

THE UNITED ARAB EMIRATES
THE MINISTRY OF AGRICULTURE AND FISHERIES
WATER AND SOIL DIRECTORATE



GENERAL CONDITIONS OF CONTRACT

CONDITIONS OF CONTRACT

GENERAL CONDITIONS OF CONTRACT

RY

JICA LIBRARY



1029334[8]

**THE UNITED ARAB EMIRATES
THE MINISTRY OF AGRICULTURE AND FISHERIES
WATER AND SOIL DIRECTORATE**



**AL BASSIERAH DAM PROJECT
CONDITIONS OF CONTRACT**

TENDER AND CONTRACT DOCUMENTS

VOL I

JAPAN INTERNATIONAL COOPERATION AGENCY

NOVEMBER, 1981

国際協力事業団	
受入 月日 84. 8. 27	37531
	61.71
登録No. 08159	SDS

マイクロ
フィルム作成

<u>Clause</u>	<u>Page</u>
18. Boreholes and Exploratory Excavation	12
19. Watching and Lighting	12
20. Care of Works	12
21. Insurance of Works, etc.	13
22. Damage to Persons and Property	14
23. Third Party Insurance	15
24. Accident or Injury to Workmen	16
25. Remedy on Contractor's Failure to Insure	16
26. Giving of Notices and Payment of Fees	16
27. Fossils, etc.	17
28. Patent Rights and Royalties	17
29. Interference with Traffic and Adjoining Properties	17
30. Extraordinary Traffic	18
31. Opportunities for Other Contractors	18
32. Contractor to Keep Site Clear	19
33. Clearance of Site on Completion	19
<u>LABOUR</u>	20
34. Engagement of Labour	20
35. Returns of Labour, etc.	22
<u>MATERIALS AND WORKMANSHIP</u>	22
36. Quality of Materials and Workmanship and Tests	22
37. Inspection of Operations	24
38. Examination of Work Before Covering Up	24
39. Removal of Improper Work and Materials	24
40. Suspension of Work	25

<u>Clause</u>	<u>Page</u>
<u>COMMENCEMENT TIME AND DELAYS</u>	26
41. Commencement of Works	26
42. Possession of Site	26
43. Time for Completion	26
44. Extension of Time for Completion	27
45. No Night or Friday Work without Permission	27
46. Rate of Progress	27
47. Liquidated Damages for Delay	28
48. Certification of Completion of Works	29
49. Definition of "Period of Maintenance"	31
50. Contractor to Search	33
<u>ALTERATIONS, ADDITIONS AND OMISSIONS</u>	33
51. Variations	33
52. Valuation of Variations	34
<u>PLANT TEMPORARY WORKS AND MATERIALS</u>	37
53. Plant, etc. Exclusive Use for the Works	37
54. Approval of Materials, etc. not Implied	38
<u>MEASUREMENT</u>	38
55. Quantities	38
56. Works to be Measured	38
57. Method of Measurement	39
<u>PROVISIONAL AND PRIME COST SUMS</u>	39
58. Prime Cost Items	39
<u>NOMINATED SUB-CONTRACTORS</u>	40
59. Definition of "Nominated Sub-Contractors"	40

<u>Clause</u>	<u>Page</u>
<u>CERTIFICATES AND PAYMENT</u>	42
60. Monthly Statements	42
61. Approval only by Maintenance Certificate	44
62. Maintenance Certificate	45
<u>REMEDIES AND POWERS</u>	46
63. Default of Contractor	46
64. Urgent Repairs	48
<u>SPECIAL RISKS</u>	48
65. No Liability for War, etc. Risks	48
<u>FRUSTRATION</u>	51
66. Payment in Event of Frustration	51
<u>SETTLEMENT OF DISPUTES</u>	51
67. Settlement of Disputes - Arbitration	51
<u>NOTICES</u>	53
68. Service of Notices on Contractor	53
<u>DEFAULT OF EMPLOYER</u>	53
69. Default of Employer	53
<u>MISCELLANEOUS</u>	54
70. Increase or Decrease of Costs	54
71. Bribery or Corruption	54
72. Details Confidential	54
73. Law Covering Contract	55
74. Uncompleted Work	55
75. Interference with Works	55
76. Rate of Exchange	55

<u>Clause</u>	<u>Page</u>
77. Income Tax	55
78. Setting Out	55
79. Profile Grade	56
80. Site Visit	56
81. Access	56
82. Discrepancies	56

Clause

Page

CONDITIONS OF CONTRACT

CONDITIONS OF PARTICULAR APPLICATION

57

CONDITIONS OF CONTRACT

PART I - GENERAL CONDITIONS

DEFINITIONS AND INTERPRETATION

1. Definitions

- (1) In the Contract, as hereinafter defined, the following words and expressions shall have the meaning hereby assigned to them, except where the context otherwise requires:
- (a) "Employer" means the Ministry of Agriculture and Fisheries of the United Arab Emirates herein represented by H. E. the Minister of Agriculture and Fisheries.
 - (b) "Contractor" means the person or persons, firm or company whose tender has been accepted by the Employer and includes the Contractor's personal representatives, successors and permitted assigns.
 - (c) "Engineer" means any person appointed from time to time by the Employer and notified in writing to the Contractor to act as Engineer for the purposes of the Contract, and his name shall be stated in the Particular Conditions.
 - (d) "Engineer's Representative" means any resident engineer or assistant of the Engineer, or any clerk of works appointed from time to time by the Employer or the Engineer to perform the duties set forth in Clause 2 hereof, whose authority shall be notified in writing to the Contractor by the Engineer.
 - (e) "Works" shall include both Permanent Works and Temporary Works.
 - (f) "Contract" means the Conditions of Contract, Specification, Drawings, priced Bill of Quantities, Schedule of Rates and Prices, if any, Tender, Letter of Acceptance and the Contract Agreement, if completed.
 - (g) "Contract Price" means the sum named in the Letter of Acceptance, subject to such additions thereto or deductions therefrom as may be made under the provisions hereinafter contained.
 - (h) "Constructional Plant" means all appliances or things or whatsoever nature required in or about the execution or maintenance of the Works but does not include materials or other things intended to form or forming part of the Permanent Works.

- (i) "Temporary Works" means all temporary works of every kind required in or about the execution or maintenance of the Works.
- (j) "Permanent Works" means the permanent works to be executed and maintained in accordance with the Contract.
- (k) "Specification" means the specification referred to in the Tender and any modification thereof or addition thereto as may from time to time be furnished or approved in writing by the Engineer.
- (l) "Drawings" means the drawings referred to in the Specification and any modification of such drawings approved in writing by the Engineer and such other drawings as may from time to time be furnished or approved in writing by the Engineer.
- (m) "Site" means the land and other places on, under, in or through which the Permanent Works or Temporary Works designed by the Engineer are to be executed and any other lands and places provided by the Employer for working space or any other purpose as may be specifically designated in the Contract as forming part of the Site.
- (n) "Approved" means approved in writing, including subsequent written confirmation of previous verbal approval and "approval" means approval in writing, including as aforesaid.
- (o) "Days" means every day shown in the calendar, Fridays and holidays included.

Singular and Plural

- (2) Words importing the singular only also include the plural and vice versa where the context requires.

Headings or Notes

- (3) The headings or marginal notes in these Conditions of Contract shall not be deemed to be part thereof or be taken into consideration in the interpretation thereof or of the Contract.

Cost

- (4) The word "cost" shall be deemed to include overhead costs whether on or off the Site.

Time

- (5) Time is defined by reference to the Gregorian Calendar.

ENGINEER AND ENGINEER'S REPRESENTATIVE

2. Duties and Powers of Engineer and Engineer's Representative

- (1) The Engineer shall carry out such duties in issuing decisions, certificates and orders as are specified in the Contract.
- (2) The Engineer's Representative shall be responsible to the Engineer and his duties are to watch and supervise the Works and to test and examine any materials to be used or workmanship employed in connection with the Works. He shall have no authority to relieve the Contractor of any of his duties or obligations under the Contract nor, except as expressly provided hereunder or elsewhere in the Contract, to order any work involving delay or any extra payment by the Employer, nor to make any variation of or in the Works.

The Engineer may from time to time in writing delegate to the Engineer's Representative any of the powers and authorities vested in the Engineer and shall furnish to the Employer a copy of all such written delegations of powers and authorities. Any written instruction or approval given by the Engineer's Representative to the Contractor within the terms of such delegation, but not otherwise, shall bind the Contractor and the Employer as though it had been given by the Engineer.

Provided always as follows:

- (a) Failure of the Engineer's Representative to disapprove any work or materials shall not prejudice the power of the Engineer thereafter to disapprove such work or materials and to order the pulling down, removal or breaking up thereof.
- (b) If the Contractor shall be dissatisfied by reason of any decision of the Engineer's Representative he shall be entitled to refer the matter to the Engineer, who shall thereupon confirm reverse or vary such decision.

ASSIGNMENT AND SUB-LETTING

3. Assignment

The Contractor shall not assign the Contract or any part thereof, or any benefit or interest therein or thereunder otherwise than by a charge in favour of the Contractor's bankers of any monies due or to become due under this Contract, without the prior written consent of the Employer.

4. Sub-Letting

- (1) The Contractor shall not sub-let the whole of the works. Except where otherwise provided by the Contract, the Contractor shall not sub-let any part of the Works without the prior written consent of the Engineer, which shall not be unreasonably withheld, and such consent, if given, 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 sub-contractor, 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 always that the provision of labour on a piecework basis shall not be sub-letting under this Clause.

Engineer May Terminate Sub-Contracts

- (2) If any Sub-Contractor engaged on the Works executes any work or provides any material or things which in the opinion of the Engineer's Representative are not in accordance with the Contract, the Engineer or Engineer's Representative may, by written notice to the Contractor require him to terminate such Sub-Contract and the Contractor upon the receipt of such notice shall immediately terminate such Sub-Contract. No action taken by the Engineer or Engineer's Representative under this Clause shall relieve the Contractor of any of his liabilities under the Contract, or give rise to any right to compensation, extension of time, or otherwise.

Extent of Contract

- (3) The Contract comprises the construction completion and maintenance of the Works and except in so far as the Contract otherwise provides the provision of all labour, materials, Constructional Plants, Temporary Works and everything whether of a temporary or permanent nature required in and for such construction and maintenance so far as the necessity for providing the same is specified in or reasonably to be inferred from the Contract.

CONTRACT DOCUMENTS

5. Language

- (1) Contract documents are prepared in Arabic and with exact translation to English. In case of discrepancy the Arabic version of all Contract documents shall be governing and binding.

Documents Mutually Explanatory

- (2) Except if and to the extent otherwise provided by the Contract, the provisions of the Conditions of Contract shall prevail over those of any other document forming part of the Contract. Subject to the foregoing, 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. Provided always that if, in the opinion of the Engineer, compliance with any such instructions shall involve the Contractor in any cost, which by reason of any such ambiguity or discrepancy could not reasonably have been foreseen by the Contractor, the Engineer shall evaluate and recommend the issuing of a certificate for additional sums as may be reasonable to cover such expenses and the Employer shall pay such sums after only due study and approval of same.

Correspondence

- (3) The Contractor shall conduct all correspondence with the Employer, the Engineer and the Engineer's Representative in the Arabic language. The Contractor may, however, include the English translation, but the interpretation of the Arabic text shall prevail.

6. Custody of Drawings

- (1) The Drawings shall remain in the sole custody of the Engineer, but two copies thereof shall be furnished to the Contractor free of charge. The Contractor shall provide and make at his own expense any further copies required by him. At the completion of the Contract the Contractor shall return to the Engineer all Drawings provided under the Contract.

One Copy of Drawings to be Kept on Site

- (2) One copy of the drawings, furnished to 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 the Engineer's Representative and by any other person authorised by the Engineer in writing.

