

claimed by him to be incorrect. On receipt of such notice, the Engineer shall review the records and drawings and either confirm or vary them.

- Method of Measurement** 57.1 The Works shall be measured net, notwithstanding any general or local custom, except where otherwise provided for in the Contract.
- Breakdown of Lump Sum Items** 57.2 For the purposes of statements submitted in accordance with Sub-Clause 60.1, the Contractor shall submit to the Engineer, within 28 days after the receipt of the Letter of Acceptance, a breakdown for each of the lump sum items contained in the Tender. Such breakdowns shall be subject to the approval of the Engineer.

PROVISIONAL SUMS

- Definition of "Provisional Sum"** 58.1 "Provisional Sum" means a sum included in the Contract so designated in the Bill of Quantities for the execution of work or the supply of goods, materials, or services, or for contingencies, which sum may be used, in whole or in part, or not at all, at the direction and discretion of the Engineer. The Contract Price shall include only such amounts in respect of the work, supply or services to which such Provisional Sums relate as the Engineer shall approve or determine in accordance with this Clause. The Engineer shall notify the Contractor of any determination made under this Clause, with a copy to the Employer's Delegate.
- Use of Provisional Sum** 58.2 In respect of every Provisional Sum the Engineer shall have power to order:-
- (a) Work to be executed, including goods, materials or services to be supplied by the Contractor. The Contract Price shall include the value of such work executed or such goods, materials or services supplied determined in accordance with Clause 52 hereof.
 - (b) Work to be executed or goods, materials or services to be supplied by a nominated Sub-Contractor as hereinafter defined. The sum to be paid to the Contractor therefor shall be determined and paid in accordance with Clause 59.4 hereof.
 - (c) Goods and materials to be purchased by the Contractor. The sum to be paid to the Contractor therefore shall be determined and paid in accordance with Clause 59.4 hereof.
- Production of Vouchers, etc.** 58.3 The Contractor shall, when required by the Engineer, produce all quotations, invoices, vouchers and accounts or receipts in connection with expenditure in respect of Provisional Sums.

NOMINATED SUB-CONTRACTORS

Definition
"Nominated
Sub-Contractor"

59.1 All specialists, merchants, tradesmen and others executing any work or supplying any goods, materials or services for which Provisional Sums are included in the Contract, who may have been or be nominated or selected or approved by the Employer or the Engineer, and all persons to whom by virtue of the provision of the Contract the Contractor is required to sub-let any work shall, in the execution of such work or the supply of such goods, materials or services, be deemed to be sub-contractors employed by the Contractor and are referred to in this Contract as "nominated Sub-Contractors".

Nominated Sub-
Contractors Objection
to Nomination

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

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

and

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

Design
Requirements to be
Expressly Stated

59.3 If in connection with any Provisional Sum the services to be provided include any matter of design or specification of any part of the Permanent Works or of any Plant to be incorporated therein, such requirements shall be expressly stated in the Contract and shall be included in any nominated Sub-Contract. The nominated Sub-Contract shall specify that the nominated Sub-Contractor providing such services will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities.

Payments to

59.4 For all work executed or goods, materials, or services

**Nominated
Sub-Contractors**

supplied by any nominated Sub-Contractor, there shall be included in the Contract Price:-

- (a) the actual price paid or due to be paid by the Contractor, on the direction of the Engineer, and in accordance with the Sub-Contract;
- (b) the sum, if any, entered in the Bill of Quantities for labour supplied by the Contractor in connection therewith, or if ordered by the Engineer pursuant to Clause 58.2 (b) hereof, as may be determined in accordance with Clause 52 hereof;
- (c) in respect of all other charges and profit, a sum being a percentage rate of the actual price paid or due to be paid calculated, where provision has been made in the Bill of Quantities for a rate to be set against the relevant Provisional Sum, at the rate inserted by the Contractor against that item or, where no such provision has been made, at the rate inserted by the Contractor in the Appendix to the Tender and repeated where provision for such is made in a special item provided in the Bill of Quantities for such purposes.

**Certification of 59.5
Payments to Nominated
Sub-Contractors**

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

- (a) satisfies the Engineer in writing that he has reasonable cause for withholding or refusing to make such payments and
- (b) produces to the Engineer reasonable proof that he has so informed such nominated Sub-Contractor in writing.

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

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

Assignment of
Nominated
Sub-Contractors'
Obligation

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

CERTIFICATES AND PAYMENTS

Monthly
Statements

60.1 The Contractor shall submit to the Engineer after the end of each month six copies, each signed by the Contractor's representative approved by the Engineer in accordance with Sub-Clause 15.3, of a statement, in such form as the Engineer may from time to time prescribe, showing the amounts to which the Contractor considers himself to be entitled up to the end of the month in respect of

- (a) the value of the Permanent Works executed
- (b) any other items in the Bill of Quantities including those for Contractor's Equipment, Temporary Works, dayworks and the like
- (c) ninety percent of the invoice value of listed materials, delivered by the Contractor on the Site for incorporation in the Permanent Works but not incorporated in such Works
- (d) adjustment under Clause 70
- (e) any claims for additional costs submitted by the Contractor.

