

**KINGDOM OF THAILAND
BANGKOK METROPOLITAN ADMINISTRATION**

**INVITATION TO TENDER
FOR
BANGKOK AREA TRAFFIC CONTROL SYSTEM PROJECT - STAGE I**

PART C

GENERAL CONDITIONS OF CONTRACT

GENERAL CONDITIONS OF CONTRACT

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PART C : GENERAL CONDITIONS OF CONTRACT

1.0 : ABBREVIATIONS, DEFINITIONS AND INTERPRETATION

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

1.1 ABBREVIATIONS

BMA -	Bangkok Metropolitan Administration of the Kingdom of Thailand.
MEA -	Metropolitan Electricity Authority
TOT -	Telephone Organization of Thailand
TCC -	Traffic Control Center
CCTV -	Closed Circuit Television

1.2 DEFINITIONS

CONTRACTOR -	The individual, partnership, firm, corporation, association, or joint venture who has been selected by the BMA to undertake and complete the Works as specified in the Contract Documents, and includes the CONTRACTOR's personal representatives, successors and permitted assignees.
Sub-Contractor -	Any person named in the Contract for any part of the Works or any person to whom any part of the Contract has been sublet with the written consent of the BMA, and the legal representative, successors, and assignees of such person.
Works -	All works and services to be performed and equipment, plants, and material to be furnished by the CONTRACTOR and his

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Sub-Contractors, if any, in accordance with the stipulations of the Contract.

- Contract -** The formal Contract Agreement concluded between the BMA and the CONTRACTOR including the documents and enclosures mentioned therein, as well as modifications and additions agreed upon during the contract negotiations, and all amendments as may from time to time mutually agreed upon between the CONTRACTOR and the BMA.
- ENGINEER -** The ENGINEER designated as such or ENGINEER appointed from time to time by the BMA and notified in writing to the CONTRACTOR to act as ENGINEER for overseeing the execution of the Works, liaison, coordination and supervision.
- Plant -** Machinery, apparatus and the like, including software and database if required, intended to form or forming part of the permanent Works.
- Goods -** All plant, equipment, material, software and things to be supplied by the CONTRACTOR.
- CONTRACTOR'S Equipment -** All appliances or things of whatsoever nature required in or about the execution and completion of the Works or Temporary Works, but does not include materials or other things intended to form or forming part of the permanent Work.
- Tender Price -** The grand total price quoted and filled in by the Tenderer in the Tender Documents.
- Contract Price -** The grand total estimated price as agreed upon and stipulated in the Contract subject to such additions thereto or deductions therefrom as may be agreed upon between the BMA and the CONTRACTOR under the provisions of the Contract.

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- Final Contract Price -** The total actual cost of the Works as measured and accepted upon completion of the Works with such adjustments as may be made under the provisions of the Contract.
- Completion Time -** The time period for completion of the Works from the date of signing the Contract to the date of issuance of the Certificate of Completion by the BMA and handing over of the Works to the BMA.
- Certificate of -
Completion** The issuance of the taking over certificate(s) for a portion or the entire Works by the BMA after satisfactory completion of the work and acceptance testing and trial operation under the Contract.
- Final Acceptance -** The issuance of the Final Certificate of Acceptance for the whole Works by the BMA following completion of the Guarantee Period maintenance and when all defects uncovered during the period have been corrected by the CONTRACTOR.
- Temporary Works -** All temporary works of every kind necessary for the execution, completion or maintenance of the Works.
- Site -** The land and other places on, under, in, or through which the Works are to be executed or carried out and any other lands or places provided by the BMA for the purposes of the Contract together with such other places as may be specifically designated in the Contract as forming part of the Site.
- Guarantee Period -** The period of time during which the CONTRACTOR provides all parts and labor to repair or to replace items which have failed or do not meet the Specifications. The date of issuance of the Certificate of Completion of the whole works marks the beginning of the Guarantee Period while the time period is as

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stipulated in sub-section 8.1 of the Special Conditions.

- Measured Quantities -** The deliveries and performances of work items actually provided by the CONTRACTOR and examined and approved by the ENGINEER, which according to the Contract are not to be charged on a lump sum basis, but on the basis of measurements and/or expenditures incurred.
- Specifications -** The conditions, requirements and technical specifications of the Works included in the Contract as well as all additional instructions and requirements as may from time to time be issued by the ENGINEER during the execution of the Works.
- Plans -** All drawings, calculations, and technical information of a like nature provided by the ENGINEER/BMA to the CONTRACTOR.
- Contract Drawings -** ENGINEER/BMA furnished Plans and all drawings, calculations, samples, patterns, models, operation and maintenance manuals and other technical information of a like nature submitted by the CONTRACTOR and approved by the ENGINEER.

1.3 INTERPRETATION

"month" shall mean calendar month.

"week" shall mean seven consecutive days.

"day" shall mean calendar day.

"cost" shall means all expenditure properly incurred or to be incurred, whether on or off the Site, including overhead and other charges properly allocable thereto but does not include any allowance for profit.

"or equal," "or similar," "or as approved" when used after a specified material or piece of equipment shall mean that the CONTRACTOR

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may substitute for the specified goods such material or equipment as is substantially equivalent in function, performance, dimension, quality and durability, provided that the substitution is proposed to the ENGINEER in writing and provided that the ENGINEER approves the substitution in writing. The request shall be submitted with sufficient anticipation so as not to preclude the timely delivery of the originally specified goods in the event that the CONTRACTOR's proposed substitution is not approved.

When the word "shall" is used, it shall be understood in its mandatory sense, as implying an absolute obligation, unless the context does not reasonably permit such a sense. Where "shall" is used in the passive sense without a personal subject, it shall be understood that the CONTRACTOR is the agent or party responsible for carrying out the stated obligations, unless the context does not reasonably permit such a sense.

Wherever in the Contract Documents provisions are made for the giving or issue of any notice, consent, approval, certificate or determination by any person, unless otherwise specified, such notice, consent, approval, certificate or determination shall be in writing.

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

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

2.0 : SCOPE OF CONTRACT

2.1 SCOPE OF WORK

The Contract comprises the supply, installation, and guarantee period maintenance of the Works and, except insofar as the Contract otherwise provides, shall include the provision of all labor, materials, equipment, construction facilities, Temporary Works and everything, whether of a temporary or permanent nature, required in and for such supply, installation, and maintenance, so far as the necessity for providing the same is specified in or reasonably to be inferred from the Contract Documents.

2.2 CONTRACT DOCUMENTS

The following documents shall be understood to have been incorporated and made part of the Contract, as though fully written out and set forth herein:

- (a) CONTRACTOR'S Confidential Application for Prequalification, including all supporting documents
- (b) Invitation to Tender
- (c) Technical Specifications and its addenda
- (d) Contract Drawings
- (e) Technical Proposal of the CONTRACTOR
- (f) All rules and regulations, codes, standards, standard specifications, standard drawings, and similar materials which are referred to in the Invitation to Tender and the Technical Specifications

The Contract and all of the above documents are referred to herein as the Contract Documents.

2.3 GOVERNING PRIORITY

The several documents forming the Contract Documents are to be taken as mutually explanatory of one another. In case of discrepancies among the various provisions of the Contract Documents, including the modifications and/or additions to the relevant sections, the following order of priority shall govern.

- (1) Contract Agreement
- (2) Special Conditions of Contract
- (3) General Conditions of Contract
- (4) Technical Specifications
- (5) Contract Drawings
- (6) Other referenced standards and specifications

The Tender Documents shall prevail, in any case of variance between provisions thereof and provisions contained in the CONTRACTOR's technical proposal. Any exception to or alteration of the Tender Documents proposed by the CONTRACTOR shall be valid only if agreed upon between the BMA and the CONTRACTOR in writing.

The Technical Specifications, other Contract Documents and the Contract Drawings are intended to describe and provide for a finished piece of Work. They are intended to be complementary and what is called for any shall be as binding as if called for by all. It is understood

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and agreed by the CONTRACTOR that the Work described shall be complete and functional in every detail, even though every item necessarily involved may not be particularly mentioned.

The CONTRACTOR shall apply to the ENGINEER if he requires any explanation concerning obscurities or discrepancies or the intent of any section in the Contract Documents. The CONTRACTOR shall be responsible for any error or loss resulting from his failure to obtain such explanations.

2.4 EFFECTIVE DATE AND VALIDITY OF CONTRACT

The CONTRACTOR shall, when called upon to do so, enter into and execute a Contract Agreement in the form prepared by the BMA. The expenses of preparing, completing and stamping the agreement, if any, shall be paid by the CONTRACTOR. The Contract shall become binding and effective upon signature by both parties. Until the signing of the Contract, the Tender shall remain valid and binding. The Contract shall remain in full force until the CONTRACTOR has fulfilled his obligations under the Contract and the Works have been finally accepted by the BMA/ENGINEER and the payment thereof has been satisfactorily fulfilled.

2.5 CONTRACTOR'S GENERAL OBLIGATIONS

By signing the Contract, the CONTRACTOR shall be deemed to accept the obligation of supplying, with the exception of materials specifically noted as to be supplied by others, and executing everything necessary to complete the Works, based on all available information including the details provided in the Specifications and accompanying drawings.

