



PAKISTAN NUCLEAR REGULATORY AUTHORITY

Off Shore Marker Piles

Construction of Marker Piles and Navigational Aids
at Karachi Nuclear Power Plant

TENDER DOCUMENTS (Rev-B)

Volume-1

Instruction to Tenderers

Tendering Data

General Condition of Contract - Part I

Conditions of Particular Applications: Part IIA

Conditions of Particular Applications: Part IIB

Tender Security Form

Performance Security Form

Contract Agreement Form

Mobilization Advance Guarantee Form

Consultants:



ZAHEERUDDIN CONSULTANTS (PVT.) LTD.

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PAKISTAN NUCLEAR REGULATORY AUTHORITY

Construction of Marker Piles and Navigational Aids at Karachi Nuclear Power Plant

INVITATION TO TENDER

1. The Pakistan Nuclear Regulatory Authority Islamabad invites tenders from reputable Pakistani contracting firms, specializing in the marine and harbour works at the Karachi Nuclear Power Plant. The Construction of the works will be financed by the Pakistan Nuclear Regulatory Authority Islamabad from its own resources and it is intended to make eligible payments under the contract for the "***Construction of Marker Piles and Navigational Aids at Karachi Nuclear Power Plant***".
2. The Pakistan Nuclear Regulatory Authority Islamabad now invites sealed tenders from eligible pre-qualified Tenderers for the ***Construction of Marker Piles and Navigational Aids at Karachi Nuclear Power Plant***.
3. Interested pre-qualified Tenderers may obtain further information from and inspect the Tender Documents at the offices of:-

Project Director – Marker Piles,
Pakistan Nuclear Regulatory Authority,
Street 11,
Islamabad. Telephone: + (92-51) 9263017

4. A complete set of Tender Documents may be purchased by any eligible pre-qualified Tenderer on the submission of a written application to the above addresses, and upon payment of non-refundable fee of Pak. Rs.25,000/= in favour of Pakistan Nuclear Regulatory Authority Islamabad. Additional sets of documents may be purchased each at the Pak Rs.20,000/=. Documents will be available on or after _____ 2014.
5. A Pre-Tender Meeting will be held at the Conference Room in the office of Project Director, Pakistan Nuclear Regulatory Authority Islamabad, Pakistan, on _____, **2014**.
6. All tenders must be accompanied by a security of Pakistani Rupees 6 million or its equivalent, in an acceptable form, and must be delivered to the Project Director, Pakistan Nuclear Regulatory Authority Islamabad, Pakistan **on or before 12 Noon on _____ 2014**
7. Tenders will be opened in the presence of Tenderers' representatives who choose to attend at **12:30 p.m. on _____ 2014** the Office of Project Director, Pakistan Nuclear Regulatory Authority Islamabad, Pakistan.
8. **No tenders will be accepted after closing time that is 12:00 noon _____ 2014**

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PAKISTAN NUCLEAR REGULATORY AUTHORITY*Construction of Marker Piles and Navigational Aids
at Karachi Nuclear Power Plant***Volume - I****CONTENTS**

	<u>Page No.</u>
01 INSTRUCTION TO TENDERERS	1 – 16
02 TENDERING DATA	17 –21
03 GENERAL CONDITIONS OF CONTRACT PART - I	22 – 92
04 CONDITIONS OF PARTICULAR APPLICATION: PART-II A	93 – 108
05 CONDITIONS OF PARTICULAR APPLICATION: PART II B:	109 – 138
06. FORMS:	
6.1 TENDER SECURITY FORM	139 – 140
6.2 PERFORMANCE SECURITY FORM	141 – 142
6.3 CONTRACT AGREEMENT FORM	143 – 143
6.4 MOBILIZATION ADVANCE GUARANTEE FORM	144 – 145

PAKISTAN NUCLEAR REGULATORY AUTHORITY

Construction of Marker Piles and Navigational Aids at Karachi Nuclear Power Plant

TENDER DOCUMENTS

PREFACE

The Tender Documents are contained in four volumes, namely:

VOLUME - 1

Instruction to Tenderers
Tendering Data
General Conditions of Contract – Part-I
Condition of Particular Application: Part-II A
Condition of Particular Application: Part-II B

Tender Security Form
Performance Security Form
Contract Agreement Form
Mobilization Advance Guarantee Form

VOLUME - 2

Tender Form
Appendix to Form of Tender
Form of Tender Bond
Security Undertaking
Insurance Undertaking
Schedules
Bills of Quantities

VOLUME - 3

Specifications

VOLUME - 4

Tender Drawings

PAKISTAN NUCLEAR REGULATORY AUTHORITY

Construction of Marker Piles and Navigational Aids at Karachi Nuclear Power Plant

INSTRUCTIONS TO TENDERERS

CONTENTS

	<u>Page</u>
1	GENERAL 1
	Organization inviting Tenders 1
	Scope of the Works 1
	Funding of Contract 1
	Eligibility and Qualification Requirements 1
	Local Representation 2
	Communications 3
	Circular Letters 3
2	DOCUMENTS 4
	Contents of Documents 4
	Issue of Documents 4
	Clarification of Documents 4
	Requests for Extension of Time 5
3	SITE VISITS AND PRE-TENDER MEETING 6
	Site Visits 6
	Pre-Tender Meeting 6
	Access to Information 6
4	PREPARATION OF TENDERS 7
	Language 7
	Completion of Tender Documents 7
	Documents Comprising the Tender 7
	Tender Prices 8
	Currency of Tender and Payment 8
	Tender Validity 8
	Tender Security 8
	Security and Insurance Undertakings 9
	Alternative Offers 9
	Alterations to Tender Documents 10
	Responsibility for Expenses 10
5	SUBMISSION OF TENDERS 11
	Sealing and Marking 11
	Late Submission of Tender 11
	Modification of Tender 11
	Withdrawal of Tender 12

6	OPENING AND EVALUATION	13
	Opening of Tenders	13
	Process to be Confidential	13
	Clarification of Tenders	13
	Determination of Responsiveness	13
	Correction of Errors	14
	Evaluation and Comparison of Tenders	15
7	AWARD OF CONTRACT	16
	Award Criteria	16
	Authority's Right to Accept or Reject Tenders	16
	Notification of Award	16
	Signature of Agreement and Submission of Performance Security	16
	Notification to Unsuccessful Tenderers	16
	Instructions to Tenderers not part of Contract	16

INSTRUCTIONS TO TENDERERS

1 GENERAL

Organization inviting Tenders

- 1.1 Tenders are invited by Pakistan Nuclear Regulatory Authority (PNRA), Islamabad, Pakistan, hereinafter in these Instructions to Tenderers referred to as the "Employer".

Scope of the Works

- 1.2 The Works to be undertaken under the Contract are located in front of Karachi Nuclear Power Plant, and comprise the following works of civil engineering construction.

- * Construction of Marker Piles;
- * Supply and Installation of Navigational Aids;

The Works are to be completed within the period of **214 days** in the Appendix to Tender, which period shall form the basis of all conforming Tenders.

Funding of Contract

- 1.3 The PNRA will be making eligible payments to the contractor from its own funds.

Eligibility and Qualification Requirements

- 1.4 Tenders have been invited from a list of pre-qualified firms qualified by the Employer as defined under the "Guidelines for Procurement" of the Public Procurement Regulatory Authority (PPRA) and Pakistan Engineering Council (PEC).

A firm which has been pre-qualified on the basis of its being a subsidiary of a larger organization may be required to provide a legally binding warranty by the parent organization in respect of the performance of the Tenderer should his Tender be accepted.

The firm is duly licensed by the Pakistan Engineering Council (PEC) in the category relevant to the value of Works.

A firm / joint venture of firms must be registered with Pakistan Engineering Council, to be eligible for the bidding. They must submit evidence of eligibility with the Tender Documents.

- 1.5 All goods and services to be supplied under the Contract shall have their origin in eligible source countries, defined under the "Guidelines for Procurement" of the PPRA, and all expenditures made under the Contract will be limited to such goods and services. For the purposes of this paragraph "origin" means the place where the goods are mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembling of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components. The origin of goods and services may be distinct from the nationality of the Tenderer.

- 1.6 Only those firms on the list of pre-qualified firms may be permitted to form joint ventures, subject to the approval of Employer, which must be requested not later than 15 days before the Tender submission date.

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

- (a) The Tender and, in the case of a successful Tender, the Form of Agreement of the Contractor shall be signed so as to be legally binding on all partners of the joint venture;
- (b) One of the partners shall be nominated as being in charge; this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners;
- (c) 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 administration of the Contract, including payment, shall be performed exclusively by the partner in charge;
- (d) 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 relevant statement to this effect shall be included in the authorization mentioned under (b) above as well as in the Form of Tender and the Form of Agreement of the Contract (in the case of a successful Tender); and
- (e) A copy of the agreement entered into by the joint venture partners shall be submitted with the Tender.

1.7 To be eligible for award of Contract, Tenderers shall provide evidence satisfactory to Employer of their eligibility under paragraph 1.4 and 1.5 above, and of their capability and adequacy of resources to carry out the Contract effectively. To this end, all Tenders submitted shall include an update of information provided by Tenderers in their prequalification submission, if any details have changed, especially:-

- (a) Any changes in constitution or legal status of the company or firm or partnership or, if a joint venture, of each party thereto constituting the Tenderer;
- (b) Details of current work in hand and other contractual commitments and the major items of Equipment proposed to be used on the Works;
- (c) Proposals for sub-contractors and suppliers of materials and major Constructional Plant for the Works as listed in Schedules B and C of Tender;
- (d) updated reports on the financial standing of the Tenderer (or of each party to a joint venture) such as profit and loss statements, balance sheets and auditor's reports for the last five years, an estimated financial projection for the next two years and an authority from the Tenderer (or authorised representative of a joint venture) to seek references from the Tenderer's bankers;
- (e) Information regarding any litigation in which the Tenderer is involved;
- (f) The qualification and experience of key personnel proposed for administration and execution of the Contract, both on and off site, in the Memorandum of Supplementary information.

Local Representation

1.8 The Tenderer selected for award of Contract shall, before signing the Contract, be required, at the Tenderer's option, to either (i) open an office in Karachi, or (ii)

nominate a local agent and enter into a legal agreement with the agent indicating the extent of authorization entrusted to the agent.

Communications

- 1.9 Except where otherwise stated, Tenderers shall direct all communications to Employer at the address below:-

Project Director – Marker Piles,
Pakistan Nuclear Regulatory Authority,
Street 11,
Islamabad.

Telephone: + (92-51) 9263017

Circular Letters

- 1.10 If Employer wishes to make explanations, revisions, additions or deletions to the Tender Documents, for any reason prior to the dead line for submission of tender they will issue such explanations, revisions, additions or deletions to all Tenderers in the form of one or more Circular Letters, which will form Addenda to and shall be incorporated in the Tender Documents and form part of the Contract Documents. Each Circular Letter will have a serial number. The Tenderer must acknowledge receipt in writing to Employer of each Circular Letter.
- 1.11 **Verbal explanations by the staff of Employer will not be binding unless confirmed in writing by Employer and issued as a Circular Letter.**

2 DOCUMENTS

Contents of Documents

2.1 The Tender Documents are contained in four volumes and comprise:

VOLUME – 1: Instruction to Tenderers
Tendering Data
General Conditions of Contract – Part-I
Condition of Particular Application: Part-II A
Condition of Particular Application: Part-II B
Tender Security Form
Performance Security Form
Contract Agreement Form
Mobilization Advance Guarantee Form

VOLUME – 2: Tender Form
Appendix to Form of Tender
Form of Tender Bond
Security Undertaking
Insurance Undertaking
Schedules
Bills of Quantities

VOLUME – 3: Specifications

VOLUME – 4: Tender Drawings

The Quantities listed in the Bills of Quantities are only estimated and their accuracy or inaccuracy shall in no way affect the validity of the tender or of the Contract based thereon. The quantities listed are for tendering purposes only. Payments will be based on measurements of the works executed in accordance with the Contract.

Issue of Documents

2.2 The Tenderer will be supplied with one set of Volumes 1 to 4 and one additional copy of Volume 2 upon payment of Rs 25,000/= which sum will not be refunded.

2.3 An additional copy of individual volumes may be obtained from PNRA on payment of Rs.20,000/= per volume.

2.4 Payment shall be by Pay Order in favour of Pakistan Nuclear Regulatory Authority. No refund will be made on the return of the Drawings and Documents. A Tenderer wishing the documents to be dispatched by courier shall also pay any additional costs arising.

2.5 The Tenderer shall give written acknowledgment to Employer of receipt of the Tender Documents, and include in this letter his e-mail, fax and business address for the purpose of receiving correspondence during the Tender period.

2.6 The Tenderer shall treat the details of these documents and all Addenda thereto as private and confidential, whether he submits a Tender or not.

Clarification of Tender Documents

2.7 The Tenderer shall examine carefully the Conditions of Contract, Specification, Bill of Quantities, Schedules, Drawings and other documents supplied herewith. If the Tenderer has doubts about the meaning of anything in the Tender Documents or the obligations of the Contractor or requires further information or clarification, he shall

address his queries in writing to Employer, with a copy to their Consulting Engineers at the addresses below:

Zaheeruddin Consultants (Pvt.) Ltd.
5-A Sindhi Muslim Society
Karachi 74400
Pakistan

Telephone: + (92 21) 3455-0321
Facsimile + (92 21) 3455-5251

Queries will not be accepted less than 14 days before the latest date for submission of Tenders. Employer will acknowledge receipt of all queries, advising any Tenderers whose queries have been discounted due to late receipt. The queries will be dealt with by Circular Letter.

Requests for Extension of Time

- 2.8 If a Tenderer wishes to request an extension of the time within which Tenders are to be submitted, he shall make such request in writing (by letter or e mail / facsimile) to Employer not later than 14 days before the latest date for submission of Tenders. The request shall state the reasons for and the time of the desired extension. No undertaking is given that any extension of time will be granted but in the event that such extension is granted; Employer will notify all Tenderers of this extension by telex or facsimile, and each Tenderer shall acknowledge receipt of such notice in writing to Employer.

2.9 **Amendment to Tender Documents**

At any time prior to the deadline for submission of Tenders, the Employer may, for any reason, whether at his own initiative or in response to a clarification requested by a prospective Tenderer modify the Tender Documents by the issuance, of an Addendum by a circular letter.

The Addendum will be sent in writing (which includes telex, cables and facsimile) to all prospective Tenderers who have purchased the Tender Documents and will be binding upon them. Prospective Tenderers shall promptly acknowledge receipt thereof by cable to the Employer and the Engineer.

Tenders are to submit with their Tenders a Statement confirming that they have taken them into consideration in preparing their Tender. Failure to submit such a statement may result in the rejection of the Tender. It is each Tenderers' responsibility to confirm to the Employer that all the Addenda issued by the Employer have been received by the Tenderers.

In order to afford prospective Tenderers reasonable time in which to take an Addendum into account in preparing their tenders, the Employer may, at his discretion, extend the deadline for the submission of Tenders in accordance with Clause 2.8 and 5.13 of the Instructions to Tenderers."

3 SITE VISITS AND PRE-TENDER MEETING

Site Visits

- 3.1 Before tendering, the Tenderer is advised to visit the Site of the proposed Works at Karachi, or cause it to be visited on his behalf by a competent and reliable person, and he shall on his own responsibility obtain the information necessary for the purpose of making his Tender and entering into a Contract. Regardless of whether or not the Tenderer visits the Site he will be deemed to have done so.

The Tenderers are to satisfy themselves as to the nature of the Works, the means of access and transportation to the Site, the available working areas, the availability of local labour and their conditions of employment, the necessity of engaging foreign skilled workmen, engineer's or specialists, the risks, obligations and responsibilities involved, and of all bases for fixing the Bills of Quantity rates, and in order to possess comprehensive knowledge as required for executing, completing and maintaining the Works in conformity with the Contract.

Tenderers are required to convince themselves of the technical feasibility of the intended construction method, taking into account the Exhibited Design.

- 3.2 Employer will grant permission to all accredited representatives of Tenderers to visit the Site, subject to the express condition that the Tenderers shall indemnify Employer in respect of personal injury, loss of or damage to property and any other loss, damage, costs and expenses however caused, which, but for the exercise of such permission, would not have arisen.

Pre-Tender Meeting

- 3.3 The Tenderer or his official representative is advised to attend a pre-tender meeting which will be held at the date, time and place as indicated on the Tender Notice.
- 3.4 The purposes of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage, and to show Tenderers around the Works Site.
- 3.5 The Tenderer is requested to submit any questions in writing to reach the Employer and their Consulting Engineers not later than 4 days before the meeting.
- 3.6 Minutes of the meeting, including copies of the questions raised and responses given, will be furnished expeditiously to all Tenderers. Any modification of the Tender Documents which may become necessary as a result of the pre-tender meeting shall be made by Employer exclusively through the issuance of a Circular Letter pursuant to paragraph 1.10 hereof and not through the minutes of the pre-tender meeting.
- 3.7 Non Attendance at the pre tender meeting will not be a cause for disqualification of a tender.

4 PREPARATION OF TENDERS

Language

- 4.1 The language of the Tender, all correspondence, and the subsequent Contract shall be English. Supporting documents and printed literature furnished by the Tenderer with the Tender may be in another language provided they are accompanied by an appropriate translation in English of all relevant passages. For the purpose of interpretation of the Tender, English shall prevail.

Completion of Tender Documents

- 4.2 The Tenderer shall complete all the issued documents comprising the Tender for the whole of the Works and insert all the information called for therein, sign and date them. Every page completed by the Tenderer shall be initialed by the person or persons signing the Tender. Proof of authorization of signature shall be furnished in the form of a written power of attorney which shall accompany the Tender.

Written authorization of the assignees and certificates attesting their signature from the Chamber of Commerce or a similar body.

- 4.3 The original of the Tender and accompaniments shall be typed or written in indelible ink.

Documents Comprising the Tender

- 4.4 The Tender to be prepared by the Tenderer shall comprise the following:- Form of Tender and Appendix thereto; Tender Security; Security and Insurance Undertakings; Schedules; Memorandum of Supplementary Information; Bill of Quantities; information on eligibility and qualifications as set out in Section 1 of these Instructions; joint venture details if applicable; power of attorney; alternative offers if applicable and any other material required to be completed and submitted in accordance with these Instructions to Tenderers. The Forms, Bill of Quantities and Schedules provided in Volume 2 of these Tender Documents shall be used without exception (subject to extensions to the Schedules in the same format and to provisions of paragraph 4.17 hereof regarding alternative forms of Tender Security).

- 4.5 The Tenderer shall submit a Memorandum of Supplementary Information on the forms provided in Volume 2, to demonstrate that he has understood the extent and nature of the work and to furnish information needed for the Tender evaluation process. The information submitted by the successful Tenderer will in addition be deemed to be proposals made and accepted under the Contract until such time as consent has been given by the Engineer to detailed proposals made after award of Contract. The information to be provided shall include, but is not restricted to, the matters listed at the head of the Memorandum. The Tenderer may if appropriate insert additional pages into the Memorandum; all such pages shall be numbered consecutively.

- 4.6 The Tenderer is to submit a programme of works with the Tender and within the framework of the timings shown in the Appendix to Tender (Volume 2).

Information on any standards, equivalent but other than those specified for the supply and testing of material and equipment or for the execution of construction works

- 4.7 Comments or additional information which the Tenderer desires to make shall be included in the Memorandum of Supplementary Information, with reference to page, clause or item number of the Tender Documents.

Tender Prices

- 4.8 Unless stated otherwise in the Tender Documents, the Contract shall be for the whole works as described in paragraph 1.2 hereof, based on the unit rates and prices submitted by the Tenderer. The Tenderer shall fill in rates and prices for all items of work described in the Bill of Quantities, whether quantities are stated or not. 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 other rates and prices in the Bill of Quantities. All duties, taxes, basic prices and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the latest closing date for submission of Tenders, shall be included in the rates and prices and Tender Total submitted by the Tenderer. The evaluation and comparison of Tenders by the Employer shall be made accordingly.

The Tenderer shall be responsible for any error, which he may make in computing any quantities of material or labour required or costs involved or through any lack of knowledge of the site or site conditions or misunderstanding of anything shown or implied in the Drawings or in the Specifications or the Description of Works

- 4.9 The successful Tenderer will be required to provide an export bond or guarantee against export of his Construction Equipment and spare parts when they are no longer required for the Works. The rates and prices entered by the Tenderer in the Bill of Quantities shall include the taxes and duties payable to the customs authorities as applicable to the value of the depreciation during the Contract Period of the Equipment and spares to be exported, and to the value at initial importation of Equipment and spares remaining in Pakistan after completion of the Contract.

- 4.10 **The Contract contains no Price Escalation.**

Currency of Tender and Payment

- 4.11 The unit rates and prices and the Tender Total shall be expressed entirely in Pakistani currency. A Tenderer expecting to incur expenditures in other currencies for inputs to the Works supplied from outside Pakistan (referred to as "the foreign currency requirements") shall arrange for the payment of such foreign currency requirements, on its own. The Employer shall not be responsible for any payments in Foreign Exchange.

Tender Validity

- 4.12 Tenders shall remain valid and open for acceptance for a period of 182 calendar days from the latest date for submission of Tenders.
- 4.13 In exceptional circumstances, prior to expiry of the original Tender validity period, Employer may request all Tenderers for a specified extension to the period of validity. The request and responses thereto shall be made in writing. The Tenderer shall have the right to refuse such an extension without forfeiting his Tender Bond. If the Tenderer is willing to extend the validity of his Tender he shall be required to extend the validity of his Tender Bond. The provisions of paragraphs 4.16 to 4.19 of these Instructions to Tenderers regarding discharge and forfeiture of the Tender Bond shall continue to apply during the extended period of Tender validity. The Tenderer will not be allowed to alter the content of his Tender during the extension of the validity.

Tender Security

- 4.14 The Tenderer shall furnish, as part of his Tender, at the Tenderers option, a Tender Security in the sum of Rupees 3,500,000/= (Rupees three million five hundred thousand only) or an equivalent amount in freely convertible currency. The Security shall be either in the form of a cash deposit (pay Order) from a scheduled Bank authorized by

the State Bank of Pakistan, an irrevocable letter of guarantee from the Scheduled Bank authorized by the State Bank of Pakistan or a foreign bank which has been determined by the Tenderer to be acceptable to the Employer. The format of the guarantee shall be in accordance with the sample Form of Tender Bond included in these Tender Documents. The Tender Security shall be valid for 90 days beyond the validity of the Tender.