Monthly Payments

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

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

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

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

**Payment of
Retention Money**

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

(b) Upon the expiration of the Maintenance Period for the Works the other half of the Retention Money shall be certified by the Engineer for payment to the Contractor. Provided that, in the event of different Maintenance Periods having become applicable to different Sections or parts of the Permanent Works pursuant to clause 48, the expressions "expiration of the Maintenance Period" shall, for the purposes of this Sub-Clause, be deemed to mean the expiration of the latest of such periods.

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

**Correction of
Certificates**

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

**Statement at
Completion**

60.5 Not later than 84 days after the issue of the Certificate of Completion in respect of the whole of the Works, the Contractor shall submit to the Engineer a Statement at Completion with supporting documents showing in detail, in the form approved by the Engineer.

(a) the final value of all work done in accord with the Contract up to the date stated in such Certificate of Completion

(b) any further sums which the Contractor considers to be due and

(c) an estimate of amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in such Statement at Completion. The Engineer shall certify payment in accordance with Sub-Clause 60.2.

Final Statement 60.6 Not later than 56 days after the issue of the Maintenance Certificate pursuant to Sub-Clause 62.1, the Contractor shall submit to the Engineer for consideration a draft final statement with supporting documents showing in detail, in the form approved by the Engineer,

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

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

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

Discharge 60.7 Upon submission of the Final Statement, the Contractor shall give to the Employer, with a copy to the Engineer, a written discharge confirming that the total of the Final Statement represents full and final settlement of all monies due to the Contractor arising out of or in respect of the Contract. Provided that such discharge shall become effective only after payment due under the Final Certificate issued pursuant to Sub-Clause 60.8 has been made and the performance security referred to in Sub-clause 10.1, if any, has been returned to the Contractor.

Final Certificate 60.8 Within 28 days after receipt of the Final Statement, and the written discharge, the Engineer shall issue to the Employer (with a copy to the Contractor) a Final Certificate stating

(a) the amount which, in the opinion of the Engineer, is finally due under the Contract,

and

(b) after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled under the Contract, other than Clause 47, the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer as the case may be.

Cessation of Employer's Liability 60.9 The Employer shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or execution of the Works, unless the Contractor shall have included a claim in respect thereof in his Final Statement (except in respect of matters or

things arising after the issue of the Completion Certificate in respect of the whole of the Works) in the Statement at Completion referred to in Sub-Clause 60.5.

Time for Payment 60.10 The Amount due to the Contractor under any interim certificate issued by the Engineer pursuant to this Clause, or to any other term of the Contract, shall, subject to Clause 47, be paid by the Employer to the Contractor within 28 days after such interim certificate has been delivered to the Employer, or in the case of the Final Certificate referred to in Sub-Clause 60.8 within 56 days, after such Final Certificate has been delivered to the Employer. In the event of the failure of the Employer to make payment within the times stated, the Employer shall pay to the Contractor interest at the rate stated in the Appendix to Tender upon all sums unpaid from the date by which the same should have been paid. The provisions of this Sub-Clause are without prejudice to the Contractor's entitlement under Clause 69.

Advance Payment 60.11 An Advance Payment of the amount stated in the Appendix to Tender shall, following the presentation by the Contractor to the Employer of an approved performance security in accordance with Sub-Clause 10.1 and a Guarantee in terms approved by the Employer for the full value of the Advance Payment, be certified by the Engineer for payment to the Contractor. Such Guarantee shall be progressively reduced by the amount repaid by the Contractor provided that the Employer shall receive a request in writing to arrange such a reduction.

The Advance Payment shall not be subject to retention.

The Advance Payment shall be repaid in equal monthly installments over the period of execution of the Works stated in the Appendix to Tender provided that upon the issue of the Completion Certificate for the whole of the Works or upon the happening of any of the events specified in Sub-Clause 63.1 or termination under Clause 65, 66 or 69, the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Employer.

In the event of no certificate being issued in any month or the value of any certificate being less than the repayment instalment of the Advance, then the Contractor shall pay the Employer the whole or the balance of the sum due for that month. In the event that the Contractor is required to comply with further conditions in respect of the Advance Payment, these shall be set out in Part II of these Conditions.

Approval Only by Maintenance Certificate 61.1 Only the Maintenance Certificate, referred to in Clause 62, shall be deemed to constitute approval of the Works.

- Work or Materials Not Conforming** 61.2 Failure of the Engineer or his representatives to disapprove or condemn any work or materials not conforming to the requirements of the Contract prior to the issue of the Maintenance Certificate pursuant to Sub-Clause 61.1 shall in no way relieve the Contractor of his responsibilities under the Contract, or prejudice the Employer's right to replacement or making good defects of any workmanship or materials for which the Contractor or any of his Sub-Contractors were responsible under this Contract.
- Maintenance Certificate** 62.1 The Contract shall not be considered as completed until the Maintenance Certificate shall have been signed by the Engineer and delivered to the Employer, with a copy to the Contractor, stating the date on which the Contractor shall have completed his obligations to execute and complete the Works and remedy any defects therein to the Engineer's satisfaction. The Maintenance Certificate shall be given by the Engineer within 28 days after the expiration of the Maintenance Period, or, if different Periods of Maintenance shall become applicable to different Sections or parts of the Permanent Works, the expiration of the latest such period, or as soon thereafter as any works instructed, pursuant to Clauses 49 and 50, have been completed to the satisfaction of the Engineer. Provided that the issue of the Maintenance Certificate shall not be a condition precedent to payment to the Contractor of the second portion of the Retention Money in accordance with the conditions set out in Sub-Clause 60.3.
- Unfulfilled Obligations** 62.2 Notwithstanding the issue of the Maintenance Certificate the Contractor and the Employer shall remain liable for the fulfillment of any obligation incurred under the provisions of the Contract prior to the issue of the Maintenance Certificate which remains unperformed at the time such Maintenance Certificate is issued and, for the purposes of determining the nature and extent of any such obligation, the Contract shall be deemed to remain in force between the parties to the Contract.

