous with ‘Tender,’ and the words ‘tender documents’ with ‘Tender Documents.’”

Engineer and Engineer’s Representative

Sub-Clause 2.1 Engineer’s Duties and Authority

With reference to Sub-Clause 2.1 (b), the following provision shall also apply:

The Engineer shall obtain the specific approval of the Employer before taking any of the following actions specified in Part I:

(a) approving subcontracting of any part of the Works under Clause 4;

(b) certifying additional cost determined under Clause 12;

(c) determining an extension of time under Clause 44;

(d) issuing a variation under Clause 51, except if such variation would increase the Contract Price by less than the amount stated in the Appendix to Tender; or

(e) fixing rates or prices under Clause 52.
Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibilities under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Employer, with any such instruction of the Engineer. The Engineer shall determine an addition to the Contract Price, in respect of such instruction, in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the Employer.

**Assignment and Subcontracting**

**Sub-Clause 3.1**
Assignment of Contract

Amend Sub-clause 3.1 (a) by adding the words “or creditors” after the word “bankers”:

**Sub-Clause 4.1**
Subcontracting

With reference to Sub-Clause 4.1, add the following provisions:

The Contractor shall, within 60 days after commencement date submit to the Employer a list of works he intends to sublet.

Prior to sub-contracting any of the works, the list must be approved by the Employer.

If the Contractor consists of a joint venture of domestic and foreign firms which is awarded the contract through the application of the ten percent (10%) domestic preference, the Contractor shall not, without express approval of the Employer, modify the profit and loss distribution and work-sharing characteristics of the joint venture with which it satisfied the criteria of eligibility for being awarded the Contract with the application of domestic preference.

**Sub-Clause 4.4**
Preference for Foreign Contractors Associating with Domestic Contractors

A Foreign Contractor who is awarded a contract on the basis of the two and one-half per cent (2.5%) preference in view of associating/sub-contracting arrangements with a local contractor(s) cannot vary such arrangements without the prior written approval of the Employer.
**Contract Documents**

<table>
<thead>
<tr>
<th>Sub-Clause 5.1</th>
<th>(a) Delete sub-clause 5.1 (a) and substitute:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Language and Law</td>
<td>The official language of the Contract shall be English, and all correspondence and meetings in connection with the Contract shall be conducted in the English Language.</td>
</tr>
<tr>
<td>(b) Delete sub-clause 5.1 (b) and substitute:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The Contract shall be governed by and construed according to the laws in force in the Republic of Ghana.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sub-Clause 5.2</th>
<th>Delete the documents listed 1–6 and substitute:</th>
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<tr>
<td>Priority of Contract Documents</td>
<td>(1) the Contract Agreement (if completed); (2) the Letter of Acceptance; (3) the Tender and the Appendix to Tender; (4) the Addenda (if any); (5) Schedules of Supplementary Information; (6) the Conditions of Contract, Part II; (7) the Conditions of Contract, Part I; (8) the Specifications; (9) the Drawings; (10) the Priced Bill of Quantities; and (11) other documents, as listed in the Appendix to Tender.</td>
</tr>
</tbody>
</table>

| Sub-Clause 7.2 | Delete the word “Permanent” from the title and text of sub-clause 7.2 |

**General Obligations**

| Sub-Clause 8.1 | Amend the second paragraph of sub-clause 8.1 as follows: |
| Contractor’s General Responsibilities when | “The contractor shall promptly inform the Employer and the Engineer of any omission, fault and other defect in the design of the specifications for the Works which are discovered reviewing the Contract Documents or in the process of execution of the Works” |

| Sub-Clause 9.1 | Delete the phrase “with such modifications as may be necessary” after “Conditions” in line 3. |

| Sub-Clause 10.1 | Replace the text of Sub-Clause 10.1 with the following: |
| Performance Security | “The Contractor shall provide security for his proper performance of the Contract to the Employer within 28 days after the receipt of the Letter of Acceptance. The performance security shall be in the form of a bank guarantee or performance bond, as stipulated by the |
Employer in the Appendix to Tender. The performance security shall be denominated in the types and proportions of currencies in which the Contract Price is payable. The Contractor shall notify the Engineer when providing the performance security to the Employer.

“If the performance security is a bank guarantee, it shall be issued either (a) by a bank located in the country of the Employer or a foreign bank through a correspondent bank located in the country of the Employer, or (b) directly by a foreign bank that has been determined in advance to be acceptable to the Employer.

“If the performance security is a performance bond, it shall be issued by a bonding or insurance company acceptable to the Employer.

“Without limitation to the provisions of the preceding paragraph, whenever the Engineer determines an addition to the Contract Price as a result of a change in cost and/or legislation or as a result of a variation amounting to more than 25 percent of the portion of the Contract Price payable in a specific currency, the Contractor, at the Engineer’s written request, shall promptly increase the value of the performance security in that currency by an equal percentage. The performance security of a joint venture shall be in the name of the joint venture.”

Sub-Clause 10.2
Period of Validity of the Performance Security

The performance security shall be valid until a date 28 days from the date of issue of the Taking-Over Certificate in the case of a bank guarantee, and one year from such date of issue in the case of a performance bond. The security shall be returned to the Contractor within 14 days of expiration.

Sub-Clause 10.3
Claims under Performance Security

Delete Sub-Clause 10.3.

Sub-Clause 10.4
Cost of Performance Security

Add the following Sub-Clause 10.4:

The cost of complying with the requirements of this clause shall be borne by the Contractor.
Sub-Clause 14.1  
Program to Be Submitted
Delete sub-clause 14.1 and substitute:
“The Contractor shall, within 21 days after the date of the Letter of Acceptance, submit to Engineer for his consent two copies of a Programme, in such form and detail as the Engineer shall reasonably prescribe for the execution of the Works. The Programme shall be revised at three monthly intervals and should include a chart of principle quantities of work forecast for monthly execution and a schedule of payments expected to be made to the Contractor by the Employer.”

Sub-Clause 14.3  
Cash Flow Estimate to Be Submitted
Delete sub-clause 14.3 and substitute:
“The Contractor shall, within 21 days after the date of the Letter of acceptance, provide to the Engineer for his information a detailed cash flow estimate, in quarterly periods, of all payments to which the Contractor will be entitled under the Contract and the Contractor shall subsequently supply revised cash flow estimates at quarterly intervals, if required to do so by the Engineer.”

Sub-Clause 15.2  
Language Ability of Contractor’s Representative
Add the following Sub-Clause 15.2:
“If the Contractor’s authorized representative is not, in the opinion of the Engineer, fluent in English, the Contractor shall have available on site at all times a competent interpreter to ensure the proper transmission of instructions and information.”

Sub-Clause 16.3  
Language Ability of Superintending Staff
Add the following Sub-Clause 16.3:
“A reasonable proportion of the Contractor’s superintending staff shall have a working knowledge of English, or the Contractor shall have available on site at all times a sufficient number of competent interpreters to ensure the proper transmission of instructions and information.”

Sub-Clause 16.4  
Employment of Local Personnel
“The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labor with appropriate qualifications and experience from sources within the Republic of Ghana.”

Sub-clause 17.1  
Setting-out
Add new paragraph (d) to sub-clause 17.1 as follows:
“The Contractor shall give the Engineer’s Representative not less than 24 hours notice of his intention to set out any part to the works.”
Amend Sub-Clause 20.4 to read as follows:

The Employer’s risks are

(a) insofar as they directly affect the execution of the Works in the Republic of Ghana:

(i) war and hostilities (whether war be declared or not), invasion, act of foreign enemies;

(ii) rebellion, revolution, insurrection, military or usurped power, or civil war;

(iii) ionizing radiations, or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

(iv) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds;

(v) riot, commotion, or disorder, unless solely restricted to the employees of the Contractor or of his Subcontractors and arising from the conduct of the Works;

(b) loss or damage due to the use or occupation by the Employer of any Section or part of the Permanent Works, except as may be provided for in the Contract;

(c) loss or damage to the extent that it is due to the design of the Works, other than any part of the design provided by the Contractor or for which the Contractor is responsible; and

(d) any operation of the forces of nature (insofar as it occurs on the Site) that an experienced contractor:

(i) could not have reasonably foreseen, or

(ii) could reasonably have foreseen, but against which he could not reasonably have taken at
least one of the following measures:

(A) prevent loss or damage to physical property from occurring by taking appropriate measures, or

(B) insure against such loss or damage.