- 4.15 The Tender Bonds of unsuccessful Tenderers will be returned in the form, currency and amount as furnished not later than 28 days after the expiry of the period of Tender validity (or agreed extended validity) or such earlier time as a Tender will have been definitely accepted.
- 4.16 The Tender Security of the successful Tenderer will be released within 28 days after the Tenderer has executed the Agreement and furnished the required Performance Security.
- 4.17 The Tender Security will be held as a guarantee of the good faith of the Tenderer in the performance of the obligations undertaken by him, and may be forfeited if:-
- (a) The Tenderer withdraws his Tender during the period of Tender validity;
 - (b) The Tenderer refuses to accept the correction of errors in his Tender in accordance with paragraphs 6.12 and 6.13 of these Instructions to Tenderers;
 - (c) In the case of the successful Tenderer if he fails to execute the Agreement or to furnish in an acceptable form the necessary Performance Security within the respective times stipulated herein.
- 4.18 **Tenders submitted without an acceptable Tender Bond will be rejected.**

Security and Insurance Undertakings

- 4.19 Tenders shall include undertakings by a surety and an insurer in the forms included herein. If more than one insurer is proposed for the various insurances required, a separate undertaking must be provided by each, stating in each case which insurance is to be provided. Tenders submitted without such undertakings will be rejected.

Alternative Offers

- 4.20 Variations are permitted in Tender conditions of a financial/administrative nature. The Tenderer shall state the basis of his offer in the Appendix to Tender. Tenderers wishing to qualify their Tenders or otherwise to deviate from the requirements of the documents on items of a financial/administrative nature shall present such qualifications or deviations in the form of alternative offers to the basic Tender requirements.
- 4.21 The Tenderer may submit alternative technical proposals for any part of the work only if he also completes the Tender for the designs shown on the Drawings. In making any proposals for alternative designs the Tenderer shall conform to the requirements of the Specification.
- 4.22 Comparison and evaluation of alternative offers will be restricted to those submitted by the Tenderer who submits the lowest evaluated Tender Total for a substantially responsive Tender conforming with the Tender Documents issued to Tenderers.
- 4.23 The attention of Tenderers is drawn to the provisions of paragraphs 6.8 to 6.11 hereof regarding the rejection of Tenders which are not substantially responsive to the requirements of the Tender Documents. Each alternative offer shall be accompanied by a detailed description and price breakdown indicating the Tenderer's estimate of the cost implications to the Employer if the alternative offer were to be accepted by the

Employer and incorporated in the Contract. Tenders containing qualifications and deviations which are not so detailed and priced as alternative offers may be rejected. After evaluation in accordance with paragraphs 6.15-6.17 hereof the Employer reserves the right to accept or reject any alternative offer submitted pursuant to this paragraph.

Alterations to Tender Documents

- 4.24 No alteration shall be made in the Tender, Bill of Quantities, Schedules and other documents, except where necessary to accord with Circular Letters or as necessary to correct errors made by the Tenderer. Such corrections shall be initialed by the person or persons signing the Form of Tender. The Tender shall be deemed to comply entirely with the terms of the Tender Documents.

Responsibility for Expenses

- 4.25 Employer will not be responsible for or pay for the expenses or losses which may be incurred by any Tenderer in the preparation of his Tender, or in visiting the Site and attending meetings in connection therewith.

5 SUBMISSION OF TENDERS

Sealing and Marking

- 5.1 Tenders are to be submitted in more than one copy as set out hereunder.
- 5.2 One set of Tender Volume 2, duly completed and signed, and originals of all accompaniments including the documents described in paragraphs 4.4-4.7 hereof and copies of any Circular Letters, shall be submitted, clearly marked 'ORIGINAL TENDER' on the cover of each volume. In addition one copy of Tender Volumes 1, 3, and 4, duly stamped and signed, and marked "ORIGINAL TENDER", shall be submitted. Two certified photocopies of Volume 2 and accompaniments marked 'COPY OF TENDER' shall also be submitted. In the event of any discrepancy between the copies marked 'ORIGINAL TENDER' and any of the copies marked 'COPY OF TENDER', the 'ORIGINAL TENDER' shall take precedence. The front covers of all bound Tender Documents shall be marked with the Tenderer's name.
- 5.3 The 'ORIGINAL TENDER' and two 'COPY OF TENDER' shall be enclosed in a sealed package with an inner and outer covering. Each cover shall be addressed to Employer as set out in paragraph 5.4 hereof and shall bear the endorsements " **Tender for Construction of Marker Piles and Navigational Aids at Karachi Nuclear Power Plant**" and "**Do Not Open Before _____, 2014**". Only in the inner cover shall indicate the name and address of the Tenderer.
- 5.4 The package shall be delivered to the address below or any other place to be notified in advance, **not later than 12 noon; _____ 2104:**

**Project Director,
Pakistan Nuclear Regulatory Authority
Street 11, G-8/1, Islamabad
Pakistan**

- 5.5 If the outer envelope is not sealed and marked as set out in paragraph 5.3 hereof, Employer will assume no responsibility for the misplacement or premature opening of the Tender submitted. A Tender opened prematurely for this cause will be rejected and returned to the Tenderer.
- 5.6 Only one Tender may be submitted by each Tenderer, excepting alternative offers under paragraphs 4.20 - 4.23 hereof. No Tenderer may participate in the Tender of another in any relation whatsoever.

Late Submission of Tender

- 5.7 Tenders received after the appointed date and time will be rejected and returned unopened.

Modification of Tender

- 5.8 If a Tender has been delivered prior to the submission date, the Tenderer may modify or correct the Tender provided such modifications or corrections are received by Employer in writing prior to the time specified for its submission. The original Tender thus modified or corrected will be considered as the official Tender.

Withdrawal of Tender

- 5.9 A Tenderer may withdraw his Tender after submission provided that the notice of withdrawal is received in writing by Employer prior to the prescribed deadline for submission of Tenders.
- 5.10 The Tenderer's notice of modification or notice of withdrawal shall be prepared, sealed, marked and delivered in accordance with the provisions of paragraphs 5.2 to 5.4 hereof for the submission of Tenders, with the inner envelopes additionally marked "MODIFICATION" or "WITHDRAWAL" as appropriate.
- 5.11 Withdrawal of a Tender during the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified in the Form of Tender may result in the forfeiture of the Tender Bond pursuant to paragraph 4.17 of these Instructions to Tenderers.
- 5.12 Submission of a Tender shall be deemed an acceptance by the Tenderer of the conditions laid down or implied in these Instructions. Any Tender which does not conform with the foregoing instructions may not be considered.
- 5.13 The Employer may, at his discretion extend the deadline for submission of tenders by issuing an amendment in accordance with Clause 1.10, in which case all rights and obligations of the Employer and the Tenders previously subject to the original deadline shall thereafter be subject to the new deadline as extended.

6 OPENING AND EVALUATION

Opening of Tenders

6.1 **Tenders will be opened in public at 12:30 p.m. local time on _____-, 2014, in the office of the Project Director, Pakistan Nuclear Regulatory Authority Street 11, G-8/1, Islamabad Pakistan or any other place to be notified in advance.** Tenderers, or their representatives, wishing to attend should arrive fifteen minutes in advance of the stipulated time of opening. Tenderers' representatives who are present shall sign a register evidencing their attendance.

6.2 Tenders will be examined to determine whether they are complete, whether the requisite Tender Bonds and undertakings have been furnished, whether the documents have been properly signed, and whether the Tenders are generally in order.

6.3 Tenders for which an acceptable notice of withdrawal has been submitted pursuant to paragraph 5.9 hereof will not be opened.

6.4 At Tender opening, Employer will announce the Tenderers' names, the amount of each Tender Total including any alternative offers, discounts if any, Tender modifications and withdrawals if any, the existence of the requisite Tender Bonds, and such other details as the Employer, at its discretion, may consider appropriate.

The Employer will prepare , for his own records, minutes of the tender opening, including the information disclosed to those present in accordance with clause 6.4 hereof.

Process to be Confidential

6.5 Information relating to the examination, clarification, evaluation and comparison of Tenders and recommendations concerning the award of Contract will not be disclosed to Tenderers or to others not officially concerned with such processes.

6.6 Any effort by a Tenderer to influence Employer or their Consulting Engineers in the process of examination, clarification, evaluation and comparison of Tenders and in decisions concerning award of Contract, may result in the rejection of the Tenderer's Tender.

Clarification of Tenders

6.7 To assist in the examination, evaluation and comparison of Tenders, Employer or their Consulting Engineers may ask Tenderers individually for clarification of their Tenders including amplification of the information submitted in the Memorandum of Supplementary Information and break-downs of unit rates. No change in the price or substance of the Tender shall be sought, offered or permitted except as required to confirm the correction of arithmetical errors discovered during the evaluation of the Tenders. Any such clarification shall be recorded in writing.

Determination of Responsiveness

6.8 Prior to the detailed evaluation of Tenders, each Tender will be examined by the Employer to determine whether it is substantially responsive to the requirements of the Tender Documents.

6.9 For the purpose of these Instructions to Tenderers, a substantially responsive Tender is one which conforms to all the terms, conditions and specifications of the Tender Documents without material deviation or reservation. A material deviation or reservation is one which affects in any substantial way the scope, quality or

performance of the Works, or which limits in any substantial way, inconsistent with the Tender Documents, the Employer's rights or the Contractor's obligations under the Contract, and the rectification of which deviation or reservation would affect unfairly the competitive position of other Tenderers presenting substantially responsive Tenders. An acceptable Tender Security, Security Undertaking and Insurance Undertaking must be available and all documents duly signed by an authorized signatory of the Tenderer.

6.10 Determination of responsiveness should include consideration of the following technical and administrative aspects:

- (a) conformity with Specification and Drawings;
- (b) programme of work;
- (c) sufficiency and quality of Contractor's Equipment;
- (d) methods of working;
- (e) methods of construction;
- (f) subcontractors and suppliers.
- (g) provides ant clarification and substantiation that the Employer may require.

6.11 If a Tender is not substantially responsive to the requirements of the Tender Documents, it will be rejected, and may not subsequently be made responsive by the Tenderer having corrected or withdrawn the non-conforming deviation or reservation. Employer may waive any minor informality or non-conformity or irregularity in a Tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Tenderer.

Correction of Errors

6.12 Tenders determined to be substantially responsive will be checked by the Employer for any arithmetical errors in computation and summation. Errors will be corrected as follows:

- (a) where there is a discrepancy between 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 total amount derived from the multiplication of the unit price and the quantity, the unit rate as quoted will govern unless in the opinion of the Employer there is an obvious gross misplacement of the decimal point in the unit rate, in which event, the Total amount as quoted will govern and the unit rate will be corrected; and
- (c) where there is an error in addition, the total amount will be corrected.

6.13 The net total amount of the corrections made in accordance with paragraph 6.12 hereof will be added to or deducted from (as the case may be) the Adjustment Item in the Grand Summary of the Bill of Quantities, such that the Tender Total entered by the Tenderer remains unchanged. The concurrence of the Tenderer shall be sought and shall be considered as binding upon the Tenderers. If the Tenderer does not accept the corrected amount of the Adjustment Item his Tender will be rejected and the Tender Security will be forfeited.

Evaluation and Comparison of Tenders

- 6.14 Only those Tenders determined to be substantially responsive to the requirements of the Tender Documents will be evaluated.
- 6.15 The following financial factors will be taken into account in order to determine for each Tender the Evaluated Tender Total:
- (a) the Tender Total duly corrected in accordance with clause 6.12 expressed in Pakistani currency in accordance with paragraph 4.11 hereof excluding alternative items, provisional sum and provision, if any for Contingency in the Bills of Quantities;
 - (b) the financial effect of acceptable quantifiable variations or deviations not reflected in the Tender Total.
 - (c) the monetary costs to the Employer of variations in the clause amounts of advance payments for mobilization and Permanent Materials requested by Tenderers pursuant to Clause 4.20 to 4.23 shall be assessed in net current terms on a monthly basis and discounted to present values, using a discount rate of 15% per annum and shall be added to the prospective Tenderer's tender price (corrected for arithmetic error if any). The foregoing benefits so assessed shall be discounted to present values in accordance with and added to respective Tenderer's tender price for comparison purpose only.
- 6.16 Employer reserves the right to accept or reject any variation, deviation or alternative offer. The Technical alternatives if any, variations, deviations, alternative offers and other factors which are in excess of the requirements of the Tender Documents or which otherwise result in the accrual of unsolicited benefits to Employer will not be taken into account in Tender evaluation.
- 6.17 Price adjustment provisions applying to the period of execution of the Contract shall not be taken into account in tender evaluation.

Unbalanced Tender

- 6.18 If the Tender of the successful Tenderer is seriously unbalanced in relation to the Engineer's estimate of the real cost of the works to be performed under the contract, and in the event that a Tenderer is unable to provide a satisfactory explanation for tendered unit prices, which in the judgment of the Employer appear unrealistic, the Tender will be considered unbalanced and Employer reserves the right to reject such a Tender. Alternatively Employer may require the amount of the performance security set forth in Clause 4.14 - 4.18 be increased at the expense of the successful Tenderer to a level sufficient to protect Employer against financial loss in the event of subsequent default of the successful Tenderer under the Contract.

7 AWARD OF CONTRACT

Award Criteria

- 7.1 Subject to paragraph 7.2 hereof, Employer will award the Contract to the Tenderer whose Tender has been determined to be substantially responsive to the requirements of the Tender Documents and who has submitted the lowest Evaluated Tender Total, provided that the technical and administrative aspects of the Tender which are listed in paragraph 6.10 hereof are satisfactory and demonstrate that the Tenderer has the capability and resources to carry out the Contract effectively.

Employer's Right to Accept or Reject Tenders

- 7.2 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 Employer's action.

Notification of Award

- 7.3 The Tenderer whose Tender may be accepted will be required to send authorised representatives to Karachi, at his own expense and within the time notified by Employer, for necessary technical and contractual negotiations. Prior to the expiration of the period of Tender validity prescribed in paragraph 4.12 or 4.13 hereof, Employer will notify the successful Tenderer by email/facsimile or letter that his Tender has been accepted. Issue of such Letter of Acceptance shall mean that a binding contract exists between Employer and the Tenderer. The Tenderer is to acknowledge receipt within 7 days.

Signature of Agreement and Submission of Performance Security

- 7.4 Within 14 days after the date of the Letter of Acceptance, Employer will issue the Form of Agreement in its final form to the successful Tenderer. Within 14 days after its receipt, the successful Tenderer shall sign the Form and return it to Employer. The successful Tenderer shall further be required to sign all Contract Documents (Volumes 1 to 4) and accompaniments at the time of executing the Agreement.
- 7.5 Within 14 days of the receipt of the Letter of Acceptance, the successful Tenderer shall furnish to Employer a performance security in accordance with Clause 10 of the Conditions of Contract, using the forms annexed to the Conditions of Contract or another form acceptable to Employer. The performance security shall be a bank guarantee, in an amount of 10 per cent of the Contract Price and shall be denominated in the currency in which the Contract Price is payable. The performance security shall be issued, by a Scheduled Bank, located in Pakistan, which has been determined by the successful Tenderer to be acceptable to Employer.
- 7.6 Failure of the successful Tenderer to comply with the requirements of paragraphs 7.4 and 7.5 above shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security, in which event Employer may make the award to the Tenderer who submitted the next lowest evaluated Tenderer Total or call for new Tenders.

Notification to Unsuccessful Tenderers

- 7.7 When the successful Tenderer has signed the Contract Agreement and furnished the performance security, Employer will promptly notify unsuccessful Tenderers in writing and discharge their Tender Securities.

Instructions to Tenderers not part of Contract

- 7.8 These Instructions to Tenderers will not form part of the Contract.

TENDERING DATA

Tendering Data

INSTRUCTION TO TENDERERS CLAUSE REFERENCE

Instructions to Tenderers
Clause Reference

1.1 Name of the Project & Summary of the Works

Construction of Marker Piles and Navigational Aids.

The Works to be undertaken under the Contract are located in front of Karachi Nuclear Power Plant and comprise the following works of civil engineering construction;

- * Construction of approximately 16 Nos Marker Piles.
- * Supply and provide Navigational Aids.

1.1 Name and address of the Employer.

Tenders are invited by Pakistan Nuclear Regulatory Authority, hereinafter in these Instructions to Tenderers referred to as the "Employer", who is government - owned body responsible for safe regulation of Nuclear Technology in Pakistan, but exists and operates as a Authority legally separate from the Government.

1.1 Name and Address of the Project Director

Project Director – Marker Piles,
Pakistan Nuclear Regulatory Authority,
Street 11,
Islamabad.

Telephone: + (92-51) 9263017

1.3 Name of the Borrower/Source of Financing/Funding Agency

Pakistan Nuclear Regulatory Authority / International Atomic Energy Agency.

1.3 Amount and type of financing.

Allocation from the PNRA own resources in local Currency that is Pakistan Rupees only.

1.10 Circular Letter

If Employer wishes to make explanations, revisions, additions or deletions to the Tender Documents, for any reason prior to the dead line for submission of tender they will issue such explanations, revisions, additions or deletions to all Tenderers in the form of one or more Circular Letters, which will form Addenda to and shall be incorporated in the Tender Documents and form part of the Contract Documents.

Each Circular Letter will have a serial number. The Tenderer must acknowledge receipt in writing to Employer of each Circular Letter.

2.1 Tender Documents / Documents comprising the Tender

The Tender Documents are contained in four volumes and comprise:

Volume 1:	Instructions to Tenderers Tendering Data General Conditions of Contract Part I Conditions of Particular Applications Part IIA Conditions of Particular Applications Part II B Forms of Performance Security (Performance Guarantee, Performance Bond) Form of Advance Payment Guarantee
Volume 2:	Tender and Appendix Form of Tender Bond Security Undertaking Insurance Undertaking Schedules Memorandum of Supplementary Information Bill of Quantities
Volume 3:	Specification
Volume 4:	Drawing

2.6 Time limit for clarification

The tenderer may seek of any clarifications within 14 days

3.3 Venue, time, and date of the pre-bid meeting.

A pre bid meeting will be held in the Office of the Project Director – Marker Piles, Pakistan Nuclear Regulatory Authority, Street 11, Islamabad at the time and date to be notified by the Employer.

4.1 Tender language.

English language will be used for bidding and correspondence.

Prequalification Information to be updated

Not Applicable

4.11 Tenderers quote entirely in Pak. Rupees but specify the percentages of foreign currency they require.

Tenders to quote bid entirely in Pakistan Rupees.

4.12 Period of tender validity.

Tenders shall remain valid and open for acceptance for a period of 182 calendar days from the latest date for submission of Tenders.

4.14 Amount of Tender Security.

The Tenderer shall furnish, as part of his Tender, at the Tenderers option, a Tender Security in the sum of Rupees 3,500,000/= (Rupees Three Million five hundred thousand only) or an equivalent amount in freely convertible currency. The Security shall be either in the form of a cash deposit (Pay Order) from a scheduled Bank authorized by the State Bank of Pakistan, an irrevocable letter of guarantee from the Scheduled Bank authorized by the State Bank of Pakistan or a foreign bank which has been determined by the Tenderer to be acceptable to the Employer. The format of the guarantee shall be in accordance with the sample Form of Tender Bond included in these Tender Documents. The Tender Security shall be valid for 90 days beyond the validity of the Tender.

5.2 Number of copies of the tender to be completed and returned.

The tenderer shall submit complete one set in original and two copies of the tender documents duly filled and signed, stamped and sealed.

5.4 Employer's address for the purpose of tender submission.

**Project Director – Marker Piles,
Pakistan Nuclear Regulatory Authority,
Street 11,
Islamabad
Pakistan**

Telephone: + (92-51) 9263017

5.3 Deadline for submission of tenders.

As notified by the Employer in Notice Inviting Tender

5.4 Venue, time, and date of tender opening.

**Venue: Project Director – Marker Piles,
Pakistan Nuclear Regulatory Authority,
Street 11,
Islamabad
Pakistan**

Standard form and amount of Performance Security acceptable to the Employer.

An amount equal to 10 % of the Contract Price in the form of Bank Guarantee from any Scheduled A-Class Bank in Pakistan / AA rating Insurance Company approved by PNRA.

Tenderers' Registration with Pakistan Engineering Council.

The Tenderers shall be registered with or licensed by the Pakistan Engineering Council as Contractor in accordance with the provisions of Bye laws called "the construction and Operation of Engineering Works Bye Laws 1987" issued under Statutory Notifications SRO No 568(1)/87 dated 8th July 87.

No tenderer shall be allowed to participate in Tendering for these works unless his constructors license conforms to not less than required C-2 limit category as prescribed in the Bye Laws.

The Tenderer shall submit to the Employer valid authenticated copy of his Constructors License well before the Tender opening date. Tenders shall be accepted only after the license is verified by the Employer to be acceptable.

Ender shall not be opened unless the above conditions are complied with by the Tenderers.

List of approved Insurance Companies by the Employer

National Insurance Company for purposes of provisions of Sub Clause 25.5 of the Conditions of particular Applications.