The CONTRACTOR shall be deemed to have informed himself fully of all circumstances and conditions which are necessary for the satisfactory, complete and timely performance of the Contract and all works and activities related to the Contract.

The CONTRACTOR shall, with due care and diligence, design (to the extent provided for by the Contract Documents), execute and complete the Works and remedy any defects therein in accordance with the provisions of the Contract.

2.6 INSPECTION OF SITE AND DOCUMENTS

By virtue of his submitting his Tender, the Tenderer asserts that he has inspected and examined the Site, its surroundings, existing installations and facilities relevant to the execution of the Works, and system

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documents pertaining to the existing traffic control system, that he has fully satisfied himself as to the form and nature of the Site, hardware and software of the existing system, the quantities and nature of the Works, the materials necessary for the completion of the Works, the means of access to the Site, and the accommodation he may require, and that he himself has obtained all necessary information regarding risks, contingencies, and other circumstances which can reasonably be expected to influence or affect his Tender.

Any information received from the BMA or the ENGINEER shall in no way relieve the CONTRACTOR of his responsibility for fulfilling his obligations under this Contract. The data and information presented simply represent the best data available to the BMA and ENGINEER, and all interpretations, deductions, or conclusions from such data whether accepted by or made by the Tenderers are at the Tenderer's own risk.

2.7 SUFFICIENCY OF TENDER

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 Schedule of Rates and Prices. The rates and prices in the said schedule shall cover all his obligations under the Contract and all matters and things necessary for the proper completion and maintenance of the Works.

2.8 COVENANT AGAINST CONTINGENCIES

The CONTRACTOR warrants that he has not employed or retained any person or agency to solicit or secure this Contract upon any agreement for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established agencies maintained by the CONTRACTOR for the purpose of securing business. For breach or violation of this warranty, the BMA shall have the right to terminate the Contract without liability, or at its discretion, to deduct from the value of the Contract the full amount of such commission, percentage, brokerage, or contingent fees.

3.0 : PLANS AND DRAWINGS

3.1 PLANS

The CONTRACTOR will be provided with five sets of blue line prints of the Plans free of charge from the BMA. Additional sets of the Plans,

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if needed, should be obtained by the CONTRACTOR at his own cost. Unless it is necessary for the purpose of this Contract, the Plans, Specifications and other documents provided by the ENGINEER or the BMA shall not, without the consent of the ENGINEER, be used or communicated to a third party by the CONTRACTOR.

The CONTRACTOR shall give adequate notice in writing to the ENGINEER of any further drawings or specifications that may be required for the execution of the Works under the Contract. The notice shall include details of the drawings or specifications required and for why and by when it is required and of any delay or disruption likely to be suffered if it is late.

Prior to the issue of the Certificate of Completion, the CONTRACTOR shall submit to the ENGINEER one set of marked-up Plans with all changes and modification clearly indicated thereon. The marked up Plans will be verified by the ENGINEER and then returned to the CONTRACTOR for final preparation of the as-built document.

3.2 CONTRACTOR FURNISHED CONTRACT DRAWINGS

The CONTRACTOR shall submit to the ENGINEER for approval such drawings, samples, patterns, models, and technical information as may be called for in the Specifications or as the ENGINEER may reasonably require.

The ENGINEER's approval of the CONTRACTOR's drawings (for the purpose of this Section, the word "drawing(s)" shall be understood to include technical specification sheets, samples, pattern, models, calculations, and other technical information of the like kind) shall not relieve the CONTRACTOR from his responsibility for errors or omissions which may exist, even though work is done in accordance with such approved drawings. Where such errors or omissions are discovered later, they shall be made good by the CONTRACTOR. The valuation of work involved in making good shall be determined by the BMA with the recommendations of the ENGINEER as provided in Section 12, "ALTERATIONS, ADDITIONS AND OMISSIONS" of the General Conditions of Contract.

The CONTRACTOR shall not depart from approved Contract Drawings, except as directed in writing by the ENGINEER.

3.3 REVIEW AND APPROVAL OF CONTRACTOR FURNISHED CONTRACT DRAWINGS

Copies of all drawings, etc., to be approved by the ENGINEER shall be provided in triplicate by the CONTRACTOR. Of the three copies submitted one shall be reproducible if the original of the drawing is larger than A3 in size, unless directed otherwise by the ENGINEER.

All drawings and documents prepared or furnished by the CONTRACTOR shall be marked with the title of the Work, serial number, issue record and scale as appropriate, and certified accordingly and the names of the CONTRACTOR and Sub-contractor, if applicable, shall be indicated. The system of serial numbering and contents of title block shall be subject to the approval of the ENGINEER.

Within a reasonable time period, from receipt of such drawings, the ENGINEER will inform the CONTRACTOR by returning one copy marked with one of the following categories:

- (1) "Approved"
- (2) "Approved, except as noted"
- (3) "Not approved"

The notation "Approved" authorizes the CONTRACTOR to proceed with the construction works.

The notation "Approved, except as noted" authorizes the CONTRACTOR to proceed with the works, subject to corrections noted on the drawing. After correction, the drawing shall be resubmitted for approval.

The notation "Not approved" indicates that the drawing must be revised and resubmitted for approval before proceeding with the works.

Revised drawings shall be immediately resubmitted for approval unless otherwise directed by the ENGINEER. Any revision shall be plainly marked on the drawing together with the date and an indication of the changes.

The CONTRACTOR shall have available at all times at the Work Site one copy of the approved drawings relating to the Work. These drawings shall be at the disposal of the ENGINEER at any reasonable hour.

3.4 FINAL DRAWINGS AND DOCUMENTS

Final drawings and documents shall be transmitted to the ENGINEER in as many copies as specified in the Technical Specifications. Each transmittal of drawings shall be accompanied by a list giving the numbers and titles thereof.

3.5 FURTHER DRAWINGS AND INSTRUCTIONS

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 and the CONTRACTOR shall carry out and be bound by the same. These drawings shall serve to clarify detail and shall not increase the scope of work beyond that intended in the Contract.

4.0 : ASSIGNMENT, SUB-LETTING AND OTHER CONTRACTS

4.1 ASSIGNMENT

The CONTRACTOR shall not assign the whole Works or any part thereof or any benefit or interest therein or thereunder without the prior written consent of the BMA.

4.2 SUB-LETTING

The CONTRACTOR shall not sublet the whole Works. Except where otherwise provided by the Contract, the CONTRACTOR shall not sublet any part of the Works without the prior written consent of the BMA and the ENGINEER and such consent, if given, shall not relieve the CONTRACTOR from any liability or obligations under the Contract and he shall be responsible for the acts, defaults and neglects of any subcontractor, his agents, servants or workmen.

If a Sub-contractor participating in the execution of the Works shall perform in a manner which in the opinion of the ENGINEER is not in accordance with the Contract Documents, the ENGINEER shall be entitled to reject the work of the Sub-contractor by giving notice in writing to the CONTRACTOR.

The CONTRACTOR shall comply with such notice from the ENGINEER immediately upon receipt of the said notice. No measure ordered by the ENGINEER in accordance with this section shall,

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however, relieve the CONTRACTOR of his obligations, neither shall it entitle him to claim damages or extension of time for completion.

4.3 OTHER CONTRACTS

The BMA reserves the right to let other contracts in connection with the Bangkok ATC Project. The CONTRACTOR shall afford such other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work simultaneously with his own and shall properly connect and coordinate his Work with theirs or as required by the ENGINEER.

If any part of the CONTRACTOR's work depends for proper execution or results upon the work of any other contractor, the CONTRACTOR shall inspect and promptly report in writing to the ENGINEER any defects in such other work that render it unsuitable for such proper execution or results. The CONTRACTOR's failure to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of his Work, except as to defects which may develop in the other contractor's work after the execution of his work.

5.0 : ENGINEER'S DUTIES AND POWERS

5.1 GENERAL

When the ENGINEER is appointed by the BMA to supervise the conduct of the Contract, the CONTRACTOR shall afford him every reasonable facility for so doing, but the ENGINEER will not be authorized to relieve the CONTRACTOR in any way of his duties or obligations under the Contract. After the Tender has been accepted by the BMA, all instructions and orders to the CONTRACTOR shall, except as herein otherwise provided, be given by or through the ENGINEER. This will be regulated by the ENGINEER's agreed responsibility to the BMA.

5.2 ENGINEER'S INSTRUCTIONS AND DECISIONS

The CONTRACTOR is obliged to respond immediately, or within a stipulated period, to all of the instructions/orders of the ENGINEER in order to avoid any delay in the Works.

Instructions given by the ENGINEER shall be in writing. However, if for any reason the ENGINEER considers it necessary to give any such

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instructions orally, the CONTRACTOR shall promptly comply with such instruction. Confirmation in writing of such oral instruction given by the ENGINEER, whether before or after the carrying out of the instruction, shall be deemed an instruction in writing within the meaning of this Sub-section. The CONTRACTOR may also confirm in writing to the ENGINEER of such oral instruction within seven (7) days and such confirmation shall be deemed to be an instruction in writing of the ENGINEER if such confirmation is not contradicted in writing within seven (7) days by the ENGINEER.