Disruption of Progress

- (3) The Contractor shall give written notice to the Engineer whenever planning or progress of the Works is likely to be delayed or disrupted unless any further drawing or order, including a direction, instruction or approval, is issued by the Engineer within a reasonable time. The notice shall include details of the drawing or order required and of why and by when it is required and of any delay or disruption likely to be suffered if it is late.

Delays and Cost of Delay of Drawings

- (4) 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 (3) of this Clause, the Contractor suffers delay and/or incurs costs then the Engineer shall take such delay into account in determining any extension of 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, provided that the Employer shall evaluate this and issue his decision.

7. Further Drawings and Instructions

- (1) The Engineer shall have full power and authority to supply to the Contractor from time to time, during the progress of the Works, such further drawings and instructions as shall be necessary for the purpose of the proper and adequate execution and maintenance of the Works. The Contractor shall carry out and be bound by the same.
- (2) Such drawings or documents as the Contractor may be required to prepare under the Contract shall be submitted in duplicate to the Engineer not less than 28 days before the work therein described is put in hand. The Contractor shall make any alterations or additions that the Engineer may require to drawings or documents to submit the revised drawings or documents in duplicate to the Engineer before the work therein described is put in hand. The Contractor shall furnish the Engineer with a further three copies of each drawing or document to which the Engineer has indicated he does not require any alterations or additions.

Should it be found at any time after acceptance has been given by the Engineer to any drawings or documents submitted by the Contractor that such drawings do not comply with the Contract or with drawings or documents previously submitted and accepted, the Contractor shall amend his drawings or documents as required by the Engineer notwithstanding any acceptance previously given.

- (3) Neither any examination by the Engineer of any drawing or document submitted by the Contractor nor any approval expressed by the Engineer in regard thereto shall release the Contractor from any liability imposed upon him under the Contract.

GENERAL OBLIGATIONS

8. Contractor's General Responsibilities

- (1) The Contractor shall, subject to the provisions of the Contract, and with due care and diligence, execute and maintain the Works and provide all labour including the supervision thereof, materials, Constructional Plant and all other things, whether of a temporary or permanent nature, required in and for such execution and maintenance, so far as the necessity for providing the same is specified in or is reasonably to be inferred from the Contract.
- (2) 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 may be expressly provided in the Contract, for the design or specification of the Permanent Works, or for the design or specification of any Temporary Works prepared by the Engineer.

9. Contract Agreement

The successful tenderer will be notified of the acceptance of his tender and shall when called upon so to do, enter into and execute a contract agreement prepared by the Employer. Provided that the successful tenderer prior to signing the contract shall furnish at his own expense an acceptable performance bank guarantee (bond) and any other additional required guarantees. The Contract agreement shall include all the tender documents and the number of tender which the Contract is based upon.

10. Performance Bond

Within 10 days of informing the successful tenderer of the acceptance of his tender and prior to him coming to sign the Contract, the successful tenderer shall furnish at his own expense an acceptable performance bank guarantee (bond) for the due performance of the Contract at the time of the execution of the Contract in an amount equal to 10% of his total tender price (not including the bank interest on this bond). Should the amount of the performance bond be decreased due to any retention or should the value of Works become more than the Contract value, then the Contractor shall immediately within 10 days after the request of the Employer increase the value of the performance bond to reach 10% of the value of the whole Works. Should the Contractor fail to fulfil the above mentioned duty then the Employer has the right to deduct the required sum from any payments due to the Contractor under this Contract or any other Contract he is performing for the Employer.

The Bank guarantee of an acceptable bank operating in the U. A. E. has to be jointly and severally bound with the Contractor to the Employer.

The Bank Guarantee and the Bank issuing same shall be acceptable to the Employer and the Contractor shall at his own cost bear all the expenses for furnishing such guarantee.

The validity of this guarantee must remain for a period of 90 days after the end of Contract unless it is decided otherwise by the Employer.

If the successful tenderer fails to furnish and submit the acceptable performance bank guarantee within the period mentioned above, the Employer, at the end of this period has the right to forfeit the Tender Guarantee and to execute the Works and the Contractor must bear the difference in addition to 5% of the total value of the new Contract as administration expenses. The Employer has the right to cover all these sums from any money due to the Contractor from the Employer or from any other Government department or any other party and to cancel the Contractor's name from the registered list of Contractors.

11. Inspection of Site

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

The Contractor shall also 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, before submitting his Tender, as to the form and nature thereof, including the sub-surface conditions, the hydrological and climatic conditions, the extent and nature of work and materials necessary for the completion of the Works, 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.

12. Sufficiency of Tender-Adverse Physical Conditions and Artificial Obstructions

The Contractor shall be deemed to have satisfied himself before tendering as to the correctness and sufficiency of his Tender for the Works and of the rates and prices stated in the priced Bill of Quantities and the Schedule of Rates and Prices, if any, which Tender rates and prices shall, except insofar as it is otherwise provided in the Contract, cover all his obligations under the Contract and all matters and things necessary for the proper execution and maintenance of the Works. If, however, during the execution of the Works the Contractor shall encounter physical conditions,

other than climatic conditions on the Site, or artificial obstructions which conditions or obstructions could, in his opinion, not have been reasonably foreseen by an experienced contractor, the Contractor shall forthwith give written notice thereof to the Engineer's Representative and if, in the opinion of the Engineer, such conditions or artificial obstructions could not have been reasonably foreseen by an experienced contractor, then the Engineer shall certify and the Employer shall pay the additional cost to which the Contractor shall have been put by reason of such conditions, including the proper and reasonable cost:

- (a) of complying with any instruction which the Engineer may issue to the Contractor in connection therewith, and
- (b) any reasonable and suitable measures and actions the Contractor shall take during the absence of specific instructions from the Engineer provided approval of the Engineer at a later date is obtained.

The Engineer shall recommend and certify the amounts expended and the Employer shall study these recommendations and the circumstances and evaluate these extra expenses and make the required payments in light of the Engineer's recommendations.

as a result of such conditions or obstructions being encountered.

13. Work to be to the Satisfaction of Engineer

Save insofar as it is legally or physically impossible, the Contractor shall execute and maintain the Works in strict accordance with the Contract to the satisfaction of the Engineer and shall comply with and adhere strictly to the Engineer's instructions and directions on any matter whether mentioned in the Contract or not, touching or concerning the Works. The Contractor shall take instructions and directions only from the Engineer or, subject to the limitations referred to in Clause 2 hereof, from the Engineer's Representative.

14. Programme to be Furnished

- (1) Within 15 days the Contractor shall, after the acceptance of his Tender, submit to the Engineer for his approval a programme showing the order of procedure in which he proposes to carry out the Works. The Contractor shall whenever required by the Engineer or Engineer's Representative 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.
- (2) If at any time it should appear to the Engineer that the actual progress of Works does not conform to the approved programme referred to in sub-clause (1) of this Clause, the Contractor shall produce, at the request of the Engineer, a revised programme showing the modifications of the approved programme

necessary to ensure completion of the Works within the time for completion as defined in Clause 43 hereof.

- (3) The submission to and approval by the Engineer or Engineer's Representative of such programmes or the furnishing of such particulars shall not relieve the Contractor of any of his duties or responsibilities under the Contract.

15. Contractor's Superintendence

The Contractor shall give or provide all necessary superintendence during the execution of the Works and as long thereafter as the Engineer may consider necessary for the fulfilling of the Contractor's obligations under the Contract. The Contractor, or a competent and authorised agent or representative approved of in writing by the Engineer which approval may at any time be withdrawn, is to be constantly on the Works and shall give his whole time to the superintendence of the same. If such approval shall be 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 written notice of such withdrawal, remove the agent from the Works and shall not thereafter employ him again on the Works in any capacity and shall replace him by another agent approved by the Engineer. Such authorised agent or representative shall receive, on behalf of the Contractor, directions and instructions from the Engineer or, subject to the limitations of Clause 2 hereof, the Engineer's Representative. The Contractor's authorised Agent or representative shall be sufficiently fluent in the Arabic and English languages to receive directions and instructions and to correspond with the Employer, the Engineer and the Engineer's Representative in Arabic.

16. Contractor's Employees

- (1) The Contractor shall provide and employ on the Site in connection with the execution and maintenance of the Works:
 - (a) only such technical assistants as are skilled and experienced in their respective calling and such sub-agents, foremen and leading hands as are competent to give proper supervision to the work they are required to supervise, and
 - (b) such skilled, semi-skilled labour as is necessary for the proper and timely execution and maintenance of the Works.
- (2) The Engineer shall be at liberty to object to and require the Contractor to remove forthwith from the Works any person employed by the Contractor in or about the execution or maintenance of the Works who, in the opinion of the Engineer, misconducts himself, or is incompetent or negligent in the proper performance of his duties, or whose employment is otherwise considered by the Employer or by the Engineer to be undersirable and such

person shall not be again employed upon the Works without the written permission of the Engineer. Any person so removed from the Works shall be replaced as soon as possible by a competent substitute approved by the Engineer.

- (3) The Contractor shall if required by the Engineer deliver to the Engineer or the Engineer's Representative returns in such form and at such intervals as the Engineer may prescribe showing in detail the Supervisory staff and the numbers of the several classes of labour from time to time employed by the Contractor on the Site.

17. Setting-out

- (1) The Contractor shall be responsible for the true and proper setting-out of the Works in relation to original points, lines and levels of reference given by the Engineer in writing and for the correctness, subject as above mentioned, of the position, levels, dimensions and alignment of all parts of the Works and for the provision of all necessary instruments, appliances and labour in connection therewith. If, at any time during the progress of the Works, any error shall appear or arise in the position, levels, dimensions or alignment of any part of the Works, the Contractor on being required so to do by the Engineer's Representative, shall, at his own cost, rectify such error to the satisfaction of the Engineer or the Engineer's Representative, unless such error is based on incorrect data supplied in writing by the Engineer or by the Engineer's Representative, in which case the expense of rectifying the same shall be borne by the Engineer. The checking of any setting-out or of any line or level by the Engineer or the Engineer's Representative shall not in any way relieve the Contractor of his responsibility for the correctness thereof and the Contractor shall carefully protect and preserve all bench-marks, sight-rails, pegs and other things used in setting-out the Works.
- (2) Land survey beacons, bench-marks and other permanent land markings and features on or around the Site shall not be disturbed unless permission in writing is obtained from the Engineer.
- (3) Where existing levels either above or under water are relevant to the measurement of any part of the Works the Contractor shall take and record such levels before such part of the Works is commenced. The taking and recording of such levels shall be carried out under the direction and in the presence of the Engineer's Representative. Two copies of the recorded levels when checked and signed by the Engineer's Representative and by the Contractor shall be supplied to the Engineer's Representative and shall be used as a basis of measurement.

18. Boreholes and Exploratory Excavation

If, at any time during the execution of the Works, the Engineer shall require the Contractor to make boreholes or to carry out exploratory excavation, such requirement shall be ordered in writing and shall be deemed to be an addition ordered under the provisions of Clause 51 hereof, unless a provisional sum in respect of such anticipated work shall have been included in the Bill of Quantities.

19. Watching and Lighting

The Contractor shall in connection with the Works provide and maintain at his own cost all lights, guards, fencing and watching when and where necessary or required by the Engineer or the Engineer's Representative, or by any duly constituted authority, for the protection of the Works, or for the safety and convenience of the public or others. The Contractor shall provide, erect and maintain all necessary barricades suitable and sufficient red lights danger signals detour and other signs and he shall provide a sufficient number of watchmen and take all necessary precautions for the protection of the Works and the safety of the Public. Roads and footpaths or sections of roads and footpaths closed to traffic shall be protected by effective barricades and obstructions shall be illuminated by night.