Other insurance companies approved by the Employer for the Purpose other then the provisions of eh sub clause 25.5 of the Conditions f Particular Applications must carry minimum 'AA' rating of PACRA

- a. Eastern Federal Union General Insurance Company Ltd.
- b. Adamjee Insurance Company
- c. National Insurance Company
- d. New Jubilee Insurance Company



FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS

CONDITIONS OF CONTRACT

FOR WORKS OF CIVIL

ENGINEERING CONSTRUCTION

PART I GENERAL CONDITIONS

WITH FORMS OF TENDER AND AGREEMENT

FOURTH EDITION 1987

Reprinted 1988 with editorial amendments

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

FIDIC Secretariat

P.O. Box 86

1000 Lausanne 12

Switzerland

e-mail: fidic.pub@fidic.org – FIDIC.org/bookshop]

CONTENTS

PART I: GENERAL CONDITIONS

Definitions and Interpretation

- 1.1 Definitions
- 1.2 Headings and Marginal Notes
- 1.3 Interpretation
- 1.4 Singular and Plural
- 1.5 Notices, Consents, Approvals, Certificates and Determinations

Engineer and Engineer's Representative

- 2.1 Engineer's Duties and Authority
- 2.2 Engineer's Representative
- 2.3 Engineer's Authority to Delegate
- 2.4 Appointment of Assistants
- 2.5 Instructions in Writing
- 2.6 Engineer to Act Impartially

Assignment and Subcontracting

- 3.1 Assignment of Contract
- 4.1 Subcontracting
- 4.2 Assignment of Subcontractors' Obligations

Contract Documents

- 5.1 Language/s and Law
- 5.2 Priority of Contract Documents
- 6.1 Custody and Supply of Drawings and Documents
- 6.2 One Copy of Drawings to be Kept on Site
- 6.3 Disruption of Progress
- 6.4 Delays and Cost of Delay of Drawings
- 6.5 Failure by Contractor to Submit Drawings
- 7.1 Supplementary Drawings and Instructions
- 7.2 Permanent Works Designed by Contractor
- 7.3 Responsibility Unaffected by Approval

General Obligations

- 8.1 Contractor's General Responsibilities
- 8.2 Site Operations and Methods of Construction
- 9.1 Contract Agreement
- 10.1 Performance Security
- 10.2 Period of Validity of Performance Security
- 10.3 Claims under Performance Security

-
- 11.1 Inspection of Site
 - 12.1 Sufficiency of Tender
 - 12.2 Not Foreseeable Physical Obstructions or Conditions
 - 13.1 Work to be in Accordance with Contract
 - 14.1 Programme to be Submitted
 - 14.2 Revised Programme
 - 14.3 Cash Flow Estimate to be Submitted
 - 14.4 Contractor not Relieved of Duties or Responsibilities
 - 15.1 Contractor's Superintendence
 - 16.1 Contractor's Employees
 - 16.2 Engineer at Liberty to Object
 - 17.1 Setting-out
 - 18.1 Boreholes and Exploratory Excavation
 - 19.1 Safety, Security and Protection of the Environment
 - 19.2 Employer's Responsibilities
 - 20.1 Care of Works
 - 20.2 Responsibility to Rectify Loss or Damage
 - 20.3 Loss or Damage Due to Employer's Risks
 - 20.4 Employer's Risks
 - 21.1 Insurance of Works and Contractor's Equipment
 - 21.2 Scope of Cover
 - 21.3 Responsibility for Amounts not Recovered
 - 21.4 Exclusions
 - 22.1 Damage to Persons and Property
 - 22.2 Exceptions
 - 22.3 Indemnity by Employer
 - 23.1 Third Party Insurance (including Employer's Property)
 - 23.2 Minimum Amount of Insurance
 - 23.3 Cross Liabilities
 - 24.1 Accident or Injury to Workmen
 - 24.2 Insurance Against Accident to Workmen
 - 25.1 Evidence and Terms of Insurances
 - 25.2 Adequacy of Insurances
 - 25.3 Remedy on Contractor's Failure to Insure
 - 25.4 Compliance with Policy Conditions
 - 26.1 Compliance with Statutes, Regulations
 - 27.1 Fossils
 - 28.1 Patent Rights
 - 28.2 Royalties
 - 29.1 Interference With Traffic and Adjoining Properties
 - 30.1 Avoidance of Damage to Roads
 - 30.2 Transport of Contractor's Equipment or Temporary Works
 - 30.3 Transport of Materials or Plant
 - 30.4 Waterborne Traffic
 - 31.1 Opportunities for Other Contractors
 - 31.2 Facilities for Other Contractors
 - 32.1 Contractor to Keep Site Clear
 - 33.1 Clearance of Site on Completion

Labour

- 34.1 Engagement of Staff and Labour
- 35.1 Returns of Labour and Contractor's Equipment

Materials, Plant and Workmanship

- 36.1 Quality of Materials, Plant and Workmanship
- 36.2 Cost of Samples
- 36.3 Cost of Tests
- 36.4 Cost of Tests not Provided for
- 36.5 Engineer's Determination where Tests not Provided for
- 37.1 Inspection of Operations
- 37.2 Inspection and Testing
- 37.3 Dates for Inspection and Testing
- 37.4 Rejection
- 37.5 Independent Inspection
- 38.1 Examination of Work before Covering up
- 38.2 Uncovering and Making Openings
- 39.1 Removal of Improper Work, Materials or Plant
- 39.2 Default of Contractor in Compliance

Suspension

- 40.1 Suspension of Work
- 40.2 Engineer's Determination following Suspension
- 40.3 Suspension lasting more than 84 Days

Commencement and Delays

- 41.1 Commencement of Works
- 42.1 Possession of Site and Access Thereto
- 42.2 Failure to Give Possession
- 42.3 Rights of Way and Facilities
- 43.1 Time for Completion
- 44.1 Extension of Time for Completion
- 44.2 Contractor to Provide Notification and Detailed Particulars
- 44.3 Interim Determination of Extension
- 45.1 Restriction on Working Hours
- 46.1 Rate of Progress
- 47.1 Liquidated Damages for Delay
- 47.2 Reduction of Liquidated Damages
- 48.1 Taking-Over Certificate
- 48.2 Taking-Over of Sections or Parts
- 48.3 Substantial Completion of Parts
- 48.4 Surfaces Requiring Reinstatement

Defects Liability

- 49.1 Defects Liability Period
- 49.2 Completion of Outstanding Work and Remedying Defects
- 49.3 Cost of Remedying Defects
- 49.4 Contractor's Failure to Carry Out Instructions
- 50.1 Contractor to Search

Alterations, Additions and Omissions

- 51.1 Variations
- 51.2 Instructions for Variations
- 52.1 Valuation of Variations
- 52.2 Power of Engineer to Fix Rates
- 52.3 Variations Exceeding 15 percent
- 52.4 Daywork

Procedure for Claims

- 53.1 Notice of Claims
- 53.2 Contemporary Records
- 53.3 Substantiation of Claims
- 53.4 Failure to Comply
- 53.5 Payment of Claims

Contractor's Equipment, Temporary Works and Materials

- 54.1 Contractor's Equipment, Temporary Works and Materials; Exclusive Use for the Works.
- 54.2 Employer not Liable for Damage
- 54.3 Customs Clearance
- 54.4 Re-export of Contractor's Equipment
- 54.5 Conditions of Hire of Contractor's Equipment
- 54.6 Costs for the Purpose of Clause 63
- 54.7 Incorporation of Clause in Subcontracts
- 54.8 Approval of Materials not Implied

Measurement

- 55.1 Quantities
- 56.1 Works to be Measured
- 57.1 Method of Measurement
- 57.2 Breakdown of Lump Sum Items

Provisional Sums

- 58.1 Definition of “Provisional Sum”
- 58.2 Use of Provisional Sums
- 58.3 Production of Vouchers

Nominated Subcontractors

- 59.1 Definition of “Nominated Subcontractors”
- 59.2 Nominated Subcontractors; Objection to Nomination
- 59.3 Design Requirements to be Expressly Stated
- 59.4 Payments to Nominated Subcontractors
- 59.5 Certification of Payments to Nominated Subcontractors

Certificates and Payment

- 60.1 Monthly Statements
- 60.2 Monthly Payments
- 60.3 Payment of Retention Money
- 60.4 Correction of Certificates
- 60.5 Statement at Completion
- 60.6 Final Statement
- 60.7 Discharge
- 60.8 Final Payment Certificate
- 60.9 Cessation of Employer’s Liability
- 60.10 Time for Payment
- 61.1 Approval only by Defects Liability Certificate
- 62.1 Defects Liability Certificate
- 62.2 Unfulfilled Obligations

Remedies

- 63.1 Default of Contractor
- 63.2 Valuation at Date of Termination
- 63.3 Payment after Termination
- 63.4 Assignment of Benefit of Agreement
- 64.1 Urgent Remedial Work

Special Risks

- 65.1 No Liability for Special Risks
- 65.2 Special Risks
- 65.3 Damage to Works by Special Risks
- 65.4 Projectile, Missile

- 65.5 Increased Costs arising from Special Risks
- 65.6 Outbreak of War
- 65.7 Removal of Contractor's Equipment on Termination
- 65.8 Payment if Contract Terminated

Release from Performance

- 66.1 Payment in Event of Release from Performance

Settlement of Disputes

- 67.1 Engineer's Decision
- 67.2 Amicable Settlement
- 67.3 Arbitration
- 67.4 Failure to Comply with Engineer's Decision

Notices

- 68.1 Notice to Contractor
- 68.2 Notice to Employer and Engineer
- 68.3 Change of Address

Default of Employer

- 69.1 Default of Employer
- 69.2 Removal of Contractor's Equipment
- 69.3 Payment on Termination
- 69.4 Contractor's Entitlement to Suspend Work
- 69.5 Resumption of Work

Changes in Cost and Legislation

- 70.1 Increase or Decrease of Cost
- 70.2 Subsequent Legislation

Currency and Rates of exchange

- 71.1 Currency Restrictions
- 72.1 Rates of Exchange
- 72.2 Currency Proportions
- 72.3 Currencies of Payment for Provisional Sums

REFERENCE TO PART II

PART I - GENERAL CONDITIONS**Definitions and Interpretation****1.1 Definitions**

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.
- (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 of any Section or part thereof are taken over by the Employer.
- (ii) "Taking-Over Certificate" means a certificate issued pursuant to Clause 48.
- (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.

1.2 Headings and Marginal Notes

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.

1.3 Interpretation

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

1.4 Singular and Plural

Words importing the singular only also include the plural and vice versa where the context requires.

1.5 Notices, Consents, Approvals, Certificates and Determinations

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

2.1 Engineer's Duties and Authority

- (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.

2.2 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.

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.

2.4 **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.

2.5 **Instructions in Writing**

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 instructions 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.

2.6 **Engineer to Act Impartially**

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

3.1 **Assignment of Contract**

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 there under, 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.

4.1 Subcontracting

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,
- (c) the subcontracting of any part of the Works for which the Subcontractor is named in the Contract.

4.2 Assignment of Subcontractors' Obligations

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

5.1 Language/s and Law

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".

5.2 **Priority of Contract Documents**

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.

6.1 **Custody and Supply of Drawings and Documents**

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.

6.2 **One Copy of Drawings to be Kept on Site**

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.

6.3 **Disruption of Progress**

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.

6.4 Delay and Cost of Delay of Drawings

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 6.3, 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.

6.5 Failure by Contractor to Submit Drawings

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.

7.1 Supplementary Drawings and Instructions

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.

7.2 Permanent Works Designed by Contractor

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:

- (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.

7.3 Responsibility Unaffected by Approval

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

8.1 Contractor's General Responsibilities

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, material, 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.

8.2 Site Operations and Methods of Construction

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.

9.1 Contract Agreement

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.

10.1 Performance Security

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.

10.2 Period of Validity of Performance Security

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.

10.3 **Claims under Performance Security**

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.

11.1 **Inspection of Site**

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.

12.1 **Sufficiency of Tender**

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.

12.2 **Not Foreseeable Physical Obstructions or Conditions**

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.

13.1 **Work to be in Accordance with Contract**

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).

14.1 **Programme to be Submitted**

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 **Revised Programme**

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 **Cash Flow Estimate to be Submitted**

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 **Contractor not Relieved of Duties or Responsibilities**

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.

15.1 **Contractor's Superintendence**

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.

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.

16.1 **Contractor's Employees**

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 **Engineer at Liberty to Object**

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.

17.1 Setting-out

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 52 and shall notify the Contractor accordingly, with a copy to the Employer.

The checking of any setting-out or of any line or 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.

18.1 Boreholes and Exploratory Excavation

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.

19.1 Safety, Security and Protection of the Environment

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 the same is under his 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.

19.2 **Employer's Responsibilities**

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.

20.1 **Care of Works**

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.

20.2 **Responsibility to Rectify Loss or Damage**

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.

20.3 **Loss or Damage Due to Employer's Risks**

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 or risks causing loss or damage any such determination shall take into account the proportional responsibility of the Contractor and the Employer.

20.4 **Employer's Risks**

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 of his Subcontractor 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.

21.1 **Insurance of Works and Contractor's Equipment**

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.

21.2 Scope of Cover

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 cause occurring prior to the commencement of the Defects Liability Periods, and
 - (ii) for loss or damage occasioned by the Contractor in the course of any operations carried out by him for the purpose of complying with his obligations under Clauses 49 and 50.

21.3 Responsibility for Amounts not Recovered

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.

21.4 Exclusions

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

- (a) war, hostilities (where 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, or
- (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

22.1 Damage to Persons and Property

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.

22.2 Exceptions

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, is 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.

22.3 Indemnity by Employer

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

23.1 Third Party Insurance (including Employer's Property)

The Contractor shall, without limiting his or the Employer's obligation 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.

23.2 Minimum Amount of Insurance

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

23.3 Cross Liabilities

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

24.1 Accident or Injury to Workmen

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.

24.2 Insurance Against Accident to Workmen

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 the 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.

25.1 Evidence and Terms of Insurances

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.

25.2 Adequacy of Insurances

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.

25.3 Remedy on Contractor's Failure to Insure

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.

25.4 Compliance with Policy Conditions

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.

26.1 Compliance with Statutes, Regulations

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.

27.1 Fossil

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.

28.1 Patent Rights

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.

28.2 Royalties

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.

29.1 Interference with Traffic and Adjoining Properties

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.

30.1 Avoidance of Damage to Roads

The Contractor shall use every reasonable means to prevent any of the roads or bridges 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.

30.2 Transport of Contractor's Equipment or Temporary Works

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.

30.3 Transport of Materials or Plant

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.

30.4 Waterborne Traffic

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.

31.1 Opportunities for Other Contractors

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.

31.2 Facilities for Other Contractors

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

- (a) make available to any 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.

32.1 Contractor to Keep Site Clear

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.

33.1 Clearance of Site on Completion

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 materials, 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.

Labour

34.1 Engagement of Staffs and Labour

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.

35.1 Returns of Labour and Contractor's Equipment

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

36.1 Quality of Materials, Plant and Workmanship

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.

36.2 **Cost of Samples**

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.

36.3 **Cost of Tests**

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 for 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.

36.4 **Cost of Tests not Provided for**

If any test required by the Engineer which is:

- (a) not intended by or provided for,
- (b) (in the cases above mentioned) not so particularised, or
- (c) (through 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.

36.5 **Engineer's Determination where Tests not Provided for**

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 of 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.

37.1 **Inspection of Operations**

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.

37.2 **Inspection and Testing**

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.

37.3 **Dates for Inspection and Testing**

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 tests readings. If the Engineer has not attended the tests, he shall accept the said readings as accurate.

37.4 **Rejection**

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 or 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 test 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.

37.5 **Independent Inspection**

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.

38.1 Examination of Work before Covering up

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.

38.2 Uncovering and Making Openings

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 the Contractor's costs in respect of such of 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.

39.1 Removal of Improper Work, Materials or Plant

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.

39.2 Default of Contractor in Compliance

In case of default on the part of 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 Suspension of Work**

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 of 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.

40.2 Engineer's Determination following Suspension

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.

40.3 Suspension lasting more than 84 Days

If the progress of the Works or any part thereof is suspended on the written instructions of the Engineer and if permission to resume work is not given by the Engineer within a period for 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 terminates his employment under the Contract in accordance with the provisions of Sub-Clause 69.1, whereupon the provisions of Sub-Clause 69.2 and 69.3 shall apply.

Commencement and Delays

41.1 Commencement of Works

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

42.1 Possession of Site and Access Thereto

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.

42.2 Failure to Give Possession

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.

42.3 **Rights of Way and Facilities**

The Contractor shall bear all costs and charges for special or temporary wayleaves 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.

43.1 **Time for Completion**

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.

44.1 **Extension of Time for Completion**

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.

44.2 **Contractor to Provide Notification and Detailed Particulars**

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.

44.3 **Interim Determination of Extension**

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.

45.1 **Restriction on Working Hours**

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.

46.1 **Rate of Progress**

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 cost 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.

47.1 Liquidated Damages for Delay

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.

47.2 Reduction of Liquidated Damages

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.

48.1 Taking-Over Certificate

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 the Works specified therein. The Contractor shall be entitled to receive such 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.

48.2 Taking Over of Sections or Parts

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).

48.3 Substantial Completion of Parts

If any part of the Permanent Works has been substantially completed and has satisfactorily passed any Tests on Completion prescribed by the Contractor, 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.

48.4 Surfaces Requiring Reinstatement

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 Defects Liability Period**

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 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.

49.2 Completion of Outstanding Work and Remedying Defects

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 remedying 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.

49.3 Cost of Remedying Defects

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) the 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.

49.4 Contractor's Failure to Carry Out Instructions

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 cost 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.

50.1 Contractor to Search

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 a 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

51.1 Variations

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 of 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.

51.2 Instructions for Variations

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.

52.1 Valuation of Variations

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.

52.2 Power of Engineer to Fix Rates

Provided that if the nature or amount of any varied work relative to the nature or amount of the whole of the Works or to any part thereof, is such that, in the opinion of the Engineer, the rate or price contained in the Contract for any item of the Works is, by reason of such varied work, rendered inappropriate or inapplicable, then, after due consultation by the Engineer with the Employer and the Contractor, a suitable rate or price shall be agreed upon between the Engineer and the Contractor. In the event of disagreement the Engineer shall fix such other rate or price as is, 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.

52.3 Variations Exceeding 15 per cent

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 adjustment 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 sums 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.

52.4 Daywork

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 provide the amounts paid and, before ordering material, 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

53.1 Notice of Claims

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.

53.2 Contemporary Records

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.

53.3 Substantiation of Claims

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.

53.4 Failure to Comply

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-Clause 53.2 and 53.3).

53.5 Payment of Claims

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

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.

54.2 Employer not Liable for Damage

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.

54.3 Customs Clearance

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.

54.4 Re-export of Contractor's Equipment

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 Contract.

54.5 Conditions of Hire of Contractor's Equipment

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 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 respect 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 execution and completing the Works and remedying any defects therein, under the terms of the said Clause 63.

54.6 Costs for the Purpose of Clause 63

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 provision 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 remedying of any defects therein.

54.7 Incorporation of Clause in Subcontracts

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.

54.8 Approval of Materials not Implied

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**55.1 Quantities**

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 fulfillment of his obligations under the Contract.

56.1 Works to be Measured

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.

57.1 **Method of Measurement**

The Works shall be measured net, notwithstanding any general or local custom, except where otherwise provided for in the Contract.

57.2 **Breakdown of Lump Sum Items**

For the purposes of statements submitted in accordance with Sub-Clause 60.1, the 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

58.1 **Definition of "Provisional Sum"**

"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.

58.2 **Use of Provisional Sums**

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, material, 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 therefor shall be determined and paid in accordance with Sub-Clause 59.4.

58.3 Production of Vouchers

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**59.1 Definition of "Nominated Subcontractors"**

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".

59.2 Nominated Subcontractors; Objection to Nomination

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 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 fulfill 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.

59.3 Design Requirements to be Expressly Stated

If in connection with any Provisional Sum the services to be provided include any matter of design or specification of any part of the Permanent Works or of any 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 fulfill such liabilities.

59.4 **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.

59.5 **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 payment, 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 retention, 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

60.1 Monthly Statements

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 the 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.

60.2 Monthly Payments

The Engineer shall, within 28 days of receiving such statement, certify to the Employer the amount of payment to the Contractor which he considers due and payable in respect thereof, subject:

- (a) firstly, to the retention of the account calculated by applying the Percentage of Retention stated in the Appendix to Tender, to the amount to which the Contractor is entitled under paragraph (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.

60.3 Payment of Retention Money

- (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 part 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 Clause 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.

60.4 Correction of Certificates

The Engineer may by any Interim Payment Certificate make any correction or modification in any previous 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.

60.5 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 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 verify payment in accordance with Sub-Clause 60.2.

60.6 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 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.

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.

60.7 Discharge

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.

60.8 Final Payment Certificate

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.

60.9 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 60.5.

60.10 Time for Payment

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. In the 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.

61.1 Approval only by Defects Liability Certificate

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

62.1 Defects Liability Certificate

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 Clause 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.

62.2 Unfulfilled Obligations

Notwithstanding the issue of the Defects Liability Certificate the Contractor and the Employer shall remain liable for the fulfillment 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 of 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 Default of Contractor

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 if any act is done or event occurs with respect to the Contractor or his assets which, 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 Contract, if the Engineer certifies to the Employer, with a copy to the Contractor, that, in his opinion, the Contractor:

- (a) has repudiated the Contract, or
- (b) without reasonable excuse has failed
 - (i) to commence the Works in accordance with Sub-Clause 41.1,
 - (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 the Site and the Works and terminate the employment of the Contractor without thereby releasing the Contractor from any of his obligations or liabilities under the Contract, or affecting the rights and authorities 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, Temporary Works and materials as he or they may think proper.

63.2 Valuation at Date of Termination

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.

63.3 Payment after Termination

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 thereafter 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.

63.4 Assignment of Benefit of Agreement

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 or materials or services and/or for the execution of any work for the purposes of the Contract, which the Contractor may have entered into.

64.1 Urgent Remedial Work

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

65.1 No Liability for Special Risks

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 of 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 of or damage to property, whether of the Employer or third parties, or
- (c) injury or loss of life.

65.2 Special Risks

The Special Risks are:

- (a) the risks defined under paragraphs (a), (c), (d) and (e) of Sub-Clause 20.4, and
- (b) the risks defined under paragraph (b) of Sub-Clause 20.4 insofar as these relate to the country in which the Works are to be executed.

65.3 Damage to Works by Special Risks

If the Works or any materials or Plant on or near or 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.

65.4 Projectile, Missile

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.

65.5 Increased Costs arising from Special Risks

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 Work (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.

65.6 Outbreak of War

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 endeavour 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 portion 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 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.

Release from Performance

66.1 Payment in Event of 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 party to fulfill 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

67.1 Engineer's Decision

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 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.

67.2 Amicable Settlement

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.

67.3 Arbitration

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 progress of the Works.

67.4 Failure to Comply with Engineer's Decision

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-Clause 67.1 and 67.2 shall not apply to any such reference.

Notices**68.1 Notice to Contractor**

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.

68.2 Notice to Employer and Engineer

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.

68.3 Change of Address

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 Default of Employer**

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 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.

69.2 Removal of Contractor's Equipment

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 dispatch, remove from the Site all Contractor's Equipment brought by him thereon.

69.3 Payment on Termination

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.

69.4 Contractor's Entitlement to Suspend Work

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.

69.5 Resumption of Work

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

70.1 Increase or Decrease of Cost

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.

70.2 Subsequent Legislation

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 State 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

71.1 Currency Restrictions

If, after the date 28 days prior to the latest date for submission of tenders for the Contract, the Government or authorized 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.

72.1 **Rates of Exchange**

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.

72.2 **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.

