

REPUBLIC OF BOLIVIA
BOLIVIAN NATIONAL RAILWAYS
RAILWAY CONSTRUCTION PROJECT, EASTERN LINE
(TAPERAS-ROBORE)

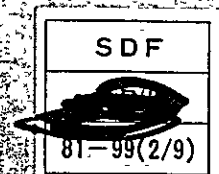
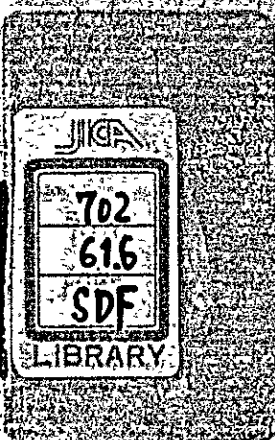
- Vol. 1: Instructions to Bidders
2. General Conditions of Contract
3. Bid Form
4. General Specifications
5. Technical Specifications
6. Special Specifications
7. Bill of Quantities
8. Drawings
9. Form of Agreements

Volume 2

March, 1981

JAPAN INTERNATIONAL COOPERATION AGENCY

(JICA)



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(JICA)

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CONDITION OF CONTRACT

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DEFINITIONS AND INTERPRETATION

Definitions.

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

- (a) "Employer" means "Empresa Nacional de Ferrocarriles (ENFE)".
- (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.
- (c) "Engineer" means the Engineer appointed from time to time by the Employer and notified in writing to the Contractor to act as Works supervising Engineer for the purposes of the Contract in place of the Employer.
- (d) "Engineer's Representative" means any resident engineer or assistant of the Engineer 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 Instructions to Bidders, Conditions of Contract Specifications, Drawings, Contract Agreement, and others, as listed in Clause 5.
- (g) "Contract Price" means the sum named in the Contract Agreement, 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 of 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) "Specifications" mean the specifications 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 Specifications and any such drawings prepared by the Contractor and approved in writing by the Engineer.
- (m) "Site" means the land other places on, under, in or through which the Permanent Works or Temporary Works 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.

Singular and Plural.

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

Headings or Notes.

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

Cost.

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

ENGINEER AND ENGINEER'S REPRESENTATIVE

Duties and Powers of Engineer and Engineer's Representative.

2. (1) The Engineer shall carry out such duties in issuing notices decisions, certificates and orders as are specified in the Contract, including the following:

- (a) Examination and approval of the overall Works schedule to be prepared by the Contractor.
- (b) Examination and approval of such alignment surveys and subsurface exploration to be carried out at the site by the Contractor.
- (c) Examination and approval of the detailed drawings and calculations.
- (d) General supervision of the Works.
- (e) Issuing certificates regarding the Work progress.
- (f) Examination and approval of alternations in the quantity of the Work, until prices, and Contract Amount.
- (g) Making available the necessary conveniences to be provided by the Employer for execution of the Works.
- (h) Examination and approval of materials and equipment.
- (i) Any other supervisory duties related to the performance of this 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 Contractor, and 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

Assignment.

3. The Contractor shall not assign the Contract or any part thereof, or any benefit or interest therein or thereunder.

Sub-letting. 4. 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 deemed to be a subletting under this Clause.

CONTRACT DOCUMENTS

Language. 5. (1) The language in which the Contract documents shall be drawn up and the language whereby the Contract is to be construed and interpreted shall be Spanish.

Law. (2) The law which is to apply to the Contract Law and whereby the Contract is to be construed shall be the law of the Republic of Bolivia.

Composition of Contract Documents. (3) Each of the following documents shall comprise a part of the Contract documents.

- (a) Instructions to Bidders
- (b) General Conditions of Contract
- (c) General Specifications
- (d) Technical Specifications
- (e) Special Specifications
- (f) Price Bill of Quantities
- (g) Drawings
- (h) Proposal Submitted by the Contractor
- (i) Decision of the Tender Evaluation Committee
- (j) Letter of Acceptance
- (k) Contract Agreement

Documents Mutually Explanatory. (4) Except if and to the extent otherwise provided by the Contract, the provision 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 certify and the Employer shall pay such additional sum as may be reasonable to cover such costs.

Investigation and Designing. 6. The Contractor shall make detailed investigations for execution of the Works, such as alignment survey and subsurface exploration, in accordance with the technical specifications, and shall prepared drawings of detailed designs and shop drawings in accordance with the drawings of basic design and technical specifications annexed hereto. The Contractor shall furnish the Engineer with three (3) copies each of such drawings and diagrams and obtain the Engineer's approval thereon. The Engineer shall promptly examine such drawings and diagrams and, if they are found to be satisfactory, shall notify the Contractor in writing of his approval.