20. Care of Works

- (1) From the date of commencement of the Works until the date of issue of the Certificate of Completion for the whole of the Works pursuant to Clause 48 hereof the Contractor shall take full responsibility for the care thereof. Provided that if the Engineer shall issue a Certificate of Completion in respect of any part of the Permanent Works the Contractor shall cease to be liable for the care of that part of the Permanent Works from the date stated in the Certificate of Completion in respect of that part and the responsibility for the care of that part shall pass to the Employer. Provided further that the Contractor shall take full responsibility for the care of any outstanding work which he shall have undertaken to finish during the Period of Maintenance until such outstanding work is completed. In case any damage, loss or injury shall happen to the Works or to any part thereof, from any cause whatsoever, save and except the excepted risks as defined in Sub-Clause (2) of this Clause, while the Contractor shall be responsible for the care thereof the Contractor shall, at his own cost, repair and make good the same, so that at completion the Permanent Works shall be in good order and condition and in conformity in every respect with the requirements of the Contract and the Engineer's instructions. In the event of any such damage, loss or injury happening from any of the excepted risks, the Contractor shall, if and to the extent required by the Engineer and subject always to the provisions of Clause 65 hereof, repair and make good the same as aforesaid at the cost

of the Employer. The Contractor shall also be liable for any damage to the Works occasioned by him in the course of any operations carried out by him after the date of issue of the Certificate of Completion for the purpose of completing any outstanding work or complying with his obligations under this Contract.

Excepted Risks

- (2) The "excepted risks" are war, hostilities (whether war be declared or not) military or usurped power, civil war, or unless solely restricted to employees of the Contractor or of his sub-contractors and arising from the conduct of the Works, riot, commotion or disorder, or use or occupation by the Employer of any part of the Permanent Works, or a cause solely due to the Engineer's design of the Works, or ionising radiations or contamination by radioactivity from any nuclear fuel, or from any waste from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive, nuclear assembly or nuclear component thereof, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds, or any such operation of the forces of nature as an experienced contractor could not foresee, or reasonably make provision for or insure against all of which are herein collectively referred to as "the excepted risks".

21. Insurance of Works, etc.

- (1) Without limiting his obligations and responsibilities under Clause 20 hereof, the Contractor shall insure in the joint names of the Employer and the Contractor against all loss or damage from whatever cause arising, other than the excepted risks, for which he is responsible under the terms of the Contract and in such manner that the Employer and Contractor are covered for the period stipulated in Clause 20 (1) hereof and are also covered during the Period of Maintenance for loss or damage arising from a cause, occurring prior to the commencement of the Period of Maintenance, and for any loss or damage occasioned by the Contractor in the course of any operations carried out by him after the date of issue of the Certificate of Completion for the purpose of complying with his obligations under this Contract:
- (a) The Works for the time being executed to the estimated current contract value thereof, together with the materials for incorporation in the Works at their replacement value.
- (b) The Construction Plant and other things brought on to the Site by the Contractor to the replacement value of such Constructional Plant and other things.

Such insurance shall be effected with an insurer and in terms approved by the Employer, which approval shall not be unreasonably withheld, and the Contractor shall whenever required, produce to the Engineer or the Engineer's Representative the policy or policies of insurance and the receipts for payment of the current premiums, any of which may be retained by the Engineer. Provided always that without limiting his obligations and responsibilities as aforesaid nothing in this Clause contained shall render the Contractor liable to insure against the necessity for the repair or reconstruction of any work constructed other than in accordance with the requirements of the Contract.

- (2) Should the Works or any part thereof or any of the material Constructional Plant or other things be damaged or lost during the continuance of any of the insurances aforesaid by any risk insured against the Contractor shall proceed with the utmost despatch to make good such damage or loss and every sum of money received upon the policies shall be paid to the Employer and shall be paid by him to the Contractor by such installments as the Engineer shall think proper and certify having regard to the progress made by the Contractor in making good the damage or loss aforesaid if and so far as such damage or loss ought in the opinion of the Engineer to be made good for the proper conduct of the Works or the construction completion and maintenance of the Works.

If and so far as the said monies shall not be required for the purpose aforesaid they shall upon the directions in writing of the Engineer be paid over to the Contractor. If and so far as such monies shall be insufficient for the purposes aforesaid the deficiency shall be borne by the Contractor.

22. Damage to Persons and Property

- (1) The Contractor shall, except if and so far as the Contract provides otherwise, indemnify the Employer against all losses and claims in respect of injuries or damage to any person or material or physical damage to any property whatsoever which may arise out of or in consequence of the execution and maintenance of the Works and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect of or in relation thereto except any compensation or damages for or with respect to:
 - (a) The permanent use or occupation of land by the Works or any part thereof.
 - (b) The right of the Employer to execute the Works or any part thereof, on, over, under, in or through any land.
 - (c) Injuries or damage to persons or property which are the unavoidable result of the execution or maintenance of the Works in accordance with the Contract.

- (d) Injuries or damage to persons or property resulting from any act or neglect of the Employer, his agents, servants or other contractors, not being employed by the Contractor, or for 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 compensation 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 damage or injury.

Indemnity by Employer

- (2) The Employer shall compensate for all claims, damages, fees, costs and expenses related to fees mentioned in Clauses (a), (b), (c) and (d) of Clause (1) of this item. The above expenses should be borne by the causer.

23. Third Party Insurance

- (1) Before commencing the execution of the Works the Contractor, but without limiting his obligations and responsibilities under Clause 22 hereof, shall insure in the joint names of the Employer and the Contractor against his liability for any material or physical damage, loss or injury which may occur to any property including any employee of the Employer, by or arising out of the execution of the Works or in the carrying out of the Contract, otherwise than due to the matters referred to in the proviso to Sub-Clause (1) of Clause 22 hereof.

Minimum Amount of Third Party Insurance

- (2) Such insurance shall be effected with an insurer and in terms approved by the Employer, which approval shall not be unreasonably withheld, and for at least the amount stated in the Appendix to the Tender. The Contractor shall, whenever required, produce to the Engineer or the Engineer's Representative the policy or policies of insurance and the receipts for payment of the current premiums.

Provision to Indemnify Employer

- (3) The terms shall include a provision whereby, in the event of any claim in respect of which the Contractor would be entitled to receive indemnity under the policy being brought or made against the Employer, the insurer will indemnify the Employer against such claims and any costs, charges and expenses in respect thereof.

24. Accident or Injury to Workmen

- (1) The Employer shall not be liable for or in respect of any damages or compensation payable at law in respect or in consequence of any accident or injury to any workman or other person in the employment of the Contractor, save and except an accident 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, save and except as aforesaid, and against all claims, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

Insurance Against Accident, etc. to Workmen

- (2) The Contractor shall insure against such liability with an insurer approved by the Employer, which approval shall not be unreasonably withheld, and shall continue such insurance during the whole of the time that any persons are employed by him on the Works and shall, when required produce to the Engineer or the Engineer's Representative such policy of insurance and the receipts for payment of the current premium. Provided always that, in respect of any persons employed by any sub-contractor, the Contractor's obligation to insure as aforesaid under this Sub-Clause shall be satisfied if the sub-contractor 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 sub-contractor to produce to the Engineer or the Engineer's Representative, when required, such policy of insurance and the receipt for the payment of the current premium.

25. Remedy on Contractor's Failure to Insure

If the Contractor shall fail to effect and keep in force the insurances referred to in Clause 21, 23 and 24 hereof, or any other insurance which he may require to effect under the terms of the Contract, then and in any such case the Employer may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the Employer as aforesaid from any monies due or which may become due to the Contractor, or recover the same as a debt due from the Contractor.

26. Giving of Notices and Payment of Fees

- (1) The Contractor shall give all notices and pay all fees required to be given or paid by 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 of the Works and by 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.

Compliance with Statutes, Regulations, etc.

- (2) The Contractor shall conform in all respects with the provisions of any such Statute, Ordinance or Law as aforesaid and the regulations or bye-law of any local or other duly constituted authority which may be applicable to the Works and with such rules and regulations of public bodies and companies as aforesaid and shall keep the Employer indemnified against all penalties and liability of every kind for breach of any such Statute, Ordinance or Law, Regulation or bye-law.

27. Fossils, etc.

All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the site of the Works 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 such article or thing and shall immediately upon discovery thereof and, before removal, acquaint the Engineer's Representative of such discovery thereof and, before removal, acquaint the Engineer's Representative of such discovery and carry out, at the expense of the Employer, the Engineer's Representative's orders as to the disposal of the same.

28. Patent Rights and Royalties

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 Constructional Plant, machine work, or material used for or in connection with the Works or any of them and from and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto. Except where otherwise specified, 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 or any of them.

29. Interference with Traffic and Adjoining Properties

All operations necessary for the execution of the Works and for the construction of any Temporary Works shall so far as compliance with the requirements of the Contract permits, be carried on so as not to interfere unnecessarily or improperly with the convenience of the public, or 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 in so far as the Contractor is responsible therefor.

30. Extraordinary Traffic

- (1) The Contractor shall use every reasonable means to prevent any of the highways 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 sub-contractors 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 moving of plant and material 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 highways and bridges.

Special Loads

- (2) Should it be found necessary for the Contractor to move one or more loads of Constructional Plant, machinery or pre-constructed units or parts of units or work over part of a highway or bridge, the moving whereof is likely to damage any highway or bridge unless special protection or strengthening is carried out, then the Contractor shall before moving the load on to such highway or bridge give notice to the Engineer or Engineer's Representative of the weight and other particulars of the load to be moved and his proposals for protecting or strengthening the said highway or bridge. Unless within fourteen days of the receipt of such notice the Engineer shall be counter-notice direct that such protection or strengthening is unnecessary, then the Contractor will carry out such proposals or any modification thereof that the Engineer shall require and, unless there is an item or are items in the Bill of Quantities for pricing by the Contractor of the necessary works for the protection or strengthening aforesaid, the costs thereof shall be paid by the Employer to the Contractor.

Waterborne Traffic

- (3) 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 "highway" included a lock, dock, sea wall or other structure related to waterway and "vehicle" included craft, and shall have effect accordingly.

31. 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 any other contractors employed by the Employer and their workmen and to the workmen of the Employer and of any other duly constituted authorities who may be employed in the execution on or near the Site of any work not included in the Contract or of any contract which the Employer may enter into in connection with or ancillary to the Works. If, however, the Contractor shall, on the

written request of the Engineer or the Engineer's Representative, make available to any such other contractor, or the Employer or any such authority, any roads or ways for the maintenance of which the Contractor is responsible, or permit the use by any such of the Contractor's scaffolding or other plant on the Site, or provide any other service of whatsoever nature for any such, the Employer shall pay to the Contractor in respect of such use or service such sum or sums as shall, in the opinion of the Engineer, be reasonable.

32. Contractor to Keep Site Clear

- (1) During the progress of the Works the Contractor shall keep the Site reasonably free from all unnecessary obstruction and shall store or dispose of any Constructional Plant and surplus materials and clear away and remove from the Site any rubbish or Temporary Works no longer required.

Supply of Plant Materials and Labour

- (2) Except where otherwise specified the Contractor shall at his own expense supply and provide all the Constructional Plant, Temporary Works, materials both for temporary and for permanent works, labour (including the supervision thereof), transport to or from the Site and in and about the Works and other things of every kind required for the construction completion and maintenance of the Works.

Insufficient Tools, Plant and Equipment

- (3) If at any time before the commencement or during the progress of the works tools, plant or equipment appear to the Engineer to be insufficient or inappropriate to secure the quality of the work required or the proper rate of progress, the Engineer may order the Contractor to increase their efficiency, to improve their character, to augment their number or to substitute new tools, plant or equipment as the case may be, and the Contractor must conform to such order. The failure of the Engineer to demand such increase of efficiency, number or improvement shall not relieve the Contractor of his obligations to achieve the quality of works and the rate of progress necessary to complete the work within the time required by the Contract to the satisfaction of the Engineer.

33. Clearance of Site on Completion

On the completion of the Works the Contractor shall clear away and remove from the Site all Constructional Plant, surplus materials, rubbish and Temporary Works of every kind, and leave the whole of the Site and Works clean and in a workmanlike condition to the satisfaction of the Engineer.