72.3 **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-Clauses 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

INDEX**PART I GENERAL CONDITIONS**

INDEX	Clause
Access to Site	42.1
Access to Works, Engineer	37.1
Access, Contractor to Satisfy Himself	11.1
Accident or Injury to Workmen - Insurance Against	24.2
Accident or Injury to Workmen - Liability for	24.1
Address, Change of	68.3
Adequacy of Insurance	25.2
Adjustment of Contract Price if Variations Exceed 15 percent of Tender Sum	52.3
Agreement	9.1
Alterations, Additions and Omissions	51&52
Ambiguities in Contract Documents	5.2
Amicable Settlement of Disputes	67.2
Appointment of Assistants to Engineer	2.4
Approval by the Engineer	7.3
Approval of Materials not Implied	54.8
Approval Only by Defects Liability Certificate	61.1
Arbitration	67.3
Assignment of Contract	3.1
Avoidance of Damage to Roads	30.1
Bills of Quantities – Estimated Only	55.1
Boreholes and Exploratory Excavation	18.1
Breakdown of Lump Sum items	57.2
Care of works	20.1
Cash Flow Estimate to be Submitted	14.3
Certificate, Final	60.8
Certificate and Payment, Monthly Statements	60.1
Certificates, Correction of	60.4
Certificate, Taking-Over	48.1
Certification of Completion of Works	48.1
Certification of Completion of Sections or Parts	48.2
Cessation of Employer's Liability	60.9
Change of Address, Notice of	68.3
Claims, Contemporary Records	53.2
Claims, Notice of	53.1
Claims, Payment of	53.5
Claims, Substantiation of	53.3
Claims Under Performance Security	10.3
Clearance of Site on Completion	33.1
Commencement of Works	41.1
Completion of Works, Time for	43.1
Completion of Works, Time for, Extension of	44.1
Completion, Statement at	60.5

	Clause
INDEX	
Compliance with Insurance Policy Conditions	25.4
Compliance with Statutes and Regulations	26.1
Contemporary Records for Claims	53.2
Contract Agreement	9.1
Contract Not Relieved of Duties or Responsibilities	14.4
Contractor's Employees	16.1
Contractor's Employees, Engineer at Liberty to Object	16.2
Contractor's Entitlement to Suspend Work for Employer's Default	69.4
Contractor's Equipment, Conditions of Hire	54.5
Contractor's Equipment, Employer not Liable for Damage	54.2
Contractor's Equipment, Insurance of	21.1
Contractor's Equipment, Reference in Subcontracts	54.7
Contractor's Equipment, Temporary Works and Material; Exclusive Use for the Works	54.1
Contractor's Equipment, Transport of	30.2
Contractor's Failure to Carry Out Instructions	49.4
Contractor's Failure to Insure, Remedy	25.3
Contractor's General Responsibilities	8.1
Contractor's Superintendence	15.1
Contractor to Keep Site Clear	32.1
Contractor to Search	50.1
Correction of Certificates	60.4
Cost of Remedying Defects	49.3
Cost of Samples	36.2
Cost of Tests	35.3
Cost of Tests not Provided for	36.4
Covering up Work, Examination Before	38.1
Cross Liabilities	23.3
Currencies of Payment for Provisional Sums	72.3
Currencies, Rates of Exchange	72.1
Currency Restrictions	71.1
Custody and Supply of Drawings and Documents	6.1
Customs Clearance	54.3
Damage to Persons and Property	22.1
Damage to Roads, Avoidance of	30.1
Damage to Works, Special Risks	65.3
Damages, Liquidated	47.1
Dates for Inspection and Testing	37.3
Daywork	52.4
Decrease or Increase of Costs	70.1
Default of Contractor in Compliance with Instructions on Improper Work	39.2
Default of Contractor, Remedies for	63.1
Default of Employer	69.1
Defective Materials and Work	39.1
Defects, Contractor to Search for, if Required	50.1

INDEX	Clause
Defects, Cost of Remedying	49.3
Defects Liability Certificate	62.1
Defects Liability Period	49.1
Defects, Remedying of	49.2
Definitions	1.1
Delay, Liquidated Damages for	47.1
Delays and Cost of Delay of Drawings	6.4
Design by Nominated Subcontractors	59.3
Discharge	60.7
Discrepancies in Documents	5.2
Dismissal of Contractor's Employees	16.2
Disorderly Conduct, etc.	34.1
Dispute, Engineer's Decision	67.1
Disruption of Progress	6.3
Documents Mutually Explanatory	5.2
Drawings	6&7
Drawings and Documents - Custody and Supply of	6.1
Drawings and Instructions – Supplementary	7.1
Drawing, Copy to be Kept on Site	6.2
Drawings, Delays and Cost of Delay of Drawings	6.4
Drawings, Failure by Contractor to submit	6.5
Employer not liable for Damage to Contractor's Equipment etc.	54.2
Employer's Liability, Cession of	60.9
Employer's Responsibilities	19.2
Employer' Risks	20.4
Engagement of Staff and Labour	34.1
Engineer's Authority to Delegate	2.3
Engineer's Determination Where Tests not Provided for	36.5
Engineer's Duties and Authority	2.1
Engineer to Act Impartially	2.6
Environment – Protection of	19.1
Errors in Setting Out	17.1
Evidence and Terms of Insurance	25.1
Examination of Work before Covering Up	38.1
Exceptions	22.2
Exchange, Rates of	72.1
Exclusions	21.4
Extension of Time, due to Engineer's Failure to give Possession of Site	42.2
Extension of Time for Completion	44.1
Extension of Time for Completion, Contractor's Claims	44.2
Extension of Time for Completion, Engineer's Determination	44.3
Extraordinary Traffic	30.
Facilities for Other Contractors	31.2
Facilities - Rights of Way and	42.3
Failure by Contractor to Submit Drawings	6.5

	Clause
INDEX	
Failure to Comply with Claims Procedure	53.4
Failure to Comply with Engineer's Decision	67.4
Failure to give Possession of Site	42.2
Faulty Work, Removal of	39.1
Fees and Notices	26.1
Fencing, Watching, Lighting, etc.	19.1
Final Payment Certificate	60.8
Final Statement	60.6
Foreign Currencies, Payment in	72.
Fossils	27.1
Foundations, Examination of	38.1
General Responsibilities of Contractor	8.1
Giving of Notices – Payment of Fees	26.1
Headings and Marginal Notes	1.2
Improper Work and Materials, Removal of	39.1
Increase or Decrease of Costs	70.1
Indemnity by Contractor	22.1 & 24.1
Indemnity by Employer	22.3
Independent Inspection	37.5
Injury to Persons – Damage to Property	22.1
Injury to Workmen	24.1
Inspection and Testing	37.2
Inspection of Testing , Dates for	37.3
Inspection of Foundations, etc.	38.1
Inspection of Operations	37.1
Inspection of Site by Contractor	11.1
Instructions for Variations	51.2
Instructions in Writing	2.5
Instructions, Supplementary	7.1
Insurance, Adequacy of	25.2
Insurance, Evidence and Terms of	25.1
Insurance, Minimum Amount of	23.2
Insurance of Works and Contractor's Equipment	21.1
Insurance,. Remedy on Failure to Insurance	25.3
Insurance, responsibility for Amounts not Recovered	21.3
Insurance, Scope of Cover	21.2
Insurance, Third Party	23.1
Insurance, Workmen	24.2
Interference with Traffic and Adjoining Properties	29.1
Interim Determination of Extension	44.3
Interpretations	1.3
Labour, Engagements of	34.1
Language/s and Law	5.1
Law to which Contract Subject	5.1

INDEX	Clause
Legislation, Subsequent	70.2
Lighting, Fencing, Watching, etc.	19.1
Liquidated Damages for Delay	47.1
Liquidated Damages, Reduction of	47.2
Loss or Damage due to Employer's Risks	20.3
Loss or Damage – Responsibility to Rectify	20.2
Lump-Sum Items – Breakdown of	57.2
Materials and Plant, Transport of	30.3
Materials - Approval of, etc, not Implied	54.8
Materials, Improper – Removal of	39.1
Materials, Quality of	36.1
Materials, Supply of	8.1
Measurement by Engineer	56.1
Measurement, Method of	57.1
Measurement, Quantities Estimated Only	55.1
Methods of Construction	8.2
Minimum Amount of Insurance	23.2
Monthly Payments	60.2
Nominated Subcontractors, Certification of Payments to	59.5
Nominated Subcontractors, Definition	59.1
Nominated Subcontractors, Design by	59.3
Nominated Subcontractors, Objection to Nomination	59.2
Nominated Subcontractors, Payment of	59.4
Not Foreseeable Physical Obstructions or Conditions	12.2
Notice of Claims	53.1
Notices and Fees, Payment of	26.1
Notices, Consents and Approvals	1.5
Notice to Contractor	68.1
Notice to Employer and Engineer	68.2
Objections to Contractor's Employees	16.2
Obstructions or Conditions - Not Foreseeable Physical	12.2
Omissions, Alterations and Additions	59.0
Openings, Uncovering and Making	38.2
Operations, Inspection of	37.1
Order of Work, Contractor to Furnish Programme	14.1
Other Contractors, Opportunities for	31.1
Patent Rights	28.1
Payment if Contract Terminated for Contractor's Default	63.3
Payment if Contract Terminated for Employer's Default	69.3
Payment of Claims	53.5
Payment, Time for	60.10
Performance Security	10.1
Performance Security – Claims Under	10.3
Performance Security – Period of Validity	10.2
Period of Defects Liability	49.1

	Clause
INDEX	
Permanent Works Designed by Contractor	7.2
Physical Obstruction or Conditions – Not Foreseeable	12.2
Physical Obstruction or Conditions – Engineer’s Determination	12.3
Plant and Materials, Transport of	30.3
Plant, Conditions of Hire	54.5
Plant, Customs Clearance	54.3
Plant, Employer not Liable for Damage to	54.2
Plant, etc. – Exclusive Use for the Works	54.1
Plant, Quality of	36.1
Plant, Re-export of	54.4
Plant, Removal of	39.1
Policy of Insurance – Compliance with Conditions	25.4
Possession of Site	42.1
Possession of Site, Failure to Give	42.2
Power of Engineer to Fix rates	52.2
Priority of Contract Documents	5.2
Programme to be Submitted	14.1
Progress – Disruption of	6.3
Progress-Rate of	46.1
Protection of Environment	19.1
Provision to Indemnify Contractor	22.3
Provision to Indemnify Employer	22.2
Provisional Sums, Currencies of Payment	72.3
Provisional Sums, Definition	58.1
Provisional Sums, Production of Vouchers	58.3
Provisional Sums, Use of	58.2
Quality of Materials and Workmanship	36.1
Quantities	55.1
Rate of Progress	46.1
Rates of Exchange	72.1
Rates, Power of Engineer to Fix	52.2
Rectification of Loss or Damage	20.2
Reduction of Liquidated Damages	47.2
Re-export of Plant	54.4
Regulations, Status etc. Compliance with	26.1
Rejection	37.4
Release from Performance	66.1
Remedies for Default of Contractor	63.1
Remedying of Defects,	49.2
Remedying of Defects, Cost of	49.3
Remedy on Contractor’s Failure	25.3
Removal of Contractor’s Employees	16.2
Removal of Contractor’s Equipment	69.2
Removal of Improper Work, Materials or Plant	39.1

INDEX	Clause
Removal of Plant, etc.	65.7
Responsibility to Rectify Loss or Damage	20.2
Responsibility Un-affected by Approval	7.3
Restriction on Working Hours	45.1
Resumption of Work	69.5
Retention Money, Payment of	50.3
Returns of Labour and Contractor's Equipment	35.1
Revised Programme	14.2
Rights of Way and Facilities	42.3
Risks, Employer's	20.4
Risks, Special	65.0
Roads, etc, - Damage by Extraordinary Traffic	30.1
Roads, Interference with Access to	29.1
Royalties	28.2
Safety, Security and Protection of the Environment	19.1
Samples, Cost of	36.2
Security, Safety and Protection of the Environment	19.1
Setting-Out	17.1
Singular and Plural	1.4
Site, Clearance on Completion	33.1
Site, Contractor to Keep Clear	32.1
Site Inspection by Contractor	11.1
Site Operations and Methods of Construction	8.2
Site, Possession of	42.1
Special Risks	65.0
Staff, Engagement of	34.1
Statement at Completion	60.5
Statement, Final	60.6
Statutes, Regulations, etc. – Compliance with	26.1
Subcontracting	4.1
Subcontractors, Nominated	59.0
Subcontractors, Responsibility of the Contractor for Acts and Default of	4.1
Subsequent Legislation	70.2
Substantial Completion of Sections or Parts	48.3
Sufficiency of Tender	12.1
Supply of Plant, Materials and Labour	8.1
Surfaces Requiring Reinstatement	48.4
Supervision, Engineer's Determination	40.2
Suspension lasting more than 84 days	40.3
Suspension of Work	40.1
Taking Over Certificate	48.1
Taking Over of Sections or Parts	48.2
Tender Documents	11.1
Tender, Sufficiency of	12.1
Termination of Contract by Employer	63.1

	Clause
INDEX	
Termination of Contract by Employer, Assignment of Benefit	63.4
Terms of Insurance	25.1
Tests, Cost of	36.3
Test not Provide for – Cost of	36.4
Third Part Insurance	23.1
Time for Completion	43.1
Time for Completion, Extension of	44.1
Time for Payment	60.10
Traffic, Extraordinary	30.1
Traffic Interference with	29.1
Traffic Waterborne	30.4
Transport of Contractor's Equipment and Temporary Works	30.2
Transport of Materials and Plant	30.3
Uncovering Work and Making Openings	38.2
Unfulfilled Obligations	62.2
Urgent Remedial Work	64.1
Valuation at Date of Termination by the Employer	63.2
Variations	51.1
Variations, Daywork Basis	52.4
Variations, Exceeding 15 percent	52.3
Variations, Instructions for	51.2
Variations, Power of the Engineer to Fix Rates	52.2
Variations, Valuation of	51.3
Vouchers Production of	58.3
War, Outbreak of	20.4
Watching and Lighting, etc.	19.1
Waterborne Traffic	30.4
Work, Examination of Before Covering Up	38.1
Work, Improper, Removal of	39.1
Working Hours, Restriction of	45.1
Workmanship, Quality of	36.1
Workmen, Accident or Injury to	24.1
Works, Care of	20.1
Works, Completion of (Defects Liability Certificate)	62.1
Works Commencement of	41.1
Works Insurance of	21.1
Works Remedying of Defects	49.2
Works, Time for Completion of	43.1
Works to be Measured	56.1
Works, Suspension of	40.1
Work to be in Accordance with the Contract	13.1

CONTENTS

PART-IIA – CONDITIONS OF PARTICULAR APPLICATION

1.1	Definitions
2.1	Engineer's Duties and Authority
2.2	Engineer's Representative
2.7	Engineer Not Liable
5.1	Language (s) and Law
5.2	Priority of Contract Documents
6.6	Shop Drawings
6.7	As-Built Drawings
10.1	Performance Security
10.4	Performance Security Binding on Variations and Changes
14.1	Programme to be Submitted
14.3	Cash Flow Estimate to be Submitted
14.5	Detailed Programme and Monthly Progress Report
15.2	Language Ability of Contractor's Representative
15.3	Contractor's Representative
16.3	Language Ability of Superintending Staff of Contractor
16.4	Employment of Local Personnel
19.3	Safety Precautions
19.4	Lighting Works at Night
20.4	Employer's Risks
21.4	Exclusions
25.5	Insurance with National Insurance Corporation of Pakistan
31.3	Cooperation with Other Contractors
34.2	Rates of Wages and Conditions of Labour
34.3	Employment of Persons in the Service of Others
34.4	Housing for Labour
34.5	Health and Safety
34.6	Epidemics
34.7	Supply of Water
34.8	Alcoholic Liquor or Drugs
34.9	Arms and Ammunition
34.10	Festivals and Religious Customs
34.11	Disorderly Conduct

- 34.12 Compliance by Subcontractors
- 35.2 Records of Safety and Health
- 35.3 Reporting of Accidents
- 36.6 Use of Pakistani Materials and Services
- 41.1 Commencement of Works
- 47.1 Liquidated Damages for Delay
- 47.3 Bonus for Early Completion of Works
- 48.2 Taking Over of Sections or Parts
- 51.2 Instructions for Variations
- 52.1 Valuation of Variations
- 53.4 Failure to Comply
- 54.5 Conditions of Hire of Contractor's Equipment
- 59.4 Payments to Nominated Sub-contractors
- 60.1 Monthly Statements
- 60.2 Monthly Payment
- 60.10 Time for Payments
- 60.11 Secured Advance on Materials
- 60.12 Financial Assistance to Contractor
- 63.1 Blacklisting of Contractors
- 65.2 Special Risks
- 67.3 Arbitration
- 68.1 Notice to Contractor
- 68.2 Notice to Employer and Engineer
- 70.1 Increase or Decrease of Cost
- 71.1 Currency Restrictions
- 73.1 Payment of Income Tax
- 74.1 Bribery and Collusion
- 75.1 Termination of Contract for Employer's Convenience
- 76.1 Liability of Contractor
- 77.1 Joint and Several Liability
- 78.1 Details to be Confidential

PART II A – CONDITIONS OF PARTICULAR APPLICATION
(Mandatory Provisions not to be Amended / Substituted)**1.1 Definitions**

- (a) (i) "**Employer**" means the Pakistan Nuclear Regulatory Authority (PNRA) who will employ the Contractor and includes their legal successors, and whose mailing address is;

Pakistan Nuclear Regulatory Authority

Islamabad

Telephone: +92-51-XXXXXXX

Facsimile: + 92-51-XXXXXXX

The Chairman/Chairperson means the Chairman/Chairperson of the Employer or such person as may be acting in the capacity.

Employer is represented through the Project Director of the Employer, or any other Employer's officer authorized by the Employer.

- (a) (iv) "Engineer" means

Zaheeruddin Consultants (Pvt.) Ltd
5-A Sindhi Muslim Housing Society,
Karachi – 74400. (Pakistan)
Telephone: +92-21-3455-0321 to 24
Facsimile: +92-21-3455-5251

Within the scope of this contract or their successor or other persons or person appointed by the Employer by notice in writing to the Contractor to act in that capacity, or in replacement of the Engineer.

Engineer further means the authorized representative(s) of the aforementioned engineering firms approved by the Employer and notified in writing.

or any other competent person appointed by the Employer, and notified to the Contractor, to act in replacement of the Engineer. Provided always that except in cases of professional misconduct, the outgoing Engineer to formulate his certifications/recommendations in relation to all outstanding matters, disputes and claims relating to the execution of the Works during his tenure.

Add the following paragraph:

- (a) (vi) "Bidder or Tenderer" means any person or persons, company, corporation, firm or joint venture submitting a Tender.

- (b) (v) Add the following at the end of the paragraph:

The word "Tender" is synonymous with "Bid" and the word "Tender Documents" with "Bidding Documents".

- (b) (ix) "Programme" means the programme to be submitted by the Contractor in accordance with Sub-Clause 14.1 and any approved revisions thereto.

- (e) (i) Delete the text and substitute:

“Contract Price” means the sum stated in the Letter of Acceptance as payable to the Contractor for the execution and completion of the Works subject to such additions thereto or deductions there from as may be made and remedying of any defects therein in accordance with the provision of the Contract.

2.1 Engineer’s Duties and Authority

- (b) Delete the text and substitute:

The Engineer shall obtain the specific approval of the Employer before carrying out his duties in accordance with the clauses specified in Part-IIB.

If in the opinion of the Engineer an emergency occurs affecting the safety of life or of the Works or of adjoining property, the Engineer may, without recourse to the provisions as set out in the above paragraph, and without relieving 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 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.

2.2 Engineer’s Representative

Add the following paragraph:

The Employer shall ensure that the Engineer’s Representative is a professional engineer as defined in the Pakistan Engineering Council Act 1975 (V of 1976)

Add the following Sub-Clause:

2.7 Engineer not Liable

Approval, reviews and inspection by the Engineer of any part of the Works does not relieve the Contractor from his sole responsibility and liability for the supply of materials, plant and equipment for construction of the Works and their parts in accordance with the Contract and neither the Engineer’s authority to act nor any decision made by him in good faith as provided for under the Contract whether to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Engineer to the Contractor, any Subcontractor, any of their representatives or employees or any other person performing any portion of the Works.

5.1 Language (s) and Law

- (a) The Contract Documents shall be drawn up in the English language.
- (b) The Contract shall be subject to the Laws of Islamic Republic of Pakistan.

5.2 Priority of Contract Documents

Delete the documents listed at (1) to (6) of the Sub-Clause and substitute:

- (1) The Contract Agreement (if completed);
- (2) The Letter of Acceptance;
- (3) The Tender;

- (4) The Conditions of Particular Application – Part IIB;
- (5) The Conditions of Particular Application – Part IIA;
- (6) The General Conditions of Contract – Part I;
- (7) The Drawings;
- (8) The Specifications;
- (9) The priced Bill of Quantities;
- (10) _____;
- (11) _____;

In case of discrepancies between drawings, those of larger scale shall govern unless they are superseded by a drawing of later date regardless of scale. All Drawings and Specifications shall be interpreted in conformity with the Contract and these Conditions. Addendum, if any, shall be deemed to have been incorporated at the appropriate places in the documents forming the Contract.

Add the following Sub-Clause:

6.6 Shop Drawings

The Contractor shall submit to the Engineer for review 3 copies of all shop and erection drawings applicable to this Contract as per provision of relevant Sub-Clause of the Contract.

Review and approval by the Engineer shall not be construed as a complete check but will indicate only that the general method of construction and detailing is satisfactory and that the Engineer's review or approval shall not relieve the Contractor of any of his responsibilities under the Contract.

6.7 As-Built Drawings

At the completion of the Works under the Contract, the Contractor shall furnish to the Engineer 6 copies and one reproducible of all drawings amended to comply with the Works as built. The price of such Drawings shall be deemed to be included in the Contract Price.

10.1 Performance Security

Delete the text and substitute:

The Contractor shall provide Performance Security to the Employer in the prescribed form. The said Security shall be furnished or caused to be furnished by the Contractor within 28 days after the receipt of the Letter of Acceptance in case of Bank guarantee or 15% of the contract price stated in the letter of acceptance in case of insurance guarantee. The Performance Security shall be of an amount not less than 10% of the Contract Price stated in the Letter of Acceptance. Such Security shall be in the form of either (a) bank guarantee from any Scheduled Bank of Pakistan or (b) bank guarantee from a bank located outside Pakistan duly counter-guarantee by a Scheduled Bank of Pakistan or (c) an insurance guarantee from an approved insurance company.