Instructions issued by the ENGINEER shall in no way relieve the CONTRACTOR of his responsibility for quality, condition and proper execution of the Works.

To prevent delays and disputes, and to discourage litigation, it is agreed by the parties to this Contract that the ENGINEER shall resolve all questions in relation to the work performed under this Contract. The decisions of the ENGINEER as rendered shall be promptly observed.

If the CONTRACTOR should, by written notice to the BMA within thirty (30) calendar days after receiving any decision, instruction or order of the ENGINEER or the BMA in writing or written confirmation thereof, intimate that he disputes or questions the decision, instruction or order, giving his reasons for so doing, either party to the Contract will be at liberty to refer the matter to arbitration pursuant to Section 18, "SETTLEMENT OF DISPUTES AND ARBITRATION," but such an intimation shall not relieve the CONTRACTOR of his obligation to proceed with the Works in accordance with the decision, instruction or order in respect of which the intimation has been given. The CONTRACTOR will be at liberty in any such arbitration to rely on reasons additional to the reasons stated in the said intimation.

5.3 ENGINEER'S REPRESENTATIVE

The ENGINEER may from time to time delegate to his representative(s) any of the powers, discretions, functions and authorities vested in him and may at any time revoke any such delegation.

Any such delegation or revocation will be in writing signed by the ENGINEER and in the case of a delegation will specify the powers, discretions, functions and authorities thereby delegated and the person or persons to whom the same are delegated. No such delegation will

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have effect until a copy thereof has been delivered to the CONTRACTOR.

For the purposes of this Contract, the term "ENGINEER" shall be understood to include the ENGINEER and his duly delegated representatives.

5.4 WORK TO BE OF SATISFACTION TO ENGINEER

The CONTRACTOR shall execute, complete and maintain the Works in strict accordance with the Contract Documents 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) relevant to or concerning the Works. The CONTRACTOR shall take instructions and directions only from the ENGINEER.

6.0 : PERFORMANCE BOND AND CASH FLOW

6.1 PERFORMANCE BOND

The CONTRACTOR shall, before signing of the Contract, provide at his own expense a Performance Bond equivalent to ten percent (10%) of the Contract Price, executed in the manner as prescribed therefor, in the form of cash, manager's check, cashier's check, bank draft/guarantee confirmed by a local bank (in the case of foreign contractor, bonded by a foreign bank), letter of credit issued by a reputable bank, surety bond, callable on demand, issued by surety or insurance companies duly accredited by the BMA.

The Performance Bond shall be posted in favor of the BMA and shall guarantee the payment of the amount of the bond as penalty in the event it is established that the CONTRACTOR is in default in his obligation thereunder.

Subject to adjustments and replacement as provided in this section, the Performance Bond shall remain in force until the date of issue of Certificate of Final Acceptance by the BMA.

Subject to the conditions of the Contract, the Performance Bond may be released by the BMA after the issuance of the Certificate of Completion of the whole works, provided that there are no claims for labor and material filed against the CONTRACTOR or the surety

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company and provided further that the CONTRACTOR has furnished the BMA with a replacement Performance Bond equivalent to two and one-half percent (2-1/2 %) of the original contract price to guarantee faithful performance of the guarantee period maintenance.

Should any surety upon the Performance Bond become unacceptable to the BMA, the CONTRACTOR shall promptly furnish such replacement security as may be required from time to time up to the sum equal to the amount of the original surety.

The CONTRACTOR shall post an additional performance bond to cover any cumulative increase of more than ten percent (10%) over the original value of the Contract as a result of adjustments in unit prices, and/or change orders, extra work orders and supplemental agreements.

The CONTRACTOR shall cause the extension of the validity of the Performance Bond to cover approved contract time extension.

In case of a reduction in the contract value and for partial work completed by the CONTRACTOR and accepted by the BMA and which in the judgement of the BMA shall not affect the integrity of the entire Work, a proportional reduction in the original Performance Bond may be allowed provided that any such reduction is more than ten percent (10%) and that the aggregate of such reductions is not more than fifty percent (50%) of the original Performance Bond.

6.2 CASH FLOW

Prior to execution of the Contract, the CONTRACTOR shall submit a Cash Flow by quarter and supporting CPM/PERT for the approval of the ENGINEER.

7.0 : DAMAGE, ACCIDENT AND INSURANCE

7.1 CARE OF WORKS

From the commencement of the Works to the issue of the Certificate of Completion, the CONTRACTOR shall take full responsibility for the care of the Works and of all Temporary Works and in case any damage, loss or injury shall happen to the Works or to any part thereof or to any Temporary Works from any cause whatsoever, the CONTRACTOR shall at his own cost repair and make good the same so that upon completion, the 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. The CONTRACTOR shall also be liable for any damage to the Works occasioned by him in the course of any operation carried out by him for the purpose of complying with his obligations under Section 8.0, "GUARANTEES AND GUARANTEE PERIOD MAINTENANCE", of the Special Conditions of Contract.

In the event of any such damage, loss or injury occurring from any of the excluded causes as defined in Sub-section 7.3, "EXCLUSIONS," the CONTRACTOR shall, as to the extent required by the ENGINEER, repair and make good the same as aforesaid at the cost of the BMA. The ENGINEER shall determine an addition to the Contract Price in accordance with Sub-section 12.3, "VALUATION OF VARIATIONS."

7.2 INSURANCE OF WORKS AND CONTRACTOR'S EQUIPMENT

The CONTRACTOR shall, without limiting his obligations and responsibilities, insure:

- (a) the Works, together with materials and Plant for incorporation therein, to the full replacement cost,
- (b) an additional sum of 15 percent of such replacement cost to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature, and
- (c) the CONTRACTOR's equipment and other things brought onto the Site by the CONTRACTOR, for a sum sufficient to provide for their replacement at the Site.

The insurance in paragraphs (a) and (b) above shall be in the joint names of the CONTRACTOR and the BMA and shall cover:

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- (a) the CONTRACTOR and the BMA against all loss or damage from whatsoever cause arising, other than as provided in Sub-section 7.3, "EXCLUSIONS" from the start of work at the Site until the date of issuance of the Certificate of Completion of Whole Works, and
- (b) the CONTRACTOR for his liability during the entire contract period for loss or damage arising from any cause for which he is responsible.

Such insurance shall be effected with an Insurance Company or companies approved by the BMA and in terms as specified herein.

Any amount not insured or not recovered from the insurers shall be borne by the CONTRACTOR or the BMA in accordance with their responsibilities.

7.3 EXCLUSIONS

There shall be no obligation for the insurances in Sub-section 7.2, "INSURANCE OF WORKS AND CONTRACTOR'S EQUIPMENT" to include loss or damage caused by:

- (a) wars, hostilities, invasion, act of foreign enemies,
- (b) riot, rebellion, revolution, insurrection, or military or usurped power, or civil war,
- (c) ionizing radiations, or contamination by radio-activity from any nuclear fuel, nuclear waste, or other hazardous properties of any explosive nuclear assembly or component thereof,
- (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds, and
- (e) loss or damage due to the use or occupation by the BMA of any part of the Works.

7.4 DAMAGE AND INJURIES TO PERSONS AND PROPERTY

The CONTRACTOR shall indemnify the BMA and the ENGINEER against all losses and claims in respect of:

- (a) death of or injury to any person, or

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(b) loss of or damage to any property, other than the Works, which may arise out of or in consequence of the execution and completion of the Works and the remedying of any defects therein, and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of or in relation thereto, subject to the following exceptions:

- the permanent use or occupation of land by the Works or any part thereof,
- the right of the BMA to execute the Works or any part thereof on, over, under, in or through any land,
- damage to property which is the unavoidable result of the execution and completion of the Works, or the remedying of any defects therein, in accordance with the Contract.
- interference whether temporary or permanent with any right of light, air way, or water or other easement, quasi-easement, which is the unavoidable result of the execution of the Works in accordance with the Contract.
- death of or injuries to persons or loss of or damage to property resulting from any act or neglect of the BMA, his agents, servants, or other contractors not being employed by the CONTRACTOR, or in respect of any claims, proceedings, damages, costs, charges, and expenses in respect thereof, or in relation thereto.

7.5 ACCIDENT OR INJURY TO WORKMEN

The CONTRACTOR shall indemnify the BMA and the ENGINEER against all actions, suits, demands, costs or expenses arising in connection with injuries suffered by persons employed by the CONTRACTOR or his Sub-contractor on the Works, whether at common law or under any statutes in force at the date of the Contract dealing with the question of the liability of employers for injuries suffered by employees, and shall procure and maintain the necessary policy or policies of insurance to cover and indemnify the same.