REMEDIES

- Default of Contractor** 63.1 If the Contractor is deemed by law unable to pay his debts as they fall due, or enters into voluntary or involuntary bankruptcy, liquidation or dissolution (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or becomes insolvent, or makes an arrangement with, or assignment in favour of, his creditors, or agrees to carry out the Contract under a committee of inspection of his creditors, or if a receiver, administrator, trustee or liquidator is appointed over any substantial part of his assets, or if, under any law or regulation relating to reorganization, arrangement or readjustment of debts, proceedings are commenced against the Contractor or resolutions passed in connection with dissolution or liquidation or if any steps are taken to enforce any security interest over a substantial part of the assets of the Contractor, or if any act is done or event occurs with respect to the

Contractor or his assets which, under any applicable law has a substantially similar effect to any of the foregoing acts or events, or if the Contractor has contravened Sub-Clause 3.1, or has an execution levied on his goods, or if the Engineer certifies to the Employer, with a copy to the Contractor, that, in his opinion, the Contractor :

- (a) has repudiated the Contract, or
- (b) without reasonable excuse has failed
 - (i) to commence the Works in accordance with Sub-Clause 41.1, or
 - (ii) to expedite progress of the Works, or any Section thereof, within 28 days after receiving notice pursuant to Clause 46, or
- (c) has failed to comply with an instruction issued pursuant to Sub-Clause 39.1 within 28 days after having received it, or
- (d) despite previous warning from the Engineer, in writing, is otherwise persistently or flagrantly neglecting to comply with any of his obligations under the Contract, or
- (e) has contravened Clause 4.1,
- (f) has contravened Sub-Clause 28.3.

then the Employer may, after giving 14 days' notice to the Contractor, enter upon the Site and the Works and terminate the employment of the Contractor without thereby releasing the Contractor from any of his obligations or liabilities under the Contract, or affecting the rights and authorities conferred on the Employer or the Engineer by the Contract, and may himself complete the Works or may employ any other contractor to complete the Works. The Employer or such other contractor may use for such completion so much of the Contractor's Equipment, Plant, Temporary Works and materials as he or they may think proper.

Valuation at Date of Termination 63.2

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

- (a) what amount (if any) had, at the time of such entry and termination, been reasonably earned by or would reasonably accrue to the Contractor in respect of work then actually done by him under the Contract, and
- (b) the value of any of the said unused or partially used materials, any Contractor's Plant and any Temporary Works.

Payment after Termination

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

Assignment of Benefit of Agreement

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

Urgent Repairs

64.1 If, by reason of any accident, or failure, or other event occurring to in or in connection with the Works, or any part thereof, either during the execution of the Works, or during the 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 or repair, as the Engineer or 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

Notwithstanding anything in the Contract contained:-

No Liability for War, etc, Risks

65.1 The Contractor shall be under no liability whatsoever whether by way of indemnity or otherwise for or in respect of destruction of or damage to the Works, save to work condemned under the provisions of Clause 39 hereof prior

to the occurrence of any special risk hereinafter mentioned, or to property whether of the Employer or third parties, or for or in respect of injury or loss of life which is the consequence of any special risk as hereinafter defined. The Employer shall indemnify and save harmless the Contractor against and from the same and against and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising thereout or in connection therewith.

Damage for
Works etc by
Special Risks

65.2 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

65.3 Destruction, damage or 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 Cost
arising from
Special Risks

65.4 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 39 hereof, prior to the occurrence of any special risk, which is howsoever attributable to or consequent on or the result of or in any way whatsoever connected with the said special risks, subject however to the provisions in this Clause hereinafter contained in regard to outbreak of war, but the Contractor shall as soon as any such increase of cost shall come to his knowledge forthwith notify the Engineer thereof in writing.

Special Risks

65.5 The special risks are war, hostilities (whether war be declared or not), invasion, act of foreign enemies, the nuclear and pressurewaves risk described in Clause 20.2 hereof, or insofar as these relate to and occur in Papua New Guinea, rebellion, revolution, insurrection, military or usurped power, civil war, or, unless solely restricted to the employees of the Contractor or of his Sub-Contractors and arising from the conduct of the Works, riot, commotion or disorder.