The cost of complying with requirements of this Sub-Clause shall be borne by the Contractor.

Add the following Sub-Clause:

10.4 Performance Security Binding on Variations and Changes

The Performance Security shall be binding irrespective of changes in the quantities or variations in the Works or extensions in Time for Completion of the Works which are granted or agreed upon under the provisions of the Contract.

14.1 Programme to be submitted

The programme shall be submitted within 42 days from the date of receipt of Letter of Acceptance, in such form as specified in Part II-B

14.3 Cash Flow Estimate to be submitted

The detailed Cash Flow Estimate shall be submitted within 21 days from the date of receipt of Letter of Acceptance

Add the following Sub-Clause;

14.5 Detailed Programme and Monthly Progress Report

- a) For purposes of Sub-Clause 14.1, the Contractor shall submit to the Engineer detailed programme for the following:
 - (1) Execution of Works
 - (2) Labour Employment;
 - (3) Local Material Procurement;
 - (4) Material Imports, if any; and
 - (5) Other details as required by the Engineer.
- b) During the period of the Contract, the Contractor shall submit to the Engineer not later than the 8th day of the following month, 10 copies each of Monthly Progress Reports covering:
 - (1) A Construction Schedule indicating the monthly progress in percentage;
 - (2) Description of all work carried out since the last report;
 - (3) Description of the work planned for the next 56 days sufficiently detailed to enable the Engineer to determine his programme of inspection and testing;
 - (4) Monthly summary of daily job record;
 - (5) Photographs to illustrate progress; and
 - (6) Information about problems and difficulties encountered, if any, and proposals to overcome the same.
- c) During the period of the Contract, the Contractor shall keep a daily record of the work progress, which shall be made available to the Engineer as and when requested. The daily record shall include particulars of weather conditions, number of men working, deliveries of materials, quantity, location and assignment of Contractor's equipment.

*Add the following Sub-Clauses:***15.2 Language Ability of Contractor's Representative**

The Contractor's authorized representative shall be fluent in the English language.

15.3 Contractor's Representative

The Contractor's authorized representative and his other professional engineers working at site shall register themselves with the Pakistan Engineering Council.

The Contractor's authorized representative at Site shall be authorized to exercise adequate administrative and financial powers on behalf of the Contractor so as to achieve completion of the Works as per the Contract.

*Add the following Sub-Clause:***16.3 Language Ability of Superintending Staff of Contractor**

A reasonable proportion of the Contractor's superintending staff shall have a working knowledge of the English language.

16.4 Employment of Local Personnel

The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labour from sources within Pakistan.

*Add the following Sub-Clause:***19.3 Safety Precautions**

In order to provide for the safety, health and welfare of persons, and for prevention of damage of any kind, all operations for the purposes of or in connection with the Contract shall be carried out in compliance with the Safety Requirement of the Government of Pakistan with such modifications thereto as the Engineer may authorise or direct and the Contractor shall take or cause to be taken much further measures and comply with such further requirements as the Engineer may determine to be reasonably necessary for such purpose.

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

19.4 Lighting Work at Night

In the event of work being carried out at night, the Contractor shall at his own cost, provide and maintain such good and sufficient light as will enable the work to proceed satisfactorily and without danger. The approaches to the Site and the Works where the night-work is being carried out shall be sufficiently lighted. All arrangement adopted for such lighting shall be to the satisfaction of the Engineer's Representative.

20.4 Employer's Risks

The Employer's risks are:

Delete the text and substitute:

- (a) insofar as they directly affect the execution of the Works in Pakistan:

- (i) war and hostilities (whether war be declared or not), invasion, act of foreign enemies,
 - (ii) rebellion, revolution, insurrection, or 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 restrict 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) which 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

21.4 Exclusions

Delete the text and substitute:

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 paras (a) (i) to (iv).

Add the following Sub-Clause:

25.5 Insurance with National Insurance Corporation of Pakistan

The Contractor shall be obliged to place all insurances relating to the Contract (including, but not limited to, the insurances referred to in Clauses 21, 23 and 24) with National Insurance Corporation of Pakistan.

Add the following Sub-Clause:

31.3 Co-operation with other Contractors

During the execution of the Works, the Contractor shall co-operate fully with other contractors working for the Employer at and in the vicinity of the Site and also shall provide adequate precautionary facilities not to make himself a nuisance to local residents and other contractors.

Add the following Sub-Clauses:

34.2 Rates of Wages and Conditions of Labour

The Contractor shall pay rates of wages and observe conditions of labour not less favourable than those established for the trade or industry where the work is carried out. In the absence of any rates of wages or conditions of labour so established, the Contractor shall pay rates of wages and observe conditions of labour which are not less favourable than the general level of wages and conditions observed by other employers whose general circumstances in the trade or in industry in which the Contractor is engaged are similar.

34.3 Employment of Persons in the Service of Others

The Contractor shall not recruit his staff and labour from amongst the person in the services of the Employer or the Engineer; except with the prior written consent of the Employer or the Engineer, as the case may be.

34.4 Housing for Labour

Save insofar as the Contractor otherwise provides, the Contractor shall provide and maintain such housing accommodation and amenities as he may consider necessary for all his supervisory staff and labour, employed for the purposes of or in connection with the Contract including all fencing, electricity supply, sanitation, cookhouses, fire prevention, water supply and other requirements in connection with such housing accommodation or amenities. On completion of the Contract, unless otherwise agreed with the Employer, the temporary camps or housing provided by the Contractor shall be removed and the Site reinstated to its original conditions, all to the approval of the Engineer.

34.5 Health and Safety

Due precautions shall be taken by the Contractor, And at his own cost, to ensure the safety of his staff and labour at all times throughout the period of the Contract. The Contractor shall further ensure that suitable arrangements are made for the prevention of epidemics and for all necessary welfare and hygiene requirements.

34.6 Epidemics

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

34.7 Supply of Water

The Contractor shall, so far as is reasonably practicable, having regard to local conditions, provide on the Site, to the satisfaction of the Engineer or his representative, adequate supply of drinking and other water for the use of his staff and labour.

34.8 Alcoholic Liquor or Drugs

The Contractor shall not, otherwise than in accordance with the Statutes, Ordinances and Government Regulations or Orders for the time being in force, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or suffer any such importation, sale, gift, barter or disposal by his Subcontractor, agents, staff or labour.

34.9 Arms and Ammunition

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

34.10 Festivals and Religious Customs

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

34.11 Disorderly Conduct

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst staff and labour and for the preservation of peace and protection of persons and property in the neighborhood of the Works against the same.

34.12 Compliance by Subcontractors

The Contractor shall be responsible for compliance by his Subcontractors of the provisions of this Clause.

35.2 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.

35.3 Reporting of Accidents

The Contractor shall report to the Engineer details of any accident as soon as possible after its occurrence. In the case of any fatality or serious accident, the Contractor shall, in addition, notify the Engineer immediately by the quickest available means.

Add the following Sub-Clause:-

36.6 Use of Pakistani Materials and Services

The Contractor shall, so far as may be consistent with the Contract, make the maximum use of materials, supplies, plant and equipment indigenous to or produced or fabricated in Pakistan and services, available in Pakistan provided such materials, supplies, plant, equipment and services shall be of required standard.

41.1 Commencement of Works

Delete the text and substitute:

The Contractor shall commence the Works on Site within the period named in Appendix to Tender from the date or receipt by him from the Engineer of a written Notice to Commence. Thereafter, the Contractor shall proceed with the Works with due expedition and without delay.

47.1 Liquidated Damages for Delay

In the fifth line of the Sub-Clause, delete the words” and not as a penalty”

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

The liquidated damages for each day of delay in completion of the whole of the Works, or if applicable any Section, shall be as given in Appendix to Tender, subject to a maximum of 10% of the Contract price stated in the Letter of Acceptance.

Add the following Sub-Clause:-

47.2 Bonus for Early Completion of Works

The Contractor shall in case of earlier completion for either whole or part(s) of the Works pursuant to Clause 48.1 and 48.2 (a) respectively of the General Conditions of Contract, be paid bonus up-to a limit and at a rate equivalent to 50% of the relevant limit and rate of liquidated damages prescribed under Clause 47.1 above.

48.2 Taking Over of Sections or Parts

For the purpose of para (a) of this Sub-Clause, separate Times for Completion shall be as indicated in Part II B.

51.2 Instructions for Variations

At the end of the first sentence, after the words “Engineer”, add the words “in writing”.

52.1 Valuation of Variations

In the tenth line, after the words” Engineer shall” add the following:-

Within a period not exceeding one-eighth of the completion time subject to a minimum of 56 days from the date of disagreement whichever is later.

53.4 Failure to Comply

Delete this Sub-Clause in its entirety

54.5 Conditions of Hire of Contractor’s Equipment

Add the following paragraph

The Contractor shall, upon request by the Engineer at any time in relation to any item of hired Contractor’s Equipment, forthwith notify the Engineer in writing the name and address of the Owner of the equipment and shall certify that the agreement for the hire thereof contains a provision in accordance with the requirements set forth above.

59.4 Payments to Nominated Sub-Contractors

For the purposes of this Sub-Clause, provisions made by the Employer in Part II-B shall apply.

60.1 Monthly Statements

In the first line after the word “shall”, add the following:

“on the basis of the joint measurement of work done under Clause 56.1,”

In Para (c) delete the words “the Appendix to Tender” and substitute “Sub-Clause 60.11 (a)(6) hereof”.

60.2 Monthly Payments

In the first line, substitute “28” by “14”.

60.10 Time for Payment

Delete the text and substitute:

The amount due to the Contractor under any Interim Payment Certificate issued by the Engineer pursuant to this Clause, or to any other terms of the Contract, shall, subject to Clause 47, be paid by the Employer to the Contractor within 14 days in the case of local currency and within 42 days in the case of foreign currency, after such Interim Payment Certificate has been delivered to the Employer, or, in the case of the Final Certificate referred to in Sub Clause 60.8, within 28 days in the case of local and within 56 days in case of foreign currency, after such Final Payment Certificate has been delivered to the Employer. In the event of the failure of the Employer to make payment within the times stated, the Employer shall pay to the Contractor compensation at the rate of 8% per annum, 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.

Add the following Sub-Clauses:

60.11 Secured Advance on Materials

- a) The Contractor shall be entitled to receive from the Employer Secured Advance against an indemnity bond acceptable to the Employer of such sum as the Engineer may consider proper in respect of non-perishable materials brought at the Site but not yet incorporated in the Permanent Works provided that:
- (1) The materials are in accordance with the Specifications for the Permanent Works;
 - (2) Such materials have been delivered to the Site and are properly stored and protected against loss or damage or deterioration to the Satisfaction of the Engineer but at the risk and cost of the Contract;
 - (3) The Contractor’s records of the requirements, orders, receipts and use of materials are kept in a form approved by the Engineer, and such records shall be available for inspection by the Engineer
 - (4) The Contractor shall submit with his monthly statement the estimated value of the materials on site together with such documents as may be required by the Engineer for the purpose of valuation of materials and providing evidence of ownership and payment therefore;
 - (5) Ownership of such materials shall be deemed to vest in the Employer and these materials shall not be removed from the Site or otherwise disposed of without written permission of the Employer; and
 - (6) The sum payable for such materials on Site shall not exceed 75% of the (i) landed cost of imported materials, or (ii) ex-factory / ex-warehouse price of locally manufactured or produced materials, or (iii) market price of other materials.

- (b) The recovery of Secured Advance paid to the Contractor under the above provisions shall be effected from the monthly payments on actual consumption basis.

60.12 Financial Assistance to Contractor

Financial assistance shall be made available to the Contractor by the Employer by adopting any one of the following three Alternatives, as stated in Part-II B.

Alternative One: Mobilization Advance

- (a) An interest-free Mobilization Advance up to 15% of the Contract Price stated in the Letter of Acceptance shall be paid by the Employer to the Contractor in two equal parts upon submission by the Contractor of a Mobilization Advance Guarantee for the full amount of the Advance in the specified form from a Scheduled Bank of Pakistan or an insurance company acceptable to the Employer:
- (1) First part within 14 days after signing of the Agreement or date of receipt of Engineer's Notice to Commence, whichever is earlier; and
 - (2) Second part within 42 days from the date of payment of the first part, subject to the satisfaction of the Engineer as to the state of mobilization of the Contractor.
- (b) This Advance shall be recovered in installments; first installment at the expiry of third month after the date of payment of first part of Advance and the last installment two months before the date of completion of the Works as per Clause 43 hereof.

The schedule of recovery of the Mobilization Advance shall be as given in Part-IIB.

63.1 Black Listing of Contractors

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

Provided further that in addition to the action taken by the Employer against the Contractor under this Clause, the Employer may also refer the case of default of the Contractor to Pakistan Engineering Council for punitive action under the Construction and Operation of Engineering Works Bye-Laws 1987, as amended from time to time.

65.2 Special Risks

Delete the text and substitute:

The Special Risks are the risks defined under Sub-Clause 20.4 paras a (i) to (v).

67.3 Arbitration

In the sixth to eight lines, delete the words "shall be finally settled

Appointed under such Rules" and substitute the following:

Shall be finally settled under the provisions of the Arbitration Act, 1940 as amended or any statutory modification or re-enactment thereof for the time being in force.

Add the following paragraph:

The place of arbitration is stated in part-IIB.

68.1 Notice to Contractor***Add the following paragraph:***

For the purposes of this Sub-Clause, the Contractor shall, immediately after receipt of Letter of Acceptance, intimate in writing to the Employer and the Engineer by registered post, the address of his principal place of business or any change in such address during the period of the Contract.

68.2 Notice to Employer and Engineer

For the purposes of this Sub-Clause, the respective addresses are:

- a) The Employer:
Project Director
PNRA
Islamabad.
Telephone 92-51-XXXXXXX
Facsimile 92-51-XXXXXXX
- b) The Engineer

Zaheeruddin Consultants (Pvt.) Ltd
5-A Sindhi Muslim Housing Society,
Karachi – 74400. (Pakistan)
Telephone: +92-21-3455-0321 to 24
Facsimile: +92-21-3455-5251

70.1 Increase or Decrease of Cost***“Add the following paragraph”***

- (a) The Contractor is deemed to have quoted rates and prices given in the Contract on the basis of labour wages/out-going and prices of certain specified materials and equipment prevailing on the date 28 days prior to date of opening of the Tender. Applicable Basic Prices and method of Calculating price adjustment is given in Appendix to Tender.
- (b) During the currency of the Contract the Contractor shall be paid compensation for additional payments/ expenses to which he may be exposed on account of changes/ additions in the rates or quantum of such wages/ out-going and prices of materials brought about by any changes in the fiscal policies of any Federal/Provincial Government, Local Body and/ or Government-controlled/owned Corporation or Company, applicable to the Contract. Similarly, the Contractor shall be liable to pay to the Employer any saving which he may make on such wages/out-going and prices of materials because of any changes in the aforesaid fiscal policies.
- (c) Adjustment shall be allowed only for the quantities of materials specified in Appendix to Tender (except High Speed Diesel) which have actually been incorporated in the Permanent Works during the corresponding period of increase or decrease.
- (d) Adjustment shall be allowed for the Specified Materials and Labour according to Notes (1) and Note (2) respectively in the Appendix to Tender.
- (e) All claims for additional payments under this Clause shall be lodged by the Contractor with the Engineer within such reasonable time from the date of occurrence of the even which, according to the Contractor, entitles him to such additional payments by the Employer but in no case after the expiry of 28 days

thereof. Such claims invariably be supported with all necessary/relevant/ material details and particulars required for proper verification thereof and the Engineer shall be entitled to require the Contractor to provide such further details/information as may be so required for due and effective verification of such claims.

- (f) The Engineer shall verify and certify for payment, if any, all claims lodged by the Contractor under this Clause within a period not exceeding 28 days from the date on which the same are submitted by the Contractor as aforesaid.
- (g) The Employer shall make payment against the certification of the Engineer made pursuant to para (f) above along with the monthly payment/any other payment falling due immediately after the date of such certification.
- (h) In case the Employer is entitled to recover from the Contractor any sum or sums under this Clause arising from any decrease in the said wages/out-going and prices for materials, the provisions of this Clause shall mutatis mutandis apply to such recoveries by the Employer.
- (i) If the Contractor fails to complete the Works within the Time for 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 are more favourable to the Employer, provided that if extension of time is granted pursuant to Clause 44 the above provision shall apply only to adjustments made up to the expiry of such extension of time.
- (j) Provisions contained in this Sub-Clause shall be incorporated in the Sub-contract/s by the Contractor.

71.1 Currency Restrictions

Delete this Sub-Clause in its entirety

Add the following Sub-Clause:

73.1 Payment of Income Tax

The Contractor, Subcontractors and their employees shall be responsible for payment of all their income tax, super tax and other taxes on income arising out of the Contractor and the rates and prices stated in the Contract shall be deemed to cover all such taxes.

Add the following Sub-Clause:

74.1 Bribery and Collusion

- (1) The Employer shall be entitled to terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination if the Contractor shall have offered or given to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, any action in relation to obtaining, or in the execution of the Contract or any other contract the Employer, or for showing favour to any person in relation to the Contract or any other contract with the Employer, or if any of the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without the knowledge of the Contractor), or if the Contractor shall have come to any agreement with another contractor or number of contractors whereby an agreed quotation or estimate shall be offered as a bid to the Employer by one or more Contractors.

- (2) In the event of such termination, the Contractor shall:
 - (a) proceed as provided in Sub-Clause 65.7 hereof; and
 - (b) be paid by the Employer as provide in Sub-Clause 65.8 hereof, provided that any loss referred to in Sub-Clause (1) of this Sub-Clause shall first be deducted

75.1 Termination of Contract for Employer's Convenience

The Employer shall be entitled to terminate the 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:

- (a) shall proceed as provided in Sub-Clause 65.7 hereof; and
- (b) shall be paid by the Employer as provided in Sub-Clause 65.8 hereof;

Add the following Sub-Clause:

76.1 Liability of Contractor

The Contractor or his Subcontractors or assigns shall follow strictly, all relevant labour laws including the Workmen's Compensation Act and the Employer shall be fully indemnified for all claims, damages etc. arising out of any dispute between the Contractor, his Subcontractors or assigns and the labour employed by them.

Add the following Sub-Clause:

77.1 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 leader 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.

Add the following Sub-Clause:

78.1 Details to be Confidential

The Contractor shall treat the details of the Contract as private and confidential, save in so far 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 prior 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 decision of the Engineer whose award shall be final.

CONTENTS

PART II B: CONDITIONS OF PARTICULAR APPLICATION

	Page
2.1 Engineer's Duties and Authority	43-43
4.1 Sub-Contracting	43-43
4.3 No Deviations from the List of Sub Contractors and Suppliers	44-44
4.4 Extent of the Contract	44-44
5.1 Language of Law	44-44
5.2 Priority of Contract Documents	44-45
7.4 Documents to be supplied by Engineer	45-45
7.5 Documents to be supplied by the Contractor	45-46
7.6 Checking of Document to the Engineer by the Contract	47-47
7.7 Checking of Documents of the Contractor by the Engineer	47-47
7.8 Checking of Contractor's Alternative Design	47-47
7.9 Responsibility Unaffected by Engineer Approval	48-48
7.10 Use of the Documents	48-48
7.11 Custody of Drawings	48-48
7.12 Type, Number and Distribution of Copies to be supplied by Engineer	48-48
7.13 Type, Number and Distribution of Copies to be supplied by Contractor	48-49
7.14 Copy of all documents at the site.	49-49
7.15 Right of Inspection	49-49
7.16 Drawings and Distribution Deviating from Tender	50-50
8.2 Site Operation and Methods of Construction	50-50
8.3 Temporary Works	50-50
8.4 Contractor to inform Engineer	50-50
8.5 Specialists Supplies and Sub-Contractors	50-50
8.6 Safety Procedures	50-50
9.1 Agreement of Contract	51-51
10.1 Performance Security	51-51
12.3 Foreign Taxation	51-51
12.4 Local Taxation	51-51
12.5 Unit Rates	51-51
14.1 Programme to be Submitted	51-51
16.5 Specialist	51-51
16.6 Contractor's Employees Income Tax	52-52
19.1(d) Safety, Security and Precaution of Environment	52-52
21.1 Insurance of Works and Contractor's Equipment	52-54
29.2 Interference with Port Operations	54-54
29.3 Port Regulations	54-54
30.4 Water Borne Traffic	54-54
34.13 Engagement of Staff and Labour in Pakistan	54-55

34.14	Work Permits for Foreign Personnel	55-55
34.15	Repatriation	55-55
34.16	Restriction on Employment	55-55
34.17	Accident Prevention Officer	55-55
34.18	Life Saving Application	55-55
34.19	Measures against Insect and Pest Nuisance	55-55
34.20	Burial of Dead	56-56
34.21	Strike Notice	56-56
36.7	Manufacture's Instructions Warranties, etc.	56-56
36.8	Samples of materials and Plant	56-56
36.9	Trade Name Designation	56-56
36.10	Copies Documents	57-57
36.11	Use of Latest Codes and Standards	57-57
37.6	Test Certificate	57-57
37.7	Responsibility of the Contractor	57-57
39.3	Engineer's Failure to Disapprove	57-57
47.2	Bonus for Early Completion of Works	57-57
47.4	Consultancy Fees etc in Case of delay in completion of works	57-57
48.2	Taking over of sections or parts	57-57
49.5	Warranties beyond the Defects Liability Period	58-58
49.6	Extension of Defect Liability Period	58-58
52.1	Valuation of Variation	58-58
52.3	Variation Exceeding 15 Percent	58-58
54.9	Vesting of Contractor's Plant, Equipment Temporary Works and Materials	58-61
54.10	Landing Charges, Port Dues, etc.	61-61
54.11	Anchorage Dues on Floating Equipment etc.	61-61
54.12	Customs Duties, Sales Tax, etc.	61-61
54.13	Contractor's Responsibility of Licenses	61-61
54.14	Report on Import Articles	62-62
54.15	Contractor's Equipment and Materials, Remaining in Pakistan	62-62
54.16	Floating Plant	59-62
54.17	Incorporation of Clauses in Sub-Contracts	62-62
54.18	Approval of Materials not Implied	62-62
54.19	Status of Ownership at the Site	62-63
54.20	Unloading and Storage at the Site	63-63
55.1	Quantities	63-63
58.4	Execution of Work under Provisional Sum	63-63
58.5	Provisional and Alternative Item	63-63
59.2	Nominated Sub Contractor, Objection to Nomination	64-64
59.4	Payment to Nominated Sub-Contractors	64-64
60.8	Final Payment Certificate	64-64

60.9	Time for Payment	64-64
60.10	Secured Advance	64-64
60.12	Financial Assistance to Contractor	64-65
60.13	Not Responsibility of the Engineer	65-65
60.14	With holding of Payment	65-66
63.2	Valuation of date of Termination	66-66
67.3	Arbitration	66-66
73.1	Local Taxes Payables by Contractor	66-66
73.2	Local Taxes Payables by Contractor's Staff	66-66
73.3	Foreign Taxes	66-66
73.4	Rates and Prices to include Taxes	66-66
74.1	Import and Work Permits, Foreign Exchange and other Regulations	66-66
74.2	Registration and Licensing of Vehicles	67-67
74.3	Contractor's Personnel	67-67
75.1	Official Secrets	67-67
75.2	Miscellaneous Document Distribution	67-67
75.3	Coordination Meetings	68-68
75.4	Coordination Meetings	68-68
76.1	Details to be Confidential	68-68
76.2	Photographs	68-68
76.3	Gate Passes	69-69
76.4	Customs Checks	69-69
76.5	General Regulations of the Employer	69-69
77.1	Bribes	69-69
78.1	Joint and Several Liability	69-69
79.1	Languages for Communication	69-69
80.1	Property in Dredging and Excavated and Demolished Materials	70-70
82.1	Restrictions on Eligibility	70-70
83.1	Return of Tender Security	70-70
84.1	International Flights	70-70

PART II B: CONDITIONS OF PARTICULAR APPLICATION

2.1 Engineer's Duties and Authority

With reference to Sub Clause 2.1(b), the following provisions shall apply:

- (b) The Engineer shall design the permanent structures, watch and supervise the Works, excluding Temporary Works, check and examine all materials to be used and all performances and deliveries required and issue decisions, certificates and orders as are specified in the Contract.