7.6 TRANSPORT ALL RISK INSURANCE

The CONTRACTOR shall secure an insurance at his own expense covering all equipment and material during transportation from places of manufacture up to the places of destination for the installation as

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well as intermediate storage against all risks including theft, pilferage, loss and/or damage caused by sea, fresh and rainwater, condensation, hooks, mud, oil and/or cargo, fire, and including ordinary breakages, bending, denting and twisting, rust and/or oxidation howsoever caused.

The insurance shall cover all risks from ex-factory to the Site till the beginning of erection, including storage period(s) and shall cover one hundred per cent of the cost and freight (c & f) value of material and equipments to be transported.

7.7 EVIDENCE OF INSURANCE

Certified copies of all required insurance policies shall be filed with the BMA at least two (2) weeks before commencement of the Works. The CONTRACTOR shall also provide the ENGINEER, if so instructed, with copies of the insurance policies and the receipts for payment of the current premiums.

7.8 REMEDY ON CONTRACTOR'S FAILURE TO INSURE

If the CONTRACTOR should fail to effect and keep in force the insurance required hereunder, or any other insurance which he may be required hereunder, or any other insurance which he may be required to effect under the terms of the Contract, then the BMA 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 BMA 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.

7.9 CONTRACTOR TO BE INFORMED

In the event of any claim being made against the BMA or the ENGINEER arising out of the matters referred to and in respect of which the CONTRACTOR is liable under the Contract, the CONTRACTOR will be promptly notified thereof and may at his own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.

7.10 PROTECTION AGAINST CANCELLATION

All insurance policies shall incorporate clauses enjoining both the insurer and the insured from canceling such policy without prior written notice to the BMA. Such notice shall be received no less than thirty (30) days previous to cancellation.

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7.11 EXCLUSION OF PERSONAL LIABILITY

No member, official, employee or authorized representative of the BMA or of the ENGINEER shall in any way be personally bound or liable for any acts committed under the Contract and shall not be responsible for any error or omissions in the observation or execution of any action, matter or thing contained herein.

8.0 : PUBLIC SAFETY, CONVENIENCE AND ACCESS

8.1 SAFETY REGULATIONS

From the commencement of Work until Final Acceptance, the CONTRACTOR shall strictly follow the safety standards of all applicable governmental laws, safety regulations and ordinances to prevent accidents.

8.2 SITE SAFETY, WATCHING AND LIGHTING

The CONTRACTOR shall have full regard for the safety of all persons entitled to be upon the Site and keep the Site, so far as the same is under his control, and the Works in an orderly state appropriate to the avoidance of danger to such person.

The CONTRACTOR shall be responsible for the proper fencing, signing, lighting, guarding and watching of all Works and the auxiliary installations and for the maintenance of roads, tracks, temporary roadways, sidewalks, guards and fences to the extent rendered necessary by the ENGINEER or by any duly constituted authority, for the protection of the Works, or for the convenience and safety of owners/occupants of adjacent properties, or of the public until the issue of the Certificate of Completion.

No naked light or open fires shall be used by the CONTRACTOR on the Site without special permission in writing from the ENGINEER.

8.3 PROTECTION OF ENVIRONMENT

The CONTRACTOR shall take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to person or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of his operation.

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- 8.4 INTERFERENCE WITH TRAFFIC AND ADJACENT PROPERTIES**
All operations necessary for the execution of the Works and for the construction of any temporary works, so far as compliance with the requirements of the Contract permits, be carried on so as not to interfere unnecessarily or improperly with the public convenience or the access to use and occupation of public or private roads and footpaths or of properties whether in the possession of the BMA or of any other person.

The CONTRACTOR shall notify and obtain permission from the ENGINEER or other duly constituted authority prior to any detour or closure of public roads necessitated by his operation and shall observe all restrictions and take all actions, in the opinion of the ENGINEER or the authority, necessary for the convenience and safety of the public.

The CONTRACTOR shall save harmless and indemnify the BMA and the ENGINEER in respect of all claims, demands, legal actions, damages, costs, charges and expenses whatsoever arising out of infractions committed by the CONTRACTOR in this respect.

- 8.5 ACCESS RIGHTS**
Facilities to inspect the Works at all times shall be afforded to the ENGINEER and his representative and other authorized officials or representatives of the BMA.

The CONTRACTOR shall be fully responsible for making application in good time for all necessary authorities, permits, etc., for his staff and workmen.

The necessary control methods to ensure compliance with these rules shall be fixed jointly by the BMA, the CONTRACTOR and the ENGINEER.

9.0 : COMMENCEMENT AND COMPLETION OF WORKS

- 9.1 COMMENCEMENT OF WORKS**
The CONTRACTOR shall commence the Works at the date mentioned in the Notice to Proceed or as may be stipulated in the Contract Agreement and shall proceed with the Works with due expedition and without delay if not otherwise provided in the Contract.

9.2 TIME FOR COMPLETION

Subject to any requirement in the Specifications as to completion of any portion of the Works before completion of the whole, the whole of the Works shall be completed according to Section 7.7 of the Special Conditions, "TRANSFER OF WORKS" within the time stated or such extended time as may be allowed under Section 9.3, "EXTENSION OF TIME FOR COMPLETION."

9.3 EXTENSION OF TIME FOR COMPLETION

Extension of time for completion may be approved if the amount of extra or additional work is such as fairly to entitle the CONTRACTOR to an extension or if the delay is due to an event or factor beyond the control of the CONTRACTOR. In each case, the ENGINEER shall determine the amount of such extension after due consultation with the BMA and the CONTRACTOR, and shall notify the CONTRACTOR and the BMA accordingly.

The BMA/ENGINEER is not bound to grant the extension unless the CONTRACTOR has within thirty (30) days after such work has been commenced or such event has first arisen delivered to the ENGINEER a written request containing all particulars to extend the time for completion and, in the opinion of the BMA and the ENGINEER, the ultimate completion of the entire Works is or will be delayed thereby despite efforts exercised by the CONTRACTOR. The request shall state in detail the reason for the delay in each case and shall demonstrate that the CONTRACTOR has used all reasonable means to minimize the delay.

Extension of time will not be granted for delays caused by inadequate work force, performance, failure to place orders for equipment or materials a sufficient time in advance to ensure delivery when needed, ordinary unfavorable weather conditions, and other circumstances which the CONTRACTOR is responsible or at fault. Extension of time for completion may be granted only when the affected activities fall within the critical path of the CPM/PERT network.

9.4 INTERIM DETERMINATION OF EXTENSION

If an event has a continuing effect such that it is not practical for the CONTRACTOR to submit detailed particulars within the 30-day period as specified in Section 9.3, he shall nevertheless be entitled to an extension of time provided that he has submitted an interim particulars within the 30-day period followed by submitting final particulars within 14 days of the end of the effects resulting from the event. Upon receipt

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of the interim particulars, the ENGINEER shall, without undue delay, make an interim determination of extension of time and notify the CONTRACTOR and the BMA accordingly. Upon receipt of the final particulars, the ENGINEER shall review all the circumstances and determine an overall extension of time in regard to the event. No final review shall result in a decrease of any extension of time already determined by the ENGINEER.

9.5 PROLONGED DELAY

If any such delay, except failure to reach agreement as set forth herein, lasts for more than ninety (90) calendar days, the parties shall immediately consult with one another for the purpose of agreeing upon the basis on which the CONTRACTOR shall resume Work at the end of the delay. If they do not agree upon a solution of the problems involved, including adjustment of the prices, within one hundred and fifty (150) days from the beginning of such delay, then either party may, by written notice, cancel that portion of the Work which is delayed and in such event the BMA will pay to the CONTRACTOR reasonable and proper cancellation charges as mutually agreed.

9.6 EXCEPTED RISKS

The CONTRACTOR shall not be responsible for delays emanating from causes beyond his control and for which he is not at fault or negligent. Such causes will be referred to collectively in the Contract as "excepted risks."

Should the CONTRACTOR be obstructed or delayed in the commencement, prosecution or completion of his Work by "excepted risks," such as any necessary or unavoidable act or delay of the BMA or any default of other portions under separate contract with the BMA, or by riot, insurrection, war, blockades, revolution, civil commotion, pestilence, acts of public authorities, fire, explosion, lightning, earthquake, tidal waves, cyclones, typhoons, hurricanes, tornadoes, floods, plague, epidemics, quarantine, strikes or other labor troubles, then the Contract deadlines will be extended provided that the CONTRACTOR submits to the ENGINEER for approval a written request for extension as specified in Section 9.3, "EXTENSION OF TIME FOR COMPLETION."

9.7 LIQUIDATED DAMAGES FOR DELAY

If the CONTRACTOR fails to complete the whole or parts of the Works within the time prescribed in the contractual time schedule or within the time agreed upon or accepted extension thereof, the

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CONTRACTOR shall pay the **BMA** for liquidated damages, and not by way of penalty, an amount equal to one-tenth of one percent (0.10%) of the total Contract Price minus the value of the completed portions of the Contract certified by the **BMA** as usable as of the expiration of the contract time, for each calendar day of delay, until the Work is completed and accepted or taken over by the **BMA**.