- Outbreak of War** 65.6 If, during the currency of the Contract, there shall be an outbreak of war, whether war is declared or not, in any part of the world which, whether financially or otherwise, materially affects the execution of the Works, the Contractor shall, unless and until the Contract is terminated under the provisions of this Clause, continue to use his best endeavours to complete the execution of the Works. Provided always that the Employer shall be entitled at any time after such outbreak of war to terminate the Contract by giving written notice to the Contractor and, upon such notice being given, this Contract shall, except as to the rights of the parties under this Clause and to the operation of Clause 67 hereof, terminate, but without prejudice to the rights of either party in respect of any antecedent breach thereof.
- Removal of Plant on Termination** 65.7 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 give similar facilities to his Sub-Contractors to do so.
- Payment if Contract Terminated** 65.8 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 65.1, 65.2 and 65.4.
 - (e) The reasonable cost of removal of Contractor's Plant under Sub-Clause 65.7, and if required by the Contractor, return thereof to the Contractor's main plant yard in his country of registration or to other destination, at no greater cost.

(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 Contractor's 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.

RELEASE FROM PERFORMANCE

Payment in Event of Release from Performance 66.1 If any circumstance outside the control of both parties arises after the issue of the Letter of Acceptance which renders it impossible or unlawful for either party to fulfil his contractual obligations, or under the law governing the Contract the parties are released from further performance, then the sum payable by the Employer to the Contractor in respect of the work executed shall be the same as that which would have been payable under Clause 65 if the Contract had been terminated under the provisions of Clause 65.

SETTLEMENT OF DISPUTES

Settlement of Disputes - Arbitration 67.1 If any dispute or difference of any kind whatsoever shall arise between the Employer and the Contractor in connection with, or arising out of, the Works, whether during the progress of the Works or after their completion and whether before or after the termination, abandonment or breach of the Contract, but excepting disputes arising out of the Engineer's determinations and valuations given under Sub-Clauses 52.1, 52.2, 52.4, 52.5(e), 52.5(f), and 56.2 of these Conditions it shall in the first place be referred to and settled by the Engineer who within a period of 84 days after being requested by either party to do so shall give written notice of his decision to the Employer and the Contractor. Save as hereinafter provided such decision in respect of every matter so referred shall be final and binding upon the Employer and the Contractor until the completion of the Works and shall forthwith be given effect to by the Employer and by the Contractor who shall proceed with the Works with all due diligence whether he or the Employer require 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 84 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 84 days after being requested as aforesaid or if either the Employer or Contractor be

dissatisfied with any such decision, then and in any such case either the Employer or the Contractor may within 63 days after receiving notice of such decision or within 63 days after the expiration of the first named period of 84 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 by arbitration in accordance with Rules and Procedures set out in Part II of these conditions. 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 any arbitrator on any matter whatsoever relevant to the dispute or difference referred to such arbitrator as aforesaid. Any such arbitrator/s shall have full power to open up, review and revise any decision, opinion, instruction determination certificate or valuation of the Engineer provided that such decision opinion instruction determination certificate or valuation of the Engineer has not become final and binding under the terms of this Contract. The said arbitrator/s shall not enter on the reference until after the completion or alleged completion of the Works unless with the written consent of the Employer and the Contractor provided always:-

- (a) that such reference may be opened before such completion or alleged completion in respect of the withholding by the Engineer or the Engineer's Representative of any certificate other than under the provision of the Sub-Clause 60.2 or the withholding of any portion of retention money to which the Contractor claims in accordance with the conditions set out in Clause 60 to be entitled or in respect of the exercise of the Engineer's power to give a certificate under Clause 63.1 hereof or in respect of a dispute arising under Clause 71 hereof.
- (b) that the giving of a Certificate of Completion under Clause 48 hereof shall not be a condition precedent to the opening of any such reference.

NOTICES

- | | | |
|---------------------------------|------|--|
| Notice to Contractor | 68.1 | All certificates, notices or instructions to be given to the Contractor by the Employer or the Engineer under the terms of the Contract shall be sent by post, cable, telex, or facsimile transmission to or left at the Contractor's principal place of business or such other address as the Contractor shall nominate for that purpose. |
| Notice to Employer and Engineer | 68.2 | Any notice to be given to the Employer or to the Engineer under the terms of the Contract shall be sent by post, cable, telex or facsimile transmission or delivering the same to the respective addresses nominated for that purpose in Part II of these Conditions. |

Change of Address 68.3 Either party may change a nominated address to another address in Papua New Guinea by prior notice to the other party, with a copy to the Engineer, and the Engineer may do so by prior notice to both parties.

DEFAULT OF EMPLOYER

Default of Employer 69.1 In the event of the Employer :

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

or

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

or

(c) giving notice to 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 by giving notice to the Employer, with a copy to the Engineer. Such termination shall take effect 14 days after the giving of the notice.

Removal of Contractor's Equipment 69.2 Upon the expiry of the 14 days' notice referred to in Sub-Clause 69.1, the Contractor shall, notwithstanding the provisions of Sub-Clause 53.1, with all reasonable despatch, remove from the Site all Contractor's Equipment brought by him thereon.

Payment on Termination 69.3 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 has been terminated under the provisions of Clause 65, but, in addition to the payment specified in Sub-Clause 65.8, the Employer shall pay to the Contractor the amount of any loss or damage to the Contractor arising out of or in connection with or by consequence of such termination.