Sub-Clause 21.1
Insurance of Works and Contractor’s Equipment

Amend the first line of para. 1 of sub-clause 2.1 by adding: “prior to commencement of the works and” in between ‘the Contractor shall” and “without limiting ………”

Add a new paragraph to sub-clause 21.1 (b) as follows:

“It shall be the responsibility of the Contractor to notify the insurer of any change in the nature and extent of the Work and to ensure the adequacy of the insurance cover at all times in accordance with the provisions of the Clause”

Amend paragraph 21.1 (c) as follows:

The contractor’s equipment and other things brought onto the site or into burrow pits or any other locations for the production of materials for the works by the Contractor for a sum sufficient to provide for their replacement at the site.

Add a new paragraph 21.1 (d) as follows:

“Such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred,”

Sub-Clause 21.2
Scope of Cover

Amend sub-para. (a) of Sub-Clause 21.2 by deleting the words “from the start of work at the Site” and by substituting therefore the words “from the first working day after the Commencement Date.”

Add the following as Sub-Clause (c) under Sub-Clause 21.2:

(c) It shall be the responsibility of the Contractor to notify the insurance company of any change in the nature and extent of the Works and to ensure the adequacy of the insurance coverage at all times during the period of the Contract.
Sub-Clause 21.4 Exclusions

Amend Sub-Clause 21.4 to read as follows:

“There shall be no obligation for the insurances in Sub-Clause 21.1 to include loss or damage caused by the risks listed under Sub-Clause 20.4 sub-paras. (a) (i) to (iv) of the Conditions of Particular Application.”

Sub-Clause 22.1 Damage to Persons and Property

Add a new paragraph to 22.1 as follows:

“The site shall be made free from fire hazard by such measures and by the enforcement of such Site Regulations as the Engineer may require. Adequate fire fighting equipment shall be provided.”

Sub-Clause 25.5 Source of Insurance

Add the following Sub-Clause 25.5:

“The Contractor shall be entitled to place all insurance relating to the Contract (including, but not limited to, the insurance referred to in Clauses 21, 23, and 24) with insurers from any eligible source country as specified by the Public Procurement Board of the Republic of Ghana, which have been determined to be acceptable to the Employer.”

Sub-Clause 26.2 Inspections and Audit by the Public Procurement Board

Add the following Sub-Clause 26.2:

The Contractor shall permit the Public Procurement Board to inspect the Contractor’s accounts and records relating to the performance of the Contract and to have them audited by auditors appointed by the Public Procurement Board, if so required.

Sub-Clause 28.2 Royalties

Add a new paragraph as follows:

“The Employer will reimburse the Contractor compensation for crops and building destroyed on the right of way and in approved borrow pits only in accordance with agreed procedures”

Labor

Sub-Clause 34.2 Rates of Wages

Add sub-clause 34.2 as follows:

“The contractor shall pay rates of wages not less favourable than those approved by the Government of the Republic of Ghana in the district where the Works are being carried out.”

Sub-Clause 34.3
### Payment of Wages

“The Contractor shall pay his employees promptly and regularly at the customary intervals and all employees shall be paid in full and up to date before the issue of the Defects Liability Certificate.”

### Sub-Clause 34.4

#### Compliance with Labour, Regulations, etc.

Add sub-clause 34.4 as follows:

“The Contractor shall comply in all respects with the requirements of all laws for the time being in force and shall ascertain them from the Labour Department and shall strictly comply with all the regulations written or otherwise of the Commissioner of Labour or any of his duly appointed representative affecting the employment of any class of employees under this Contract and from time to time in force.”

### Sub-Clause 34.5

#### Display of Provision

Add sub-clause 34.5 as follows:

“The Contractor shall at all time during the continuance of the Contract display in conspicuous places on the site and in any factory, workshop or other place occupied or used by him for the execution of the Contract in positions convenient reading notice informing his employees of the foregoing provisions of this Clause and of their condition of work.”

### Sub-Clause 34.6

#### Records of Time Worked and Wages Paid

Add sub-clause 34.6 as follows:

The contractor shall keep proper records of time worked by every employee engaged on the Contract, the class of work on which employed and the wages paid. Such records shall be available for inspection at any time by the Engineer or the Engineer’s Representative or any duly appointed representative of the Commissioner of Labour and the contractor shall produce if required such other records as may be necessary as evidence of this compliance with the requirements of this clause.”

### Sub-Clause 34.7

#### Contractor’s Dwellings

Add sub-clause 34.7 as follows:

“The contractor shall at his own expense make his own arrangements for the accommodation of his staff and labour and shall not make use of Government Resthouses or other Government facilities unless with the express permission of the appropriate authority and on payment of the appropriate charges.”

### Sub-Clause 34.8

Add sub-clause 34.8 as follows:
Supply of Water

“The Contractor shall, so far as reasonably practicable, having regard to local conditions, provide on site, to the satisfaction of the Engineer’s Representative, an adequate supply of drinking and other water for the use of the Contractor’s staff and work people.”

Sub-Clause 34.9
Temporary Latrines

Add sub-clause 34.9 as follows:

“The Contractor shall provide and maintain at his own cost efficient, adequate and sanitary latrine accommodation constructed to comply with any Government regulations in force for the use of the employees on the works and shall keep the whole of the site and latrines in a clean and satisfactory condition to the satisfaction of the Engineer and in accordance with the requirements of the health authorities of the Republic of Ghana. The Health Officer shall thoroughly disinfect and fill all latrine pits, sumps and trenches when no longer required.”

Sub-Clause 34.10
Trade Union Membership

Add sub-clause 34.10 as follows:

“The contractor or Subcontractor shall recognize the freedom of his work people to be members of registered trade unions.”

Sub-Clause 34.11
Expatriate Labour

Add sub-clause 34.11 as follows:

“The Contractor shall make his own arrangement for the engagement of expatriate labour, and if required, for the housing, health, welfare and repatriation of the same, and shall conform in all respects with the conditions and requirements of the Immigration Act No. 154 of 1957 and the Aliens Act No. 160 of 1963, and amendments or replacements thereof.”

Sub-Clause 34.12
Alcoholic Liquors or Drugs

Add sub-clause 34.12 as follows:

“The Contractor shall not, otherwise than in accordance with the Statutes, ordinance and Government regulations or Orders for the time being in force, import, sell, 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 or employees.”

Sub-Clause 34.13
Arms and

Add sub-clause 34.13 as follows:

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

Sub-Clause 34.14
Festivals and Religious Customs
Add sub-clause 34.14 as follows:
“The Contractor shall, in all dealings with his staff and labor, have due regard to all recognized festivals, days of rest, and religious and other customs.”

Sub-Clause 34.15
Epidemics
Add sub-clause 34.15 as follows:
“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.”

Sub-Clause 34.16
Disorderly Conduct
Add sub-clause 34.16 as follows:
“The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous, or disorderly conduct by or among his staff and labor and take all reasonable precautions for the preservation of peace and protection of persons and property in the neighborhood of the Works against the same.”

Sub-Clause 34.17
Accidents
Add sub-clause 34.17 as follows:
“The Contractor shall within 24 hours of the occurrence of any accident at or about the site or in connections with the execution of the Work report such accident to the Engineer’s Representative. The Contractor shall also report such accident to the competent authority whenever such report is required by law.”