The Engineer shall not without prior approval of the Employer give any instructions which are likely to substantially increase the cost of works executed in this Contract.

Instructions, directions and approvals given by the Engineer under or pursuant to the Contract, of specifications, workmanship, materials, plants, the order of the works or the manner and the means by which the Contractor or any of his sub contractors achieve the results called for under or pursuant to the Contractor other like instructions, directions and approvals, shall not in any way whatsoever relieve the Contractor, his responsibility under the contract to execute and complete the Works and remedy any defects therein, in proper, timely and workmanship like manner and with he exercise of all due skill and care for ensuring (save that the Contractor is not responsible for the Engineer's design of the Works) that the Works when completed will be fit and suitable for the purpose for which they were designed and constructed.

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.

- (a) giving his decision, opinion or consent, or
- (b) expressing his satisfaction or approval, or
- (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 67.1 and 67.2

4.1 Sub – Contracting

Add “/sublet” after “sub-contract” in first and second line of Sub Clause 4.1 of General Conditions of Contract Part I.

Add following new Sub Clause 4.3, “No Deviations from the List of Sub Contractors and Suppliers”

4.3 No Deviations from the List of Sub Contractors and Suppliers

The Contractor shall have submitted in Schedules B and C of his Tender a list of Subcontractors and Suppliers whom he proposes to use in the performance of the Works. The said list shall be construed as part of the Contract and no deviation from or substitutions to the said list will be allowed without the written permission of the Engineer.

Add following new Sub Clause 4.4, "Extent of Contract"

4.4 Extent of the Contract

The Contract comprises the execution and completion of the Works, and the remedying of any defects therein during the Defect Liability period, and unless otherwise specified in the Contract, the provision of all labour, material, constructional plant, temporary works and every thing whether of a permanent or temporary nature required in and for such execution and completion and remedying of defects, so far as the necessity for providing the same is specified in the Contract or is to be reasonably inferred from the Contract.

Delete and replace text of Sub Clause 5.1 in Conditions of Particular Applications, Part II-A, "Language and Law" with the following:

5.1 Language and Law

- (a) The Contract Documents shall be drawn, drafted and interpreted in the English language. The official language for general correspondence, technical information and data, operating instructions, literature, brochures drawings, standards regardless of national origin and test data shall also be in English.

All marking on equipment, recording devices, name plates and other objects shall also be in legible English. Shipping markings addresses and marking of individual shipments shall be in printed capital letters and exclusively in English. The Contractor is obligated to replace any marking on objects in any language other than English, without additional cost to the Employer.

- (b) The Contract shall in all respects be construed, operated and interpreted in accordance with the laws of, and applicable in, the Islamic Republic of Pakistan including any such law passed or made or coming into force during the Contract Period and without prejudice to the provisions of Clause 67 no suit or other proceeding relating to the Contract shall be brought or filed in any Court other than a competent Court of Pakistan.

Add the following new Paragraphs at the end of Sub Clause 5.2, "Priority of Contract Documents"

5.2 Priority of Contract Documents

The Engineer may follow among others the following principles to arrive at the instructions to be issued according to this sub clause 5.2:

- (a) The Contractor assumes all risks without any limitations, which are connected with or result from the supply and transportation of the Constructional Plant and all material and equipment, before arrival at the Site, except for those risks defined under sub clause 20.4 (b).
- (b) The Contractor assumes all risks without any limitation having effects on the Progress of works at the site, unless otherwise stated under Clause 44. Interruptions of works for any reason whatsoever do not entitle the Contractor to additional compensation, except as mentioned in Clauses 40 and 44.

- (c) With the exclusion of direct damages due to “Employers Risk” (see clause 20 and 65), the Contractor assumes all other risk for the material and equipment stored at the site, for his Constructional Plant, all Temporary Works (unless designed by the Employer or the Engineer) and for the partially or fully completed structures or parts thereof, namely till the start of the Defect Liability Period for such structures or parts thereof.
- (d) With the start of the Defect Liability Period for the completed structures or part thereof, all risks pass over to the Employer, with the exception of those, whose origin lies at a time before the start of the Defect Liability Period (such for example, which results from construction not executed in accordance with the Contract).

Add the following new sub clauses after clause 7.3

7.4 Documents to be supplied by Engineer

The Engineer shall, except for the permanent works under clause 7.2;

- (a) supply all working drawings for the permanent structures, concrete and reinforcing drawings, as well as normal working drawings for structural steel elements with all the relevant structural calculations.
- (b) check final as-built drawings submitted by the Contractor of the complete Works. For this purpose, the Contractor shall enter all changes undertaken in the course of the construction work, in a print of the working drawings additionally supplied by the Engineer and return the supplementary drawings to the Engineer.

The Contractor shall request all aforesaid drawings in sufficient but reasonable time before the beginning of the respective manufacturing or construction measures.

The Contractor shall give adequate notice in writing to the Engineer of any further drawing or specification that may be required for the execution of the Works or otherwise under the Contract.

If, by reason of any failure or inability of the Engineer to issue within a time reasonable in all the circumstances any Drawing or order requested by the Contractor in accordance with Sub-Clause(1) of this Clause, the Contractor suffers delay and/or incurs costs then the Engineer shall in concurrence with the Employer take such delay into account in determining any extension of the time to which the CONTRACTOR is entitled under Clause 44 hereof and the Contractor shall be paid the amount of such cost as shall be reasonable.

7.5 Documents to be supplied by Contractor

The Contractor is obliged to supply all drawings and documents as determined by the Engineer that are necessary for the execution of the Works except those supplied by the Engineer under Sub-Clause 7 (1). The drawings and documents to be supplied by the Contractor include, but are not necessarily limited to, the following:

- (a) Site installation drawings
- (b) Initial, intermediate and final construction programmes and time schedules (see Clause 14).
- (c) Surveying and sounding drawings, and reports on subsoil investigations and/or ground water observations executed under the Contract.

- (d) Drawings and calculations for all Temporary Works. This also includes drawings and calculations for any part of the permanent structures which are fully or partially used as Temporary Works or as a support thereof.
- (e) Structural calculations for temporary construction and erection stages of the permanent structures, inclusive of determination of the strength and stability of already completed structural members, as well as of the stability of excavation embankments, retaining walls and the like, insofar as additional loads occur to them in the course of the execution of construction work.
- (f) Drawings and calculations in connection with special construction method or sequence for construction or erection of the permanent structures or parts thereof.
- (g) Shop drawings, calculations and specifications for all special equipment (e.g. cathodic protection installation, fenders, steel or rubber bearings, electrical, mechanical and product handling installations and the like). For special equipment or construction materials, for which the manufacturing firms normally do not supply shop drawings, at least brochures with sketches on basic shape, installation dimensions and the like must be supplied in order to enable the Engineer to make an evaluation and to carry out a check.
- (h) Bar bending schedules for concrete works, as well as shop drawings and calculations for structural steel members, considering the customary practices of the manufacturing firms.
- (i) Reports and record on all tests and materials tests carried out by the Contractor or by his suppliers.
- (j) The records, reports and the like on definite construction measures to be supplied by the Contractor in accordance with the other provisions of the Contractor.
- (k) Drawings of site measurements and of settlement of accounts or quantity calculations, lists and the like.
- (l) "As built" drawings for the Works (vide Clause 6.7). When any field changes are made, the Contractor shall immediately submit to the Engineer accurately amended prints of all Drawings affected.
- (m) Final "As built" drawings for the complete Works to be submitted to the Engineer for acceptance and approval, said drawings shall be reproducible and shall be submitted on approved Mylar.
- (n) Brochures and technical literature of all equipment and fixtures which are to be permanently installed in the Works. This data, at least relevant descriptions and salient features, shall be in English.
- (o) All instructions (in the form of lists manuals and the like), which are required by the Employer for proper operation and for expert maintenance and repair of the structures and facilities.

All instructions are to be in English. They shall be supplied in 6 copies each in an approved binder and one of the copies shall be in a waterproof binder with each page sealed in plastic. These instructions shall be provided for all operating equipment and shall include but are not limited to Erection, Operating and Maintenance Manuals as shown on the Drawings and/or specified in the mechanical and electrical specifications.

The Contractor shall furnish at least one copy of each erection, operating, and maintenance manual when the purchase order is placed and shall have furnished all erection operating and maintenance manuals 42 days prior to the issue of the Taking-Over Certificate.

7.6 Checking of Documents of the Engineer by the Contractor

It is presupposed, that the Contractor has convinced himself of the technical feasibility of his construction methods, already before the submission of the Tender, taking into account the Engineer's Tender Design. He is obligated to thoroughly recheck these Drawings on the basis of the local surveying work results, with regard to the correctness of all main dimensions and to inform the Engineer of corrections considered necessary by him.

The Contractor shall examine all final working drawings of the Engineer with regard to the technical feasibility of the respective construction procedures foreseen by the Contractor, the correctness of the dimensions and in all other aspects, however limited to those which are of significance for the execution of construction. In this connection the Contractor shall also use the experience he has gained so far in the execution of the construction and call the Engineer's attention to circumstances, which shall make a change in the design and calculation basis necessary in his opinion.

The Contractor shall promptly inform Employer and the Engineer of any error, omission, fault or other defect in the design of or specifications for the Works which are discovered in the process of execution of the Works.

7.7 Checking of Documents of Contractor by the Engineer

All drawings, bar bending schedules and calculations prepared by the Contractor in accordance with Sub-Clause 7.2 are to be submitted to the Engineer for checking and approval. The purpose of such checks is, to assist the Contractor in the interpretation and use of the Specifications, Technical and Special Conditions of Contract and other provisions of the Contract, so that the possibility of deliveries of deficient materials and equipment to the Site is extensively restricted. Insofar as it concerns technical documents on the Temporary Works, construction stages and the like, the checks of the Engineer shall be of help in assuring the required safety during the construction work, and at the same time, to prevent such action of the Contractor, which endangers or reduces the stability or the quality of the Works.

7.8 Checking of Contractor's Alternative Designs for Permanent Works by the Engineer.

All working documents prepared by the Contractor in accordance with Sub-Clause 7.2 shall be checked and approved by the Engineer.

If the Engineer's checking and approval of the working documents to be prepared and submitted by the Contractor in accordance with Sub-Clause 7.5(f) and 7.2 involve the Employer in additional engineering costs, such costs shall, after concurrence with the Employer and due consultation with 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.

7.9 Responsibility unaffected by Engineer's Approval

The approval by the Engineer of any document submitted by the Contractor under the provisions of Clause 7, whether for Permanent Works or Temporary Works, in no case releases the Contractor from his sole responsibility and liability for the execution and completion of the Works and the remedying of any defects therein, in accordance with the Contract.

The Contractor shall be responsible and shall pay the extra cost, if any, occasioned by any discrepancies, errors or omissions in the drawings and other particulars supplied by him, whether such drawings and other particulars have been approved by the Engineer or not, provided that such discrepancies, errors or omissions be not due to incorrect information or particulars furnished in writing to the Contractor by the Engineer.

7.10 Use of the Documents

The execution of construction according to the working drawings of the Engineer may be started, when a copy of the respective drawings verified and signed by the Contractor is available at the Site Office of the Engineer through which the Contractor confirms the examination on his part.

The manufacture of materials or equipment according to the working and shop drawings of the Contractor may be started, when a copy of the respective drawing, approved by the Engineer through signature is available, or in special case, when the release is made in writing or by cable.

7.11 Custody of Drawings

The Drawings shall remain in the sole custody of the Engineer. At the completion of the Contract, the Contractor shall return to the Engineer all drawings provided under the Contract.

7.12 Type, Number and Distribution of Copies to be supplied by Engineer

The Engineer will make available to the Contractor immediately after conclusion of the Agreement of Contract, 3(three) additional prints of all Tender Drawings for examination, of which 1(one) copy each is to be sent back to the Engineer Head Office and Office in Karachi, corrected or supplemented, and bearing the signature of the Contractor.

The Contractor shall be given 3(three) prints of all a working drawings and all other technical documents of the Engineer, insofar as they are necessary for the execution of construction. Out of these, one print of each drawing is to be returned to the Engineer after verification duly signed by the Contractor with stamp of acceptance, according to sub-clause 7.4 and 7.8.

The Engineer is to be reimbursed separately for the additional copies of the Drawings required by the Contractor beyond the extent described in the foregoing.

7.13 Type, Number and Distribution of Copies to be supplied by Contractor

The Contractor shall first send 4 (four) copies of all his drawings (except settlement of accounts, survey and as-built drawings) calculations, descriptions, specifications, brochure, reports, test records, bar bending schedules, operating instructions and the like to the Head Office of the Engineer, for preliminary checking, and at the same time, 1 (one) copy each for information to the Employer head office and to the Site Office of the Engineer in Karachi. Such documents are to bear the remark "Preliminary".

The Engineer will send the preliminary check on the documents by means of 1 (one) copy of his comments to the Contractor for the purpose of incorporating the corrections and supplementations in the original, and further copies for information to his Site Office in Karachi.

After incorporating the corrections and supplementations in the original, the Contractor shall directly send 8 (eight) copies to the head office of the Engineer and 1 (one) reproducible Ozalid or equivalent copy to the Engineer's Site Office. The Engineer will then undertake the final checking, put his mark of approval on the copies and distribute them as follows:

- ♦ 1 (one) copy each to the head office of the Employer and to the Site Offices of the Employer and the Engineer, in Karachi and Islamabad.
- ♦ 3 (three) copies to the Contractor.
- ♦ The reproducible copy to the head office of the Employer.

As-built and survey drawings, as well as settlement of account drawings of the Contractor are to be designated as such through pertinent imprints. Copies for preliminary check are to be submitted in triplicate each to the Site Office of the Engineer in Karachi. After conclusion of the preliminary check, 1 (one) copy each will be sent to the Contractor for incorporating the corrections and supplementations, and to the head office of the Engineer. In the dispatch of survey, as-built and settlement of account drawings for the final approval, the Contractor shall send five copies and one reproducible copy to the Engineer's Site Office of the 3 (three) copies of the settlement of account drawings, which the Contractor receives back from the Engineer with his mark of approval, he shall use 2 (two) when submitting his bills, which then remain in the record of the Employer and the Engineer.

The Engineer shall return all documents with his approval or notations as soon as practicable but within 14 days of their receipt in the Head Office of the Engineer or the Site Office in Karachi depending on where the check is to be made as determined by the Engineer.

Documents to be re-submitted for the Engineer's approval shall be re-submitted within 14 days after receipt of commented documents from the Engineer.

Within 14 days after receipt of documents approved by the Engineer, the Contractor shall issue final documents.

7.14 Copy of all Documents at the Site by the Contractor

One copy each of the aforesaid mentioned approved documents shall be filed by the Contractor at the Site and shall be available at all reasonable times for inspection and use by the Employer, the Engineer, as well as by any other person authorized by the Engineer in writing.

This aforesaid copy of the Drawings shall be marked immediately when any field changes are made with detailed accurate information showing these changes. This set of prints shall at all times represent accurately the current "as-built" condition of the Works.

7.15 Right of Inspection

The Employer shall have the right at all reasonable times to inspect at the office of the Contractor or at any other place where they are held, all drawings and other documents relating to any portion of the Works.

7.16 Drawings and Directions Deviating from Tender

The Engineer in consultation with the Employer is entitled and authorized to also supply Drawings and to give directions with deviations from the Tender Documents issued by the Employer, to the Contractor, for the purpose of proper and reasonable execution of the Works and remedy of any defects therein. The Contractor shall carry them out and is bound to them. Unless otherwise stated under Clauses 51 and 52, he cannot demand any price corrections therefore.

Any deviations from the Tender Documents issued by Employer is they are due to or result from the Contractor's measures/decisions, approved by the Engineer, cannot justify any claim whatsoever.

8.2 Add second paragraph to sub clause 8.2, Site Operations and Methods of Construction

Second Paragraph to, 8.2, Site Operations and Methods of Construction

“The Contractor shall be responsible for ensuring that any operation carried out by him during the execution of the Works does not endanger the stability and integrity of adjacent infrastructure or property including earthworks and installations. Incase damage is inflicted then remedial works shall be carried out in accordance with clause 22.1.”

Add Following new sub clause after clause 8.2

8.3 Temporary Works

Sufficient details, drawings and calculations pertaining to Temporary Works to demonstrate the adequacy of the Temporary Works shall be submitted not less than 28 days before work on the erection of any such Temporary Works commences on the Site. If required by the Engineer the Contractor shall also submit calculations of stresses, strains and deflections that will arise in the Permanent Works or any part thereof during construction arising from such methods of construction as the Contractor proposes to use. Any consent of the Engineer in relation to documents submitted by the Contractor under this Sub-Clause shall not relieve the Contractor of his responsibilities under the Contract.

8.4 Contractor to Inform Engineer

The Contractor shall promptly inform the Engineer should he discover any ambiguity, error, omission, fault or other defect in the design or specification for the Works.

8.5 Specialists Suppliers and Subcontractors

Where the Works require the incorporation of proprietary articles manufactured by specialist suppliers, or portions of the work involve design or specification matters to be carried out by specialist subcontractors, the Contractor shall be fully responsible for the outcome in the case of, for such proprietary articles and for such design and specification executed by specialist subcontractors.

8.6 Safety Procedures

The Contractor shall comply with all recommendations of the safety committee of the Employer, of which he will be informed from time to time, with respect to accident prevention and other safety measures. In all other matters, the Contractor is obliged to comply with such rules and regulations as may be prescribed by the Employer from time to time. The decisions of the Employer in all these matters are firm, final and binding for the Contractor.

9.1 Agreement of Contract

Read “Contractor” in place of “Employer” occurring in 2nd line of Sub Clause 9.1 of General Conditions of Contract Part-I.

10.1 Performance Security

In Sub Clause 10.1 Performance Security of General Conditions of Contract Part-II A;

- i) Replace “28 days” in line No. 3 with “14 days”

- ii) Security shall be in the form of Bank Guarantee Only, equivalent to 10 % of Contract Amount.

Add after clause 12.2, the following new sub clauses;

12.3 Foreign Taxation

It is deemed that the prices tendered by the Contractor include all taxes, duties and other charges imposed outside Pakistan on the production, manufacture, sale and transport of the Constructional Plant, materials and supplies to be use on or furnished under the Contract, and on the services performed under the Contract.

12.4 Local Taxation

It is deemed that the prices tendered by the Contractor include all customs duties, import duties, port charges, business taxes, income and other taxes that may be levied in accordance to the laws and regulations in being in Pakistan; as of the date 28 days before the closing date for submission of tenders, on the Construction 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 Pakistan on profits made by him in respect of the Contract.

12.5 Unit Rates

All prices and until rates in the Contract are subject to adjustment in respect of the rise or fall in the costs of labour and/or materials or any other matters affecting the cost of the execution of the Works as set out in Clause 70 hereto.

14.1 Programme to be Submitted:

Replace “42 days” in line 1 with “14 days” in sub clause 14.1 of Part II A.

The Programme shall be provided in the form as required by the Engineer

Add the following new sub clause after clause 16.4 of Part I A

16.5 Specialists

The engineer has the right to demand at the Contractor’s own cost, the immediate delegation of further specialists or experts to the Site to handle complicated problems in the course of the construction work, difficult repairs locally and the like.

16.6 Contractor’s Employees Income Tax.

The Contractor is responsible to ensure that his employees pay income tax or any other levies applicable under the laws of the Government of Pakistan or the Provincial Governments.

Add the following two sub clause after clause 19.1 (c), “Safety, Security and Precaution of Environment”

19.1(d) Safety, Security and Precaution of Environment

- (a) shall provide, lay and maintain such buoys, moorings and fastenings as are necessary to secure his floating plant and also such mark buoys as are deemed necessary by the Engineer and/or the Employer to mark the water-sided site area and to warn vessels of the existence of submerged portions of the Works. These buoys, moorings and fastenings shall be at the sole risk of the Contractor and he shall be responsible for any accidents arising there from or damage caused thereby or thereto or which may arise through the failure of the moorings or fastenings, the breaking adrift of the buoys or their absence from the positions where they should have been moored. The Contractor shall bear all costs and charges which may incur from time to time in connection with the lifting, moving and relaying of buoys, moorings and fastenings during the continuance of the Contract or which may appear necessary or desirable by the Engineer and/or the Employer. The Contractor shall remove and clear away all such buoys, moorings and fastenings when they are no longer required or as instructed by the Engineer or before the granting of the Defects Liability Certificate.
- (b) The Contractor shall forthwith and with dispatch raise and remove any plant (floating or otherwise) belonging to him or to any sub-contractor or to any person employed by him, which may be sunk in the course of the construction and completion of the Works or during the remedy of defects therein or otherwise deal with the same, as the Employer may direct. Until the same shall be raised and removed, the Contractor shall set all such buoys and display at night such lights and do all such things for the safety of navigation as may be required by the Port Authority. In the event of the Contractor not carrying out the obligations imposed upon him by this Clause the Employer may buoy and light such sunken plant and raised and remove the same (without prejudice to the rights of the Employer to hold the Contractor liable) and the Contractor shall refund to the Employer all costs incurred in connection therewith. The fact that the sunken vessel, craft or plant is insured or has been declared a total loss shall not absolve the Contractor from his obligation under this clause to raise or remove the same.