Contractor's Entitlement to Suspend Work 69.4 Without prejudice to the Contractor's entitlement to interest under Sub-Clause 60.10 and to terminate under Clause 69.1, the Contractor may, if the Employer fails to pay the Contractor the amount due under any certificate of the Engineer within 28 days after the expiry of the time stated in Sub-Clause 60.10 within which payment is to be made, subject to any deduction that the Employer is entitled to make under the Contract, after giving 28 days'

prior notice to the Employer, with a copy to the Engineer, suspend work or reduce the rate of work.

If the Contractor suspends work or reduces the rate of work in accordance with the provisions of this Sub-Clause and thereby suffers delay or incurs cost the Engineer shall, after due consultation with the Employer's Delegate and the Contractor, determine,

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

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

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

Resumption
of Work

69.5

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

CHANGES IN COST AND LEGISLATION

Subsequent
Legislation

70.1

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

Increase or
Decrease of Cost

70.2

Provided that it shall state in the Appendix to the Tender that this Sub-Clause is applicable, there shall be added to or deducted from the Contract Price such sums in respect of rise or fall in the cost of labour and/or materials or any other matters affecting the cost of the execution of the Works as may be determined in accordance with Part II of these Conditions.

CURRENCY AND RATES OF EXCHANGE

Currency
Restrictions

71.1

If, after the date 28 days prior to the latest date for submission of tenders for the Contract, the Employer or authorised agency of the Employer 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 72.1 Where the Contract provides for payment in whole or in part to be made to the Contractor in foreign currency or currencies, the procedures for calculation and payment shall be as set in Part II of these Conditions.

Taxation 73.1 The Contractor and his staff will be required to pay all corporate and individual income taxes, import duties, sales tax on imports, stamp duties, road taxes and registration fees on vehicles and other taxes imposed under the laws and regulations in force at the time unless stated otherwise in Part II of these Conditions.

MISCELLANEOUS

Explosive Materials 74.1 The Contractor and his Sub-Contractors shall convey store and make use of all explosive, petroleum, acetylene, carbide of calcium and other similar explosive materials provided by them for use in or on the Works in strict accordance with the provisions of all Law Orders and Regulations that are in force at that time or may be issued from time to time by the Government. And take such other precautions as the Engineer shall reasonably require for the safety of the Works Personnel on the Site and the Public.

Gifts, Inducements and Rewards 75.1 The Employer shall be entitled to determine this Contract and to recover from the Contractor the amount of any loss resulting from such determination if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to obtaining or showing or forbearing to show favour or disfavour to any person in relation to this Contract or any other Contract with the Employer.

Contract Confidential 76.1 The Contractor shall treat the Contract and everything in connection therewith as private and confidential. In particular the Contractor shall not publish any information drawing or photograph concerning the Works and shall not use the Site for the purpose of advertisement except with the written consent of the Employer and subject to such Conditions as he may prescribe.

Members of
Government not
Personally
Liable

77.1 No member or officer of the Government of the Employer or the Engineer or the Engineer's Representative or any one of their respective staffs or their employees shall be in any way personally bound or liable for the acts or obligations of the Employer under the Contract or answerable for any default or omission in the observance or performance of any of the acts matters or things which are herein contained.

CONDITIONS OF CONTRACT

PART II CONDITIONS OF PARTICULAR APPLICATION

Insofar as any modified or additional Clause in PART II may conflict or be inconsistent with any provision of the General Conditions, the modified or additional Clause in PART II shall prevail.

DEFINITIONS AND INTERPRETATIONS

Definitions

1.1 (a) (v)

The "Engineer" shall be the First Assistant Secretary (Operations), Department of Works, Waigani Drive, Boroko, Papua New Guinea or such person, partnership or whosoever named or nominated in writing by the Employer's Delegate to the Contractor from time to time.

1.1 (b) (i)

Delete "Parts I and II" in the 1st line and substitute "Parts I, II and III".

1.1 (b) (ii)

The whole of Sub-Clause 1.1 (b) (ii) shall be deleted and the following substituted.

The "Specification" means the Specification of the Works included in the Contract and any modification thereof or addition thereto made under Clause 51.

1.1 (b) (viii)

Delete "annexed to these Conditions" and substitute "included in Volume II-1 and Volume II-2."

1.1 (c) (i) and (ii)

Delete "Clause 41" and substitute "Clause 41.1"

1.1 (f) (iii)

Add the words "and Equipment" after the word "Contractor's Plant" in the 2nd line of this Sub-Clause.

1.1 (f) (iv)

Delete "Contractor's Plant" and substitute "Contractor's Plant, Contractor's Equipment or Contractor's Plant and Equipment" in the 1st line of this Sub-Clause.

Add the word "Equipment" after the word "Plant" in the 6th line of this Sub-Clause.

1.1 (h)

The following Sub-Clauses shall be added to the Sub-Clause 1.1 (h).

- (i) "Months" means calendar months according to the Gregorian calendar.

- (ii) "Fund" means the Overseas Economic Cooperation Fund of Japan.
- (iv) "Eligible Source Countries" means the countries listed in the Appendix to the Instructions to Tenderers, which are defined as eligible source countries in the Loan Agreement between the OECF of Japan and the Independent State of Papua New Guinea.
- (v) "Foreign Currency Portion" means the foreign expenditure portion of the Contract Price stated in Japanese Yen or U.S. Dollars.
- (vi) "Local Currency Portion" means the local expenditure portion of the Contract Price stated in Papua New Guinea Kina.