Sub-Clause 34.18
Default of Payment of Wages
Add sub-clause 34.18 as follows:
“In the event of default being made of any wages of any workmen employed on the Contract, and, if a claim thereafter is filed in the office of the Engineer’s Representative, and satisfactory proof thereof furnished, the Engineer shall be notified forthwith and may, failing payment by the Contractor, arrange the payment of such claim out of the monies at any time payable under the Contract and the amount so paid shall be deemed payments to the Contractor under the Contract.”
Add sub-clause 34.19 as follows:
“Observance by Sub-contractors

The Contractor shall be responsible for observance by his sub-contractors of the foregoing provisions.”

Add sub-clause 34.20 as follows:
“Employment of Persons in the Service of Others

The Contractor shall not recruit or attempt to recruit his staff and labor from among persons in the service of the Employer or the Engineer.”

Add sub-clause 35.2 as follows:
“Records of Safety and Health

The Contractor shall maintain such records and make such reports concerning safety, health, and welfare of persons and damage to property as the Engineer may from time to time prescribe.”

Delete sub-clause 41.1 and substitute:
“Commencement of Works

Within the time stated in the Appendix to Tender after the date of the Letter of Acceptance, the Engineer shall be issued a Notice to Commence stating the Commencement Date in accordance with Sub-Clause 43.1. The period between the date of issuance of the Notice to Commence and the said Commencement Date shall not exceed 28 days. Thereafter, the Contractor shall proceed with the work with due expedition and without delay.”

Delete Sub-Clause 45.1 and substitute:
“Restriction on Working Hours

Subject to any provision to the contrary contained in the Contract, the Contractor shall have the option to work continuously by day and by night and on holidays or days of rest.”

Add sub-clause 48.5 as follows:
“Prevention from Testing

If the Contractor is prevented from carrying out the Tests on Completion by a cause for which the Employer or the Engineer or other contractors employed by the Employer are responsible, the Employer shall be deemed to have taken over the Works on the date when the Tests on Completion would have been completed but for such
prevention. The Engineer shall issue a Taking-Over Certificate accordingly, provided always that the Works shall not be deemed to have been taken over if they are not substantially in accordance with the Contract.

If the Works are taken over under this sub-clause, the Contractor shall nevertheless carry out the Tests on Completion during the Defects Liability Period. The Engineer shall require the Tests to be carried out by giving 14 days’ notice.

Any additional costs to which the Contractor may be put, in making the Tests on Completion during the Defects Liability Period, shall be added to the Contract Price.

**Alterations, Additions, and Omissions**

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<tr>
<th>Sub-Clause 51.2</th>
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<td>Instructions for Variations</td>
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<th>Sub-Clause 52.1</th>
<th>Amend sub-clause 52.1 as follows:</th>
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<td>Valuation of Variations</td>
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<th>Sub-Clause 52.2</th>
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<td>Power of Engineer to Fix Rates</td>
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“Provided further that no change in the rate or price for any item contained in the Contract shall be considered unless such item accounts for an amount more than 2 percent of the Contract Price, and the actual quantity of work executed under the item exceeds or falls short of the quantity set out in the Bill of Quantities by more than 25 percent.”

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<th>Sub-Clause 52.3</th>
<th>Add a final sentence, as follows:</th>
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<td>Variations Exceeding 15 Percent</td>
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“Where the Contract provides for the payment of the Contract Price in more than one currency, the amount or
proportion payable in each of the applicable currencies shall be specified when such further sum is agreed or determined, it being understood that in specifying these amounts or proportions the Contractor and the Engineer (or, failing agreement, the Engineer) shall take into account the currencies (and the proportions thereof) in which the Contractor’s Site and general overhead cost of the Contract were incurred without being bound by the proportions of various currencies specified in the Appendix to Tender for payment of the Contract Price.”

Measurement

Add sub-clause 55.2 as follows:

“Items of the Works described in the Bill of Quantities for which no rate or price has been entered in the Contract shall be considered as included in other rates and prices in the Contract and will not be paid for separately by the Employer.”

Certificates and Payment

Clause 60 of the General Conditions is deleted and the following Sub-Clausues 60.1-60.14 are substituted therefore:

The Contractor shall submit a statement in the number of copies specified in the Appendix to Tender to the Engineer at the end of each month, in a tabulated form approved by the Engineer, showing the amounts to which the Contractor considers himself to be entitled. The statement shall include the following items, as applicable, which shall be taken into account in the sequence listed:

(a) the estimated Contract value of the Temporary and Permanent Works executed up to the end of the month in question, determined in accordance with Sub-Clause 56.1, at the unit rates and prices included in the Contract, in the currency/currencies of the Contract Price;

(b) the actual value certified for payment for the Temporary and Permanent Works executed up to the end of the previous month, at the unit rates and prices
included in the Contract, in the currency/currencies of the Contract Price;

(c) the estimated Contract value at the unit rates and prices included in the Contract of the Temporary and Permanent Works for the month in question, in the currency/currencies of the Contract Price, obtained by deducting (b) from (a);

(d) the value of any variations executed up to the end of the month in question, less the amount certified in the previous Interim Payment Certificate, expressed in the relevant amounts of Ghanaian Cedis and foreign currencies, pursuant to Clause 52;

(e) amounts approved in respect of Daywork executed up to the end of the month in question, less the amount for Daywork certified in the previous Interim Payment Certificate, indicating the amounts of Ghanaian Cedis (GHC) and foreign currencies as determined from the Daywork Schedule of the Bill of Quantities;

(f) amounts reflecting changes in cost and legislation, pursuant to Clause 70, expressed in the relevant amounts of Ghanaian Cedis (GHC) and foreign currencies;

(g) any credit or debit for the month in question in respect of materials and Plant for the Permanent Works, in the relevant amounts, in Ghanaian Cedis (GHC) and foreign currencies, and under the conditions set forth in Sub-Clause 60.3;

(h) any amount to be withheld under the retention provisions of Sub-Clause 60.5, determined by applying the percentage set forth in Sub-Clause 60.5 to the amounts in Ghanaian Cedis (GHC) and foreign currencies due under Paragraphs 60.1 (c), (d), (e), and (f);

(i) any amounts to be deducted as repayment of the Advance under the provisions of Sub-Clause 60.7; and

(j) any other sum, expressed in the applicable currency or currencies, to which the Contractor may be entitled under the Contract or otherwise.
Sub-Clause 60.2
Monthly Payments

The said statement shall be approved or amended by the Engineer in such a way that, in his opinion, it reflects the amounts in various currencies due to the Contractor in accordance with the Contract, after deduction, other than pursuant to Clause 47, of any sums that may have become due and payable by the Contractor to the Employer. In cases where there is a difference of opinion as to the value of any item, the Engineer’s view shall prevail. **Within 28 days of receipt of the monthly statement referred to in Sub-Clause 60.1,** the Engineer shall determine the amounts due to the Contractor and shall deliver to the Employer and the Contractor an Interim Payment Certificate, certifying the amounts due to the Contractor.

The Engineer shall not be bound to certify any payment under this sub-clause if the net amount thereof, after all retentions and deductions, would be less than the Minimum Amount of Interim Payment Certificates stated in the Appendix to Tender. However, in such case, the unpaid certified amount will be added to the next interim payment, and the cumulative unpaid certified amount will be compared to the minimum amount of interim payment.

Notwithstanding the terms of this clause or any other clause of the Contract, no amount will be certified by the Engineer for payment until the performance security has been provided by the Contractor and approved by the Employer.
With respect to materials and Plant brought by the Contractor to the Site for incorporation in the Permanent Works, the Contractor shall (a) receive a credit in the month in which these materials and Plant are brought to the Site and (b) be charged a debit in the month in which they are incorporated in the Permanent Works, both such credit and debit to be determined by the Engineer in accordance with the following provisions:

(a) no credit shall be given unless the following conditions shall have been met to the Engineer’s satisfaction:

(i) the materials and Plant are in accordance with the specifications for the Works;

(ii) the materials and Plant have been delivered to the Site and are properly stored and protected against loss, damage, or deterioration;

(iii) the Contractor’s records of the requirements, orders, receipts, and use of materials and Plant are kept in a form approved by the Engineer, and such records are available for inspection by the Engineer;

(iv) the Contractor has submitted a statement of his cost of acquiring and delivering the materials and Plant to the Site, together with such documents as may be required for the purpose of evidencing such cost;

(v) the origin of the materials and Plant and the currencies of payment therefor are those indicated in the Appendix to Tender; and

(vi) the materials are to be used within a reasonable time.