To be entitled to such liquidated damages, the **BMA** does not have to prove that it has incurred actual damages. Such amount shall be deducted from any money due or which may become due to the **CONTRACTOR** under the Contract and/or collect such liquidated damages from the Performance Bond or **CONTRACTOR**'s surety whichever is convenient to the **BMA**.

10.0 : SUSPENSION, TERMINATION AND FRUSTRATION

10.1 SUSPENSION OF WORK

The **CONTRACTOR** shall on 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 Section will be borne and paid by the **BMA** unless such suspension is:

- (a) otherwise provided in the Contract,
- (b) necessary for the proper execution of the Work or by reason of weather conditions affecting the safety or quality of the Works or by some default on the part of the **CONTRACTOR**, or
- (c) necessary for the safety of the Works or any part thereof.

The **CONTRACTOR** shall not be entitled to recover any such extra cost unless he gives notice in writing of his intention to claim to the **ENGINEER** within thirty (30) days of the **ENGINEER**'s order. The **ENGINEER** with the approval of the **BMA** will settle and determine such extra payment to be made to the **CONTRACTOR** in respect of such claim as shall in the opinion of the **ENGINEER** be fair and reasonable.

10.2 SUSPENSION LASTING MORE THAN 90 DAYS

If, on written order of the ENGINEER, the progress of the Works or any part thereof shall be suspended for a period or consecutive periods amounting to ninety (90) days or more and if permission to resume work is not given by the ENGINEER within ninety (90) days from the date of suspension then, unless such suspension is within paragraph (a), (b), and (c) of Section 10.1, the CONTRACTOR may give notice to the ENGINEER requesting permission to proceed with the Works or that part thereof in regard to which progress is suspended within ninety (90) days of receiving the suspension order.

If such permission is not granted within that time the CONTRACTOR by a further written notice so served may elect to treat the suspension, where it affects part of the Works only, as an omission under Section 12, "Alterations, Additions and Omissions" or, where it affects the whole Works, as an abandonment of the Contract by the BMA.

10.3 CONTRACTOR'S RIGHT TO SUSPEND WORK

Should the BMA fail to pay the CONTRACTOR the amounts due to him for his accomplishments within thirty (30) days after the lapse of the period provided for payment, or should the BMA fail to pay the CONTRACTOR any judgment entered in the courts within thirty (30) days after such judgment shall have become final and executory, then in any of these cases, the CONTRACTOR may suspend the Works and recover from the BMA payment for all work accomplished, plus reasonable profit.

The amount of profit to which the CONTRACTOR is entitled shall be determined by mutual agreement and in case of failure to agree, the same shall be submitted for arbitration under the provisions of Section 18, "SETTLEMENT OF DISPUTE AND ARBITRATION."

10.4 TERMINATION OF CONTRACT

The BMA reserves the right to declare the Contract forfeited under the provisions of Section 17.2, "FORFEITURE."

Furthermore, the BMA may at any time throughout the life of the Contract, acting at his discretion, either through the ENGINEER or in his own right, terminate this Contract in whole or in part by written notice to the CONTRACTOR served to him at least thirty (30) days prior to the effective date of termination of the Contract as determined in the BMA notice. In case of such termination, the CONTRACTOR shall be obligated to deliver to the BMA all works performed by him

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prior to the effective date of such termination and the BMA will pay to the CONTRACTOR whatever sums are due to him under the terms of the Contract for all works performed by him prior to the effective date.

If the termination is for the convenience of the BMA, and is not due to a fault of the CONTRACTOR in the faithful and timely performance of his obligations hereunder, and only then, the BMA shall also indemnify the CONTRACTOR for all reasonable expenses actually incurred by him in connection with the preparation for any performance of the Works not completed prior to the effective date of termination as well as for all other expenses which will have been actually incurred by him in connection with the dismantling of his plant and equipment at the Site, cancellation of equipment orders and shipment, and the return of the foreign members of his personnel and equipment to their place of origin, but he shall not be indemnified for any other expense. In the event of such termination for the convenience of the BMA, and only in such event, the BMA shall further indemnify the CONTRACTOR for his lost profit as a result of such termination by paying to him a sum equal to five per cent (5%) of the value of the Works required hereunder, but not performed by reason of said termination. For the purpose of determining such value the prices and quantities specified in the Schedule of Rates and Prices shall be final.

10.5 FRUSTRATION

In the event that the Contract is frustrated, whether by war or by circumstances beyond the control of the BMA and the CONTRACTOR but essential for the execution of the Work, the sum payable by the BMA to the CONTRACTOR in respect of the Works executed shall be the same as that which would have been payable under Section 10.4, "TERMINATION OF CONTRACT" hereof as if the Contract had been terminated under the provisions of the said Section.

11.0 : EXECUTION OF WORKS

11.1 WORK PROGRAM AND PROGRESS SCHEDULE

After submission to and approval by the ENGINEER of the work program and progress schedule as specified in the Special Conditions of Contract, the CONTRACTOR shall adhere to the schedule, order of procedure and the method stated therein unless he obtains the written permission of the ENGINEER to vary such order, method, and schedule.

11.2 CHANGED OR ADVERSE CONDITIONS AND ARTIFICIAL OBSTRUCTIONS

If, during the execution of the Works the CONTRACTOR shall encounter subsurface or latent physical conditions or artificial obstructions differing from those shown on the drawings or which could not have been reasonably foreseen by an experienced contractor, the CONTRACTOR shall forthwith give written notice thereof to the ENGINEER and if in the opinion of the ENGINEER such conditions or artificial obstructions could not have been reasonably foreseen by an experienced contractor, the ENGINEER will certify and the BMA will pay the additional expense to which the CONTRACTOR will have been put up by reason of such conditions, including the proper and reasonable expense of:

- (a) complying with any instruction which the ENGINEER may issue to the CONTRACTOR in connection therewith, and
- (b) any proper reasonable measures approved by the ENGINEER which the CONTRACTOR may take in the absence of specific instructions from the ENGINEER, as a result of such conditions or obstructions being encountered.

11.3 SCHEDULE REVISION BY BMA

The BMA will, after consultation with the CONTRACTOR, be entitled to extend or advance the provisional dates as stipulated in the Contract Agreement by a maximum of up to fourteen (14) days. This will apply, but will not be limited to such occasions as when coordination between Works under the Contract and work by others is crucial.

The BMA will inform the CONTRACTOR accordingly in writing at least thirty (30) days prior to the original date to be advanced, in the case of advancing a Work, and in the case of extension, at least fourteen (14) days prior to the original date. By the BMA doing so, the new dates shall become contractual dates.

The CONTRACTOR shall submit within fourteen (14) days after the BMA statement regarding revision of the contractual dates, an updated progress schedule for execution of the Works based on the revised contractual dates and on the progress dates started by the CONTRACTOR in accordance with this Sub-section.

11.4 SCHEDULE ADJUSTMENT

If any contractual dates or completion periods are exceeded or any other progress conditions are not complied with and as a result thereof any contract dates or periods can be anticipated to be delayed, the CONTRACTOR shall take all measures forthwith, including the use of extra labor and equipment, in order to meet the contractual dates and completion periods as well as the other progress conditions.

If the reason for an adjustment is such that, under the Contract, the CONTRACTOR intends to claim extra remuneration for adjustment measures he shall notify the BMA his intended claim stating both the reason therefor and also the amount thereof prior to commencement of the adjustment measures or otherwise. Said notice shall also include particulars on the proposed claim for extra payment. Furthermore, if the CONTRACTOR fails to make such announcement in accordance with Section 12.6, "CLAIMS," he shall not be entitled to any extra remuneration for adjustment measures.

11.5 MONTHLY PROGRESS REPORT

Reports covering the progress of the Works shall be transmitted to the ENGINEER monthly. The work program and progress schedule shall be brought up to date monthly by the CONTRACTOR and shall be sent to the ENGINEER together with the monthly progress reports.

The monthly progress report shall describe the progress of the Works on the Site, as well as the manufacturing, testing, and transportation to the Site of major pieces of deliverable equipment. The report shall also contain all other facts and events which are relevant to the evaluation of the progress of the Works including documents delivered, payment received, and a comparison of the values established in the payment schedule with the value of Work actually executed, expressed in per cent of the total value of Work. Reasons for delays shall be stated without prejudice to the terms of the Contract in this respect.

11.6 PERIODIC MEETING

Monthly meeting shall be scheduled. At these meetings the CONTRACTOR shall report on progress, problems, and activities of the following month. In the later stages of the project, the intervals may be increased to two months by mutual consent.

The CONTRACTOR shall immediately notify the ENGINEER of any difficulties which interfere with the progress of Work or endanger its execution.

11.7 METHODS OF OPERATION

The CONTRACTOR shall give the ENGINEER full information in advance as to his plans for carrying on any part of the Works. If at any time the CONTRACTOR's Plant or equipment or his methods of executing the Works appear to the ENGINEER to be inadequate to ensure the required safety, quality, or rate of progress of the Works, he may order the CONTRACTOR to increase or improve his facilities or methods and the CONTRACTOR shall promptly comply with such orders; but neither compliance with such orders nor failure of the ENGINEER to issue such orders shall relieve the CONTRACTOR from his obligations to secure the degree of safety, the quality of Work, and the rate of progress required by the Contract. The CONTRACTOR alone shall be responsible for the safety, adequacy and efficiency of his plant, equipment and methods.