ENGINEER AND ENGINEER'S REPRESENTATIVE

Engineer's Authority

- 2.1 The Engineer shall obtain the specific approval of the Employer for:
- (a) an extension of time exceeding twenty (20) percent of the time for completion of the whole of the Works.
 - (b) total variations which exceed Fifty Thousand Kina (K50,000.00).

ASSIGNMENT AND SUB-LETTING

Sub-Contracting

The following Sub-Clauses shall be added.

- 4.2 The Contractor shall include the necessary provision in his sub-contracts and supply contracts to ensure that his sub-contractors and suppliers comply with the provisions of the Contract, insofar as they apply to the sub-contracted work or to the goods and materials to be supplied. The Contractor shall, when requested by the Engineer, produce copies of his sub-contracts and supplier's contracts, to allow the Engineer to satisfy himself that the provisions of this Clause have been fulfilled. Prices and rates in such documents need not be disclosed to the Engineer.
- 4.3 If any sub-contractor engaged upon the Works either executes any work which in the opinion of the Engineer is not in accordance with the Contract or in the opinion of

the Engineer for any other reason is undesirable, the Engineer may by written notice require the Contractor to terminate the sub-contract and the Contractor shall immediately dismiss the sub-contractor and the latter shall forthwith leave the Site.

- 4.5 The Contractor is responsible for keeping a log of all sub-contractors including nominated sub-contractors used for supply, transportation and all other work on the Contract.

This log shall record the following information:

- (1) Name and address of sub-contractor
- (2) Date of sub-contract
- (3) Commencement date of sub-contract
- (4) Completion date of the sub-contract
- (5) Value of sub-contract
- (6) Payments made to the sub-contractors

The Contractor shall supply a copy of this log to the Employer if requested by the Engineer.

GENERAL OBLIGATIONS

Performance Security

- 10.1 Delete "registered in Papua New Guinea" in 2nd line of this Sub-Clause and substitute "located in Papua New Guinea or a foreign Bank or Insurance Company from an eligible source country acceptable to the Employer."

The following sentence shall be added to the last sentence.

The Performance Security shall be payable in Japanese Yen or U.S Dollars or a sum equivalent in the currency of the Contractor's domicile.

Sufficiency of Tender

- 12.1 At the 9th line of this Sub-Clause, add the heading "12.2 Adverse Physical Conditions and Artificial Obstructions".

Programme to be Submitted

- 14.1 Pursuant to this Sub-Clause, the Contractor shall furnish to the Engineer full particulars of his programme for the execution of the Contract. The programme shall include time and progress charts arranged so that actual progress can be shown against anticipated progress, in a form acceptable to the Engineer. After commencement of the Works the Contractor shall forward to the Engineer each month a similar progress chart in triplicate showing in black completed work and in red the progress made during the month, together with a report of the activities of personnel and equipment.

Setting Out

- 17.1 The following paragraph shall be added to the last paragraph:

The Contractor shall give to the Engineer no less than 24 hours' notice of his intention to set out or give levels for any part of the Works so that arrangements and sufficient time may be made for checking or issuing instructions.

Boreholes and Exploratory Excavation

- 18.1 Add the words "boreholes or to carry out" after the word "to make" in the 2nd line of this Sub-Clause.

Employer's Representative

- 19.2 Delete "Clause 31" and substitute "Sub-Clause 31.1".

Care of Works

- 20.1 Delete "Clause 48" and substitute "Sub-Clause 48.1"

Insurance of Works, etc.

- 21.1 Delete "registered in Papua New Guinea" in the 26th line of this Sub-Clause and substitute "located in Papua New Guinea or a foreign Bank or Insurance Company from an eligible source country acceptable to the Employer".

The whole of Sub-Clause 21.1 (a) shall be deleted and the following substituted:

- (a) The Works for the time being executed to the estimated current contract value thereof plus fifteen percent (15%) together with the materials for incorporation in the Works at their replacement value.

The following Sub-Clauses 21.2 and 21.3 shall be added after Sub-Clause 21.1.

- 21.2 The Contractor shall provide marine and transport insurance for his plant and equipment, and all other things transported to the Site by the Contractor, to the replacement value of such plant and equipment, etc.
- 21.3 Copies of the policies and certificates relating to the insurances described in this Clause and Clause 23 thereof shall be lodged with the Engineer not later than twenty eight (28) days after the Engineer's order to commence.

Borrow Pits not Nominated

- 28.3 Delete "employer" in 9th line of this Sub-Clause and substitute "Employer".

Opportunities for other Contractors

The following Sub-Clause 31.2 shall be added.

- 31.2 The Contractor shall work in harmony with other contractors on the Site and shall take note of any information with regard to the requirement of other contractors made available to him by the Engineer and arrange his activities to meet such requirements as far as possible.

Clearance of Site on Completion

- 33.1 The following paragraphs shall be added:

The Contractor shall obtain the Employer's consent to remove or sell surplus materials, etc.

Temporary roads constructed by the Contractor for the purpose of the Works shall, as an alternative to their removal and at the discretion of the Employer, be put by the Contractor into a good state of repair to the satisfaction of the Engineer and handed over to the Employer without further payment. Failure by the Contractor to carry out any such instructions given shall be dealt with in accordance with Sub-Clause 49.4.