(b) the amount to be credited to the Contractor shall be the equivalent of 60 percent of the Contractor’s reasonable cost of the materials and Plant delivered to the Site, as determined by the Engineer after review of the documents listed in subpara. (a) (iv) above;

(c) the amount to be debited to the Contractor for any materials and Plant incorporated into the Permanent Works...
Works shall be equivalent to the credit previously granted to the Contractor for such materials and Plant pursuant to subpara (b) above, as determined by the Engineer; and

(d) the currencies in which the respective amounts shall be credited or debited as set forth above shall be determined by the Engineer.

**Sub-Clause 60.4**
**Place of Payment**

Payments to the Contractor by the Employer shall be made in the currencies in which the Contract Price is payable into a bank account or accounts nominated by the Contractor.

**Sub-Clause 60.5**
**Retention Money**

A retention amounting to the percentage stipulated in the Appendix to Tender of the amounts due in each currency, determined in accordance with the procedure set out in Sub-Clause 60.1 (i) shall be made by the Engineer in the first and following Interim Payment Certificates.

**Sub-Clause 60.6**
**Payment of Retention Money**

Upon the issue of the Taking-Over Certificate with respect to the whole of the Works, one-half of the Retention Money, or upon the issue of a Taking-Over Certificate with respect to a Section or part of the Permanent Works only such proportion thereof as the Engineer determines having regard to the relative value of such Section or part of the Permanent Works, shall be certified by the Engineer for payment to the Contractor. The Contractor may substitute the remaining retention money with an on-demand bank guarantee in a form, and from a source, acceptable to the Employer.

Upon the expiration of the Defects Liability Period for the Works, the other half of the Retention Money shall be certified by the Engineer for payment to the Contractor (or return of the remaining security, which replaced the Retention Money). Provided that, in the event of different Defects Liability Periods being applicable to different Sections or parts of the Permanent Works pursuant to Clause 48, the expression “expiration of the Defects Liability Period” shall, for the purposes of this sub-clause, be deemed to mean the expiration of the latest of such periods.

Provided also that if at such time, there shall remain to be executed by the Contractor any work instructed, pursuant to Clauses 49 and 50, in respect of the Works, the Engineer shall be entitled to withhold certification until completion of such work of so much of the balance of the Retention
Money as shall, in the opinion of the Engineer, represent the cost of the work remaining to be executed.

The Employer will make an interest-free advance payment to the Contractor exclusively for the costs of mobilization in respect of the Works in an amount named in the Letter of Acceptance, payable in the proportions of Ghanaian Cedis (GHC) and foreign currencies of the Contract Price, but in no event exceeding the amount stated in the Appendix to Tender. Payment of such advance amount will be due under separate certification by the Engineer after:

(a) execution of the Form of Agreement by the parties hereto;

(d) provision by the Contractor of the performance security in accordance with Sub-Clause 10.1; and

(e) provision by the Contractor of an unconditional bank guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. Such bank guarantee shall remain effective until the advance payment has been repaid pursuant to the paragraph below, but the amount thereof shall be progressively reduced by the amount repaid by the Contractor as indicated in Interim Payment Certificates issued in accordance with this clause.

The advance payment shall be repaid through percentage deductions from the interim payments certified by the Engineer in accordance with this clause. Deductions shall commence in the next Interim Payment Certificate following that in which the total of all interim payments certified to the Contractor has reached the percentage of the Contract Price stipulated in the Appendix to Tender less Provisional Sums, and shall be made at the rate stated in the Appendix to Tender of the amount of all Interim Payment Certificates in the types and proportionate amounts of currencies of the advance payment until such time as the advance payment has been repaid; always provided that the advance payment shall be completely repaid prior to the time when 80 percent of the Contract Price has been certified for payment.
### Sub-Clause 60.8
**Time of Payment and Interest**

(a) The amount due to the Contractor under any Interim or Final Payment Certificate issued by the Engineer pursuant to this clause, or to any other term of the Contract, shall, subject to Clause 47, be paid by the Employer to the Contractor as follows:

1. **(i)** in the case of Interim Payment Certificates, within 91 days after the Contractor’s monthly statement has been submitted to the Engineer for certification, pursuant to Sub-Clause 60.1, provided that if the Engineer’s Interim Certificate has not yet been issued within said 91 days, the Employer shall pay the amount shown in the Contractor’s monthly statement and that any discrepancy shall be added to, or deducted from, the next payment to the Contractor; and

2. **(ii)** in the case of the Final Payment Certificate pursuant to Sub-Clause 60.13, within 91 days after the Final Statement and written discharge have been submitted to the Engineer for certification; and

(b) In the event of the failure of the Employer to make payment within the times stated, the Employer shall pay to the Contractor interest compounded monthly at the rate(s) stated in the Appendix to Tender upon all sums unpaid from the date upon which the same should have been paid, in the currencies in which the payments are due. The provisions of this sub-clause are without prejudice to the Contractor’s entitlement under Clause 69 or otherwise.

### Sub-Clause 60.9
**Correction of Certificates**

The Engineer may by any Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificate that has been issued by him, and shall have authority, if any work is not being carried out to his satisfaction, to omit or reduce the value of such work in any Interim Payment Certificate.

### Sub-Clause 60.10
**Statement at Completion**

Not later than 84 days after the issue of the Taking-Over Certificate in respect of the whole of the Works, the Contractor shall submit to the Engineer a Statement at Completion in the number of copies specified in the Appendix to Tender with supporting documents showing in
Sub-Clause 60.11 Final Statement

Not later than 56 days after the issue of the Defects Liability Certificate pursuant to Sub-Clause 62.1, the Contractor shall submit to the Engineer for consideration a draft final statement in the number of copies stipulated in the Appendix to Tender with supporting documents showing in detail, in the form approved by the Engineer,

(a) the value of all work done in accordance with the Contract; and

(b) any further sums that the Contractor considers to be due to him under the Contract or otherwise.

If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer 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 Engineer the final statement as agreed (for the purposes of these Conditions referred to as the “Final Statement”).

If, following discussions between the Engineer and the Contractor and any changes to the draft final statement that may be agreed between them, it becomes evident that a dispute exists, the Engineer shall deliver to the Employer an Interim Payment Certificate for those parts of the draft final statement, if any, that are not in dispute. The dispute shall then be settled in accordance with Clause 67. The Final Statement shall be the agreed upon settlement of the dispute.

Sub-Clause 60.12

Upon submission of the Final Statement, the Contractor detail, in the form approved by the Engineer,

(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 that the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in such Statement at Completion. The Engineer shall certify payment in accordance with Sub-Clause 60.2.
Discharge shall give to the Employer, with a copy to the Engineer, a written discharge confirming that the total of the Final Statement represents full and final settlement of all monies due to the Contractor arising out of or in respect of the Contract. Provided that such discharge shall become effective only after payment due under the Final Payment Certificate issued pursuant to Sub-Clause 60.13 has been made and the performance security referred to in Sub-Clause 10.1 has been returned to the Contractor.

**Sub-Clause 60.13**

**Final Payment Certificate**

Within 35 days after receipt of the Final Statement, and the written discharge, the Engineer shall deliver to the Employer (with a copy to the Contractor) a Final Payment Certificate stating

(a) the amount that, in the opinion of the Engineer, is finally due under the Contract or otherwise, 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 Clause 47, the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer as the case may be.