All roadways, sidewalks, and other public facilities which are disturbed or damaged as a result of the CONTRACTOR's operation shall be restored, at the CONTRACTOR's cost, to their original conditions.

11.8 CONTRACTOR TO CHECK PLANS AND SCHEDULES

The CONTRACTOR shall check all dimensions, and quantities shown on the plans and schedules given to him by the ENGINEER, and shall notify the ENGINEER of any discrepancy between the plans and the actual field conditions, or any error or omission in plans or instructions which he may discover in the course of the Works. The CONTRACTOR shall not be allowed to take advantage of any error or omission in the Plans or Contract Documents. Full instructions will be furnished by the ENGINEER, should such error or omission be discovered, and the CONTRACTOR shall carry out such instructions as if originally specified.

11.9 CONTRACTOR'S SUPERINTENDENCE

The CONTRACTOR shall give or provide all necessary superintendence during the execution of the Works. The CONTRACTOR or a competent and authorized representative approved of in writing by the ENGINEER (which approval may at any time be withdrawn) is to be constantly on the Site 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 after receiving written notice of such withdrawal remove the agent from the Site and shall not thereafter employ him again on the Site in any capacity and shall replace him by another agent approved by the ENGINEER. Such authorized representative shall

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receive on behalf of the CONTRACTOR directions and instructions from the ENGINEER or the ENGINEER's Representative.

11.10 CONTRACTOR'S REPRESENTATIVE

The authorized representative of the CONTRACTOR as well as a sufficient number of persons from among the CONTRACTOR's personnel shall have an adequate knowledge of the written and spoken English language in order to be capable of receiving without difficulties instructions in this language and to be able to communicate properly with the BMA and ENGINEER and to be able to correspond with him.

11.11 CONTRACTOR'S OFFICE AT SITE OF WORK

During the performance of all construction and/or installation work, the CONTRACTOR shall maintain a suitable office at or near the Site of the Work which shall be the headquarters of the representative authorized to receive drawings, instructions or other communications or articles from the BMA and/or the ENGINEER; and any such communication given to the said representative or delivered at the CONTRACTOR's office at the Site of the Work in the absence of said representative shall be deemed as submitted to the CONTRACTOR.

11.12 CONTRACTOR'S EMPLOYEES

The CONTRACTOR shall provide and employ on the Site in connection with the execution and maintenance of the Works only such competent personnel as are skilled and experienced in their respective fields and such foremen and leading hands as are competent to give proper supervision to the Works and such skilled, semi-skilled and unskilled labor as is necessary for the proper and timely execution and maintenance of the Works.

11.13 SUBSTITUTION OF CONTRACTOR'S EMPLOYEES

The ENGINEER shall be authorized 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. Any person so removed from the Works shall be replaced as soon as possible by a competent substitute approved by the ENGINEER.

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The CONTRACTOR shall undertake to provide suitable replacement at his own expense and he shall not be entitled to any extension of time for completion by reason of such personnel changes.

Any person who has been removed from the Works by order of the ENGINEER cannot be employed again in any occupation relating to the Works of this Contract, unless the ENGINEER authorizes this in writing.

11.14 PERSONNEL EMPLOYED BY BMA AND/OR ENGINEER

The CONTRACTOR shall not undertake to employ or to engage under any circumstances personnel already employed by the BMA and/or ENGINEER, nor to attempt the recruitment of such personnel.

11.15 SETTING-OUT

The CONTRACTOR shall be responsible for the true and proper setting-out of the Works and for the provision of all necessary instruments, appliances and labor in connection therewith. If at any time during the progress of the Works any error shall appear or arise with respect to the position, dimensions or alignment to any part of the Works, the CONTRACTOR on being required to do so by the ENGINEER shall at his own expense rectify such error to the satisfaction of the ENGINEER unless such error is based on incorrect data supplied in writing by the ENGINEER, in which case the expense of rectifying the same will be borne by the BMA.

The checking of any setting-out by the ENGINEER shall not in any way relieve the CONTRACTOR of his responsibility for the correctness thereof.

11.16 BOREHOLES AND EXPLORATORY EXCAVATION

If at any time during the execution of the Works the ENGINEER shall require the CONTRACTOR to make boreholes or to carry out exploratory excavation not otherwise called for in the Plans or other Contract Documents, such requirements shall be ordered in writing and shall be deemed to be an additional work.

11.17 POSSESSION FOR OTHER CONTRACTORS

The access to the Sites shall not be exclusive to the CONTRACTOR, but only such as shall enable him to execute the Works. The CONTRACTOR shall afford to the BMA and to other contractors whose names will have been communicated in advance in writing to the

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CONTRACTOR by the ENGINEER every reasonable facility for the execution of work simultaneously with his own.

11.18 COOPERATION OF CONTRACTORS

The CONTRACTOR shall cooperate with all other contractors who may be performing work on behalf of the BMA and workmen who may be employed by the BMA on any work in the vicinity of the Works to be done under this Contract, and he shall so conduct his operations as to interfere to the least possible extent with the work of such contractors or workmen.

The CONTRACTOR shall promptly make good at his own expense any injury or damage caused through his fault or negligence that may be sustained by other contractors or by employees of the BMA. Any difference or conflict which may arise between the CONTRACTOR and other contractors, or between the CONTRACTOR and the workmen of the BMA in regard to their work will be adjusted and determined by the ENGINEER.

Whenever there is interference with work under other contracts, the ENGINEER will decide the manner in which the Work shall proceed under each contract.

11.19 TEMPORARY WORKS, PLANT AND MATERIALS

All construction plant, temporary works and materials provided by the CONTRACTOR shall be deemed to be exclusively intended for the construction and completion of the Works and the CONTRACTOR shall not remove the same or any part thereof without the consent in writing of the ENGINEER.

The BMA will not at any time be liable for the loss of or injury to any of the said construction plant, temporary works or materials.

11.20 REMOVAL OF PLANT AND MATERIALS

After completion of all Works required under the Contract, all remaining materials, consumable supplies, tools, equipment, and construction Plant belonging to the CONTRACTOR shall be removed from the Site, unless specified otherwise in the Contract Documents.

The BMA shall have the first option at a price to be agreed upon of purchasing construction tools, Plant and equipment specially imported by the CONTRACTOR for the prosecution of the Works.

11.21 EVIDENCE OF OWNERSHIP OF CONSTRUCTION PLANT

The CONTRACTOR shall, whenever required by the ENGINEER, produce evidence satisfactory to the ENGINEER of the ownership of any construction plant, temporary works, or materials, or alternatively of the agreement under which the same has been hired or acquired.

11.22 HIRE-PURCHASE AGREEMENT

To secure the continued availability of any hired or hire-purchased construction Plant, Temporary Works or materials for the proper execution of the Works in the event of forfeiture under Section 17, "DEFAULT, FORFEITURE, REMEDIES AND POWERS" hereof, the CONTRACTOR shall ensure that every hire or hire-purchase agreement for the aforesaid construction Plant, temporary works or materials shall contain a provision which permits the CONTRACTOR to assign and the BMA to assume all the rights and liabilities excluding past liabilities of the CONTRACTOR under the agreement and which permits the owner thereof on request in writing made by the BMA within seven (7) days after the date on which any such forfeiture has become effective and on the undertaking of the BMA to pay all hire charges or hire-purchase sums due in respect thereof from such date to hire or provide under hire-purchase agreement the aforesaid construction Plant, Temporary Works or materials to the BMA on the same terms in all respects as the same was hired or provided to the CONTRACTOR save that the BMA shall be entitled to permit the use thereof, by any other contractor employed by him for the purpose of completing the Works under the terms of the Contract.

In the event of the BMA entering into any agreement for hire or hire-purchase of construction Plant, Temporary Works or materials pursuant to the provisions of this Section, all sums properly paid by the BMA under the provisions of any such agreement and all expenses incurred by him in entering into such agreement shall be deemed for the purposes of Section 17, "DEFAULT, FORFEITURE, REMEDIES AND POWERS" hereof to be part of the cost of completing the Works.

11.23 SUPPLY OF WATER AND ELECTRIC POWER

The CONTRACTOR shall provide for any temporary water supply and electric power facilities for the execution of the Works. The CONTRACTOR shall be responsible for making all necessary applications and obtaining any and all required permits from the servicing utility companies.

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If those facilities can be made available by the BMA at certain points at or near the Site, the CONTRACTOR will be charged for consumption of water and electric power.

11.24 FIRST AID FACILITIES

The CONTRACTOR shall ensure that one or more first aid kit is readily available at all times for the use of sick or injured persons working on the Contract.

11.25 FIRE FIGHTING EQUIPMENT

The CONTRACTOR shall provide and maintain to the approval of the local Fire Fighting Authority any portable fire fighting equipment on the Site of any Works as may be required by the Fire Fighting Authority.