Before the final clearance of the Site is initiated by the Contractor in accordance with this Sub-Clause the Contractor shall consult the Engineer to ascertain if the Employer wishes to take over any of the buildings constructed by the Contractor as part of the Temporary Works. The Employer shall have the right to take over such buildings as the Employer shall notify to the Contractor at prices to be mutually agreed upon between the Employer and the Contractor.

COMMENCEMENT TIME AND DELAYS

Suspension of Work

- 40.1 Delete "Clause 44" and substitute "Sub-Clause 44.1".

No Commencement Until Completion of Engineer's Office etc

- 41.2 Delete "Clause 44" and substitute "Sub-Clause 44.1".

Time for Completion

The following Sub-Clauses 43.2 and 43.3 shall be added:

- 43.2 The Contractor shall complete and furnish the Engineer's office and laboratory required under the Contract for use by the Engineer's staff within the time stated in the Appendix to Form of Tender, calculated from the commencement date as defined in Sub-Clause 1.1 C (i)

- 43.3 The Contractor shall provide all vehicles required under the Contract for use by the Engineer's staff within the time stated in the Appendix to Form of Tender, calculated from the commencement date as defined in Sub-Clause 1.1 C (i).
- 43.4 The Contractor shall complete the centre-line survey required under the Contract within the time stated in the Appendix to Form of Tender, calculated from the commencement date as defined in Sub-Clause 1.1 C (i).

Liquidated Damages for Delay

- 47.1 Delete "Clause 43" and substitute "Sub-Clause" 43.1.

The following Sub-Clauses 47.2 and 47.3 shall be added.

- 47.2 If the Contractor shall fail to complete and furnish the Engineer's office and laboratory within the time stipulated in Sub-Clause 43.2, then the Contractor shall pay to the Employer the sum stated in the Appendix to Form of Tender as liquidated damages for such default and not as a penalty for every day that shall lapse and subject to provisions as set out in Part I of these Conditions.
- 47.3 If the Contractor shall fail to provide all vehicles within the time stipulated in Sub-Clause 43.3, then the Contractor shall pay to the Employer the sum stated in the Appendix to Form of Tender as liquidated damages for such default and not as a penalty for every day that shall lapse and subject to provisions as set out in Part I of these Conditions.
- 47.4 If the Contractor shall fail to complete the centre-line survey within the time stipulated in Sub-Clause 43.4, then the Contractor shall pay to the Employer the sum stated in the Appendix to Form of Tender as liquidated damages for such default and not as a penalty for every day that shall lapse and subject to provisions as set out in Part I of these conditions.

MAINTENANCE AND DEFECTS

Execution of Work of Repair, etc.

- 49.2 Delete "within the period specified by the Engineer" in the last line of this Sub-Clause and substitute " 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.

CONTRACTOR'S PLANT, EQUIPMENT, TEMPORARY WORKS AND MATERIALS

Cost for the Purpose of Clause 63

- 53.6 Delete "Sub-Clause 54.5" and substitute "Sub-Clause 53.5".

Approval of Materials not Implied

54.1 Delete "this Clause" and substitute "Clause 53".

CERTIFICATE AND PAYMENT

Time for Payment

60.10 Delete "28 days" in the 5th line of this Sub-Clause and substitute "56 days".

Delete "56 days" in the 7th line of this Sub-Clause and substitute "91 days".

Removal of Plant on Termination

65.7 Delete "the last preceding Sub-Clause" and substitute "Sub-Clause 65.6".

SETTLEMENT OF DISPUTES

67.1 Arbitration shall be in Papua New Guinea under the provision of the Arbitration Act 1951 of Papua New Guinea.

NOTICE

Notice to the Employer and Engineer

68.2 All notices to be given to the Employer or to the Engineer under the Terms of the Contract shall be served by sending by post, telex or facsimile transmission or by delivering the same to the respective address given below.

Employer:

The Secretary
Department of Works
Waigani Drive
P.O. Box 1108
Boroko,
Papua New Guinea

Telex : 22200
Facsimile : 241400

Engineer:

First Assistant Secretary (Operations)
Department of Works
Waigani Drive
P.O. Box 1108
Boroko
Papua New Guinea

Telex : 22200
Facsimile : 241400

DEFAULT OF EMPLOYER

Contractor's Entitlement to Suspend Work

69.4 Delete "Clause 44" and substitute "Sub-Clause 44.1".

CHANGES IN COSTS AND LEGISLATION

Increase or Decrease of Cost

70.2 The amount payable by the Employer to the Contractor, excluding the proportion paid under the General, Preliminary and Daywork Groups in the Bill of Quantities or Schedule of Rates upon issue by the Engineer of an Interim Certificate or of the Final Certificate pursuant to Sub-Clause 60.1 (other than amounts due under this Clause) shall be increased or decreased in accordance with the provision of this Clause if there shall be any changes in the following index figures for costs in Papua New Guinea:

- (a) Index of the Cost of Unskilled Labour shall be numerically equal to the amount in Kina of the Award Weekly Wage promulgated by the Minimum Wages Board for non-agricultural employees in rural areas.
- (b) Index of the Cost of Skilled Labour shall be numerically equal to the amount in Kina of the Award Weekly Wage promulgated by the Minimum Wages Board for Class 3 occupations in level 1 in urban areas.
- (c) Index of the Cost of Fuel shall be numerically equal to the sum in Kina ex store, Port Moresby of:
 - (i) Two (2) 200 litre drums of High Speed Diesel Fuel, less deposit on drums, and
 - (ii) One (1) 200 litre drum of petrol, less deposit on drum.
- (d) Index of the Cost of Steel shall numerically equal to the Cost CIF Port Moresby of twenty (20) tonnes of 12 mm diameter Reinforcing Steel Bar produced to Australian Standard 1302, Grade 230S.