- Custody of Drawings.** 7. (1) The originals of Detailed Drawings shall remain in the sole custody of the Engineer, but two (2) 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 (1) 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.
- Further Drawings and Instructions.** 8. 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.
- Drawings of Completed Works:** 9. The Contractor, upon completion of the Works, shall arrange in proper order all the drawings used and prepare the Bi-Built Drawings in accordance with the instructions of the Engineer and submit to the Engineer one (1) original and two (2) duplicate copies of the drawings.

GENERAL OBLIGATIONS

- Contractor's General Responsibilities.** 10. (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 Detailed Drawings he has prepared and for any changes in specifications he has made in preparing the Detailed Drawings from the specifications in the original Basic Drawings provided by the Employer. The Contractor shall be fully responsible for the adequacy and stability of all site operations and methods of construction.
- (3) The Contractor shall employ to the maximum extent such machinery, equipment materials and labour force as are produced and/or available in the Republic of Bolivia.
- Contract Agreement.** 11. The Contractor shall enter into a Contract Agreement with the Employer. Such a Contract Agreement shall be prepared and completed at the cost of the Employer in the form annexed with such modification as may be necessary.
- Performance Bond.** 12. The Contractor shall obtain and submit to the Employer a performance bond for a sum not less than ten (10) per cent of the Contract Amount issued by a bank and approved by the Employer to guarantee to be renewed annually the due performance of the Contract. The form of the performance bond is referred to in Appendix No. 2.
- The performance bond shall be submitted within ___ days after the date the Contract takes effect and shall cover the full duration period of the Contract from the date of submission to the date of completion of the Works. The performance bond shall

be returned to the Contractor within ___ days after the date the certificate of completion of the works is given, and, in case there is any amount to be adjusted as provided in Clause 55 of this Contract, such amount shall be deducted from the amount of the bond.

**Guarantee of
Bona Fide
Implementation**

13. To guarantee his bona fide implementation of the construction work, the Contractor shall submit to the Employer a letter of guarantee to be renewed annually and to be drawn on a bank approved by the Employer amounting to not less than ten (10) per cent of the Contract Amount. The form of the letter of guarantee is referred to Appendix No. 4.

The date for submitting such guarantee shall be within ___ days after the contract takes effect, and the effective period of the guarantee shall cover the whole period, starting from the date of its submission through the maintenance period, to the date the certificate of Completion of the Works is issued.

The letter of guarantee shall be returned to the Contractor together with the Certificate of Completion, and if there exists any adjustment to be made as provided in Clause 67 (8) (b) of this Contract, such deduction shall be effected.

**Non submission
of guarantees:**

14. In case neither the performance bond nor the letter of guarantee as provided in Clause 12 and 13 of this Contract is submitted, the Employer shall have the right to declare the award as invalidated after ___ days counting from the date the Contract takes effect.

**Inspection
of Site.**

15. The Employer shall have made 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 the 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.

**Sufficiency
of Tender.**

16. 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, 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

**Adverse Physical
Conditions and
Artificial
Obstructions.**

- (a) of complying with any instruction which the Engineer may issue to the Contractor in connection therewith, and
- (b) of any proper and reasonable measures approved by the Engineer which the Contractor may take in the absence of specific instructions from the Engi-

neer,
as a result of such conditions or obstructions being encountered.

Work to be to
the Satisfaction
of Engineer.

17. 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.

Programme to
be Furnished.

18. (1) The Contractor shall, within fifteen (15) days after signing of the Contract Agreement, 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 the 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 to the approved programme necessary to ensure completion of the Works within the time for completion as defined in Clause 51 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.

List of Res-
ponsible
persons:

19. The Contractor shall submit, together with the work progress chart, a list of responsible persons to be employed for the execution of the works including their responsibilities, experience and academic achievements for the approval of the Engineer. If there is to be any change of personnel, the Contractor must receive approval for such change in advance.

Contractor's
Superintendence.

20. 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 proper fulfilling of the Contractor's obligations under the Contract. The Contractor, or a competent and authorised Agent or Representative approved of in writing by written notice of such withdrawal, remove the Agent from the Works and shall not there-
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.

Contractor's
Employees.

21. (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 callings 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 and unskilled 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 Engineer to be undesirable 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 must comply with the laws and customs of the Republic of Bolivia in the employment of labourers.

Setting-out.

22. 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 or 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 the Engineer's Representative, in which case the expense of rectifying the same shall be borne by the Employer. 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 benchmarks, sight-rails, pegs and other things used in setting-out the Works.

Watching and Lighting.

23. The Contractor shall in connection with the Works provide and maintain at his own cost all signs, 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.

Care of Works.

24. (1) From the commencement of the Works until the date stated in the Certificate of Completion for the whole of the Works pursuant to Clause 56 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 72 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 for the purpose of completing any outstanding work or complying with his obligations under Clause 57 or 58 hereof.

Excepted Risks. (2) The "excepted risks" are war, a cause solely due to the Engineer's design of the Works, 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".