Add the following para (d), (e) and (f) after para (c) of Sub Clause 21.1 of Part I.

21.1 Insurance of Works and Contractor's Equipment

(d) General Requirements

The Contractor shall be responsible for deductibles and losses/damages not covered by insurances other than the excepted risks.

The insurance losses shall not affect the Employer's or the Contractor's rights and obligations under the Contract.

The Contractor shall be responsible for compliance by his sub-contractors of insurances specified in these Sub-Clauses. Before each sub-contractor starts work, the Contractor shall provide the Employer proof that the sub-contractor(s) are covered by insurances specified herein for the Contractor.

All policies shall state that:

- i) The Employer shall receive at least 30 days written notice of intended Cancellation or change affecting coverage.
- ii) The Contractor is fully protected so as to provide full indemnity to Employer in respect of liability against losses or damages assumed by the Contractor under the Contract under the Contract.

- iii) The inclusion of more than one insured shall not affect the rights of any other insured.
- iv) If a loss occurs the Contractor and the Employer shall be paid in relation of their share of the loss.
- v) The Insurer has no subrogation rights against any person, corporation, or organization including directors, officers, employees, servants agents thereof which:
 - is an insured under the policy or
 - is Controlled by, Owned by, or associated with an insured, or
 - is a sub-contractor on the works, or has, before or a loss occurs, been released from liability by an insured.

Hold harmless provisions: The Employer, the Engineer and the Contractor shall be indemnified against all losses.

Employer use or occupancy: If the Employer uses or occupies all or part of the works during the life of the insurance policy, the Contractor shall ensure that the policy continues in full force and the Employer shall pay any resulting extra cost of insurance.

Loss Procedure: If a loss occurs the Contractor shall, on behalf of the Employer and himself negotiate the value of the loss with the insurer. Unless directed otherwise by the Engineer, when agreement is reached the Contractor shall repair all damages and the Employer shall pay him in accordance with the Engineer's Certificates for that part of the repairs which is the Employer's responsibility.

If directed by the Engineer, instead of carrying out repairs, the Contractor shall pay to the party suffering the loss that part of the agreed value for the loss which is the Contractor's responsibility.

The provisions of this Sub-Clause 21.1(d) shall be applicable to other insurance covered by Sub-Clauses 22, 23 and 24 of General Conditions of Contract Part-I.

(e) Automobile Liability Insurance

The Contractor shall also provide automobile liability insurance of all licensed vehicles owned, hired and operated by the Contractor and the risk insured shall be bodily injury, death of person and property and property damage or loss.

(f) Marine Risk Insurance

Without limiting his obligations and responsibilities under clause 20, the contractor shall insure against normal marine risks all floating equipment (including ships) supplied by the Contractor for the use on the works, whether owned or taken on charter by the Contractor.

25.5 Add to clause 25.5 the following:

Contractor is at liberty to Insure with "A" rate Insurance company acceptable to the employer.

Add new sub clause 29.2 after clause 29.1

29.2 Port Regulations

The Contractor shall at all times during the continuance of the Contract comply with all the Regulations, Laws, Rules and Orders of Karachi Port Trust in force at the time and shall promptly carry out the orders of the Engineer with regard thereto and generally he shall conduct his proceedings and operations in such a way as to cause as little inconvenience as possible.

Add following new sub clause after clause 34.12

34.13 Engagement of Staff and Labour in Pakistan

The Contractor shall make his own arrangements for the engagement of all labour and is encouraged, to the extent practicable and reasonable, to employ staff and labour from sources within Pakistan. In respect of the engagement, employment, transport, paying, feeding, housing and working conditions of labour and of all other matters connected therewith, the Contractor shall at all times during the continuance of the Contract conform in all respects with and carry out all obligations imposed on him by the provisions and requirements of any law and of any Regulations or Orders of any Government (Central / Provincial or Local) or any authority which may be applicable including any such law,

Regulation or Order passed or many or coming into force exactly 28 days before the scheduled date of Tender opening. In particular but without prejudice to the generality of the foregoing provisions, the Contractor shall conform with and do or refrain from doing anything he may be required to do, or refrain from doing by any legislation or ORDINANCES so far as Applicable relating to factories or relating to industrial disputes and any Regulations or Orders there under.

Nothing under this Clause shall be so interpreted, to mean that the Contractor is relieved of the complete fulfillment of the applicable governmental or local rules, directives, laws and instructions in any respect.

34.14 Work Permits for Foreign Personnel

The Contractor shall entirely at his own cost obtain the necessary entry and work permits from the Government of Pakistan, to permit foreign personnel to enter Pakistan and to work there for stated periods, and the entry of such persons shall be governed by the procedures laid down in the legislation of the Islamic Republic of Pakistan concerning the entry of aliens. The Contractor shall keep the Employer fully informed at all times of applications made by him for work permits for foreign staff and of approvals given by the Pakistani Authorities.

34.15 Repatriation

The Contractor shall be responsible for the repatriation to those places where they were recruited of such staff and labour as he recruited and employed subsequently on or in connection with the Works return to the place where they were recruited of all such persons as he recruited and employed for the purpose of or in connection with the Contract, and their dependent relatives, and shall maintain such persons as are being repatriated in a suitable manner until such time as they shall have returned to the place where they were recruited. In default the Employer may maintain and repatriate such persons and recover the costs from the Contractor.

34.16 Restriction on Employment

The Contractor shall not at any time in any manner and for any purpose whatsoever entice either directly or indirectly any personnel employed by the Employer and shall not without the permission of the Engineer and the Employer employ any personnel who have resigned or been discharged from the service of the Employer at any time subsequent to the date which is twelve months prior to the date of opening tenders.

34.17 Accident Prevention Officer

The Contractor shall have on his staff at the Site an officer responsible for the safety and protection against accidents of all staff and labour. This officer shall be qualified for this work and shall have the authority to issue instructions and shall take protective measures to prevent accidents and shall be notified nominated to the Employer and Engineer's Representative in writing.

34.18 Life Saving Appliances

The Contractor shall provide and maintain upon the Works sufficient proper and efficient life-saving appliances to the approval of the Engineer and in accordance with the Specification. The appliances shall be available for use at all times.

34.19 Measures against Insect and Pest Nuisance

The Contractor shall at all times take the necessary precautions to protect all staff and labour employed on the Site from insect nuisance, rats and other pests and reduce the dangers to health and the general nuisance occasioned by the same. The Contractor shall take steps to prevent the formation of stagnant pools of water. He shall comply with all the regulations of the local health authorities in these respects and shall in particular arrange to spray thoroughly with approved insecticide all buildings erected on the Site. Such treatment shall be carried out at least once a year or as instructed by the Engineer.

34.20 Burial of the Dead

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

34.21 Strike Notice

The Contractor shall immediately advise the Engineer at his office on the Site and the Employer in writing of any labour dispute or anticipated labour dispute affecting the execution of the Works, but this shall not relieve the Contractor of his obligations under the Contract.

Add the following new sub clause after clause 36.6**36.7 Manufacturers' Instructions, Warranties, etc.**

The approved versions of manufacturers' operating and maintenance instructions, warranties, guarantees, inspection sheets and parts lists which are to be furnished with certain items of materials incorporated into the Works shall be delivered to the Engineer prior to the issue of the Taking-Over Certificate by the Engineer pursuant to Clause 48 hereof.

36.8 Samples of Materials and Plant

The Contractor shall, subject to the provision of sub-Clause 36.(3), supply to the Engineer (and to the employer for information) adequate samples of all Plant, small hardware, construction materials, prefabricated parts etc., which are necessary for the Works, for the purpose of approval. Such samples shall be submitted in due time, before ordering, shipping or installing or the relevant parts or materials as required, in order to permit tests and checks thereon.

All permanently installed parts and materials, as well as prefabricated parts used, shall be identical with the approved samples.

Samples of equipment, small hardware, materials and similar items will be returned to the Contractor if they are foreseen for installation in the Works.

36.9 Trade Name Designation.

For ease of reference in the contract, certain equipment and materials may be designated by trade name, manufacturer's name, manufacturer's catalogue number or other similar designations. Whenever such designations appear in the Contract it shall be deemed to be followed by the words "equivalent". The Contractor shall not be bound to use for the Works such designated equipment or materials and may make written request to the Engineer for the use of equivalent alternative equipment or materials. Such request shall contain data intended to

show that such alternate item is of a quality equal to or better than that specified and has the required characteristics for the intended use. Upon request the Contractor shall furnish such additional information relating use to such alternate items as the Engineer may require. Upon request the Contractor shall furnish such alternative items as the Engineer may require. The Contractor shall make such request at least 28 days before the Contractor requires approval of such alternative item. Within 28 days following receipt of all requested information the Engineer will determine whether the propose alternative meets the requirements of the Contract are met and will inform the Contractor in writing of such determination.

36.10 Copies of Documents

The Contractor shall furnish the Engineer with copies of all requisitions, bills of material and purchase orders.

36.11 Use of Latest codes and Standards

Whenever references are made in the Contractor to the respective standards in accordance with which work is to be performed or tested it is understood that the Tender is based upon the current edition or version of the standards in effect as at the date of Tender. However, all materials and workmanship shall be fabricated, tested, constructed, or performed, as the case may be, using the latest codes or standards available at the time of such fabrication, testing, construction, or performance.

Add new sub clause after clause 37.6

37.6 Test Certificate

The Contractor shall furnish to the Engineer two copies of all mill, test or other certificates obtained by the Contractor evidencing quality or fitness of materials and workmanship supplied by the Contractor under the Contract.

37.7 Responsibility of the Contractor

Factory, shop or Site visits and inspections or testing by the Engineer, with or without participation of the Employer do not in any manner release the Contractor from any obligation under the Contract to perform first-class work in accordance with the Contract

In case of faulty materials or un-workmanlike execution, which are ascertained later, the Engineer will reject such inadequate parts of the Works. Any replacement parts required to be imported shall be brought in to Pakistan by air freight, at the Contractor's expense regardless of the amount of such costs.

Add new sub clause after clause 39.2

39.3 Engineer's Failure to Disapprove

Failure of the Engineer to disapprove any work or materials shall not prejudice his power subsequently to disapprove such work or materials.

47.2 Bonus for Early Completion of Works

Delete Sub Clause 47.2 of Part II-A.

Add the following new Sub Clause;

47.4 Consultancy fees etc in case of delay in completion of Works.

Besides the Liquidated damages, the contractor shall also be responsible for the payment of consultancy fee including all staff charges, to the Consultant directly with intimation to client , expenses on Engineer's site facilities etc. for the entire period of delay.

48.2 Taking Over of Sections or Parts

The time period as given in Appendix to Tender shall prevail for this case.

Add the following new Sub Clause after clauses.

49.5 Warranties beyond the Defects Liability Period

Notwithstanding the generality of the foregoing and without prejudice to any other rights and remedies available to the Employer under the Contract or at law for the replacement or repair of defective materials and workmanship, the Contractor shall obtain warranties from material vendors extending beyond the Defects Liability Period in respect of certain materials and for certain periods as designated in the Contract.

Warranties furnished as aforesaid shall provide for replacement or repair of materials found to be defective under proper use, during the period covered by the warranty, free of cost to the Employer. Warranties extending beyond the Defects Liability Period shall be issued in favour of and shall be exercisable by the Employer and shall be furnished to the Engineer for approval prior to the placing of the relative purchase order. The Contractor shall provide such assistance as may be requested or necessary in the invoking or enforcement of any such vendor warranty.

49.6 Extension of Defect Liability Period

The extension of this sub Clause shall apply to all replacement or renewals of plant and equipment carried out by the Contractor to remedy defects and damage as if the replacement and renewals had been taken over on the date they were completed. The Defect Liability Period for the Works shall be extended by a period equal to the period during which the Works is affected the Defect Liability Period extended beyond two (2) years from the date of taking over.

52.1 Valuation of Variation

In the eight line of sub clause 52.1 of part I after the words “suitable rates and prices” add the following “using a mark up of 35% to cover Contractor’s overheads and profit including all taxes.”

Add the following para at the end of sub clause 52.1 of Part I.

“The approval / finalization of rates of all variations shall not relieve the Contractor of his obligations under the contract. The Contractor shall neither stop the works nor slow down progress of the works in awaiting the approval of rates of all variations.”

52.3 Variations Exceeding 15 per cent

Add in sub clause 52.3 (b) part I line “Contingencies” after “provisional sums”

Add in sub clause 52.3 (b) part I line 8 the word/contingencies” after “Contract, Price, Excluding Provisional Sums and before “ and allowance”

Add after sub clause 54.8, the following new sub clause

54.9 Vesting of Contractor’s Plant, Equipment Temporary Works and Materials:**(a) Definitions**

For the purpose of Sub-Clause 54.

- (i) The expression “Construction Plant” shall be deemed to exclude vehicles engaged in transporting any labour equipment or materials to or from the site.
- (ii) The expression “Essential Hired Plant” shall mean all Constructional Plant, Equipment Temporary Works and materials of Temporary Works the withdrawal of which in the event of termination under Sub-Clause 63 hereof might (having regard to the methods of construction employed prior to the termination) endanger the safety or stability of or result into serious disturbance to the execution of any part of the Works and which are held by the Contractor under any agreement for hire thereof.
- (iii) The expression “Hired Plant” shall mean any Constructional Plant, Equipment, Temporary Works (other than essential hired plant) held by the Contractor under any agreement for hire thereof.
- (iv) The expression “Agreement for Hire” shall be deemed not to include an agreement for hire purchase with an option to purchase or for conditional sale either of which is herein referred to as an “agreement for the purchase”.
- (v) The expression “Hire Purchase Plant” shall mean any Constructional Plant, Equipment, Temporary Works held by the Contractor under an agreement for hire purchase thereof.

(b) Vesting of Certain Plant

All Constructional Plant, Equipment, Temporary Work and material owned by the Contractor or by any company in which the Contractor has a controlling interest shall when brought on to the site (or in the case of hire purchase plant upon becoming the property of the Contractor) shall be and shall be deemed to become the property of the Employer.

(c) Conditions of Hire of Certain Plant

With a view to securing in the event of termination Sub-Clause 63 hereof the continued availability for the purpose of executing the Works of any essential hired plant and equipment the Contractor shall not bring on to the Site any essential hired plant unless the agreement for hire thereof contains a provision that the owner will on request in writing made by the Employer with 7 days after the date on which any such termination has become effective and on the Employer undertaking to pay all hire charges in respect thereof 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 it for the purposes of completing the works under the terms of Sub-Clause 63 hereof.

(d) Costs for purpose of Sub-Clause 63

In the event of the Employer entering into any agreement for hire of essential hired plant pursuant to the provisions of Sub-Clause 54.9(c) all sums properly paid by the Employer under the provisions of any such agreement and all expenses incurred by it (including stamp duties) in entering into such agreement shall be deemed for the purpose of Sub-Clause 63 hereof to be part of the cost of completing the Works.

(e) Contractor's Certificate as to Hiring Provisions

The Contractor shall upon request made by the Engineer at any time in relation to any item of essential hired plant forthwith notify to the Engineer in writing the name and address of the owner and shall certify that the agreement for the hire thereof contains a provision in accordance with the requirements of Sub-Clause 54.9(c) hereof. The Contractor shall also upon request as aforesaid give a like notification (but without certificate) in regard to any hire purchase plant.

(f) Hire Purchase Payment by the Employer.

The Employer shall in order to avoid seizure by the owner of any hire purchase plant be entitled to pay to such owner the amount of any overdue installation or other sum payable optionally or otherwise under any Agreement of hire purchase and in the event of his doing so any amount so paid by him shall be debt due from the Contractor to the Employer and may be deducted by the Employer from any moneys due or that may become due to the Contractor under the Contract or may be recovered by the Employer from the Contractor at law.

(g) Irrevocability of Certain Plant etc.

No Constructional Plant, Equipment Temporary Works or materials or any part thereof shall be removed from the site without the written consent of the Engineer which consent shall not be unreasonably withheld where the same is no longer immediately required for the purposes of completion of the Works but the Employer will permit the Contractor the exclusive use of all such Constructional Plant, Equipment, Temporary Works and materials in and for the completion of the Works until the occurrence of any event which gives the Employer the right to expel the Contractor from the site and proceed with the completion of the Works.

(h) Revesting and Removal of Plant

Upon the removal with the consent of the Engineer of any such Constructional Plant Equipment, Temporary Works or materials as have been deemed to have become the property of the Employer under Sub-Clause 54.9(b) the property therein shall be deemed to revest in the Contractor and upon completion of the Works the property

in the remainder of such Constructional Plant, Equipment, Temporary Works and materials as aforesaid shall subject to the provisions of Sub-Clause 63 be deemed to revert in the Contractor who shall remove the same together with any essential hired plant or hire purchase plant. If the Contractor shall fail to remove any Constructional Plant, Equipment, Temporary Works or materials as aforesaid or any essential hire plant or hire purchase plant within such reasonable time after completion of the Works as may be allowed by the Engineer then the Employer may:

- i) sell any such Constructional Plant, Equipment, Temporary Works and materials as aforesaid and
- ii) return at the Contractor's expenses to the person firm or company from whom any Essential Hired Plant or any Hire Purchase Plant was held by the Contractor such essential hire plant or hire purchase plant, and after deducting from any proceeds of sale, the costs, charges and expenses of and in connection with such sale and return as aforesaid shall pay the balance (if any) to the Contractor but to the extent that the proceeds of any sale are insufficient to meet all such cost, charges and expenses the excess shall be a debt due from the Contractor to the Employer and shall be deductible or recoverable by the Employer accordingly as aforesaid.

- (i) Liability for loss or injury to plant

The Employer shall not at any time be liable for the loss of or injury to any of the Constructional plan. Temporary Works or materials which have been deemed to become the property of the Employer under Sub-Clause 54.9(b) hereof save as mentioned in Sub-Clause 2- hereof.

- (j) Incorporation of Sub-Clause in Sub-Contracts.

The Contractor shall when entering into any sub-contract for the execution of any part of the Works incorporate in such sub-contract (by reference or otherwise) the provisions of this Sub-Clause in relation to Constructional Plant, Temporary Works and materials. Essential Hired Plant and Hire Purchase Plant to be brought on the Site by the sub-contractor.

- (k) Approval of Material etc., not implied

The operation of sub Sub-Clause 54.9(b) hereof 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 materials at any time by the Engineer.

54.10 Landing Charges, Port Dues, etc.

The Contractor shall bear and the Rates and Prices shall be deemed to include all expenses in connection with the landing and shipment of all materials, Plant, Contractor's Equipment or other things brought into or dispatched from Pakistan through the Port of Karachi for the purpose of the Works including port and light dues, pilot charges, landing charges, wharfage, demurrage and all other charges and dues, where applicable.

For all materials, Plant, Contractor's Equipment and other things brought into or dispatched from any other port the Contractor shall bear any and all expenses and the Rates and Prices shall be deemed to make due allowance for this.

54.11 Anchorage Dues on Floating Equipment, etc

The Employer will allow the Contractor's floating Equipment and craft to use Karachi Port free of anchorage dues, light dues and pilot charges during the continuance of the Contract until 28 days after the expiry of the Time for Completion or such extended time as may have been granted by the Engineer under Clause 44. Thereafter the Contractor shall pay all dues, fees and other charges in connection with the harbour as may from time to time be in force and shall become payable on such floating Equipment and craft.

54.12 Customs Duties, Sales Tax, etc

Subject to the provisions of sub-clause 12.5 the amount of the customs duty shall correspond to the rate in force at the time of the import into Pakistan and shall be paid in the full amount by the Contractor at the time. The customs authorities will require a proforma invoice, which contains the costs and freight rates of each shipment, so that the correct import duty can be determined.

The Contractor shall also arrange for all import duty approvals and pay all required incidental customs costs. If the Contractor requests any assistance from the Employer, the Employer will only give recommendations to the component authority.

54.13 Contractor's Responsibility for Licenses

The Contractor shall obtain all necessary import and export licenses for all Contractor's Equipment, Temporary Works, Plant and materials of any kind whatsoever required for the execution of the Works. The Contractor shall bear all costs incurred in the acquisition of such licenses and shall be deemed to have satisfied himself with regard to all his liabilities under the Laws and Regulations governing the processing of the said licenses and no separate payment will be made to the Contractor in respect of such costs. The Contractor shall ensure that requests for import and export licenses are submitted in sufficient time to enable all formalities to be completed, before the said licenses are required.

54.14 Report on Imported Articles

The Contractor shall supply the Employer and the Engineer with receipts for all articles imported by the Contractor under the Contract, in order to register each individual shipment received at the Site. Each shipment shall be carefully checked on its arrival at the Site, by the Contractor in the presence of the Engineer.

54.15 Contractor's Equipment and Materials, Remaining in Pakistan

The Employer has the right of first refusal to buy all Constructional Plant Contractor's Equipment and materials etc, which will be sold by, which will be sold by the Contractor in Pakistan on completion of the Works.

54.16 Floating Plant

The Contractor shall comply with the Regulations of the Karachi Port Trust and shall obey the orders of the Harbour Master or other authorised and competent authority in respect of navigation of floating plant and craft in the harbour and in the vicinity of the Site, and shall conduct his operations in such a manner that they do not interfere with the use of the waterways, anchorages and wharves in the harbour.

Only classified vessels fully registered and recently surveyed shall be used on the Works. All craft and floating plant shall be manned at all times with enough crew to be able to effectively deal with normal emergencies.

54.17 Incorporation of Clause in Subcontracts

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.

54.18 Approval of Materials not Implied

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.

54.19 Status of Ownership at the Site

All constructional Plant, Temporary Works, and materials shall when brought on the Site be deemed to have passed in to the possession of the Employer and the Contractor shall not remove them from the Site either fully or partly, without the written permission of the Engineer the Employer will however, accord the Contractor the exclusive use of such constructional Plant, Temporary Works and materials for the construction and completion of the Works, provided that the case does not occur, which gives the Employer the right to expel the Contractor from the Site and to continue with the Works itself.