11.26 CLEANING OF SITE

The CONTRACTOR shall clean the working area each day of all trash and waste materials and shall maintain the Site of any works in a neat and orderly conditions throughout the construction period. The ENGINEER shall have the right to determine what is waste material or rubbish and the manner and place of disposal. On or before the completion of the Work, the CONTRACTOR shall, without charge therefor, carefully clean the entire Site area and shall tear down and remove all temporary structures built by him and shall remove all rubbish of every kind from the tracts or grounds which he occupied and shall leave the same in orderly and sightly condition.

11.27 WORKING HOURS

Should the CONTRACTOR wish to work at other than normal working hours and/or holidays or to work in two or three shifts, except in the case of any work which it is customary to be carried out by multiple shifts, he shall ask for permission in writing from the BMA/ENGINEER explaining the reasons therefor. If such permission is granted, the CONTRACTOR shall not be entitled to any additional payment for doing so.

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

11.28 FOSSILS AND ARCHAEOLOGICAL FINDINGS

All objects and structures of value or antiquity and other remains or palaeontological or archaeological findings discovered on the Site of the Works shall be deemed to be national property, without exception. The CONTRACTOR shall take reasonable precautions to prevent his workmen or any other persons from removing or damaging any such object, structure, or finding and shall immediately upon discovery thereof and before removal notify the ENGINEER of such discovery and carry out, at the expense of the BMA, the ENGINEER orders as to the treatment and disposal of the same.

Failure to comply with the provisions of this section shall be considered and treated as an infraction against public property.

11.29 SANITATION

The operations of the CONTRACTOR shall be in full conformity with all of the rules and regulations of public boards and bodies having jurisdiction with respect to sanitation. The CONTRACTOR shall supply safe and sufficient potable water, shall obey and enforce all sanitary regulations and orders, and shall take precautions against the spread of infectious diseases.

12.0 : ALTERATIONS, ADDITIONS AND OMISSIONS

12.1 VARIATIONS

The ENGINEER shall have the power to make any variation of the form, quality or quantity of the Works or any part thereof that may in his opinion be necessary or desirable and no such variations shall in any way vitiate or invalidate the Contract. The variations shall include but not be limited to the following:

- (a) increase or decrease the quantity of a 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 position and dimensions of any part of the Works,
- (e) change the Work procedure,
- (f) change the facilities, equipment, services provided by the BMA,
- (g) execute additional Work of any kind necessary for the completion of the Works.

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12.2 INSTRUCTIONS FOR VARIATIONS

No such variation shall be made by the CONTRACTOR without an instruction in writing from the ENGINEER, except that no such instruction shall be required for increase or decrease in the quantity of any Work where such increase or decrease is not the result of an instruction given under this section, but is the result of the quantities exceeding or being less than those stated in the Schedule of Rates and Prices.

12.3 VALUATION OF VARIATIONS

The BMA with the recommendation of the ENGINEER will determine the amount (if any) which in his opinion should be added to or deducted from the Contract Price in respect of any extra or additional work done or work omitted by the ENGINEER's instruction provided that the issue of such instructions to vary the Works is not necessitated by some fault of or breach of contract by the CONTRACTOR or for which he is responsible.

All such work shall be valued at the rates set out in the Contract if in the opinion of the ENGINEER the same shall be applicable. If the Contract shall not contain any rates applicable to the extra or additional work, then suitable prices shall be agreed upon between the BMA and the CONTRACTOR.

If the nature or amount of any omission or addition to any part of the Works shall be such that in the opinion of the ENGINEER the rate or price contained in the Contract is unreasonable or not applicable, then a suitable rate or price shall be agreed upon between the BMA, with the recommendation of the ENGINEER, and the CONTRACTOR.

In the event of disagreement, the BMA shall have the power to fix such other rate or price as shall in his opinion be reasonable and proper under the circumstances.

12.4 VARIATIONS EXCEEDING FIFTEEN PERCENT

If the net effect of all variations shall be found, on completion of the whole of the Works, to result in a reduction or an addition greater than fifteen (15) per cent of the total Contract Price, the amount of the Contract Price shall be amended by such additional sum as shall be agreed upon between the BMA and the CONTRACTOR. In the event of disagreement, the BMA with the recommendation of the ENGINEER, shall fix such sum as shall in his opinion be reasonable

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and proper after taking into account relevant factors including the costs incurred by the CONTRACTOR.

12.5 CONTRACTOR TO CARRY OUT VARIATIONS

In the event of disagreement with respect to this section, the CONTRACTOR shall, on the request of the ENGINEER, nevertheless start the Work in question immediately and carry it out in accordance with the program with the implied condition that an agreement might be reached at a later date. Should the CONTRACTOR refuse or delay to carry out these Works, he will be held responsible for the resulting consequences, damages and delays including consequential delay of other Works.

12.6 CLAIMS

The CONTRACTOR shall send to the ENGINEER once in every month an account giving particulars (as full and detailed as possible) of all claims for any additional Work ordered by the ENGINEER which he has executed during the preceding month. No claim for payment for any such Work will be considered which has not been included in such particulars.

13.0 : MEASUREMENT

13.1 QUANTITIES

The quantities set out in the Schedule of Rates and Prices are the estimated quantities of the Works. They are not to be taken as the actual and correct quantities of the Works to be executed by the CONTRACTOR in the fulfillment of his obligations under the Contract. An increase or decrease of the quantities stated in the Schedule of Rates and Prices is in conformity with the Contract. Such variation of the quantities will be considered in the measurement records. Any such change of quantities shall not entitle the CONTRACTOR a revision of the relevant unit price except otherwise provided in the Contract Documents.

13.2 WORKS TO BE MEASURED

The ENGINEER will, except as otherwise stated, ascertain and determine by measurement the value of work done in accordance with the Contract. When the ENGINEER requires any part, or parts of the Works be measured, he will give notice to the CONTRACTOR, who shall forthwith assist or send a qualified agent to assist the ENGINEER in making such measurement and shall furnish all particulars required

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by him. Should the CONTRACTOR fails to assist or should he neglect or omit to send such agent, then the measurement made by the ENGINEER or approved by him will be taken to be the correct measurement of the Work.

14.0 : STATUTES AND REGULATIONS

14.1 COMPLIANCE

The CONTRACTOR shall, in all matters arising in the performance of the Contract, conform in all respects with the provisions of any national or provincial statute, ordinance or other law or any regulation, or by-law of any local, or other duly constituted authority that is applicable to the Works, and shall keep the BMA and the ENGINEER indemnified against all penalties and liability of every kind for breach of any statute, ordinance, law, regulation, or by-law.

The BMA will assist the CONTRACTOR and serve all notices and obtain permissions required in connection with by-laws of any local or other authority having jurisdiction over the Works.

14.2 REGULATIONS CONCERNING THE IMPORT AND USE OF EXPLOSIVES AND COMBUSTIBLE LIQUIDS

The importation, transportation, storage and use of explosives and of combustible liquids, shall be governed by the existing laws, the executive regulations and all amendments and addenda promulgated.

By virtue of his signing the Contract Agreement, the CONTRACTOR asserts that he has thoroughly informed himself about these laws and regulations and is fully acquainted with them.

The CONTRACTOR shall be responsible for the strict observance of all obligations resulting from these laws and regulations.

15.0 : LABOR

15.1 RECRUITMENT OF LABOR

The CONTRACTOR shall make his own arrangements for the engagement of all labor, both local and foreign, and be responsible for all that is necessary in connection with their employment.

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- 15.2 ARMS AND AMMUNITION**
The CONTRACTOR shall not give, barter or otherwise dispose of to any persons any arms or ammunition of any kind or permit the same as aforesaid.
- 15.3 FESTIVALS AND RELIGIOUS CUSTOMS**
The CONTRACTOR shall in all dealings with labor in his employ have due regard to all recognized festivals, days of rest and religious or other customs.
- 15.4 EPIDEMICS**
In the event of any outbreak of illness of an epidemic nature, the CONTRACTOR shall comply with and carry out such regulations, orders and requirements as may be made by the government or the local medical or sanitary authorities for the purpose of dealing with and overcoming the same.
- 15.5 DISORDERLY CONDUCT**
The CONTRACTOR shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst his employees and for the preservation of peace and protection of persons and property in the neighborhood of the Works against the same.
- All personnel not originating from the Kingdom of Thailand shall be prohibited from engaging in political activities of any kind.
- 15.6 LABOR NEGOTIATIONS**
The CONTRACTOR shall immediately notify the BMA and the ENGINEER about all current or impending labor negotiations and disputes in which he or any of his Sub-contractors is liable to become involved and he shall state whether and to what extent this endangers or is liable to endanger the continuous execution of the Works.
- 15.7 INFRINGEMENT**
In the event of the CONTRACTOR's infringing the applicable statutory regulations, rules, etc., concerned with the engagement and employment of labor, the BMA reserves the right to take legal steps and exercise his power as laid down in these Conditions of Contract.
- 15.8 LIST OF PERSONNEL EMPLOYED**
At the request of the ENGINEER, the CONTRACTOR shall deliver a detailed list indicating the supervisory personnel and the personnel of

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the various labor classifications that are effectively employed by the CONTRACTOR in the Works.