**Sub-Clause 60.14**

**Cessation of Employer’s Liability**

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 in respect thereof in his Final Statement and (except in respect of matters or things arising after the issue of the Taking-Over Certificate in respect of the whole of the Works) in the Statement at Completion referred to in Sub-Clause 60.10.

**Remedies**

Delete the last paragraph of this sub-clause and substitute:

“then the Employer may, after giving 14 days’ notice to the Contractor, enter upon the Site and expel the Contractor therefrom without thereby voiding the Contract, or releasing the Contractor from any of his obligations or liabilities under the Contract, or affecting the rights and powers conferred on the Employer or the Engineer by the Contract, and may himself complete the Works or may employ any other contractor to complete the Works. The Employer or such other contractor may use for such
completion so much of the Contractor’s Equipment, Plant, Temporary Works, and materials, which have been deemed to be reserved exclusively for the execution of the Works, under the provisions of the Contract, as he or they may think proper, and the Employer may, at any time, sell any of the said Contractor’s Equipment, Temporary Works, and unused Plant and materials, and apply the proceeds of sale in or toward the satisfaction of any sums due or that may become due to him from the Contractor under the Contract.”

Sub-Clause 63.2  
Valuation at Date of Expulsion

Modify the heading of Sub-Clause 63.2 by substituting “Valuation at Date of Expulsion” for “Valuation at Date of Termination.” In Sub-Clause 63.2, delete the word “termination” on the second and fifth lines and substitute “expulsion.”

Sub-Clause 63.3  
Payment after Expulsion

Modify the heading of Sub-Clause 63.3 by substituting “Payment after Expulsion” for “Payment after Termination.” In Sub-Clause 63.3, delete the words “terminates the Contractor’s employment” on the first line, and substitute “shall enter and expel the Contractor.”

Sub-Clause 63.4  
Assignment of Benefit of Agreement

In Sub-Clause 63.4, delete the word “termination” on the second line, and substitute “expulsion.”

Sub-Clause 63.5  
Corrupt or Fraudulent Practices

Add the following Sub-Clause 63.5:

If in the judgment of the Employer the Contractor has engaged in corrupt or fraudulent practices, in competing for or in executing this or any other Contract, 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 Clause 63 shall apply as if such expulsion had been made under Sub-Clause 63.1.

The list of definitions set forth below involves the most common types of corrupt or fraudulent practices, but is not exhaustive. For this reason, the Employer will also consider claims of similar nature involving alleged acts of corruption, in accordance with the procedure outlined above.

(a) “Bribery” means the act of unduly offering, giving, receiving or soliciting anything of value to influence
the process of procuring goods or services, selecting consultants, or executing contracts.

(b) “Extortion” or “Coercion” means the act attempting to influence the process of procuring goods or services, selecting consultants, or executing contracts by means of threats of injury to person, property or reputation.

c) “Fraud” means the misrepresentation of information or facts for the purpose of influencing the process of procuring goods or services, selecting consultants, or executing contracts, to the detriment of the Procurement Entity/Purchaser or other participants.

d) “Collusion” is an agreement between tenderers designed to result in tenders at artificial prices that are not competitive.

Special Risks

Sub-Clause 65.2

Amend Sub-Clause 65.2 to read as follows: “The Special Risks are the risks defined under para. (a), sub paras. (i) to (v) of Sub-Clause 20.4.”

Settlement of Disputes

Clause 67

Sub-Claus es 67.1 through 67.4 set forth the procedure for settlement of disputes.

[SUB-CLAUSE 67.1—VERSION 1]
Delete Sub-Clause 67.1 and replace with the following:

“If any dispute arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after the repudiation or other termination of the Contract, including any disagreement by either party with any action, inaction, opinion, instruction, determination, certificate, or valuation of the Engineer, the matter in dispute shall, in the first place, be referred to the Disputes Review Board (‘the Board’).

“The Board shall be established when each of the three Board Members has signed a Board Member’s Declaration of Acceptance as required by the DRB’s Rules and Procedures (which, along with the Declaration of Acceptance form, are attached to these Conditions of Particular Application). 3

“The Board shall comprise three Members experienced with the type of construction involved in the Works and with the interpretation of contractual documents. One Member shall be selected by each of the Employer and the Contractor and approved by the other. If either of these Members is not so selected and approved within 28 days of the date of the Letter of Acceptance, then upon the request of either or both parties such Member shall be selected as soon as practicable by the Appointing Authority specified in the Appendix to Bid. 4 The third Member shall be selected by the other two and approved by the parties. If the two Members selected by or on behalf of the parties fail to select the third Member within 14 days after the later of their selections, or if within 14 days after the selection of the third Member, the parties fail to approve that Member, then upon the request of either or both parties such third Member shall be selected promptly by the same Appointing Authority specified in the Appendix to Bid who shall seek the approval of the proposed third Member by the parties before selection but, failing such approval,

3 The DRB’s Rules and Procedures along with the Declaration of Acceptance form can be found in Section XIII of these Standard Tender Documents.

4 Name an appropriate international appointing authority, e.g., the Secretary-General of the Permanent Court of Arbitration, The Hague; the Secretary-General of the International Centre for Settlement of Investment Disputes, Washington, D.C.; the Chairman of the International Court of Arbitration of the International Chamber of Commerce, Paris; the President of the London Court of International Arbitration, etc. These officials are generally not obligated to act as appointing authority under rules other than those of their own institutions. It is thus strongly recommended that the designated official's consent to act as appointing authority be obtained in advance. Parties should also be aware that some institutions may levy a charge for the performance of the appointing authority service.
nevertheless shall select the third Member. The third 
Member shall serve as Chairman of the Board.

“In the event of death, disability, or resignation of any 
Member, such Member shall be replaced in the same 
manner as the Member being replaced was selected. If for 
whatever other reason a Member shall fail or be unable to 
serve, the Chairman (or failing the action of the Chairman 
then either of the other Members) shall inform the parties 
and such nonserving Member shall be replaced in the same 
manner as the Member being replaced was selected. Any 
replacement made by the parties shall be completed within 
28 days after the event giving rise to the vacancy on the 
Board, failing which the replacement shall be made by the 
Appointing Authority in the same manner as described 
above. Replacement shall be considered completed when 
the new Member signs the Board Member’s Declaration of 
Acceptance. Throughout any replacement process the 
Members not being replaced shall continue to serve and the 
Board shall continue to function and its activities shall have 
the same force and effect as if the vacancy had not 
occurred, provided, however, that the Board shall not 
conduct a hearing nor issue a Recommendation until the 
replacement is completed.

“Either the Employer or the Contractor may refer a dispute 
to the Board in accordance with the provisions of the 
DRB’s Rules and Procedures, attached to these Conditions 
of Particular Application.

“The Recommendation of the Board shall be binding on 
both parties, who shall promptly give effect to it unless and 
until the same shall be revised, as hereinafter provided, in 
an arbitral award. Unless the Contract has already been 
repudiated or terminated, the Contractor shall continue to 
proceed with the Works in accordance with the Contract.

If either the Employer or the Contractor is dissatisfied with 
any Recommendation of the Board, or if the Board fails to 
issue its Recommendation within 56 days after receipt by 
the Chairman of the Board of the written Request for 
Recommendation, then either the Employer or the 
Contractor may, within 14 days after his receipt of the 
Recommendation, or within 14 days after the expiry of the 
said 56-day period, as the case may be, give notice to the 
other party, with a copy for information to the Engineer, of 
his intention to commence arbitration, as hereinafter
provided, as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to Sub-Clause 67.4, no arbitration in respect thereof may be commenced unless such notice is given.

“If the Board has issued a Recommendation to the Employer and the Contractor within the said 56 days and no notice of intention to commence arbitration as to such dispute has been given by either the Employer or the Contractor within 14 days after the parties received such Recommendation from the Board, the Recommendation shall become final and binding upon the Employer and the Contractor.