Insurance of Works, etc. 25. Without limiting his obligations and responsibilities under Clause 24 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 24 (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 for the purpose of complying with his obligations under Clause 57 and 58 hereof:—

- (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 Constructional Plant and other things brought on to the Site by the Constructor 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 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.

Damage to Persons and Property. 26. (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 Con-

tractor, 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 indemnify the Contractor against all claims, proceedings damages, costs, charges and expenses in respect of the matters referred to in the proviso to sub-clause (1) of this Clause.

**Third Party
Insurance.**

27. (1) Before commencing the execution of the Works the Contractor, but without limiting his obligations and responsibilities under Clause 26 hereof, shall insure against his liability for any material or physical damage, loss or injury which may occur to any property, including that of the Employer, or to any person, 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 Clause 26 (1) 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.

**Accident or
Injury to
Workmen.**

28. (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 or any sub-contractor, save and except and 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 receipt 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.

**Remedy on
Contractor's
Failure to Insure.**

29. If the Contractor shall fail to effect and keep in force the insurances referred to in Clauses 25, 27 and 28 hereof, or any other insurance which he may be required 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.

Giving of
Notices and
Payment of Fees.

30. (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 byelaw 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, Regu-
lations, 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-laws 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.

(3) The Employer will repay or allow to the Contractor all such sums as the Engineer shall certify to have been properly payable and paid by the Contractor in respect of such fees.

Fossils, etc.

31. All fossils, 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 any such article or thing and shall immediately upon 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.

Patent Rights
and Royalties.

32. 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.

Interference
with Traffic
and Adjoining
Properties.

33. All operations necessary for the execution of the 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.

Transportation
of long

34. In transporting long materials such as steel materials, rails and steel girders, the Contractor shall take all the precautions as provided in the Specifications not to damage

materials: the quality, condition and shape of the materials. The Contractor shall repair at his own cost any damage incurred during such operations.

Extraordinary Traffic. 35. (1) The Contractor shall use reasonable means to prevent any of the railways, 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 the 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 railways, highways and bridges.

Special Loads. (2) Should it be found necessary for the Contractor to move once or more loads of Constructional Plant, machinery or pre-constructed units or parts of units of work over part of a railway, highway or bridge, the moving whereof is likely to damage any railway, highway or bridge unless special protection or strengthening is carried out, then the Contractor shall before moving the load on to such railway, 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 railway, highway or bridge. Unless within fourteen (14) 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.

Settlement of Extraordinary Traffic Claims. (3) If during the execution of the Works or at any time thereafter the Contractor shall receive any claim arising out of the execution of the Works in respect of damage or injury to railways, highways or bridges he shall immediately report the same to the Engineer and thereafter the Employer shall negotiate the settlement of and pay all sums due in respect of such claim and shall indemnify the Contractor in respect thereof and in respect of all claims, proceedings, damages, costs, charges and expenses in relation thereto. Provide always that if and so far as any such claims or part thereof shall in the opinion of the Engineer be due to any failure on the part of the Contractor to observe and perform his obligations under sub-clauses (1) and (2) of this Clause, then the amount certified by the Engineer to be due to such failure shall be paid by the Contractor to the Employer.

Opportunities for other Contractors. 36. (1) 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 to 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.

(2) Should the Contractor's work be hampered or delayed owing to the perfor-

mance, nonperformance, error, or negligence of any such other contractor, the Contractor shall lodge his complaint thereon with the Engineer, upon which, the Engineer shall promptly take such measures as he deems necessary. The Contractor shall promptly carry out the decisions made thereon by the Engineer, provided however, that the Contractor shall have received the right to appeal his dissatisfaction to the Employer within ten (10) days after the decision.

Contractor
to Keep
Site Clear.

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

Clearance of
Site on
Completions.

38. 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

Engagement of
Labour.

39. (1) The Contractor shall make his own arrangements 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. The number of labourers to be engaged by the Contractor shall at all times be in accordance with the scale, nature, and programme of the Works to be performed. The Contractor shall conform with the Laws, Ordinances, and Regulations of the Republic of Bolivia pertaining to minimum wages, vacations, rest days, working hours, accidents, work supervision, etc. of the labourers engaged.

Supply of
Water.

(2) the Contractor shall, so far as is reasonably practicable, having regard to local conditions, provide on the Site, to the satisfaction of the Engineer's Representative, and adequate supply of drinking and other water for the use of the Contractor's staff and work people.

Alcoholic Liquor
or Drugs.

(3) 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.

(4) 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.

Festivals and
Religious Customs

(5) 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.

Epidemics.

(6) In the event of any outbreak of illness of any 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.