LABOUR

34. Engagement of Labour

- (1) The Contractor shall make his own arrangement for the engagement of all labour, local or otherwise, and, save insofar as the Contract otherwise provides, for the transport, housing, feeding and payment thereof.

Employing Nationals

- (2) The Contractor shall give favourable consideration to employing nationals of the United Arab Emirates when ever possible.

Expatriate Labour

- (3) The Contractor shall make his own arrangements for the engagement of expatriate labour and staff if required and for the housing health welfare and repatriation of the same and shall conform in all respects with the conditions and requirements of any law and of any Regulation or Orders of the Government or any Authority which may be applicable including any such Law Regulation or Order passed or made or coming into force after the date of Tender.

Labour Law

- (4) The Contractor shall conform in all respects with the provisions of the Labour Laws of the United Arab Emirates and any amendments thereto.

Rates of Wages

- (5) The Contractor shall pay rates of wages not less favourable than those approved for comparable works by the Government of the United Arab Emirates in the area where work is being carried out.

Hours of Labour

- (6) The Contractor shall insure hours of work and other conditions of labour which are not less favourable than the general level observed in the trade or industry in which the Contractor is engaged by employers whose general circumstances are similar.

Festivals and Religious Customs

- (7) The Contractor shall in all dealings with labour in his employment have due regard to all recognised festivals, days of rest and religious or other customs.

Disorderly Conduct, etc.

- (8) The Contractor shall at any time take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst his employees and for the preservation of peace and protection of persons and property in the neighbourhood of the Works against the same.

Observance by Sub-Contractors

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

Supply of Water

- (10) The Contractor shall be generally responsible for providing all the water required for the Works in accordance with the Specifications and sufficient storage capacity shall be installed on the Site to ensure an uninterrupted supply at sufficient delivery pressure for all purposes. The supply shall include an adequate supply of drinking and other water for the use of the Contractor's and Engineer's staff and work people on Site to the satisfaction of the Engineer's Representative.

Epidemics

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

Sanitary Measures

- (12) The Contractor shall comply in all respect with the rules, regulations and instruction of the Department of Health as regards sanitary requirements in connection with the Works. This shall include the provision and maintenance of latrines on the Site for the use of his staff and labour and for the Engineer and his supervision staff, such latrines and the disposal of foul drainage etc., shall be to the approval of the Engineer and/or the local Department of Health.

First Aid

- (13) The Contractor shall make his own arrangements for treatment of casualties on the Site in such first-aid units as may be thought necessary, including the removal by ambulance or suitable transport of injured or sick employees to hospital or their home. All Contractor's and Engineer's personnel shall be informed of the locations of the first-aid units and such location shall be clearly marked with directional signs.

Accidents

- (14) The Contractor must promptly report in writing to the Engineer all accidents whatsoever arising out of or in connection with the performance of the Works whether on or adjacent to the Site which caused death and personal injury or property damage giving full details and statements of witnesses. In addition if death or serious injuries or serious damage are caused, the accident shall be reported immediately by telephone or messenger to both the Engineer and the Employer. The Contractor shall also report such accidents to the competent authority whenever such report is required by law.

Alcoholic Liquor or Drugs

- (15) 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 sub-contractors, agents or employees.

Arms and Ammunition

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

35. Returns of Labour, etc.

The Contractor shall, if required by the Engineer, deliver to the Engineer's Representative, or at his office, a return in detail in such form and at such intervals as the Engineer may prescribe showing the supervisory 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 Constructional Plant as the Engineer's Representative may require.

MATERIALS AND WORKMANSHIP

36. Quality of Materials and Workmanship and Tests

- (1) All materials and workmanship shall be of the respective kinds described in the Contract and in accordance with the Engineer's instructions and shall be subjected from time to time to such tests as the Engineer may direct at the place of manufacture or fabrication, 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, instruments, machines, labour and materials as are normally required for examining, measuring and testing any work and the quality, weight or quantity of any material used and shall supply samples of materials before incorporation in the Works for testing as may be selected and required by the Engineer.

Cost of Samples

(2) All samples shall be supplied by the Contractor at his own cost.

Cost of Tests

(3) The cost of making any test shall be borne by the Contractor if such test is clearly intended by or provided for in the Contract and, in the cases only of a test under load or of a test to ascertain whether the design of any finished or partially finished work is appropriate for the purposes which it was intended to fulfil, is particularised in the Contract in sufficient detail to enable the Contractor to price or allow for the same in his Tender.

Cost of Tests not Provided for, etc.

(4) If any test is ordered by the Engineer which is either:

(a) not so intended by or provided for, or

(b) (in cases above mentioned) is not so particularised, or

(c) though so intended or provided for is ordered by the Engineer to be carried out by an independent person at any place other than the Site or the place of manufacture or fabrication of the materials tested,

then the cost of such test shall be borne by the Contractor, if the test shows the workmanship or materials not to be in accordance with the provisions of the Contract or the Engineer's instructions, but otherwise by the Employer.

Provision of Samples

(5) The Contractor shall, when required by the Engineer or the Engineer's Representative, submit for his approval samples of materials or work which he proposes to provide. Such samples, if approved, shall be, retained by the Engineer's Representative and shall be referred to as the minimum standard with which all subsequent supplies of that work or materials shall comply. Any such work or material which does not, in the opinion of the Engineer's Representative, at least equal the standard of the approved sample shall forthwith be removed from the Site.

37. Inspection of Operations

The Engineer and any person authorised by him and the Employer shall at all times have access to the Works and to all workshops and places where work is being prepared or from where materials manufactured articles or machinery are being obtained for the Works and the Contractor shall afford every facility for and every assistance in or in obtaining the right to such access.

38. Examination of Work before Covering up

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

Uncovering and Making Openings

- (2) The Contractor shall uncover any part or parts of the Works or make openings in or through the same as the Engineer may from time to time direct and shall reinstate and make good such part or parts to the satisfaction of the Engineer. If any such part or parts have been covered up or put out of view after compliance with the requirement of Sub-Clause (1) of this Clause and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating and making good the same shall be borne by the Employer, but in any other case all costs shall be borne by the Contractor.

39. Removal of Improper Work and Materials

- (1) The Engineer shall during the progress of the Works have power to order in writing from time to time:
 - (a) the removal from the Site, within such time or times as may be specified in the order, of any materials which, in the opinion of the Engineer, are not in accordance with the Contract
 - (b) The substitution of proper and suitable materials and
 - (c) the removal and proper re-execution, notwithstanding any previous test thereof, of any work which in respect of materials or workmanship is not, in the opinion of the Engineer, in accordance with the Contract.

Default of Contractor in Compliance

- (2) In case of default on the part of the Contractor in carrying out such order, the Employer shall be entitled to employ and pay other persons to carry out the same and all expenses consequent thereon or incidental thereto shall be recoverable from the Contractor by the Employer from any monies due or which may become due to the Contractor.

40. Suspension of Work

- (1) The Contractor shall, on the written order of the Engineer, suspend the progress of the Works or any part thereof for such time or times and in such manner as the Engineer may consider necessary and shall during such suspension properly protect and secure the work, so far as is necessary in the opinion of the Engineer. The extra cost incurred by the Contractor in giving effect to the Engineer's instructions under this Clause shall be borne and paid by the Employer unless such suspension is
 - (a) otherwise provided for in the Contract, or
 - (b) necessary by reason of some default on the part of the Contractor, or
 - (c) necessary by reason of climatic conditions on the Site, or
 - (d) necessary for the proper execution of the Works or for the safety of the Works or any part thereof insofar as such necessity does not arise from any act or default by the Engineer or the Employer or from any of the excepted risks defined in Clause 20 hereof.

Provided that the Contractor shall not be entitled to recover any such extra cost unless he gives written notice of his intention to claim to the Engineer within twenty-eight days of the Engineer's order. The Engineer shall settle and determine such extra payment and/or extension of time under Clause 44 hereof to be made to the Contractor in respect of such claim as shall, in the opinion of the Engineer, be fair and reasonable.

Suspension Lasting more than 90 days

- (2) If the progress of the Works or any part thereof is suspended on the written order of the Engineer and if permission to resume work is not given by the Engineer within a period of ninety days from the date of suspension then, unless such suspension is within paragraph (a), (b), (c) or (d) of Sub-Clause (1) of this Clause, the Contractor may serve a written notice on the Engineer requiring permission within twenty-eight days from the receipt thereof to proceed with the Works, or that part thereof in regard to which progress is suspended and, if such permission is not granted within that time, the Contractor by a further written notice so served may, but is not bound to, elect or treat the suspension where it affects part only of the Works as an omission of such part under Clause 51 hereof, or, where it affects the whole Works, as an abandonment of the Contract by the Employer.

COMMENCEMENT TIME AND DELAYS

41. Commencement of Works

The Contractor shall commence the Works on Site within the period in the Appendix to the Tender after the receipt by him of a written order to this effect from the Engineer and shall proceed with the same with due expedition and without delay, except as may be expressly sanctioned or ordered by the Engineer, or be wholly beyond the Contractor's control.

42. Possession of Site'

- (1) Save insofar as the Contract may prescribe, the extent of portions of the Site of which the Contractor is to be given possession from time to time and the order in which such portions shall be made available to him 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 written order to commence the Works, give to the Contractor possession of so much of the Site 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 hereof, if any, and otherwise in accordance with such reasonable proposals of the Contractor as he shall, by written notice to the Engineer, make and 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 despatch in accordance with the said programme or proposals, as the case may be. Should the Contractor attend to the invitation of the handing over of the Site on the date fixed by the Engineer then minutes of the handing over will be issued by the Engineer and a copy will be forwarded to the Contractor and it will be understood that the Contractor has been handed over the Site on the date. If the Contractor suffers delay or incurs cost from failure on the part of the Employer to give possession in accordance with the terms of this Clause, the Engineer shall grant an extension of time for the completion of the Works.

Wayleaves, etc.

- (2) 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 accommodation outside the Site required by him for the purposes of the Works.

43. Time for Completion

Subject to any requirement in the Contract as to completion of any section of the Works before completion of the whole, the whole of the Works shall be completed, in accordance with the provisions

of Clause 48 hereof, within the time stated in the Contract calculated from the last day of the period named in the Appendix to the Tender as that within which the Works are to be commenced, or such extended time as may be allowed under Clause 48 hereof.

44. Extension of Time for Completion

Should the amount of extra or additional work of any kind or any cause of delay referred to in these Conditions, or exceptional adverse climatic conditions, or other special circumstances of any kind whatsoever which may occur, other than through a default of the Contractor, be such as fairly to entitle the Contractor to an extension of time for the completion of the Works, the Engineer shall determine the amount of such extension and shall notify the Employer and the Contractor accordingly. Provided that the Engineer is not bound to take into account any extra or additional work or other special circumstances unless the Contractor has within twenty-eight days after such work has been commenced or such circumstances have arisen, or as soon thereafter as is practicable, submitted to the Engineer's Representative full and detailed particulars of any extension of time to which he may consider himself entitled in order that such submission may be investigated at that time.

45. No Night or Friday Work without Permission

Subject to the labour law in the United Arab Emirates and subject to any provision to the contrary contained in the Contract none of the permanent or Temporary Works shall save as hereinafter provided be carried on during the night or on Fridays without the permission in writing of the Engineer or the Engineer's Representative save when the 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 or the Engineer's Representative. Provided always that the provisions of this Clause shall not be applicable in the case of any work which it is customary to carry out by rotary or double shifts. The granting of permission to carry out work at night or on Fridays shall not entitle the Contractor to any additional payment.

All work at night shall be carried out without unreasonable noise and disturbance. The Contractor shall indemnify the Employer from and against any liability for damages on account of noise or other disturbance created while or in carrying out the work and from and against all claims, demands proceeding, costs, charges and expenses whatsoever in regard or in relation to such liability.