“Whether or not it has become final and binding upon the Employer and the Contractor, a Recommendation shall be admissible as evidence in any subsequent dispute resolution procedure, including any arbitration or litigation having any relation to the dispute to which the Recommendation relates.

“All Recommendations that have become final and binding shall be implemented by the parties forthwith, such implementation to include any relevant action of the Engineer.”

[END OF VERSION 1]

[SUB-CLAUSE 67.1—VERSION 2]

Sub-Clause 67.1
Disputes Review Expert

Delete Sub-Clause 67.1 and replace with the following:

“If any dispute arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after the repudiation or other termination of the Contract, including any disagreement by either party with any action, inaction, opinion, instruction, determination, certificate, or valuation of the Engineer, the matter in dispute shall, in the first place, be referred to the Disputes Review Expert (‘DRE’).

“The DRE shall take up his functions after having signed a DRE’s Declaration of Acceptance as required by the DRE’s
Rules and Procedures (which along with the Declaration of Acceptance, are attached to these Conditions of Particular application).  

“The DRE shall be a person experienced with the type of construction involved in the Works and with the interpretation of contractual documents and shall be selected by agreement between the Employer and the Contractor. If the DRE is not selected within 28 days of the date of the Letter of Acceptance, then upon the request of either or both parties the DRE shall be selected as soon as practicable by the Appointing Authority specified in the Appendix to Bid.

“In the event of death, disability, or resignation of the DRE, the latter shall be replaced by agreement between the Employer and the Contractor. Any replacement made by the parties shall be completed within 28 days after the event giving rise to the need for a replacement, failing which the replacement shall be made by the same international appointing authority as above.

“Either the Employer or the Contractor may refer a dispute to the DRE in accordance with the provisions of the DRE’s Rules and Procedures, attached to these Conditions of Particular Application.

“The Recommendation of the DRE shall be binding on both parties, who shall promptly give effect to it unless and until the same shall be revised, as hereinafter provided, in an arbitral award. Unless the Contract has already been repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.

“If either the Employer or the Contractor is dissatisfied with any Recommendation of the DRE, or if the DRE fails to issue his Recommendation within 56 days after he has

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5 The DRE’s Rules and Procedures along with the Declaration of Acceptance form can be found in Section XIII of these Standard Tender Documents.

6 Name an appropriate international appointing authority, e.g., the Secretary-General of the Permanent Court of Arbitration, The Hague; the Secretary-General of the International Centre for Settlement of Investment Disputes, Washington, D.C.; the Chairman of the International Court of Arbitration of the International Chamber of Commerce, Paris; the President of the London Court of International Arbitration, etc. These officials are generally not obligated to act as appointing authority under rules other than those of their own institutions. It is thus strongly recommended that the designated official’s consent to act as appointing authority be obtained in advance. Parties should also be aware that some institutions may levy a charge for the performance of the appointing authority service.
received the written Request for Recommendation, then either the Employer or the Contractor may, within 14 days after his receipt of the Recommendation, or within 14 days after the expiry of the said 56-day period, as the case may be, give notice to the other party, with a copy for information to the Engineer, of his intention to commence arbitration, as hereinafter provided, as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to Sub-Clause 67.4, no arbitration in respect thereof may be commenced unless such notice is given.

“If the DRE has issued a Recommendation to the Employer and the Contractor within the said 56 days and no notice of intention to commence arbitration as to such dispute has been given by either the Employer or the Contractor within 14 days after the parties received such Recommendation from the DRE, the Recommendation shall become final and binding upon the Employer and the Contractor.

“Whether or not it has become final and binding upon the Employer and the Contractor, a Recommendation shall be admissible as evidence in any subsequent dispute resolution procedure, including any arbitration or litigation having any relation to the dispute to which the Recommendation relates.

“All Recommendations that have become final and binding shall be implemented by the parties forthwith, such implementation to include any relevant action of the Engineer.”

[END OF VERSION 2]
Sub-Clause 67.2

Sub-Clause 67.2 is deleted without a change in the numbering of the other sub-clauses of this Clause 67.

Sub-Clause 67.3

Arbitration

Sub-Clause 67.3 is deleted and replaced by the following Sub-Clauses 67.3.1 and 67.3.2:

“67.3.1 Arbitration Proceedings

“Any dispute in respect of which the Recommendation, if any, of the _____ [“Board” or “DRE”] has not become final and binding shall be finally settled by arbitration in accordance with the rules of procedure designated in Sub-Clause 67.3.2 below. The arbitral tribunal shall have full power to open up, review, and revise any decision, opinion, instruction, determination, certificate, or valuation of the Engineer and any Recommendation(s) of the _____ [“Board” or “DRE”] related to the dispute.

“Neither party shall be limited in the proceedings before such tribunal to the evidence or arguments put before the _____ [“Board” or “DRE”] for the purpose of obtaining his Recommendation(s) pursuant to Sub-Clause 67.1. No Recommendation shall disqualify the _____ [“any Board Member” or “DRE”] from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute.

“Arbitration may be commenced prior to or after completion of the Works, provided that the obligations of the Employer, the Engineer, the Contractor, and the _____ [“Board” or “DRE”] shall not be altered by reason of the arbitration being conducted during the progress of the Works.

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7  Where indicated in Sub-Clause 67.3.1, the Employer shall select the reference to the “Board” or “DRE” corresponding to the Employer’s selection between Version 1 (“Board”) and Version 2 (“DRE”) of Sub-Clause 67.1 (and delete the reference inapplicable to this Contract).

8  Insert “Board” or “DRE” to reflect alternative selected in Sub-Clause 67.1.

9  Insert “Board” or “DRE” to reflect alternative selected in Sub-Clause 67.1.

10 Insert “Board” or “DRE” to reflect alternative selected in Sub-Clause 67.1.

11 Insert “any Board Member” or “DRE” to reflect alternative selected in Sub-Clause 67.1.

12 Insert “Board” or “DRE” to reflect alternative selected in Sub-Clause 67.1.
“67.3.2 Rules of Procedure\textsuperscript{13}

(a) Contracts with foreign contractors\textsuperscript{14}

United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules:

Sub-Clause 67.3.2 (a)—Any dispute, controversy, or claim arising out of or relating to this Contract, or breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.\textsuperscript{15}

Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC):

Sub-Clause 67.3.2 (a)—All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.

Rules of Arbitration Institute of the Stockholm Chamber of Commerce:

\textsuperscript{13} Since at the time of bidding it cannot be determined whether the Contractor will be foreign or domestic, the final tender documents should contain one clause to be retained in the event of a Contract with a foreign Contractor and one clause to be retained in the event of a Contract with a domestic Contractor. At the time of finalizing the Contract, the respective applicable clause should be retained in the Contract. The following explanatory note should therefore be inserted as a header to this Sub-Clause 67.3.2 in the tender documents:

“Sub-Clause 67.3.2 (a) shall be retained in the case of a Contract with a foreign Contractor or Sub-Clause 67.3.2 (b) shall be retained in the case of a Contract with a domestic Contractor. The determination of whether a Contractor (as an individual firm or as a Joint Venture) is foreign or domestic for the purposes of this sub-clause, will be made by reference to the criteria set forth in Sub-Clauses 32.3 (a) (i) and 32.3 (a) (ii) or Sub-Clauses 32.3 (b) (i) and 34 (b) (ii) of the Instructions to Tenderers, Preference for Domestic Tenderers.”

\textsuperscript{14} The Employer is invited to select rules to govern the arbitration proceedings from among the well-recognized rules of procedures listed in Sub-Clause 67.3.2 (a). After the Employer makes its selection, the applicable clause shall be retained in the final bidding documents as Sub-Clause 67.3.2 (a) (and all other listed clauses deleted).