Disorderly

(7) The Contractor shall at all times take all reasonable precautions to prevent

- Conduct, etc.** 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.** (8) The Contractor shall be responsible for observance by his sub-contractors of the foregoing provisions.
- Facilities for Labour.** (9) The Contractor shall provide at suitable places buildings with sanitation facilities for use by the labourers engaged. Approval of the Engineer will be required as to the number of sanitation facilities, etc. of such buildings, such facilities shall be provided, maintained, and attended to at the Contractor's own cost.
- Clinic room:** (10) The Contractor shall provide a medical clinic near the Taperas Station for the personnel engaged in the Construction works, as provided in the General Specification and Special Specifications.
- Electric facilities:** (11) The Contractor shall provide electric facilities for use by the Contractor's personnel and workers, and by the Engineer and Engineer's Representatives.
- Facilities for the Employer and the** (12) The Contractor shall provide accommodations and such other facilities as provided in the General Specifications, Technical Specifications and Special Specifications for the Employer's and Engineer's staff, and shall maintain such facilities during the construction period.
- Returns of Labour, etc.** 40. 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.
- Medical Regulation.** 41. The Contractor must respect the regulations of the labour laws of Bolivia, and must, therefore, become a member of the "Caja Nacional de Seguridad Social".

MATERIALS AND WORKMANSHIP

- Quality of Materials and Workmanship and Tests.** 42. (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. Regarding the materials produced in foreign countries, test result certificates issued at the place of origin of such materials shall be submitted.
- Cost of Samples.** (2) All samples shall be supplied by the Contractor at his own cost if the supply thereof is clearly intended by or provided for in the Contract, but if not, then at the cost of the Employer.

Cost of Tests.	<p>(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.</p>
Cost of Tests not Provided for, etc.	<p>(4) If any test is ordered by the Engineer which is either</p> <p>(a) not so intended by or provided for or</p> <p>(b) (in the cases above mentioned) is not so particularised, or</p> <p>(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,</p> <p>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.</p>
Notice of Inspection:	<p>(5) The Contractor shall notify the Engineer at least thirty (30) days in advance for inspection outside the Bolivian Republic, if required by the specifications, and at least seven (7) days in advance for inspection within the Bolivian Republic.</p>
Inspection of Operations.	<p>43. The Engineer and any person authorised by him 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.</p>
Alternate materials:	<p>44. The Contractor shall be allowed, subject to the approval of the Engineer, to use alternate materials of equal or better quality and conditions than those specified in the Technical Specifications.</p>
Custody of Materials Supplied.	<p>45. All the materials approved by the Engineer and paid for by the Employer shall be transferred to the possession of the Employer. The Contractor shall be responsible for the safe keeping and use of these materials. The Contractor shall not remove from site or dispose of these materials without the approval of the Engineer.</p>
Examination of Work before Covering up.	<p>46. (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.</p>
Uncovering and Making Operatings.	<p>(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</p>

and making good the same shall be borne by the Employer, but in any other case all costs shall be borne by the Contractor.

Removal of Improper Work and Materials.

47. (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 or interim payment therefor, 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, or may be deducted by the Employer from any monies due or which may become due to the Contractor.

Suspension of Work.

48. (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 suspensions is
- (a) otherwise provided for 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 of default by the Engineer or the Employer or from any of the excepted risks defined in Clause 24 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 (28) days of the Engineer's order. The Engineer shall settle and determine such extra payment any/or extension of time under Clause 52 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 hereof 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 (90) days from the date of suspension then, unless such suspension is within paragraph (a), (b), (c) or (d) or sub-clause (1) of this Clause, the Contractor may serve a written notice on the Engineer requiring permission within twenty-eight (28) 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 so such part under Clause 60 hereof, or, where it affects the whole Works, as an abandonment of the Contract by the Employer.

COMMENCEMENT TIME AND DELAYS

- Commencement of Works.** 49. The Contractor shall commence the Works on Site within fifteen (15) days after he receives 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.
- Possession of Site.** 50. (1) The site of which the Contractor is to be given possession and wayleave from time to time, 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 and wayleave 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 18 hereof, 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. 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 and certify such sum as, in his opinion, shall be fair to cover the cost incurred, which sum shall be paid by the Employer.
- 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 purpose of the Works.
- Use of railroad:** (3) The Employer shall allow the Contractor to construct a side track branching from the trunk line near the Taperas station and the Robore station and transport the materials during the Construction period via rails to be operated under the control of the Employer.
- Time for completion:** 51. The Construction works shall be completed within the period of time as prescribed under Clause 56 of this Contract (counting from the final date of the Commencement period as provided in Clause 49 of this Agreement), or within the extended period as shall be granted in accordance with Clause 52 of this Contract.
- Extention of Time for Completion.** 52. 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 (28) 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 the time.
- No Night or** 53. Subject to any provision to the contrary contained in the Contract, none of the