After final dismantling of any such Constructional Plant, Temporary Works or materials for temporary use with the approval of the Engineer, these shall be deemed to be transferred back to the Contractor's property again. After completion of the Works, the rest of the said constructional Plant and Temporary Works, as well as any unused materials supplied by the Contractor, will likewise be transferred back to the Contractor and shall be removed from the Site by him.

Should the Contractor neglect, after completion of the Works, to remove any of the aforesaid constructional Plant, Temporary Works or unused materials, within a reasonable period approved by the Engineer, the Employer may sell the same. Employer will then, after deduction of the costs, dues and expenditures, pay the Contractor the balance from the proceeds of the sale (if available).

54.20 Unloading and Storage at the Site

The Contractor shall carefully unload at the site all Constructional Plant, temporary Works; materials, equipment item etc., and place or stack them in a proper manner in areas approved by the Engineer. Everything shall be so protected, that damage and inconvenience to others are avoided as much as possible. The storage shall be such, that inspections can be easily carried out. All packing, ship containers, planks, coverings and the like remain or become the property of the Contractor, even those containing plant, equipment or materials to be permanently installed in the Works, and are to be removed by him from the Site.

55.1 Add the following second paragraph to sub clause 55.1, "Quantities"

Quantities of supplies and performances which are not to be paid for separately in accordance with the Contract but which have to be executed as per the specifications and conditions of the Contract (eg. As per sub clause 1.1) will not be measured as the costs of such quantities are covered in the Contractor's unit rates.

Add the following new sub clauses after clause 58.3;

58.4 Execution of Work under Provisional Sum

If instructed by the Engineer the Contractor shall obtain quotations from approved subcontractors or suppliers for the execution of work or the supply of goods or materials respectively under a Provisional Sum. The Contractor shall submit these quotations to the Engineer together with such other information as the Engineer may require and upon receiving instructions from the Engineer he shall place his order for the execution of such work or the supply of such goods or materials with the subcontractor or supplier nominated by the Engineer. The costs incurred by the Contractor in respect of carrying out his obligations under this sub-clause shall be deemed to be included in the percentage entered by him in his Tender in accordance with Sub-Clause 59.4(c).

58.5 Provisional and Alternative Items

Prices and unit rates of provisional or alternative items shall be fixed as all other rates and prices of the Contract. Therefore, all payments in connection with such works will be determined in accordance with the normal provisions of the Contract and will be made against the statements of the Contractor approved by the Engineer, regardless of whether such works have been executed by the Contractor or by any of his subcontractors.

The provisional and alternative items given in the Bills of Quantities shall facilitate determining the most economical and technical solution taking into account the limitation of funds. Therefore the Engineer reserves right to decide on the execution of any such work, in concurrence with the Employer at any time during the duration of the Contract.

All sums set out in the Bills of Quantities for contingencies shall be used only on the direction and discretion of the Engineer. If not used wholly or in part, the amount not used shall not be considered in fixing the final price of the Contract.

59.2 Add paragraph after clause 59.2 (b) in sub clause “Nominated Sub Contractor; Objection to Nomination”

The Contract, which the Contractor concludes with any Sub-Contractor, does not produce any contracted connection of such Sub-Contractor with the Employer whatsoever

59.4 Payment to Nominated Sub Contractors

The payments to the nominated sub contractors shall be done as outlined in GC Part I

Delete Clause 60.2 of Part II A.

Add the following after the paragraphs (a) & (b) of Sub-Clause 60.2 of Part-I.

- (a) Thirdly to the deduction of Advance Income Tax in accordance with Income Tax Ordinance 1979 or amendments enacted by the Government of Pakistan from time to time.
- (b) The Employer may suspend payment of the Interim Certificate in case it is directed to do so, by Pakistan Custom, FIA and other competent government agencies till the matter is officially cleared by the Government and no compensation shall be made to the Contractor for this retention.

The Engineer shall not be bound to issue an Interim Payment Certificate if the Contractor has not submitted the progress reports in accordance with paragraph (b) of Clause 14.5 and such information as shall be mutually agreed in writing between the Employer and the Contractor.

60.8 Final Payment Certificate

Add the following para (c) after para (b) of Sub-Clause 60.8 of Part-I.

- (c) Before release of the final payment by the Employer, the Contractor shall furnish a certificate issued by the Excise and Taxation Department to the effect that the professional Tax as required by the law has been paid by him to the Government.

60.10 Time for Payment

Substitute “14 days” with “28 days” in line 3

Delete in line 4, “ ... and within 42 days in the case of foreign currency, ...”

Substitute “28 days” with “56 days” in line 6

And in line 6, “.. and within 56 days in case of foreign currency..” of Sub-Clause 60.10 of Part-IIA.

60.12 Financial Assistance to Contractor:

Replace the Clause 60.12 of Part-IIA with the following:

The amount equivalent 15% of the contract price shall be paid as mobilization advance to the contractor, by the Employer, after furnishing the Guarantee from a Rating-A Bank Insurance Guarantee from AA rating Insurance Company, approved by the Employer, for the full amount of mobilization advance by the Contractor.

The recovery of the mobilization advance taken by the contractor will be at 17.5% of the certified payment made to the contractor till recovery of the full mobilization advance.

Add the following Sub-Clauses after the Sub-Clause 60.12 of Part II A.

60.13 Not Responsibility of the Engineer

Nothing in the Contract shall place any responsibility on the Engineer for any payments to the Contractor for or with regard to the Works or in respect to his fulfillment of any other obligation under the Contract.

60.14 Withholding of Payment

- (a) The Employer may withhold the whole or a part of any payment requested by the Contractor if it is necessary in the opinion of the Employer to protect himself against losses on account of the following reasons.
 - (i) Defective work not rectified.
 - (ii) Non-fulfillment of any due demand and guarantee
 - (iii) Claims of third parties raised against the Employer caused through the fault of the Contractor in connection with the Works.
 - (iv) Damages caused by the Contractor or his personnel or any sub-contractor, to the Employer, or to a third party on the site.
 - (v) Non-fulfillment of the Contract by the Contractor.

- (b) After the reasons for withholding of payments have been eliminated, to the satisfaction of the Employer and the Engineer, payments to the Contractor will be undertaken by the Employer without delay.

63.2 Add following sub clauses to clause 63.2, “Valuation at Date of Termination”

- (a) The compensation of any constructional materials and other materials delivered to the site but not yet used, to the extent accepted by the Employer.
- (b) The compensation for the preliminary work performed in the offices, workshop etc., to the extent approve by the Engineer.

In case of forfeiture, the Contractor has no claim to indemnification for any loss or profit.

67.3 Arbitration

The place of arbitration is “Islamabad”.

OTHER CONDITIONS

73.1 Local Taxes Payable by Contractor

The Contractor shall pay income tax, training levies and any other taxes in accordance with the legislation at present in force in the Islamic Republic of Pakistan and any amendments thereto in force from time to time.

73.2 Local Taxes Payable by Contractor's Staff

The Contractor's staff shall pay income tax in respect of their salaries and other emoluments as are chargeable thereon under the laws from time to time in force in the Islamic Republic of Pakistan and also all other taxes levied by the Government. The Contractor shall perform such duties in regard to the deduction and paying over of such income tax and other taxes as may be lawfully imposed on them by the Government.

73.4 Rates and Prices to include Taxes

The Rates and Prices shall be deemed to include all taxes and other charges referred to in this Clause.

74.1 Import & Work Permits, Foreign Exchange and other Regulations

The Contractor shall be deemed to be fully familiar with all laws, regulations and Government procedures relating to the import and export of materials and Equipment, to the employment of Pakistani nationals and non-Pakistani citizens and to foreign exchange procedures. No compensation shall be paid by the Employer for any delay, loss or inconvenience suffered by the Contractor in complying with the laws, regulations, procedures, etc. in force at the time of tendering.

74.2 Registration & Licensing of Vehicles

The Contractor shall be deemed to be fully familiar with all laws, regulations and Government procedures relating to the import and export of materials and Equipment, to the employment of Pakistani nationals and non-Pakistani citizens and to foreign exchange procedures. No compensation shall be paid by the Employer for any delay, loss or inconvenience suffered by the Contractor in complying with the laws, regulations, procedures, etc. in force at the time of tendering.

The Contractor shall be responsible for and bear the cost of the registration and licensing of all his vehicles including those provided under the Contract.

74.3 Contractor's Personnel

The Contractor shall if required submit to the Employer for approval the names, nationalities and other details of foreign personnel that he intends to employ in executing the Works.

75.1 Official Secrets

The Contract involves an obligation of secrecy and the commission by the Contractor, his agents, employees, or sub-contractors or their agents or employees of any offence under the Official Secrets Act 1923 or any statutory modification or re-enactment thereof will, apart from any criminal liability, constitute a breach of the Contract. The port zone is classified as a secret area, and all layout drawings on which port facilities are depicted, as well as photographs of all structures, may be retained by the Contractor and his employees and sub-contractors, only with the express approval of the Employer. The taking of photographs is generally forbidden. The Contractor may not employ any personnel who are viewed as security risks by the Employer or the Government of the Islamic Republic of Pakistan.

75.2 Miscellaneous Document Distribution

In addition to the number, type and distribution of documents called for elsewhere in the Contract, the following document distribution shall be followed by the Contractor.

Subject	For Employer		For Engineer		Reg'd Surveyor	TOTAL
	Head Office	Site Office	Head Office	Site Office		
Technical Correspondence	1	1	1	1	-	4
Insurance Certificates and Guarantees	1	-	1	1	-	3
Monthly Work Progress Reports	1	1	1	1	-	4
Daily Reports	-	1	-	1	-	2
Photo	12	1	1	1	-	15
Approved Test Report	1	-	1	1	-	3
Material Report	1	-	1	1	-	3
Damage Report	1	-	1	1	1	4

Correspondence may be sent by telex or facsimile transmission, except as mentioned under Clause 68.

All letters shall be numbered, using a numbering system acceptable to the Engineer.

As per the Security Regulations, on completion of the Works the Contractor, as well as the Engineer shall return all the work progress photographs to the Employer.

75.3 Coordination Meetings

Shortly after issue of the Letter of Acceptance for the Contract, the Engineer will require a meeting with the Contractor at his head office (or at the site as determined by the Engineer), to discuss scheduling of shop and detail drawings, material procurement, progress of work and other similar problems which may be pertinent for the execution of the Works. The Contractor's authorized representative at the Site, who will be responsible for execution of the Works, shall be present at this meeting. Should the Employer consider it necessary, a representative of the Employer will also participate in these talks.

Meetings for coordination of the progress of the construction works will be held at the Site at the discretion of the Engineer. When the works at the Site are continuing regularly, these talks will take place once weekly, on the same date and time, in the Site office or the Engineer. A representative of the Employer will also be present at these meetings, if the Employer considers it necessary.

75.4 Coordination Meetings

The Contractor shall make available to the Engineer on the site, modernly furnished offices and provide transportation, all in accordance with the Specification. The Contractor shall bear all the costs for the running, cleaning, upkeep and maintenance, including telephone, the regular supply of electricity and water and drainage of sewage, against payment as per the respective items in the Bills of Quantities.

76.1 Details to be Confidential

Neither the Contractor nor his representative, nor any other persons employed by the Contractor, may disclose or reveal any information they have obtained under the Contract, nor may they participate in any activity which would be detrimental to the interests of the Employer. Should the Employer suffer any loss whatsoever due to any such activities of the Contractor, his representative, his office staff and all other persons employed by him, as well as of his sub-contractors, the Contractor shall fully indemnify the Employer therefore. Beyond this, the Employer retains the right to take any further steps which it deems suitable to this connection.

The Contractor shall treat the details of the Contract as private and confidential, save in so far 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 decision of the Employer whose award shall be final.

76.2 Photographs

Commencing with the first month, and then continuously each further month till the completion of the Works, the Contractor on direction for the Engineer's shall make serials of colour photographs showing the current progress of the Works and the completion of each part thereof. He shall use a camera with "back-date" option, which permits the clean and clear enlargement of the pictures to size 20 x 25 cm on single weight glossy paper and supply prints in such size, and the number as specified in Clause 72. He shall furthermore supply to the Employer, a CD containing the soft copies of the images.

All photographs shall be numbered and provided with brief description of the shown elements/parts or the works and be mailed or submitted not later than the 15th of each month, after prior approval of photographs by Engineer.

76.3 Gate Passes

When entering or leaving the restricted area, all personnel of the Contractor or of his sub-contractors must be in possession of special gate passes, which will be issued by the Employer on application by the Contractor. All equipment or material brought into the port area by the Contractor or on his order, or by a sub-contractor, shall also be accompanied by a gate pass, which is to be issued and signed by the authorized representative of the Contractor. These gate passes in triplicate shall be handed over to the security inspectors at the port gates for checking. All materials leaving the port area are subject to an analogously similar procedure.

76.4 Customs / Security Checks

Customs/ Security check posts have been established at all gates. It shall be the responsibility of the Contractor to make a detailed declaration to the customs officials in every respect, when entering or leaving the port area with material or equipment.

76.5 General Regulations of the Employer

The Contractor shall comply with all recommendations of the safety committee of the Employer, of which he will be informed from time to time, with respect to accident prevention and other safety measures. In all other matters, the Contractor is obliged to comply with such rules and regulations as may be prescribed by the Employer from time to time. The decisions of the Employer in all these matters are firm, final and binding for the Contractor.

77.1 Bribes

If the Contractor or any of his Subcontractors, agents or servants gives or offers to give or agrees to offer or give to any person, any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any action in relation to the Contract or any other contract with the Employer or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Employer, then the Employer may enter upon the Site and the Works and terminate the employment of the Contractor and the provisions of Clause 63 hereof shall apply as if such entry and termination had been made pursuant to that Clause.

78.1 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 leader 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.

79.1 Language for Communication

All notices given in accordance with Clause 68 of these Conditions and all communications between the Contractor and the Engineer shall be in the English language.

80.1 Property in Dredging and Excavated and Demolished Materials

All materials and things of any kind obtained from dredging and excavations or demolitions 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 Employer 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 for in the Specification. No dredging or excavations or demolitions 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.

82.1 Restrictions on Eligibility

Any Plant, supplies or materials which will be incorporated in the Works shall have its origin in eligible source countries as defined in the Guidelines for Procurement of the PPRA and PEC. Such Plant, supplies or materials shall be transported carriers from such eligible source countries, unless exempted by the Engineer in writing on the basis of potential excessive costs or delays. Surety, insurance and banking services shall be provided by insurers and bankers from any such eligible source countries.

83.1 Return of Tender Security

Within 28 days after the Contractor shall have executed the Contract Agreement and furnished in an acceptable form the Performance Security required under the Contract, the Employer shall return to the Contractor his Tender Security.

* * * * *

FORMS

TENDER SECURITY

PERFORMANCE SECURITY

CONTRACT AGREEMENT

MOBILIZATION ADVANCE GUARANTEE

APPENDIX A**TENDER SECURITY
(Bank Guarantee)**

Security Executed on

(Date)

Name of Surety with Address: _____
(Scheduled Bank of Pakistan)

Name of Principal (Tenderer) with Address _____

Penal Sum of Security Rupees. _____ (Rs. _____)

Tender Reference No. _____

KNOW ALL MEN BY THESE PRESENTS, that in pursuance of the terms of the Tender and at the request of the said Principal (Tenderer) we, the Surety above named, are held and firmly bound unto Karachi Port Trust in the sum stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Tenderer has submitted the accompanying Tender date for the Rehabilitation of Berth 1- 3 at East Wharves, Karachi Port to the said Employer;

WHEREAS, the Employer has required as a condition for considering said Tender that the Tenderer furnish a Tender Security in the above said sum from a Scheduled Bank of Pakistan or from a foreign bank duly counter-guaranteed by a Scheduled Bank of Pakistan, to the Employer, conditioned as under:

- (1) that the Tender Security shall remain valid for not less than 180 days from the date set for opening of Tender regardless of the validity period of the Tender itself;
- (2) that the Tender Security of unsuccessful Tenderers will be returned by the Employer after expiry of its validity or upon signing of the Contract Agreement; and
- (3) that in the event of failure of the successful Tenderer to execute the proposed Contract Agreement for such work and furnish the required Performance Security, the entire said sum be paid immediately to the said Employer as liquidated damages for the successful Tenderer's failure to perform.

NOW THEREFORE, if the successful Tenderer shall, within the period specified therefore, on the prescribed form presented to him for signature enter into a formal Contract with the said Employer in accordance with his Tender as accepted and furnish within twenty eight (28) days of his being requested to do so, a Performance Security with good and sufficient surety, as may be required, upon the form prescribed by the said Employer for the faithful.

performance and proper fulfillment of the said Contract or in the event of withdrawal of the said Tender within the time specified then this obligation shall be void and of no effect, but otherwise to remain in full force and effect.

PROVIDED THAT the Surety shall forthwith pay the Employer the said sum upon first written demand of the Employer (without cavil or argument) notice of which shall be sent by the Employer by registered post duly addressed to the Surety at its address given above.

PROVIDED ALSO THAT the Employer shall be the sole and final judge for deciding whether the Principal (Tenderer) has duly performed his obligations to sign the Contract Agreement and to furnish the requisite Performance Security within the time stated above, or has defaulted in fulfilling said requirements and the Surety shall pay without objection the said sum upon demand from the Employer forthwith and without any reference to the Principal (Tenderer) or any other person.

IN WITNESS WHEREOF, the above bounden Surety ha executed the instrument under its seal on the date indicated above, the name and seal of the Surety being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

SURETY**1. Signature**

2. Name

3. Title

WITNESS**1.**

Corporate Secretary (Seal)**2.**

(Name, Title & Address)
(Seal)

APPENDIX - B**PERFORMANCE SECURITY**

KNOW ALL MEN BY THESE PRESENTS, that

(Name and Address of Contractor)

As Principal (hereinafter called the 'Contractor') _____
(Name, Title and Address of Surety)
_____ and

As Surety (hereinafter called the "Surety"), are held and firmly bound unto Karachi Port Trust as Oblige (herein called the 'Employer') in the amount of Rupees _____
(Rs _____) for the payment of which sum, well and truly to be made, the Contractor and the Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Contractor has entered into a written Contract Agreement with the Employer dated the _____ day of _____ 20__ For the Rehabilitation of Berth 1 -3 at East Wharves, Port of Karachi, in accordance with the plans and specifications and amendments thereto, to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

NOW, THEREFORE the condition of this obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto) then this obligation shall be null and void; otherwise it shall remain in full force and effect.

WHENEVER the Contractor shall be, and declared by the Employer to be, in default under the Contract, the Employer having performed the Employer's obligations thereunder, the Surety may promptly remedy the default, or shall promptly;

- (1) Complete the Contract in accordance with its terms and conditions; or
- (2) Obtain a bid or bids for submission to the Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive bidder, arrange for a contract between such bidder and the Employer and make available as work progresses (even though there should be default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Value; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Value" as used in this paragraph, shall mean the total amount payable by the Employer to the Contractor; or
- (3) Pay the Employer the amount required by the Employer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Security.

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

Any suit under this Security must be instituted before the issue of the Taking-Over Certificate.

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

Signed on _____
(Date)

On behalf of _____
(The Surety)

By _____
(Name)

in the capacity of _____
(Designation)

in the presence of _____
(Witness)

APPENDIX - C**CONTRACT AGREEMENT**

THIS CONTRACT AGREEMENT (hereinafter called the “Agreement”) made the _____ day of _____ 20_____ between Pakistan Nuclear Regulatory Authority of the one part and _____ of _____ (hereafter called the “Contractor”) of the other part.

WHEREAS the Employer is desirous that certain Works, viz - _____ should be executed by the Contractor 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 witnesseth as follows:

1. In this Agreement words and expressions shall have the same meaning as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to inform and be read and construed as part of this Agreement, viz:
 - (a) The Letter of Acceptance;
 - (b) The Tender;
 - (c) The Conditions of Particular Application – Parts II A & B;
 - (d) The General Conditions – Part I;
 - (e) The Drawings;
 - (f) The Specifications; and
 - (g) The Priced 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 in conformity and 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 as per provisions of the Contract, 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 the 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:

Binding Signature of Employer _____

Binding Signature of Contractor _____

APPENDIX - D**MOBILIZATION ADVANCE GUARANTEE**

Guarantee No. _____ Date _____

WHEREAS Pakistan Nuclear Regulatory Authority has entered into a Contract for _____, with _____
(hereinafter called the "Contract").

AND WHEREAS, the Employer has agreed to advance to the Contractor, at the Contractor's request, an amount of Rupees _____ (Rs _____)
Which amount shall be advanced to the Contractor as per provisions of the Contract.

AND WHEREAS, the Employer has asked the Contractor to furnish guarantee for performance of his obligations under the said Contract.

AND WHEREAS, _____
(Scheduled Bank acceptable to the Employer)
(hereinafter called the "Guarantor") at the request of the Contractor and in consideration of the Employer agreeing to make the above advance to the Contractor, has agreed to furnish the said Guarantee.

NOW, THEREFORE, the Guarantor hereby guarantees that the Contractor shall use the advance for the purpose of above mentioned Contract and if he fails and commits default in fulfillment of any of his obligations for which the advance payment is made, the Guarantor shall be liable to the Employer for payment not exceeding the aforementioned amount.

Notice in writing of any default, of which the Employer shall be the sole and final judge, on the part of the Contractor, shall be given by the Employer to the Guarantor, and on such first written demand, payment shall be made by the Guarantor of all sums then due under this Guarantee without any reference to the Contractor and without any objection.

This Guarantee shall remain in force until the advance is fully adjusted against payments from the Interim Payment Certificates of the Contractor or until _____ whichever is earlier.
(Date)

The Guarantor's liability under this Guarantee shall not in any case exceed the sum of Rupees _____ (Rs _____).

This Guarantee shall remain valid up to the aforesaid date and shall be null and void after the aforesaid date or earlier if the advance made to the Contractor is fully adjusted against payments from Interim Payments Certificates of the Contractor provided that the Guarantor agrees that the aforesaid period of validity shall be deemed to be extended if on the above mentioned date the advance payment is not fully adjusted.

GUARANTOR

1. **Signature** _____
2. **Name** _____
3. **Title** _____

WITNESS

1. _____

Corporate Secretary (Seal)

2. _____
(Name Title & Address)

Corporate Guarantor (Seal)