\textsuperscript{15} The Employer may wish to consider adding:

(i) The appointing authority shall be [name of institution or person];
(ii) The number of arbitrators shall be [one or three];
(iii) The place of arbitration shall be [town or country];
(iv) The language(s) to be used in the arbitral proceedings shall be [language(s)].
Sub-Clause 67.3.2 (a)—Any dispute, controversy, or claim arising out of or in connection with this Contract, or the breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.

**Rules of the London court of International Arbitration:**

Sub-Clause 67.3.2 (a)—Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity, or termination shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference to this clause.

(b) Contracts with domestic contractors:

Sub-Clause 67.3.2 (b)—Any dispute between the Employer and a domestic Contractor arising in connection with the present Contract shall be referred to adjudication or arbitration in accordance with the laws of the Employer’s country.

Delete Sub-Clause 67.4 and replace with the following:

“Where neither the Employer nor the Contractor has given notice of intention to commence arbitration of a dispute within the period stated in Sub-Clause 67.1 and the related Recommendation has become final and binding, either party may, if the other party fails to comply with such Recommendation and without prejudice to any other right it may have, refer the failure to arbitration in accordance with Sub-Clause 67.3. The provisions of Sub-Clause 67.1 shall not apply to any such reference.”

**Notices**

For the purposes of this sub-clause, the addresses are those specified in the Appendix to Tender.

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16 This sample Sub-Clause 67.3.2 (b) shall be included in the tender documents and shall be retained in the Contract in the event that award is made to a domestic Contractor.
Section IV. Part I. General Conditions of Contract

**Default of Employer**

In Sub-Clauses 69.1, 69.4, and 69.5, substitute “Sub-Clause 60.8” for “Sub-Clause 60.10.”

**Sub-Clause 69.1 (d)**

Economic Dislocation

Sub-Clause 69.1 (d) is deleted.

**Sub-Clause 69.3**

Payment on Termination

Delete from “, but in addition to the payments specified...” to the end of the sub-clause.

**Changes in Cost and Legislation**

Delete Clause 70 in its entirety, and substitute:

Sub-clause 70.1 – Sub-clause 70.8

**Sub-Clause 70.1**

Price Adjustment

The amounts payable to the Contractor, in Ghanaian Cedis (GHC) pursuant to Sub-Clause 60.1, shall be adjusted in respect of the rise or fall in the cost of labor, Contractor’s Equipment, Plant, materials, and other inputs to the Works, by applying to such amounts the formulae prescribed in this clause.

**Sub-Clause 70.2**

Other Changes in Cost

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 unit rates and prices included in the Contract shall be deemed to include amounts to cover the contingency of such other rise or fall of costs.

**Sub-Clause 70.3**

Adjustment Formulae

The adjustment to the Interim Payment Certificates in respect of changes in cost and legislation shall be determined from the following formula for only the local currency portion of the payment:

\[
P_L = A + b \frac{F}{F_0} + FEB + C\frac{B}{B_0} + \frac{CH}{CH_0} + \frac{RE}{RE_0} + \frac{CE}{CE_0} + \frac{CO}{CO_0} - 1
\]

Where: \( P_L = \) Price adjustment factor to be applied to the amount of local component payment of the work carried out in the subject month determined in accordance with sub-clause 60.1 (d), and with sub-Claus 60.1 (e) and (f), where such variations and Daywork are valued at base unit rates and are not otherwise subject to adjustment;
A =  Constant, specified in the Appendix to Tender, representing the nonadjustable portion in contractual payments;

LL =  Local Labour Index;

FE =  Foreign Exchange Index;

EP =  Equipment Index;

F =  Fuel and Lubricant Index;

B =  Bitumen Index;

CH =  Chippings Index;

RE =  Reinforcing Steel Index;

CE =  Cement Index;

CO =  Combined Consumer Goods Index;

LL₀, FE₀, ER₀, F₀, etc., are the base cost indices or reference prices corresponding to the above cost elements at the date specified in Sub-Clause 70.5.

b, c, d, e, f, g, h, i, are weightings or coefficients representing the estimated proportion of each cost element (labour, materials, equipment usage, etc.) in the Works or sections thereof, net of Provisional Sums, as specified in the Appendix to Tender;

Sub-Clause 70.4
Sources of Indices and Weightings

The sources of indices shall be those listed in the Appendix to Tender, as approved by the Engineer. Indices shall be appropriate for their purpose and shall relate to the Contractor’s proposed source of supply of inputs on the basis of which his Contract Price and expected foreign currency requirements shall have been computed. As the proposed basis for price adjustment, the Contractor shall have submitted with his Tender the tabulation of Weightings and Source of Indices in the Appendix to Tender, which shall be subject to approval by the Engineer.

Sub-Clause 70.5
Base, Current, and Provisional Indices

The base cost indices or prices shall be those prevailing on the day 28 days prior to the latest date for submission of Tenders. Current indices or prices shall be those prevailing on the day 28 days prior to the last day of the period to which a particular Interim Payment Certificate is related. If at any time the current indices are not available, provisional indices as determined by the Engineer will be used, subject to subsequent correction of the amounts paid to the Contractor when the current indices become available.

Sub-Clause 70.6
If the Contractor fails to complete the Works within the time for
Adjustment after Completion prescribed under Clause 43, adjustment of prices thereafter until the date of completion of the Works shall be made using either the indices or prices relating to the prescribed time for completion, or the current indices or prices, whichever is more favorable to the Employer, provided that if an extension of time is granted pursuant to Clause 44, the above provision shall apply only to adjustments made after the expiry of such extension of time.

**Sub-Clause 70.7**  
Weightings  
The weightings for each of the factors of cost given in the Appendix to Tender shall be adjusted if, in the opinion of the Engineer, they have been rendered unreasonable, unbalanced, or inapplicable as a result of varied or additional work already executed or instructed under Clause 51 or for any other reason.

**Sub-Clause 70.8**  
Subsequent Legislation  
If, after the date 28 days prior to the latest date for submission of Tenders for the Contract, there occur in the Republic of Ghana changes to any National or State Statute, Ordinance, Decree, or other Law or any regulation or by-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation, or by-law that causes additional or reduced cost to the Contractor, other than under the preceding sub-clauses of this clause, in the execution of the Contract, such additional or reduced cost shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be added to or deducted from the Contract Price and the Engineer shall notify the Contractor accordingly, with a copy to the Employer. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same shall already have taken into account in the indexing of any inputs to the Price Adjustment Formulae in accordance with the provisions of Sub-Clauses 70.1 to 70.7.

**Currency and Rates of Exchange**

**Sub-Clause 71.1**  
Currency Restriction  
Delete sub-clause 71.1
Add the following to sub-clause 72.1:

“The Employer and the Engineer shall be notified promptly by the Contractor of any changes in the expected foreign currency requirements of the Contractor during the execution of the works as indicated in schedule, and the foreign and local currency portions of the balance of the Contract Price shall then be amended by agreement of the Employer and the Contractor in order to reflect appropriately such changes.”

Delete the part of the sub-clause beginning with the words “shall… be those prevailing” to the end of the sub-clause and substitute the following word thereof: “shall be those set forth in accordance with provisions of the tender documents.”

Add to end of paragraph “All payments shall be made in the currency or currencies specified in the Appendix to Tender pursuant to GCC 72.2.”

**ADDITIONAL CLAUSES**

The proportions of foreign and local currency payments of the balance of the Contract Price shall be amended by agreement between the Employer and the Contractor to reflect any substantial changes in the expected foreign and local currency requirements of the Contractor during the execution of the Works, provided that

(a) the Contractor shall inform the Employer and the Engineer whenever any such substantial change may occur; or

(b) the Engineer may recommend a review of such expected requirements if in his judgment there is evidence of a change in the country of origin of materials, Plant, or services to be provided under the Contract that should result in any substantial change of such expected requirements.

The prices tender by the Contractor shall include all taxes, duties, and other charges imposed outside the Republic of Ghana on the production, manufacture, sale, and transport of the Contractor’s Equipment, Plant, materials, and
supplies to be used on or furnished under the Contract, and on the services performed under the Contract.