46. Rate of Progress

The whole of the materials, plant and labour to be provided by the Contractor under the Clause 8 hereof and the mode, manner and speed of execution and maintenance of the work are to be a kind of conduct in a manner to the satisfaction of the Engineer. Should the rate of progress of the Works or any part thereof be at any time in

the opinion of the Engineer too slow to ensure the completion of the Works by the prescribed time or extended time for completion, the Engineer shall so notify the Contractor in writing and the Contractor shall think necessary and the Engineer may approve to expedite progress so as to complete the Works by the prescribed time or extended time for completion. If the work is not being carried on by day and by night then the Contractor shall request permission to work by night as well as by day or to work longer hours than specified by the existing labour laws of the United Arab Emirates. i. e. (more than 8 hours in ordinary days or more than 6 hours in Ramadan or work on Fridays and official holidays). Then if the Engineer shall grant such permission to the Contractor, the Contractor shall not be entitled to any additional payment for so doing but on the contrary the Contractor shall pay all the expenses of all the supervision staff assigned by the Engineer, to supervise the Works during overtime hours, such payment shall be as a monthly sum calculated on the Consultant's fee paid by the Employer x 1.5 per hour for ordinary days and x 2 per hour for the Fridays, official holidays and in Ramadan. This sum shall be deducted from any money due to him from the Employer. The Contractor is to clearly state in his offer whether he has allowed for overtime in his programme. No permission to work overtime shall be granted if the Contractor refuses to pay from his monthly certificates the amount of overtime expenses, and the Contractor has no right to question the said sum. The Contractor has no right to claim for any extension of time due to his not working overtime hours.

47. Liquidated Damages for Delay

- (1) If the Contractor shall fail to complete the Works including any addition ordered by the Employer, within the time prescribed by Clause 43 hereof, then the Contractor shall pay to the Employer liquidated damages for such default for every day or part of day which shall elapse between the time prescribed by Clause 43 hereof and the date of certified completion of the Works.

The amount of Liquidated Damages for Delay will be as following:

- 1% of the Contract value for the first week or any part of the week.
- 2% of the Contract value for each week of the 2nd, 3rd and 4th week, or any part of the week.
- 3% of the Contract value for each week for the 5th and 6th week or any part of the week.
- 5% of the Contract value for each month afterwards or any part of the month.

The total amount of the Liquidated Damages for Delay must not exceed 25% of the Contract value. The Liquidated Damages for Delay shall be calculated according to the above percentages

of the value of uncompleted works, but if in the opinion of the Employer, these uncompleted works prevent the use of the whole works, then the Liquidated Damages for Delay will be calculated based on the final Contract value.

The Liquidated Damages for Delay will become due on the Contractor as soon as this delay shall occur and without the necessity of a warning or any legal procedure and without the necessity of proving the damages, which are supposed in any case, to be happened.

The period for which the Liquidated Damages for Delay is calculated, must not include the time when the Works were stopped due to a force majeure or according to the Instructions of the Employer.

The Employer may deduct the Liquidated Damages for Delay from any monies in his hands, due or which may become due to the Contractor.

The Employer may relieve the Contractor from the Liquidated Damages for Delay (or part of them) if the Contractor submits in writing a request, backed with relevant documents, proving that the total delay (or part of it) has occurred due to circumstances beyond his responsibilities.

48. Certification of Completion of Works

When in the opinion of the Engineer the whole of the Works have been substantially completed the Contractor may apply to the Engineer for a Certificate of Completion in respect of the Works provided that:

- (a) The Contractor shall with his application have undertaken to complete all outstanding works, deficiencies and defects within a period of one month of the first inspection of the Provisional Handover Committee, as to hereinafter referred.
- (b) Any outstanding parts of the Works; deficiencies or defects are not such as to prevent the use by the Employer of the Works.
- (c) The Works shall have passed any final test that may be prescribed by the Contract saving such tests as it is practical to carry out during the process of handover.

Within thirty days of the Contractor's application the Engineer shall notify the Employer and the Contractor the date from which the Works shall be handed over and shall convene a meeting of a Committee upon the Site within 7 days of the date so notified hereinafter referred to as the Provisional Handover Committee consisting of:

- | | | |
|------------|---|--------------------|
| Employer | - | One Representative |
| Engineer | - | One Representative |
| Contractor | - | One Representative |

The Contractor shall within his application nominate his representative to serve upon the Provisional Handover Committee and before the date set for the meeting the Engineer will inform the Contractor in writing of the members of the Committee.

The Engineer in consultation with the Employer will prepare a programme of tests to be carried by the members of the Provisional Handover Committee designed to demonstrate that in all respects the Works conform with the standards of quality, strength, density, dimensions and quantity specified by the Contract within any permitted tolerances and will give notice of the programme of tests to the Contractor who shall furnish upon the Site at his own expense all necessary apparatus and facilities for such tests which under the Contract it is his responsibility to provide.

The Engineer will prepare a list of any defects, deficiencies, and uncompleted works known to him on the date notified.

The Provisional Handover Committee will on the date appointed examine the Works, witness the carrying out by the Engineer of the programme of tests and will add to the Engineer's list any additional defects, deficiencies and uncompleted items of work. And in the event of any dispute arising as to the Contractor's responsibilities for such items will decide, subject to Clause 67 hereof, the extent of such responsibilities. The Engineer will furnish the Contractor and the Employer with copies of this consolidated list to which shall be appended the test results. In so far as any such defects or deficiencies are not due to failure on the part of the Contractor to perform the Works in accordance with the Contract the Committee shall determine an appropriate period of grace for the rectification of defects and deficiencies. The Contractor shall make good at his own expense the effects of sampling for the purpose of testing. The Provisional Handover Committee will make a further examination of the Works one month after the first inspection or after any period of grace determined in accordance with the preceding paragraph and may require the repetition of any tests for which unacceptable results were previously obtained. Provided that no defects, deficiencies or uncompleted works remain as listed the Engineer shall issue a Certificate of Completion of Works with effect from the date of handover first recommended and the Maintenance Period shall be deemed to have commenced from such date.

If any items remain at the time of the second inspection due to the Contractor's failure to perform the works in accordance with the Contract the Provisional Handover Committee will determine a revised date for handover of the Works and the Engineer will issue a Certificate of Completion with effect from the date.

The Contractor's liability for liquidated damages shall apply to the period of any delay in applying for a Certificate of Completion in accordance with the Contract together with any period of delay in completion of any outstanding parts of the Works, deficiencies and defects compared with the one month or period of grace referred to

above. In the event that it is impracticable to rectify any defect or deficiency without major reconstruction and the Employer is prepared to take over Contractor shall have the option of either reconstructing the Works or accepting payment at revised rates to be fixed by the Engineer in accordance with Clause 52 hereof as though the departure from the requirements of the Contract were a variation ordered by the Engineer under Clause 51 hereof. In the former case the Certificate of Completion of Works shall be issued subject to the foregoing procedure following completion of the Works of reconstruction and the Maintenance Period and the Contractor's liability for Liquidated Damages if any shall be determined accordingly. The foregoing procedure shall apply in respect of any substantial portion of the Works which is substantially completed and is occupied or used by the Employer. The Provisional Handover Committee shall be formed by a decree from the Minister of Agriculture and Fisheries. Wherever it is mentioned in this clause that the Works are completed the actual meaning is that the Contractor has performed 97% of the works in this Contract according to specifications and drawings and other attached documents provided that the remaining part of the work or defects is not main part of the Works and not such as to prevent the use by the Employer.

MAINTENANCE AND DEFECTS

49. Definition of "Period of Maintenance"

- (1) In these Conditions the expression "Period of Maintenance" shall mean the period of maintenance named in the Appendix to the Tender, calculated from the date of completion of the Works, certified by the Engineer in accordance with Clause 48 hereof, or, in the event of more than one certificate having been issued by the Engineer under the said Clause, from the respective dates so certified and in relation to the Period of Maintenance the expression "the Works" shall be constructed accordingly.

Execution of Work of Repair, etc.

- (2) To the intent that the Works shall at or as soon as practicable after the expiration of the Period of Maintenance 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 finish the work, if any, outstanding at the date of completion, as certified under Clause 48 hereof, as soon as practicable after such date and shall execute all such work of repair, amendment, reconstruction, rectification and making good defects, imperfections, shrinkages or other faults as may be required of the Contractor in writing by the Engineer during the Period of Maintenance, or within fourteen days after its expiration, as a result of an inspection made by or on behalf of the Engineer prior to its expiration.

Cost of Execution of Work of Repair, etc.

- (3) All such work shall be carried out by the Contractor at his own expense if the necessity thereof shall, in the opinion of the Engineer, be due to the use of materials or workmanship not in accordance with the Contract, or to 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 shall be due to any other cause, the value of such work shall be ascertained and paid for as if it were additional work.

Remedy on Contractor's Failure to Carry Out Work Required

- (4) If the Contractor shall fail to do any such work as aforesaid required by the Engineer, 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 expense under the Contract, then all expenses consequent thereon or incidental thereto shall be recoverable from the Contractor by the Employer, or may be deducted by the Employer from any monies due or which may become due to the Contractor.

Temporary Reinstatement

- (5) If in the course or of the purposes of the execution of the works or any part thereof any facility or other structure or way shall have been broken into, then notwithstanding anything herein contained:
 - (a) If the permanent reinstatement of such facilities or other structure or way is to be carried out by the appropriate Dam Authority or by some person other than the Contractor (or any sub-contractor to him) the Contractor shall at his own cost and independently of any requirement of or notice from the Engineer be responsible for the making good of any subsidence or shrinkage or other defect, imperfection or fault on the temporary reinstatement of such facility or other structure or way and for the execution of any necessary repair or amendment thereof from whatever cause the necessity arises until the end of the Period of Maintenance in respect of the works beneath such facility or other structure or way or until the Dam Authority or other person as aforesaid shall have taken possession of the Site for the purpose of carrying out permanent reinstatement (whichever is the earlier) and shall indemnify and save harmless the Employer against and from any damage or injury to the Employer or to third parties arising out or in consequence of any neglect or failure of the Contractor to comply with the foregoing obligations or any of them and all claims demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

- (b) Where the Dam Authority or other person as aforesaid shall take possession of the Site in sections or lengths the responsibility of the Contractor under sub-clause (5) of this Clause shall cease in regard to any such section or length at the time possession thereof is taken but shall during the continuance of the said Period of Maintenance continue in regard to any length of which possession has not been so taken and the indemnity given by the Contractor under the same Sub-Clause shall be construed and have effect accordingly.

Damages to Existing Services

- (6) The Contractor shall be held responsible for all damages to any existing services caused by him or by any Sub-Contractor in the course of the Works and shall immediately have such damage made good at his own expense.

50. Contractor to Search

The Contractor shall, if required by the Engineer in writing, search under the directions of the Engineer for the cause of any defect, imperfection or fault appearing during the progress of the Works or in the Period of Maintenance. Unless such defect, imperfection or fault shall be one for which the Contractor is liable under the Contract, the cost of the work carried out by the Contractor in searching as aforesaid shall be borne by the Employer. If such defect, imperfection or fault shall be one for which the Contractor as liable as aforesaid, the cost of the work carried out in searching as aforesaid shall be borne by the Contractor and he shall in such case repair, rectify and make good such defect, imperfection or fault at his own expense in accordance with the provisions of Clause 49 hereof.

ALTERATIONS, ADDITIONS AND OMISSIONS

51. Variations

- (1) The Engineer shall make any variation of the form, quality or quantity of the Works or any part thereof that may, in his opinion, be necessary and for that purpose, or if for any other reason it shall, in his opinion be desirable, he shall have power to order 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,

- (c) change the character or quality or kind of any such work,
- (d) change the levels, lines, positions and dimensions of any part of the Works, and
- (e) execute additional work of any kind necessary for the completion of the Works.

and no such variation shall in any way vitiate or invalidate the Contract, but the value, if any, of all such variations shall be taken into account in ascertaining the amount of the Contract Price. Before ordering any variation which involves additional cost the Engineer shall obtain the prior approval of the Employer.