Sunday Work.	Permanent Works shall, save as hereinafter provided, be carried on during the night or on Sunday, if locally recognised as days of rest, or their locally recognised equivalent without the permission in writing of the Engineer's Representative, except 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's Representative. Provided always that the provisions this Clause shall not be applicable in the case of any work which it is customary to carry out by rotary or double shifts.
Rate of Progress.	54. If for any reason, which does not entitle the Contractor to an extension of time, the rate of progress of the Works or any section is at any time, in the opinion of the Engineer, too slow to ensure completion by the prescribed time or extended time for completion, the Engineer shall so notify the Contractor in writing and the Contractor shall thereupon take such steps as are necessary and the Engineer may approve to expedite progress so as to complete the Works or such section by the prescribed time or extended time. The Contractor shall not be entitled to any additional payment for taking such steps. If, as a result of any notice given by the Engineer under this Clause, the Contractor shall need the Engineer's permission to do any work at night or on Sundays, if locally recognised as days of rest, or their locally recognised equivalent, such permission shall not be unreasonably refused.
Liquidated damages for delay in starting work.	55. (1) In case the contractor fails to start work on the project within the period specified in clause 49 of this Contract without due reason, the Contractor shall pay the Employer, as liquidated damages and not as a penalty, 1/10,000 per day in Bolivian pesos for each day's delay counting from the day following expiration of the period until the day for start of work as certified by the Engineer (delay of less than 1 day shall be considered as zero).
Liquidated damages for delay in completion of works:	(2) In case the Contractor fails to complete the works within the prescribed period in Clause 51 of this Contract, the Contractor shall pay to the Employer for such default as liquidated damages, not as a penalty, for every week counting from the prescribed date until the date of completion certified by the Engineer a weekly amount of 2/1,000 Bolivian pesos for the first ten (10) weeks and 1/1,000 Bolivian pesos for the eleventh (11) week, and thereafter (less than a week shall be considered as zero).
	(3) The Employer shall be entitled to deduct such liquidated damages specified in the above paragraphs (1) and (2) from any payable amounts, either current or of the future from the performance bond. However, such deductions shall not deprive the Employer of his right to collect or recover due damages by other possible means. Regardless of such payments of liquidated damages or deductions, the Contractor shall not be relieved of his responsibilities for the completion of the works and other duties as are stipulated in the Contract.
Certification of Completion of Works.	56. (1) When the whole of the Works have been substantially completed and have satisfactorily passed any final test that may be prescribed by the Contract, the Contractor may give a notice to that effect to the Engineer or to the Engineer's Representative accompanied by an undertaking to finish any outstanding work during the Period of Maintenance. Such notice and undertaking shall be in writing and shall be deemed to be a request by the Contractor for the Engineer to issue a Certificate of Completion in respect of the Works. The Engineer shall, within twenty-one (21) days of the date of delivery of such notice either issue to the Contractor, with a copy to the Employer, a Certificate of Completion stating the date on which, in his opinion, the Works were substantially completed in accordance with the Contract or give instructions in writing to the Con-

tractor specifying all the work which, in the Engineer's opinion, requires to be done by the Contractor before the issue of such Certificate. The Engineer shall also notify the Contractor of any defects in the Works affecting substantial completion that may appear after such instructions and before completion of the works specified therein. The Contractor shall be entitled to receive such Certificate of Completion within twenty-one (21) days of completion to the satisfaction of the Engineer of the works so specified and making good any defects so notified.

(2) After the date of issue of the certification of completion, all the facilities constructed shall be temporarily accepted by the Employer, and the Employer shall commence the operation of trains. The Contractor shall, during the maintenance period, keep normal maintenance of the facilities in operation and repair all defects which may appear during the said period.

MAINTENANCE AND DEFECTS

Definition of
Period of
Maintenance.

57. (1) "Period of Maintenance" shall mean the period of one (1) year calculated from the date of completion of the Works, certified by the Engineer in accordance with Clause 56 hereof, or, in the even of more than one (1) 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 construed 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 56 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 (14) 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 this 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, and/or from performance bond for the bona fide implementation.

Contractor
to Search.

58. 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 of in the Peirod of Maintenance. Unless such defect, imperfection of 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 of fault shall be one for which the Contractor is 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 of fault at his own expense in accordance with the provisions of Clause 57 hereof.

ALTERATIONS, ADDITIONS AND OMISSIONS

Alterations
resulting from
detail
designing.

59. As the result of railroad measurement, geological investigations and detail designing performed by the Contractor and approved by the Engineer, if there should be an increase or decrease of more than ten (10) per cent of the work, the Contract Amount shall be adjusted on the related items on the basis of the unit prices and amounts as shall be mutually agreed upon between the Employer, Engineer and Contractor.

Variations.

60. (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, position 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.

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 any 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 (7) days confirm in writing to the Engineer and such confirmation shall not be contradicted in writing within fourteen (14) days by the Engineer, it shall be deemed to be an order in writing by the Engineer.