**Sub-Clause 73.2**
**Local Taxation**

The prices tendered by the Contractor shall include all customs duties, import duties, business taxes, and income and other taxes that may be levied in accordance with the laws and regulations in being on the date 28 days prior to the latest date for submission of Tenders in the Republic of Ghana on the Contractor's Equipment, Plant, materials, and supplies (permanent, temporary, and consumable) acquired for the purpose of the Contract and on the services performed under the Contract. Nothing in the Contract shall relieve the Contractor from his responsibility to pay any tax that may be levied in the Republic of Ghana on profits made by him in respect of the Contract.

**Sub-Clause 73.3**
**Income Taxes on Staff**

The Contractor’s staff and labor will be liable to pay personal income taxes in the Republic of Ghana in respect of such of their salaries and wages as are chargeable under the laws and regulations for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such laws and regulations.
Sub-Clause 73.4  
Duties on  
Contractor’s  
Equipment  

Notwithstanding the provisions of Sub-Clause 73.2, Contractor’s Equipment, including essential spare parts therefor, imported by the Contractor for the sole purpose of executing the Contract shall be temporarily exempt from the payment of import duties and taxes upon initial importation, provided the Contractor shall post with the customs authorities at the port of entry an approved export bond or bank guarantee, valid until the time of completion of the Contract plus six months, in an amount equal to the full import duties and taxes that would be payable on the assessed imported value of such Contractor’s Equipment and spare parts, and callable in the event that the Contractor’s Equipment is not exported from the Republic of Ghana on completion of the Contract. A copy of the bond or bank guarantee endorsed by the customs authorities shall be provided by the Contractor to the Employer upon the importation of individual items of Contractor’s Equipment and spare parts. Upon export of individual items of Contractor’s Equipment or spare parts, or upon completion of the Contract, the Contractor shall prepare, for approval by the customs authorities, an assessment of the residual value of the Contractor’s Equipment and spare parts to be exported, based on the depreciation scale(s) and other criteria used by the customs authorities for such purposes under the provisions of the applicable law. Import duties and taxes shall be due and payable to the customs authorities by the Contractor on (a) the difference between the initial imported value and the residual value of the Contractor’s Equipment and spare parts to be exported; and (b) on the initial imported value of that Contractor’s Equipment and spare parts remaining in the Republic of Ghana after completion of the Contract.

Upon payment of such dues within 28 days of being invoiced, the bond or bank guarantee shall be reduced or released accordingly; otherwise the security shall be called in the full amount remaining.

Sub-Clause 74.1  
Immigration  
Formalities  

The Employer will assist the Contractor, if requested in writing, in all normal immigration formalities for his employees to enter the Republic of Ghana for the purposes of the Contract.
Sub-Clause 75.1
Termination of Contract for Employer’s Convenience

The Employer shall be entitled to terminate this Contract at any time for the Employer’s convenience after giving 56 days’ prior notice to the Contractor, with a copy to the Engineer. In the event of such termination, the Contractor shall proceed as provided in Sub-Clause 65.7; and shall be paid by the Employer as provided in Sub-Clause 65.8.

Sub-Clause 76.1
Importation and Handling of Explosives

No explosives of any kind shall be used by the Contractor without the prior consent of the Engineer in writing. The Contractor shall purchase and import his own explosives for use in connection with Works and shall comply with all ordinances, instructions and regulations which the Government, or other person or persons having due authority, may issue from time to time regarding the handling, transportation, storage and use of explosives.

Sub-Clause 76.2
Permission for Blasting

The Contractor shall at all times maintain full liaison with and inform well in advance, and obtain such permission as is required from all Government authorities, public bodies and private parties whatsoever concerned or affected, or likely to be concerned or affected by blasting operations.

Sub-Clause 76.3
Warning of Blasting

The Contractor shall at all times when engaged in blasting operations post sufficient warning flags and other measures to the full satisfaction of the Engineer’s Representative.

Sub-Clause 76.4
Records of Explosives

Before the beginning of the period of maintenance the Contractor shall account to the satisfaction of the Engineer for all explosives brought on to the site during the continuance of the Contract and the Contractor shall remove all unused explosives from the Site on completion of the Works when ordered by the Engineer.

Sub-Clause 77.1
Gifts, Inducements and Awards

Any commission, advantage, gift, gratuity, reward or bribe given, promised, or offered by or on behalf of the Contractor or his agent or servant or any other person on his behalf to any member, officer, or to any person on their behalf or on behalf of any of them in relation to the obtaining or to the execution of this or any other contract with the Government, shall in addition to any criminal liability which may be thereby incurred, subject the Contractor to the cancellation of this and all of all their contracts which he may have entered into with the
Government and also to the payment of any loss or damage resulting from such cancellation. The Government shall be entitled, upon a certificate in writing of the Engineer, to deduct the amounts so certified under this or any other contract to recover the said amount as debt due or partly the one and partly the other as the Government shall deem advisable.

**Sub-Clause 78.1**

*Existing Services*

The Contractor shall take every proper precaution to ensure the efficient protection of all drains, pipes, cables, wire, telegraphs and electricity poles and similar existing services and installations, encountered in the course of the Works, so that they may continue in full and uninterrupted use to the satisfaction of the owners thereof.

**Sub-Clause 78.2**

*Diversion of Services*

In the event of it being considered necessary by the Engineer’s Representative to construct permanent or temporary diversions of the existing services, the Contractor shall, if so instructed by the Engineer’s Representatives, arrange for the construction of such Works, or diversions, including reinstatement where necessary, by the respective departments, bodies, corporations or authorities, and the cost of such works or diversion including reinstatements, shall be paid for under the relevant item in the Bill of Quantities; the Contractor shall be held liable for all damage and interference to such services, either above or below ground, caused by him or his sub-contractor in the execution of the Works and shall make good the same without delay, and do further work considered necessary by the Engineer’s Representative or the owners, all at his own expense or pay the costs of the owner in so doing.

**Sub-Clause 79.1**

*Property in Materials*

All materials and things of any kind obtained from excavations or found on or under the Site, or under any additional Site which the Contractor may be allowed to occupy, shall remain the property of the Government of the Republic of Ghana and shall not be used in the Works or sold or otherwise disposed of without the written authority of the Engineer unless otherwise expressly provided in the Specification. No excavations are to be made upon the Site, or additional site, beyond those shown on the Drawings or described in the Specification without the previous written authority of the Engineer.

**Sub-Clause 80.1**

*Photographs*

No photographs of the Site, of the Works or any part thereof, or anything therein shall be taken except with the permission in writing of the Engineer and no such
photographs shall be published or otherwise circulated without the like permission.

No such permission shall exempt the Contractor from complying with any statutory provisions in regard to the taking and publication of photographs.

**Sub-Clause 80.2**

**Project Signs**

The Contractor shall not erect or cause to be erected on the Site any sign bearing the name of the Contractor or the project save with the permission of the Engineer and any such sign shall be of the size and style and shall be erected in position, as directed by the Engineer.

**Sub-Clause 81.1**

**Joint and Several Liability**

If the Contractor is a joint venture of two or more persons, all such persons shall be jointly and severally bound to the Employer for the fulfillment of the terms of the Contract and shall designate one of such persons to act as a partner in charge with authority to bind the joint venture. The composition or the constitution of the joint venture shall not be altered without the prior consent of the Employer.

**Sub-Clause 82.1**

**Details to Be Confidential**

The Contractor shall treat the details of the Contract as private and confidential, save insofar as may be necessary for the purposes thereof, and shall not publish or disclose the same or any particulars thereof in any trade or technical paper or elsewhere without the previous consent in writing of the Employer or the Engineer. If any dispute arises as to the necessity of any publication or disclosure for the purpose of the contract, the same shall be referred to the Employer whose determination shall be final.