Orders for Variations to be in Writing

- (2) No such variations shall be made by the Contractor without an order in writing of the Engineer. Provided that no order in writing shall be required for increase or decrease in the quantity of any work where such increase or decrease is not the result of an order given under this Clause but is the result of the quantities exceeding or being less than those stated in the Bill of Quantities. Provided also that if for any reason the Engineer shall consider it desirable to give such order verbally, the Contractor shall comply with such order and any confirmation in writing of such verbal order given by the Engineer, whether before or after the carrying out of the order, shall be deemed to be an order in writing within the meaning of this Clause. Provided further that if the Contractor shall within seven days confirm in writing to the Engineer and such confirmation shall not be contradicted in writing within fourteen days by the Engineer, it shall be deemed to be an order in writing by the Engineer.

52. Valuation of Variations

- (1) All extra or additional work done or work omitted by order of the Engineer 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 extra or additional work, then 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 shall, in his opinion, be reasonable and proper. The Engineer shall recommend the agreed rates or the rates which in his opinion are reasonable to the Employer for his evaluation and approval. Such rates will not be considered binding until the written approval of the Employer is received.

Power of Engineer to Fix Rates

- (2) Provided that if the nature or amount of any omission or addition relative to the nature or amount of the whole of the works or to any part thereof shall be 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 omission or addition, rendered unreasonable or inapplicable, then 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 shall, in his opinion, be reasonable and proper having regard to the circumstances.

Provided also that no increase or decrease under Sub-Clause (1) of this Clause or variation of the rate or price under Sub-Clause (2) of this Clause shall be made unless, as soon after the date of the order as is practicable and, in the case of extra or additional work, before the commencement of the work or as soon thereafter as is practicable, notice shall have been given in writing:

- (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.

And for all the above cases in this item the Engineer recommends the agreed rates or the rates which in his opinion are reasonable to the Employer for his evaluation and approval. Such rates will not be considered binding until the written approval by the Employer is received.

Variations Exceeding 30 percent

- (3) If, on certified completion of the whole of the Works, it shall be found that a reduction or increase greater than thirty percent of the sum named in the Letter of Acceptance, excluding all fixed sums, provisional sums and allowance for dayworks, if any, results from:

- (a) the aggregate effect of all Variation Orders and
- (b) all adjustments upon measurements of the estimated quantities set out in the Bill of Quantities, excluding all provisional sums, dayworks and adjustments of price made under Clause 70 hereof,

but not from any other cause, the amount of the Contract Price shall be adjusted by such sum as may be agreed between the Contractor, the Engineer and the Employer or, failing agreement fixed by the Engineer and the Employer having regard to all material and relevant factors, including the Contractor's Site

and general overhead costs of the Contract. The Contractor has no right for Contract Price Amendment if the percentage variation is 30 percent or less.

Daywork

- (4) The Engineer may, if in his opinion it is necessary or desirable, order in writing that any additional or substituted work shall be executed on a daywork basis. The Contractor shall then be paid for such work under the conditions set out in the Daywork Schedule included in the Contract and at the rates and prices affixed thereto by him in his Tender.

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

In respect of all work executed on a daywork basis, the Contractor shall, during the continuance of such work, deliver each day to the Engineer's Representative 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 plant used thereon or therefor (other than plant which is included in the percentage addition in accordance with the Schedule hereinbefore referred to). One copy of each list and statement will if correct, or when agreed, be signed by the Engineer's Representative and returned to the Contractor.

At the end of each month the Contractor shall deliver to the Engineer's Representative a priced statement of the labour, material and plant, 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 shall consider 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 plant and materials used on such work, or at such value therefor as shall, in his opinion, be fair and reasonable.

Claims

- (5) The Contractor shall send to the Engineer's Representative once in every month an account giving particulars, as full and detailed as possible, of all claims for any additional work ordered by the Engineer which he has executed during the preceding month.

No final or interim claim for payment for any such work or expense will be considered which has not been included in such particulars.

Provided always that the Engineer shall be entitled to authorise payment to be made for any such work or expense, notwithstanding the Contractor's failure to comply with this condition, if the Contractor has, at the earliest practicable opportunity, notified the Engineer in writing that he intends to make a claim for such work and has submitted details supporting such claims within a period of three months from such notification.

PLANT, TEMPORARY WORKS AND MATERIALS

53. Plant, etc. Exclusive Use for the Works

- (1) All Constructional Plant, 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 in writing of the Engineer, which shall not be unreasonably withheld.

Removal of Plant, etc.

- (2) Upon completion of the Works the Contractor shall remove from the Site all the said Constructional Plant and Temporary Works remaining thereon and any unused materials provided by the Contractor.

Employer not Liable for Damage to Plant, etc.

- (3) The Employer shall not at any time be liable for the loss or the damage to any of the said Constructional Plant, Temporary Works or materials save as mentioned in Clause 20 and 65 hereof.

Re-export of Plant

- (4) In respect of any Constructional Plant which the Contractor shall have imported for the purposes of the Works, the Employer will assist the Contractor, where required, in procuring any necessary Government consent to the re-export of such Constructional Plant by the Contractor upon the removal thereof as aforesaid.

Customs Clearance

- (5) The Contractor shall make his own arrangements for the unloading of Constructional Plant materials, etc. brought to the United Arab Emirates and shall pay all customs duty for all imports into the United Arab Emirates regardless of the time that the plant or equipment is required on Site or in the United Arab Emirates.

The Contractor shall be deemed to have included in his prices for the cost of all customs and other import duties harbour and port duties wharfage, landing, pilotage and any other dues and transport handling and demurrage charges and for the cost of opening up letters of credit for all plant and materials entering the United Arab Emirates for the purpose of this Contract.

The Employer will nevertheless assist the Contractor where required in obtaining clearances through the customs of Constructional Plant materials and other things required for the Works.

Boycott of Israel

- (6) The Contractor shall observe and abide by all rules and regulations concerning the boycotting of Israel for goods imported to the United Arab Emirates as laid down by the Israel Boycott Commission of the Arab States.

54. Approval of Materials, etc., not Implied

The operation of Clause 53 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 such materials at any time by the Engineer.

MEASUREMENT

55. Quantities

The quantities set out in the Bill of Quantities are the estimated quantities of the work, but they are not to be taken as the actual and correct quantities of the Works to be executed by the Contractor in fulfilment of his obligations under the Contract.

56. Works to be Measured

The Engineer shall except as otherwise stated, ascertain and determine by measurement the value in terms of the Contract of work done in accordance with the Contract. He shall, when he requires any part or parts of the Works to be measured, give notice to the Contractor's authorised agent or representative, who shall forthwith attend or send a qualified agent to assist the Engineer or the Engineer's Representative in making such measurement, and shall furnish all particulars required by either of them. Should the Contractor not attend or neglect or omit to send such agent, then the measurement made by the Engineer or approved by him shall be taken to be the correct measurement of the work. For the purpose of measuring such permanent work as is to be measured by records

and drawings, the Engineer's Representative shall prepare records and drawings, month by month of such work and the Contractor as and when called upon to do so in writing, shall, within fourteen days, attend to examine and agree such records and drawings with the Engineer's Representative and shall sign the same when so agreed. If the Contractor does not so 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 shall, within fourteen days of such examination, lodge with the Engineer's Representative, for decision by the Engineer, notice in writing of the respects in which such records and drawings are claimed by him to be incorrect.

57. Method of Measurement

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

PROVISIONAL AND PRIME COST SUMS

58. Prime Cost Items

- (1) Every sum in the Bill of Quantities which contains (either as the whole or part of the sum) a prime cost (P. C.) price for goods or materials to be supplied for or for incorporation into the Works shall be varied by the substitution for the prime cost price of the actual price paid by the Contractor for the goods or materials on the direction of the Engineer and the Contract Price shall be increased or decreased (as the case may be) by the amount by which the sum in the Bill of Quantities is increased or decreased by such substitution. No variations shall be made to or in respect of any sum added for labours to the prime cost price on account of the said actual price being greater or less than the prime cost price but in all respect of all other charges and profit there shall be added or deducted as the case may be representing such percentages as is provided in the Bill of Quantities in relation to the particular item or prime cost concerned or (if none) as is inserted by the Contractor in the Appendix to the Form of Tender as the percentages for the adjustment of prime cost sums.

Cash Discount

- (2) Any cash discount allowed by nominated Sub-Contractors shall be for the benefit of the Employer.

NOMINATED SUB-CONTRACTORS

59. Definition of "Nominated Sub-Contractors"

- (1) All specialists, merchants, tradesmen and others executing any work or supplying any goods, materials 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 provision of the Contract the Contractor is required to sub-let any work shall, in the execution of such work or the supply of such goods, materials or services, be deemed to be sub-contractors employed by the Contractor and are referred to in this Contract as "Nominated Sub-Contractors".

Nominated Sub-Contractors, Objection to Nomination

- (2) The Contractor shall not be required by the Employer or the Engineer or be deemed to be under any obligation to employ any nominated Sub-Contractor against whom the Contractor may raise reasonable objection, or who shall decline to enter into a sub-contract with the Contractor containing provisions:
 - (a) that in respect of the work, goods, materials or services and the subject of the sub-contract, the nominated sub-contractor will undertake towards the Contractor the like obligations and liabilities as are imposed on the Contractor towards the Employer by the terms of the Contract and will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection therewith, or arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities, and,
 - (b) That the nominated sub-contractor will save harmless and indemnify the Contractor from and against any negligence by the nominated Sub-Contractor, his agents, workmen and servants and from and against any misuse by him or them of any Constructional Plant or Temporary Works provided by the Contractor for the purposes of the Contract and from all claims as aforesaid.

Design Requirements to be Expressly Stated

- (3) 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 equipment or plant to be incorporated therein, such requirement shall be expressly stated in the Contract and shall be included in any nominated Sub-Contract. The nominated Sub-Contract shall specify that the nominated sub-contractor providing such services will save harmless and indemnify the Contractor from and against the same and from all

claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities.

Payments to Nominated Sub-Contractors

- (4) For all work executed or goods, materials, or services supplied by any nominated Sub-Contractor, there shall be included in the Contract Price:
- (a) the actual price paid or due to be paid by the Contractor on the direction of the Engineer, and in accordance with the Sub-Contract;
 - (b) the sum, if any, entered in the Bill of Quantities for labour supplied by the Contractor in connection therewith or if ordered by the Engineer pursuant to Clause 58 (2) hereof, as may be determined in accordance with Clause 52 hereof;
 - (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 the Tender and repeated where provision for such is made in a special item provided in the Bill of Quantities for such purpose.

Certification of Payment to Nominated Sub-Contractors

- (5) Before issuing, under Clause 60 hereof, any certificate, which includes any payment in respect of work done or goods, materials or services supplied by any nominated sub-contractor, 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 or services of such nominated Sub-Contractor have been paid or discharged by the Contractor, in default whereof unless the Contractor shall:
- (a) inform the Engineer in writing that he has reasonable cause for withholding or refusing to make such payments and
 - (b) produce to the Engineer reasonable proof that he has so informed such nominated Sub-Contractor in writing,

the Employer shall be entitled to pay to such nominated sub-contractor direct, upon the certificate of the Engineer, all payments, less retentions, provided for in the Sub-Contract, which the Contractor has failed to make to such nominated sub-contractor and to deduct by way of set-off the amount so paid by

the Employer from any sums due or which may become due from the Employer to the Contractor.

Provided always 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.

Assignment of Nominated Sub-Contractors' Obligations

- (6) In the event of a nominated Sub-Contractor, as hereinbefore defined, having undertaken towards the Contractor in respect of the work executed, or the goods, materials or services supplied by such nominated sub-contractor, any continuing obligation extending for a period exceeding that of the Period of Maintenance under the Contract the Contractor shall at any time, after the expiration of the Period of Maintenance, assign to the Employer, at the Employer's request and cost, if any, the benefit of such obligation for the unexpected duration thereof.