Valuation of
Variations.

61. (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 even of disagreement the Engineer shall fix such rates or prices as shall, in his opinion, be reasonable and proper.

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 of 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 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.

Variations
Exceeding
10 per cent.

(3) If, on certified completion of the whole of the Works it shall be found that a reduction or increase greater than ten (10) per cent of the sum named in the Contract Agreement or alteration under Clause 59, excluding all fixed sums, and allowance for dayworks, if any, results from:—

- (a) the aggregate effect of all Variation Orders, and
- (b) all adjustments upon measurement of the estimated quantities set out in the Bill of Quantities, excluding all dayworks and adjustments of price made under Clause 77 (1) 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 and the Engineer or, failing agreement, fixed by the Engineer having regard to all material and relevant factors, including the Contractor's Site and general overhead costs of the Contract.

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 allwork 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 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 (1) 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 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 payment to which the Contractor may consider himself entitled and of all extra or 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.

PLANT, TEMPORARY WORKS AND MATERIALS

Plant, etc.
Exclusive Use
for the Works.

62. (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 or
Plant, etc.

(2) Upon completion of the Works the Contractor shall remove from the Site 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 of or damage to any of the said Constructional Plant, Temporary Works or materials save as mentioned in Clause 24 and 72 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 Employer will assist the Contractor, where required, in obtaining clearance through the Customs of Constructional Plant, materials and other things required for the Works.

Approval of
Materials, etc.
not implied.

63. The operation of Clause 62 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

Quantities.

64. 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.

Works to be

65. The Engineer shall, except as otherwise stated, ascertain and determine by meas-

Measured. urement 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 (14) 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 (14) 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.

Method of Measurement. 66. The Works shall be measured net, notwithstanding any general or local custom, except where otherwise specifically described or prescribed in the Contract.

CERTIFICATES AND PAYMENT

Currency: 67. (1) Payment for the works performed under this Contract shall be made in Bolivian Government funds and Bolivian pesos, or in foreign currency.

Advance payment: (2) The Employer shall provide twenty (20) per cent of the Contract Amount as advance payment within ___ days after the contract takes effect. The Contractor shall submit to the Employer a Letter of Guarantee on bank approved by the Employer in exchange for the advance payment. The letter of guarantee shall be returned to the Contractor when the amount equivalent to the advance payment shall have been deducted from the payments to the Contractor, in such manner as described in sub-clause (6) of this Clause. The Letter of Guarantee should provide a guarantee period sufficient to satisfy such condition.

Payment (3) Unless otherwise provided, the payment for the work shall be made at monthly intervals. The unit-price items shall be paid for on the basis of the measured work performed up to the end of the previous month and the amount thereof, and the lumps-sum items shall be calculated on the basis of the amount measured after the accomplished work shall have reached the stage as prescribed by the Specification. The details of calculation shall be submitted to the representative of the Engineer.

(4) The Engineer's Representative shall issue a certificate of accomplishment on the basis of the details of calculation submitted by the Contractor. Any amount held by the Engineer's Representative for any certification shall be included in the next billing with details of calculation.

(5) The Employer shall pay the Contractor for the works done within ___ days after receipt of the Contractor's statement accompanied by a certificate of accomplish-

ment signed by the Engineer.

(6) The Employer shall deduct an amount equivalent to thirty (30) per cent of the total due amount in reimbursement of the advance payment. After the whole amount of the advance payment shall have been paid, the Employer shall make no such deduction.

(7) The Employer shall make no deduction from the retention money. In the case of such a situation as stated in sub-clause (8) (b) of this Clause, the deduction shall be applied against the Letter of Guarantee.

(8) Within ___ months after the maintenance certificate have been signed, the Contractor shall submit to the Engineer a final statement of account accompanied by the details of works performed according to the Contract and other supporting documents, and, at the same time, shall submit the entire additional amount that the Contractor considers he is entitled to receive under the Contract. After receiving such final statement of account and all other documents necessary for due evaluation, the Engineer shall issue the Final Certificate within ___ months clarifying the following:

- (a) The final amount that the Contractor shall receive under the Contract (after crediting to the Employer all the amounts that had been previously paid to the Contractor under the Contract and all amounts that the Employer is entitled to), and
- (b) The balance of amount that the Employer shall have to pay to the Contractor, or the balance of amount the Contractor shall have to pay to the Employer (if any), such balance of amount shall be paid by the Employer to the Contractor, or by the Contractor to the Employer within ___ days after the Final Certificate, provided that the conditions stipulated in Clause 55 and 57-(4) shall have been complied with. In case the Contractor shall have a balance to pay and such payment is not made by the Contractor, the Employer shall deduct such balance of amount by applying it against the Letters of Guarantee.

Approval only
by Maintenance
Certificate.