The cost shall be based on standard lengths from the supplier nominated in the Schedule attached to the Tender Submission.

- (e) Index of the Cost of Cement shall be the cost CIF Port Moresby of 50 tonnes of ordinary Portland Cement from the supplier nominated in the Schedule attached to the Tender Submission.
- (f) Index of the Cost of Timber shall be numerically equal to the amount in Kina of the cost of 100 linear metres 100 mm by 50 mm dressed all round treated hardwood loaded on truck at the place of milling of the supplier nominated in the Schedule attached to the Tender Submission.
- (g) Index of the Cost of Corrugated Steel Pipes shall be numerically equal to the cost CIF Port Moresby per metre length of 1500 mm diameter corrugated steel pipe of plate thickness 3.0 mm, from the supplier nominated in the Schedule attached to the Tender Submission.
- (h) Index of the cost of Geotextile Fabrics shall be numerically equal to the cost CIF Port Moresby per square metre of 120 kgf per 3 cm in width, from the supplier nominated in the Schedule attached to the Tender submission.
- (i) Index of the cost of Plant shall be numerically equal to the amount in Kina of the sum of the cost of:
 - (i) 10 ton Dump Truck
 - (ii) 150 HP Tractor Shovel
 - (iii) 200 HP Bulldozer
 - (iv) 125 HP Motor Grader
- (j) Index of the Cost of Bitumen Products shall be numerically equal to the cost CIF Port Moresby of the sum of:
 - (i) One tonne of Bitumen Class 170 and
 - (ii) 200 litre drum of kerosene less deposit on drum

Both from the supplier nominated in the Schedules attached to the Tender Submission.

The numerical value of all base indices will be determined at the time of the award of the Contract by the Engineer based on the information supplied in the relevant Schedule attached to the Tender Submission and other sources that the Engineer deems applicable. The current indices shall likewise be determined by the Engineer on the dates hereinafter prescribed in this Clause. The net total of such increases or decreases shall be given effect to in determining the Contract Price. The determination of such increases or decreases shall be carried at each period of three months ending on the last day of March, June,

September and December respectively in any year. Each such period is hereinafter called a fiscal quarter.

For the purpose of this Clause:

- (a) "Final Index Figure" shall mean any Index Figure not qualified by the Engineer and the Contractor as a provisional Index Figure quoted at the end of each fiscal quarter.
- (b) "Provisional Index Figure" shall mean any Index Figure used for the provisional adjustment of interim valuations when a Final Index Figure is not available. Such adjustment shall be subsequently recalculated on the basis of the corresponding "Final Index Figures."
- (c) "Base Index Figure" shall mean the appropriate Final Index Figure determined by the Engineer as that existing twenty eight (28) days prior to the latest date for submission of tenders.
- (d) "Current Index Figure" shall mean the appropriate Final Index Figure to be applied in respect of any certificates issued during a current fiscal quarter or due to be issued by the engineer pursuant to Clause 60 and shall be the Final Index Figure applicable on the last day preceding the current fiscal quarter.
- (e) "Index Ratio" shall mean the ratio that is yielded by dividing current Index Figure by the Base Index Figure.

The valuation of fluctuations shall be computed as follows:

- (a) The Price Fluctuation percentage shall be determined as the sum of the product of the Index Ratio and the corresponding index percentage proportions entered in the Schedules to the Tender Submission less one hundred percent.
- (b) The difference in value of the Works between the current and preceding certificate valued in accordance with Sub-Clause 60.1 of the Conditions of Contract excluding Groups 1,2 and 19 of the Bill of Quantities shall be multiplied by the current Price Fluctuation percentage divided by 100 to yield the valuation of the price fluctuation.

Sub-Clause 70.3 shall be added:

Adjustment after Date of Completion

- 70.3 Adjustment to the Contract Price after the due date for completion of the Works pursuant to Clause 43, or after the date of completion of the whole of the works certified pursuant to Clause 48, shall be made in accordance with the Price Fluctuation percentage ruling at the due date for completion or at the date stated in the Completion Certificate which ever is the earlier.

CURRENCY AND RATES OF EXCHANGE

Rate of Exchange

- 72.1 Where the Contractor has clearly indicated in his Tender that a proportion of the Contract Price expressed as a percentage of that Price, be paid either (i) in Japanese Yen, or (ii) in U.S. Dollars, the rate of exchange is applicable for calculating the payment of such proportion shall be the governing selling rate published by the Bank of Papua New Guinea on the date thirty (30) days prior to the latest date for the submission of tenders. This rate of exchange shall be mentioned in the Letter of Acceptance and in the Agreement together with the proportion of the Contract Price, expressed as a percentage of that price, which is to be paid in a specified foreign currency.

JICA