CERTIFICATES AND PAYMENT

60. Monthly Statements

- (1) The Contractor shall be paid on account on the basis of the progress of the work according to statements submitted by him of the work executed after the Engineer performs due technical and financial checking and that these statements are according to the specifications. Then a certificate is issued accepting these statements afterwards the Employer shall check it arithmetically and that it is according to the quantities mentioned in the Contract. The sum paid to the Contractor shall not exceed 90% of the certified sum. Statements of the payments shall be made at monthly intervals in accordance with the conditions set out hereunder:
 - (a) The Contractor shall prepare and submit to the Engineer's Representative at the end of each month a statement signed by him showing the estimated quantities and the estimated amounts of permanent works executed on Site. Unless otherwise mentioned in this Contract, the Contractor incorporates with it amounts of the net cost of materials (if any) for permanent work delivered by the Contractor onto the Site, or to the approved temporary work areas. The monthly statements shall be prepared on official forms consisting of one original and eight copies duly signed by the Contractor's

Agent. The Engineer's Representative shall check these statements and then send Interim Certificates which are issued by the Engineer.

- (b) The rates and prices in such monthly statements shall be those in the priced Bill of Quantities.
- (c) If the said Bill of Quantities shall not in the opinion of the Engineer's Representative contain any rates or prices applicable to some or any part of the work executed and the Engineer has not fixed a rate or a price at the time when the monthly statement is prepared then temporary rates or prices shall be assigned thereto by the Engineer's Representative.
- (d) Neither the temporary rates nor prices assigned under the paragraph (c) of the Sub-Clause nor the quantities mentioned in the statements submitted under paragraph (a) of this Sub-Clause shall be binding on the Employer or on the Contractor.
- (e) Unless otherwise mentioned in this Contract, the Contractor shall be paid with payments on account for materials brought on Site to help him complete the Works on a basis of 75% of the net cost of these materials after submitting a statement showing a list of these materials and after the Engineer checks it technically and documentary, then it is checked arithmetically by the Employer. The Contractor shall not remove from Site any of these materials before the completion of the Works.

Interim Certificates

- (2) The Contractor will be paid monthly on the Certificate of the Engineer the amount due to him on account of the estimated contract value of the permanent work executed up to the end of the previous month subject to a retention of the percentage named in the Tender until the amount retained shall reach the "Limit of Retention Money" named in the Tender (hereinafter called the "Retention Money") after which time no further deduction of retention will be made together with such amount (if any) as the Engineer may consider proper on account of materials for permanent work delivered by the Contractor onto the Site, or to the approved temporary works areas. Provided always that no interim Certificate shall be issued for a less sum at one time than that named in the Tender as the minimum Interim Certificate.

Correction and withholding of Certificates

- (3) The Engineer may by any Certificate make any correction or modification to any previous Certificate which shall have been issued by him and shall have the power to withhold any Certificate or part of a Certificate if the Works or any part thereof are not being carried out to his satisfaction but any such correction or withholding shall not delay the issuance of a certificate for the amount not in dispute.

Payment on Completion Certificate and after Maintenance Certificate

- (4) (a) When the Engineer has issued a Certificate or Certificates of Completion for the whole of the Works under Clause 48 hereof and when the Engineer has ascertained (excluding in so doing unsettled or disputed claims of the Contractor) the estimated final sum (that is to say the estimated gross payment for the completion of the whole of the Works) due to the Contractor, the Engineer shall after allowing for the amount of all previous certificates and after determining and allowing for any sum due to the Employer from the Contractor for delay or otherwise howsoever and after allowing for all other payments due from the Contractor to the Employer, certify as payable to the Contractor the balance so calculated as remaining due to the Contractor, as will leave to be retaining by the Employer a sum equal to the Retention Money and the Employer will on such Certificate pay the amounts so certified to the Contractor retaining as aforesaid a sum equal to the Retention Money.

As soon as possible after the Certificate or Certificates of Completion for the whole of the Works have been issued the Contractor shall furnish a final account for the Works in the form and manner prescribed by the Engineer.

- (b) The said Retention Money retained under Sub-Clause (4) (a) of this Clause and the amount if any by which the final sum exceeds the estimated final sum ascertained under the said Sub-Clause(4), (a) will not be paid by the Employer until after the expiration of the Period of Maintenance and then (subject to the deduction of such sums if any as the Engineer shall determine to be due from the Contractor to the Employer) only upon the certificate of the Engineer that all the Contractor's obligations under the Contract have been performed.

Provided that in the event of different maintenance periods having become applicable to different parts of the Works pursuant to Clause 48 hereof the expression "expiration of the Period of Maintenance" shall for the purposes of this Sub-Clause be deemed to mean the expiration of the latest of such periods.

Time of Payment

- (5) Payment upon each of the Engineer's Interim Certificates shall be made within the number of days named in the Tender after such Certificate has been delivered to the Employer.

61. Approval only by Maintenance Certificate

No Certificate other than the Maintenance Certificate referred to in Clause 62 hereof shall be deemed to constitute approval of any work

or other matter in respect of which it is issued or shall be taken as an admission of the due performance of the Contract or any part thereof or of the accuracy of any claim or demand made by the Contractor or of additional or varied work having been ordered by the Engineer nor shall any other Certificate conclude or prejudice any of the powers of the Engineer.

62. Maintenance Certificate

- (1) After completion of the Maintenance Period the final Takeover Committee which shall be formed by a decree from the Minister of Agriculture and Fisheries and consists of representatives of the Ministry of Agriculture and Fisheries and the concerned department of the Engineer and of the Contractor shall perform a final takeover and makes sure that the Contractor had completed all his obligations for completing the Works according to the Contract and the final Completion Certificate shall be issued by which the Contractor shall collect his bank guarantee. The Contract shall not be considered as completed until a Maintenance Certificate shall have been signed by the representatives of the Ministry of Agriculture and Fisheries and the concerned department and the Engineer stating that the Works have been completed and maintained to their satisfaction.

The Maintenance certificate shall be given by the Engineer and the Employer twenty-eight days after the expiration of the Period of Maintenance (or if different parts of the Works the expiration of the latest such period) or as soon thereafter as any works ordered during such period pursuant to Clause 49 and 50 hereof shall have been completed to the satisfaction of the Engineer and the Employer and full effect shall be given to this clause notwithstanding any previous entry on the Works or the taking possession, working or using thereof or any part thereof by the Employer. And full effect shall be given that the Maintenance Certificate shall not be a condition to pay to the Contractor the second part of retention money according to Clause 60.

Cessation of Employer's Liability

- (2) The Employer shall not be liable to the Contractor for any matter or thing arising out or in connection with the Contract or the execution of the Works, unless the Contractor shall have made a claim in writing in respect thereof before the giving of the Maintenance Certificate under this Clause.

Unfulfilled Obligations

- (3) Notwithstanding the issue of the Maintenance Certificate the Contractor and, subject to Sub-Clause (2) of this Clause, the Employer shall remain liable for the fulfilment of any obligation incurred under the provisions of the Contract prior to the issue of the Maintenance Certificate which remains unperformed at the

time such 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 hereto.

REMEDIES AND POWERS

63. Default of Contractor

- (1) If the Contractor shall become bankrupt, or have a receiving order made against him or shall present his petition in bankruptcy, or shall make an arrangement with or assignment in favour of his creditors, or shall agree to carry out the Contract under a committee of inspection of his creditors or, being a corporation, shall go into liquidation (other than a voluntary liquidation for the purpose of amalgamation or reconstruction), or if the Contractor shall assign the Contract, without the consent in writing of the Employer first obtained, or shall have an execution levied on his goods, or if the Engineer shall certify in writing to the Employer that in his opinion the Contractor:
 - (a) has abandoned the Contract, or withdrawn from the Works, or committed any breach of Contract, or
 - (b) without an excuse which the Engineer considers reasonable has failed to commence the Works or has failed to proceed with the Works with due diligence or in accordance with the programme so that it is apparent to the Engineer that he will not be able to complete the Works at the specified date or without an excuse which the Engineer considers reasonable has suspended progress of the Works for a period of 15 days or,
 - (c) has failed to remove materials from the Site or to pull down and replace work for twenty-eight days after receiving from the Engineer written notice that the said materials or work had been condemned and rejected by the Engineer under these conditions, or
 - (d) despite previous warnings by the Engineer, in writing, is not executing the Works in accordance with the Contract, or is persistently or flagrantly neglecting to carry out his obligations under the Contract, or
 - (e) has, to the detriment of good workmanship, or in defiance of the Engineer's instructions to the contrary, sub-let any part of the Contract.

The Employer may, after giving 14 days notice in writing to the Contractor, enter upon the Site and the Works and expel the Contractor therefrom without thereby avoiding the Contract or releasing the Contractor from any of his obligations or liabilities under the Contract or affecting the rights and powers conferred on the Employer or the Engineer by the Contract and may in such manner by such means and to such extent as it in its discretion deem fit either itself complete the Works or Employ any other Contractor to complete the Works or retender for a new Contract, and the Employer for insuring such completion of Works may seize and use so much of the Contractor's Constructional Plant and equipment on Site without any liability to the Employer for any damage which may occur to these plant and equipment and the Employer or such other Contractor may use for such completion so much of the Constructional Plant. Temporary Works and materials which have been deemed to be reserved exclusively for the construction and completion of the Works under the provisions of the Contract as the Employer may think proper and the Employer may at any time sell any of the said Constructional Plant, Temporary Works and unused materials and apply the proceeds of sale in or towards the satisfaction of any sum due or which may become due to it from the Contractor under the Contract. The Contractor shall bear all claims and cost of the Employer for any damages and expenses due to the above mentioned, and in order to complete the work, in addition of 10% of the value of the Works that he failed to execute as Employer administration charges.

Valuation at Date of Forfeiture

- (2) The Engineer shall, as soon as may be practicable after any such entry and expulsion 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 what amount, if any, had at the time of such entry and expulsion been reasonably earned by or would reasonably accrue to the Contractor in respect of work then actually done by him under the Contract and the value of any of the said unused or partially used materials, any Constructional Plant and any Temporary Works.

Payment after Forfeiture

- (3) If the Employer shall enter and expel the Contractor under this Clause, he shall not be liable to pay to the Contractor any money on account of the Contract until the expiration of the Period of Maintenance and thereafter until the cost of execution and maintenance, 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 or sums, if any, as the Engineer may certify would have been payable to him 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.

64. Urgent Repairs

If, by reason of any accident, or failure, or other event occurring to, or in connection with the Works, or any part thereof, either during the execution of the Works, or during the Period of Maintenance, any remedial or other work or repair shall, in the opinion of the Engineer or the Engineer's Representative, be urgently necessary for the safety of the Works and the Contractor is unable or unwilling at once to do such works or repair, the Employer may employ and pay other persons to carry out such work or repair as the Engineer or the Engineer's Representative 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 expense under the Contract, all expenses properly incurred by the Employer in so doing shall be recoverable from the Contractor by the Employer, or may be deducted by the Employer from any monies due or which may become due to the Contractor. Provided always that the Engineer or the Engineer's Representative, as the case may be, shall, as soon after the occurrence of any such emergency as may be reasonably practicable, notify the Contractor thereof in writing.

SPECIAL RISKS

65. No Liability for War, etc., Risks

Notwithstanding anything in the Contract contained:

- (1) The Contractor shall be under no liability whatsoever whether by way of indemnity or otherwise for or in respect of destruction of or damage to the Works, save to work condemned under the provisions of Clause 39 hereof prior to the occurrence of any special risk hereinafter mentioned, or to property whether of the Employer or third parties, or for or in respect of injury or loss of life which is the consequence of any special risk as hereinafter defined. The Employer shall indemnify and save harmless the Contractor against and from the same and against all claims, proceedings, damages, costs, charges and expenses whatsoever arising thereout or in connection therewith.