68. No certificate other than the Maintenance Certificate referred to in Clause 69 hereof shall be deemed to constitute approval of the Works.

Maintenance
Certificate.

69. (1) The Contract shall not be considered as completed until a Maintenance Certificate shall have been signed by the Engineer and delivered to the Employer stating that the Works have been completed and maintained to his satisfaction. The Maintenance Certificate shall be given by the Engineer within twenty-eight (28) days after the expiration of the Period of Maintenance, or, if different periods of maintenance shall become applicable to different actions or parts of the Works, the expiration of the latest such period, or as soon thereafter as any works ordered during such period, pursuant to Clauses 57 and 58 hereof, shall have been completed to the satisfaction of the Engineer 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. Provided always that the issue of the Maintenance Certificate shall not be a condition precedent to payment to the Contractor, and shall not be construed as a pre-condition for the return of the Guarantee Letter for the bona fide instrumentation.

Cessation of
Employer's
Liability.

(2) The Employer shall not be liable to the Contractor for any matter or thing arising out of 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

Default of
Contractor.

70. (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 purposes 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
- (b) without reasonable excuse has failed to commence the Works or has suspended the progress of the Works for twenty-eight (28) days after receiving from the Engineer written notice to proceed, or
- (c) has failed to remove materials from the Site or to pull down and replace work for twenty-eight (28) 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

then the Employer may, after giving fourteen (14) days' notice in writing to the Contractor, enter upon the Site and the Works and expel the Contractor therefrom without thereby voiding the Contract, or releasing the Contractor from any of his obligations or liabilities under the Contract, or affecting the rights and powers conferred on the Employer or the Engineer by the Contract, and may himself complete the Works or may employ and other contractor to complete the Works. 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 execution of the Works, under the provisions of the Contract, as he or they may think proper, and the Employer may, at any time, sell any of the said Constructional Plant, Temporary Works and unused materials and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to him from the Contractor under the Contract.

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 costs 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 due completion by him after deducting the said amount. If such amount shall exceed the sum which would have been payable to the Contractor on due completion by him, then the Contractor shall, upon demand, pay to the Employer the amount of such excess and it shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly.

**Urgent
Repairs.**

71. If, by reason of any accident, of failure, or other event occurring to in or in connection with the Works, or any part thereof, either during the execution of the Works, or during the 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 work 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

**No Liability for
War, etc, Risks.**

72. Notwithstanding any thing contained 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 47 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 and from 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
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 cost of reconstructing work condemned under the provisions of Clause 47 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.

Special Risks.

(5) The special risks are war, described in Clause 24 (2) hereof.

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 74 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 amounts 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 payments 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) The 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 payments 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

Payment in
Event of
Frustration.

73. 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 72 hereof if the Contract had been terminated under the provisions of Clause 72 hereof.

SETTLEMENT OF DISPUTES

Settlement of
Disputes—
Arbitration.

74. If any dispute of difference of any kind whatsoever shall arise between the Employer and the Contractor or the Engineer and the Contractor in connection with, or arising out of the Contract, or the execution 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 shall, within a period of ninety (90) days after being requested by either party to do so, give written notice of his decision to the Employer and the Contractor. Subject to arbitration, as hereinafter provided, such decision in respect of every matter so referred shall be final and binding upon the Employer and the Contractor and shall forthwith be given effect to by the Employer and by the Contractor, who shall proceed with the execution of the Works with all due diligence whether he or the Employer requires 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 (90) 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 ninety (90) 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 (90) days after receiving notice of such decision, or within ninety (90) days after the expiration of the first-named period of ninety (90) 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 finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed under such Rules. The said arbitrator/s shall have full power to open up, revise and review any decision, opinion direction, certificate or valuation of the Engineer. Neither party shall be limited in the proceedings before such arbitrator/s to the evidence or arguments put before the Engineer for the purpose of obtaining his said decision. No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator/s on any matter whatsoever relevant to the dispute or difference referred to the arbitrator/s as aforesaid. The reference to arbitration may proceed notwithstanding that the Works shall not then be or be alleged to be complete, provided always that the obligations of the Employer, the Engineer and the Contractor shall not be altered by reason of the arbitration being conducted during the progress of the Works.

NOTICES

Service of
Notices on
Contractor.

75. (1) All certificates, notices or written orders to be given by the Employer or by the Engineer to the Contractor under the terms of the Contract shall be served by sending by post to or delivering the same to the Contractor's principal place of business, or such other address as the Contractor shall nominate for this purpose.

Service of
Notice on
Employer or
Engineer.

(2) All notices to be given to the Employer or to the Engineer under the term of the Contract shall be served by sending by post or delivering the same to the respective address specified for that purpose hereunder.

- (a) address of the Employer;
- (b) address of the Engineer;

Change of
Address.

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

DEFAULT OF EMPLOYER

Default of
Employer.

76. (1) In the event of the Employer:—

- (a) failing to pay to the Contractor the amount due under any certificate of the Engineer within thirty (30) days after the same shall have become due under the terms of the Contract, subject to any deduction that the Employer is entitled to make under the Contract, or
- (b) interfering with or obstructing or refusing any required approval to the issue of any such certificate, or
- (c) becoming bankrupt or, being a company, going into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation, or
- (d) giving formal notice of the Contractor that for unforeseen reasons, due to economic dislocation, it is impossible for him to continue to meet his contractual obligations

the Contractor shall be entitled to terminate his employment under the Contract after giving fourteen (14) days' prior written notice to the Employer, with a copy to the Engineer.

(2) Upon the expiry of the fourteen (14) days' notice referred to in sub-clause (1) of this Clause, the Contractor shall notwithstanding the provisions of Clause 62 (1) hereof, with all reasonable despatch, remove from the Site all Constructional Plant brought by him thereon.

(3) In the event of such termination the Employer shall be under the same obligations to the Contractor in regard to payment as if the Contract had been terminated under the provisions of Clause 72 hereof, but, in addition to the payments specified in Clause 72 (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.

CHANGES IN COSTS AND LEGISLATION

Changes in
Cost:

77. Adjustments of the unit price shall be made in respect to rise or fall of labour, materials or fuel costs affecting remarkably the cost of the works.

Only those items indicated in the Bill of Quantities shall be adjusted. The following formulas shall be used for the adjustments.

a) Adjustment of the Bolivian peso portion shall be according to the following formula:

$$X = 0.15 + 0.40 \times \frac{T_1}{T_0} + 0.40 \times \frac{S_1}{S_0} + 0.05 \times \frac{D_1}{D_0}$$

- X: Adjustment factor
- T: Minimum wage under Bolivian law
- S: Cement price under Bolivian legislation
- D: Diesel price under Bolivian legislation
- "O": Time of contract
- "I": Time of adjusting the unit price

b) Adjustment of the United States dollar portion shall be according to the following formula:

$$X = 0.30 + 0.40 \times \frac{Y_1}{Y_0} + 0.20 \times \frac{Z_1}{Z_0}$$

- X: Adjustment factor
- Y: Price of steel appearing in the commodity price list of the United States.
- Z: Consumer price index in the United States.
- "O": Time of contract.
- "I": Time of adjusting the unit price.

The time of adjustment shall begin six (6) months after the signing of the Contract, and adjustment shall be made every six (6) months thereafter. The adjustment factor shall be subject to approval of the Employer, and such factor shall be applied beginning from the first month of payment.

Subsequent
Legislation.

78. If, after the date thirty (30) days prior to the latest date for submission of tenders for the Works there occur, in the country in which the Works are being or are to be executed changes to any National or State Statute, Ordinance, Decree or other Law or any regulation or bye-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation or bye-law which causes

additional or reduced cost to the Contractor, other than under Clause 77 of this Clause, in the execution of the Works, such additional or reduced cost shall be certified by the Engineer and shall be paid by or credited to the Employer and the Contract Price adjusted accordingly.

CURRENCY AND RATES OF EXCHANGE

Currency Restrictions.

79. If, after the date thirty (30) days prior to the latest date for submission of tenders for the Works the Government of authorised agency of the Government of the country in which the Works are being or are to be executed imposes currency restrictions and/or transfer of currency restrictions in relation to the currency or currencies in which the Contract Price is to be paid, the Employer shall reimburse any loss or damage to the Contractor arising therefrom, without prejudice to the right of the Contractor to exercise any other rights or remedies to which he is entitled in such event.

Rates of Exchange.

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

TAX

Income tax:

81. (1) The Bolivian Government's income tax legislation shall apply to the income of the Contractor and his personnel. There shall be no tax-exemptions.

(2) There shall be no tax-exemptions for imports and exports of the materials and construction plants used for the execution of this Contract.

EMPLOYER'S ASSISTANCE

Employer's Assistance.

82. The Employer shall provide the Contractor with the following aids and assistance.

- (a) Assistance with respect to permission to enter pertinent premises and to cut down trees
- (b) Assistance with respect to transport by railway of materials and equipment
- (c) Assistance to facilitate the issuance of visas for unhindered entry into and departure from the residence in the Republic of Bolivia, as required of the Contractor and his staff, if the Contractor is a foreign firm.
- (d) Facilitation with respect to acquisition of permits for import of materials and equipment and with respect to customs clearance
- (e) Preferential use of telephone, telex, wireless, and other such public services
- (f) Permission for use of land

EFFECTUATION OF THE CONTRACT

Effectuation of the Contract:

83. This Contract shall take effect on the same date that Government of the Republic of Bolivia extends its approval. The Employer shall notify the Contractor immediately of this effective date.