Damage to Works, etc., by Special Risks

- (2) If the Works or any materials on, or near, or in transit to the Site, or any other property of the Contractor used or intended to be used for the purposes of the Works, shall sustain destruction or damage by reason of any of the said special risks the Contractor shall be entitled to payment for:

- (a) any permanent work and for any materials 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, on the basis of cost plus such profit as the Engineer may certify to be reasonable;

- (b) replacing or making good any such destruction or damage to the Works;
- (c) replacing or making good such materials or other property of the Contractor used or intended to be used for the purposes of the Works.

Projectile, Missile, etc.

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

Increased Costs and Extension of Time Arising from Special-Risks

- (4) The Employer shall repay to the Contractor any increased cost of or incidental to the execution of the Works, other than such as may be attributable to the costs of reconstructing work condemned under the provisions of Clause 39 hereof, prior to the occurrence of any special risk, which is 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 increase of cost shall come to his knowledge forthwith notify the Engineer thereof in writing. The Contractor shall report to the Engineer within a period of 15 days from the date the special risk happened the extension of time needed due to this special risk.

Special Risks

- (5) The special risks are war, hostilities (whether war be declared or not), invasion, act of foreign enemies, the nuclear and pressure waves risk described in Clause 20 (2) hereof, or insofar as it relates to the country in which the Works are being or are to be executed or maintained, rebellion, revolution, insurrection, military or usurped power, civil war, or, unless solely restricted to the employees of the Contractor or of his Sub-Contractors and arising from the conduct of the Works, riot, commotion or disorder.

Outbreak of War

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

Removal of Plant on Termination

- (7) If the Contract shall be terminated under the provisions of the last preceding sub-clause, the Contractor shall, with all reasonable despatch, remove from the Site all Constructional Plant and shall give similar facilities to his sub-contractors to do so.

Payment if Contract Terminated

- (8) If the Contract shall be terminated as aforesaid, the Contractor shall be paid by the Employer, insofar as such amounts or items shall not have 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 amount payable in respect of any preliminary items, so far as the work or service comprised therein has been carried out or performed, and a proper proportion as certified by the Engineer of any such items, the work or service comprised in which has been partially carried out or performed.
 - (b) The cost of materials or goods reasonably ordered for the Works which shall have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery, such materials or goods becoming the property of the Employer upon such payment being made by him.
 - (c) A sum to be certified by the Engineer, 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 shall not have been covered by the payments in this sub-clause before mentioned.
 - (d) Any additional sum payable under the provisions of Sub-Clauses (1), (2) and (4) of this Clause.

- (e) Reasonable cost of removal of Constructional Plant under Sub-Clause (7) of this Clause 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.
- (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 always 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 Constructional Plant and materials and any other sums which at the date of termination were recoverable by the Employer from the Contractor under the terms of the Contract.

FRUSTRATION

66. Payment in Event of Frustration

If a war, or other circumstances outside the control of both parties, arises after the Contract is made so that either party is prevented from fulfilling his contractual obligations, or under the law governing the Contract, the parties are released from further performance, then 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 hereof if the Contract had been terminated under the provisions of Clause 65 hereof.

SETTLEMENT OF DISPUTES

67. Settlement of Disputes-Arbitration

If any dispute or difference of any kind whatsoever shall arise between the Employer or the Engineer and the Contractor in connection with or arising out of the Contract or the carrying out of the Works (whether during the progress of the Works or after their completion and whether before or after the termination abandonment or breach of the Contract) it shall in the first place be referred to and settled by the Engineer who within a period of thirty days after being requested by either party to do so shall give written notice of his decision to the Employer and the Contractor. Save as hereinafter provided such decision in respect of every matter so referred shall be final and binding upon the Employer and the Contractor until the

completion of the work and shall forthwith be given effect to by the Contractor who shall proceed with the Works with all due diligence whether he or the Employer required arbitration as hereinafter provided or not. If the Engineer has given written notice of his decision to the Employer and the Contractor and no claim to arbitration has been communicated to him by either the Employer or the Contractor within a period of ninety days from receipt of such notice the said decision shall remain final and binding upon the Employer and the Contractor. If the Engineer shall fail to give notice of his decision as aforesaid within a period of thirty days after being requested as aforesaid or if either the Employer or the Contractor be dissatisfied with any such decision, then and in any such case either the Employer or the Contractor may within ninety days after receiving notice of such decision or within ninety days after the expiration of the first named period of thirty days (as the case may be) require that the matter or matters in dispute be referred to arbitration as hereinafter provided. All disputes or differences in respect of which the decision (if any) of the Engineer has not become final and binding as aforesaid shall be referred to the decision of three arbitrators, of which one shall be appointed by the Employer, one shall be appointed by the Contractor, and the third shall be a judge appointed by the Minister of Justice. Unless otherwise agreed between the parties the place of arbitration shall be the United Arab Emirates. The decision of the arbitrators shall be final and binding upon the parties. The said arbitrators shall have full power to open up review and revise any decision opinion direction certificate or valuation of the Engineer and neither party shall be limited in the proceedings before such arbitrators to the evidence or arguments put before the Engineer for the purpose of obtaining his said decision. No decision given by the Engineer in accordance with the foregoing shall disqualify him from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute or difference referred to the arbitrators as aforesaid.

The arbitrators shall not enter on the reference until after the completion or alleged completion of the Works unless with the written consent of the Employer and the Contractor provided always:

- (a) that such reference may be opened before such completion or alleged completion in respect of the withholding by the Engineer of any certificate or the withholding of any portion of the retention money to which the Contractor claims to be entitled in accordance with conditions set out in Clause 60 or in respect of the exercise of the Engineer's power to give a certificate under Clause 63, (1) hereof.
- (b) that the giving of a Certificate of Completion under Clause 48 hereof shall not be a condition precedent to the opening of any such reference.

- (3) In the event of such termination the Employer shall under the same obligations to the Contractor on regard to payment as if the Contract had been terminated under the provisions of Clause 65 hereof, but, in addition to the payments specified in Clause 65 (8) hereof, 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.

MISCELLANEOUS

70. Increase or Decrease of Costs

No adjustments are to be made in respect of rise or fall in the costs of labour and for materials or any other costs affecting the cost of execution of the Works unless such rise or fall is occasioned by the operation of any law, statute, etc. promulgated by the Government of the United Arab Emirates after the signing of the Contract.

71. Bribery and Corruption

The Employer has the right to cancel the Contract and forfeit the bank guarantees and complete the Works on the Contractor's expense and recover his compensation and any amounts and expenses which may occur due to the cancellation of the Contract. The cause of the cancellation of the Contract by the Employer may be in the case of the Contractor cheating, or committing bribery or, if the Contractor has offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or for borne to do any action in relation to the obtaining or the execution of the Contract or any other Contract with the Employer or for showing or for bearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the Employer, or if the like acts on his behalf, whether with or without the knowledge of the Contractor, or if in relation to this or any Contract with the Employer the Contractor or any other person employed by him or acting on his behalf shall have committed any offence under the Corruption Acts or any similar legislation under the laws of the United Arab Emirates.

72. Details Confidential

The Contractor and his sub-contractors shall treat the Contract and everything contained therein as private and confidential. In particular the Contractor and his sub-contractors shall not publish any information, drawing or photograph concerning the Works and shall not use the Site for the purpose of advertising except with the written consent of the Employer and subject to such conditions as he may prescribe. Such consent shall not relieve the Contractor or his sub-contractors from any restriction of the Laws governing the publication of such photographs.

73. Law Covering Contract

This Contract is subject to and shall be construed in accordance with the Laws for the time being in force in the United Arab Emirates.

74. Uncompleted Work

The Employer shall be at liberty from time to time or at any time before the completion of the Works to take possession of and use any part or parts of the Site or of uncompleted works and in such case the Contractor shall completely finish the said uncompleted part or parts of the Works as and when the Engineer shall direct, whether before or after the respective prescribed time or extended time or time (if any) for the completion of the Works and if required by the Engineer while the Employer is in possession of the said part or parts or the Site or Works. Provided always that if such possession or occupation or use by the Employer interfere in the opinion of the Engineer with the completion of the said part or parts of the Works or the Works generally, due allowance shall be made by the Engineer by way of extensions of time under the provisions of Clause 44 hereof and he may exclude such part or parts of the Works from the provision as to time for completion of the Works and fix such time as he may think reasonable for the completion of the said part or parts.

75. Interference with Works

The Contractor shall not interfere in any way with any existing works whether the property of the Employer or of a third party and whether the position of such works is indicated to the Contractor by the Engineer or not, except where such interference is specifically described as part of the Works either in the Contract or in the Engineer's instructions.

76. Rates of Exchange

All payment made by the Employer to the Contractor under the Contract shall be made in DIRHAMS which is the currency of the United Arab Emirates. However if the Contractor's head office is outside the United Arab Emirates then the Contractor on his request may agree with the Employer to transfer his due to any foreign currency at the rate of exchange quoted at that date payment is due.

77. Income Tax

There is no local income tax or profits tax payable under the law of the United Arab Emirates at present.

78. Setting Out

The Contractor shall start, locating and concreting all required point immediately after he is issued with the order to proceed with the work.

The Contractor shall also start taking levels and drawings the profile and cross-sections well in advance of any earth works and/or any other works.

All sections of natural ground shall be submitted by the Contractor and approved by the Engineer's Representative before any works are started. In areas where the Engineer's Representative deems it essential sections shall be taken as ordered.

79. Profile Grade

The Engineer shall review the profile grade after the levelling of the natural ground has been taken and agreed upon and has the right to raise or lower the profile grade to the best suiting local conditions. No claims by the Contractor shall be considered as a result of this.

80. Site Visit

The Contractor must visit the Site prior to submitting his offer and acquaint himself thoroughly with the conditions on Site and study the stream and wadi flows and allow for them in his prices. To allow for any cofferdams, stream or wadi, diversions including excavating new channels and all the necessary protection needed. No claims for any damage or loss due to finish floods shall be submitted and the Contractor shall be fully responsible and bear the cost of any damage resulting for any reason to any adjoining land, person or public utility or structure.

81. Access

The Contractor shall provide at his expense, the required approved access to all villages or farms all throughout the construction period.

82. Discrepancies

In the case of any discrepancy between the General Conditions of Contract, the General and Particular Specifications and these Conditions, these Conditions shall apply and prevail and be considered to amend the relevant clauses or portions thereof.

CONDITIONS OF CONTRACT

PART II - CONDITIONS OF PARTICULAR APPLICATION

Clause 1 (1) (C)

The "Engineer" is SANYU CONSULTANTS INC.

Clause 5 (1)

For the provisions of this sub-clause there shall be substituted as follows:

Contract Documents are prepared in Arabic and with exact translation to English. However, some Contract Documents are prepared in English. In case of discrepancy the Arabic version of all Contract Documents shall be governing and binding.

Clause 5 (2)

For the first sentence of this sub-clause there shall be substituted as follows:

In case of any discrepancy among the Contract Documents following order is observed, but the instruction of the Engineer during the period of the Contract are having higher preference than all of the belows.

- Form of Agreement and its Appendix
- Form of Tender and its Appendix
- Instructions to Tenderers
- General and Particular Conditions of Contract
- Bill of Quantities
- Particular Specifications
- General Specifications
- Drawings

Clause 5 (3)

For the provisions of this sub-clause there shall be substituted as follows:

The Contractor shall conduct all correspondence with the Engineer and the Engineer's Representative in English language. The Contractor shall, however, make all correspondence with the Employer in both Arabic and English languages, but the interpretation of the Arabic text shall prevail.

Clause 17 (1)

The sentence commencing "unless such error is based on incorrect data the same shall be borne by the Engineer" shall be deleted.

Clause 68 (2)

Engineer's address;

Kyogin Bldg.
No. 15-22, 2-chome, Nishiki,
Naka-ku, Nagoya, Japan

Clause 82

This Clause shall be deleted.