16.O : MATERIALS, PLANT AND WORKMANSHIP

16.1 QUALITY OF MATERIAL, PLANT AND WORKMANSHIP

All materials and equipment to be provided under this Contract shall be new.

All materials, Plant and workmanship shall be of the respective kinds specified in the Contract Documents or, where not specified, in accordance with the ENGINEER's instructions. All Works 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 all or any such places.

The CONTRACTOR shall provide such assistance, instruments, machines, labor and materials as are normally required for examining, measuring and testing any Work and the quality or quantity of any material used and shall supply samples of materials before incorporation in the Works for such testing as may be selected and required by the ENGINEER.

16.2 SUBSTITUTION OF MATERIAL AND EQUIPMENT

If the CONTRACTOR desires to propose a method or to use material or equipment other than that specifically described in the Contract Documents, he shall submit the same for approval to the ENGINEER and he shall not make the substitution unless approved by the ENGINEER in writing. If the substitute offered is not approved by the ENGINEER, the CONTRACTOR is bound to furnish the component under consideration in keeping with the Plans and the Technical Specifications.

16.3 COST OF SAMPLES

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

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16.4 COST OF TESTS BORNE BY CONTRACTOR

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. This shall apply to tests performed at the Site or elsewhere.

The costs for those tests that have not been mentioned expressly, but which are routine for the type of work involved or whose necessity can be considered as understood in connection with the various works shall be borne by the CONTRACTOR.

The costs for the tests shall include also the supply of all samples, machinery, instruments, accessories for and all reports and certifications about the tests, as well as the corresponding competent personnel.

16.5 COST OF TESTS NOT PROVIDED FOR

If the ENGINEER orders tests of a special nature, not routinely required or falling under Sub-section 16.4, "Cost of Tests Borne by the CONTRACTOR" whether performed at the Site or at place of manufacture or in an independent laboratory, the cost of such tests shall be covered by the BMA if the test results show that the quality of the materials and the execution of the corresponding Works conform to the Specification or to the instructions of the ENGINEER; otherwise the costs shall be borne by the CONTRACTOR.

16.6 INSPECTION AND TESTING

The ENGINEER shall at all reasonable times have access to the Site and to all workshops and places where materials and Plant are being manufactured, fabricated or prepared for the Works and the CONTRACTOR shall afford every facility for and every assistance in obtaining the right to such access.

The ENGINEER shall be entitled during manufacture, fabrication, or preparation to inspect, examine and test on the CONTRACTOR's and sub-contractor's premises, the material and workmanship of all Plant and equipment to be supplied under the Contract. If part of the said Plant or equipment is being manufactured on other premises, the CONTRACTOR shall obtain for the ENGINEER permission to inspect, examine and test as if the said Plant or equipment were being manufactured at the CONTRACTOR's premises. Such inspection, examination or testing shall not relieve the CONTRACTOR from any obligation under the Contract.

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Travelling expenses incurred by the ENGINEER in connection with inspection and testing of Plant, material, equipment and workmanship at the CONTRACTOR's and/or his sub-contractor's premises shall be borne by the BMA.

16.7 DATES FOR INSPECTION AND TESTING

The CONTRACTOR shall inform in writing the ENGINEER on the time and place for the inspection or testing of any materials or Plant as provided in the Contract not less than seven (7) days in advance. The ENGINEER shall give the CONTRACTOR not less than 24 hours notice of his intention to carry out the inspection or to attend the tests. If the ENGINEER does not attend on the date agreed, the CONTRACTOR may, unless otherwise instructed by the ENGINEER, proceed with the test, which shall be deemed to have been made in the presence of the ENGINEER. The CONTRACTOR shall forthwith forward to the ENGINEER duly certified copies of the test readings. If the ENGINEER has not attended the test, he shall accept the said readings as accurate.

16.8 REJECTION

If, at the time and place agreed in accordance with Sub-section 16.7, the materials or Plant are not ready for inspection or testing or if, as a result of the inspection or testing referred to in this Section, the ENGINEER determines that the materials or Plant are defective or otherwise not in accordance with the Contract, he may reject the materials or Plant and shall notify the CONTRACTOR thereof immediately. The notice shall state the ENGINEER's objections with reasons. The CONTRACTOR shall then promptly make good the defect or ensure that rejected materials or Plant comply with the Contract. If the ENGINEER so requests, the tests of rejected materials or Plant shall be made or repeated under the same terms and conditions. All costs incurred by the BMA by the repetition of the tests shall, after due consultation with the BMA and the CONTRACTOR, be determined by the ENGINEER and shall be recoverable from the CONTRACTOR by the BMA and may be deducted from any monies due or to become due to the CONTRACTOR and the ENGINEER shall notify the CONTRACTOR accordingly, with a copy to the BMA.

16.9 INDEPENDENT INSPECTION

The ENGINEER may delegate inspection and testing of materials or Plant to an independent inspector. Notice of such delegation shall be given by the ENGINEER to the CONTRACTOR in writing.

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16.10 UNFAVORABLE CONDITIONS

During unfavorable weather, hurricanes, storms, wet ground, or other unsuitable construction conditions, the CONTRACTOR shall confine his operations to Works which will not be affected adversely thereby. No portion of the Works shall be constructed under conditions which would affect adversely the quality or efficiency thereof, unless special means or precautions are taken by the CONTRACTOR to perform the Work in a proper and satisfactory manner.

16.11 EXAMINATION OF WORK BEFORE COVERING-UP

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

16.12 UNCOVERING

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 that have been covered up or put out of view after compliance with the requirements of Section 16.1, "QUALITY OF MATERIAL, PLANT AND WORKMANSHIP." If the uncovered part or parts are found to be executed in accordance with the Contract, the expenses of uncovering or making openings in or through the Work and thereafter reinstating and making good the same shall be borne by the BMA but in any other case, all such expenses shall be borne by the CONTRACTOR and shall be recoverable from him by the BMA or may be deducted by the BMA from any monies due or which may become due to the CONTRACTOR.

16.13 REMOVAL OF IMPROPER WORK, PLANT AND MATERIALS

The ENGINEER shall have the authority to order:

- (a) the removal from the Site within such time or times as may be specified by the ENGINEER of any materials or Plant which in the opinion of the ENGINEER are not in accordance with the Contract,

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- (b) the substitution of proper and suitable materials or Plant, and
- (c) the removal and proper re-execution (notwithstanding previous test thereof or interim payment thereof) of any Work which in respect of materials, Plant, workmanship, or design by the CONTRACTOR or for which he is responsible is, in the opinion of the ENGINEER, not in accordance with the Contract.

16.14 PATENT RIGHTS

The CONTRACTOR shall save harmless and indemnify the BMA and the ENGINEER from and against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement of patent rights, designs, trademarks, or name or other protected rights in respect of any CONTRACTOR's equipment, materials, or Plant used for the Works except where such infringement results from compliance with the Specification or the ENGINEER's instructions.

16.15 CLAIMS OUT OF PATENT RIGHTS

In the event of any claim being made or action brought against the BMA or the ENGINEER arising out of the matters referred to in this section, the CONTRACTOR will be promptly notified thereof and may at his own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. The BMA and the ENGINEER will not, unless and until the CONTRACTOR shall have failed to take over the conduct of the negotiations or litigation, make any admission which might be prejudicial thereto. The conduct by the CONTRACTOR of such negotiations or litigation shall be conditional upon the CONTRACTOR's having first given to the BMA or the ENGINEER such reasonable security as shall from time to time be required by the BMA or the ENGINEER to cover the amount ascertained or agreed or estimated as the case may be of any compensation, damages, expenses and costs for which the BMA or the ENGINEER may become liable in respect of such infringement as aforesaid.

The BMA or the ENGINEER will, at the request of the CONTRACTOR afford all available assistance for the purpose of contesting any such claim or action and shall be repaid any expense incurred in so doing.

16.16 CLAIMS OUT OF PATENT RIGHTS BORNE BY BMA OR ENGINEER

If the CONTRACTOR receives from the BMA or the ENGINEER any design or instruction which infringes any patent right, registered designs, trademarks or copyrights, he shall inform the BMA and the ENGINEER in writing about the said design or instruction, all claims in this respect shall be borne by the BMA.

16.17 ROYALTIES

Except otherwise provided in the Contract Documents, the CONTRACTOR shall pay all tonnage and other royalties and compensation, if any, for getting the materials required for the Works.

17.0 : DEFAULT, FORFEITURE, REMEDIES AND POWERS

17.1 NOTICE TO CONTRACTOR

If the CONTRACTOR neglects to execute the Works with due diligence and expedition, or refuses or neglects to comply with any reasonable orders given to him by the ENGINEER and/or the BMA in connection with the Works, or contravenes the provisions of the Contract, the BMA or the ENGINEER may give notice to the CONTRACTOR to make good the failure, neglect or contravention complained of. Should the CONTRACTOR fails to comply with the notice within a reasonable time from the date of service thereof, then the BMA shall have the right:

- (a) to employ other workmen and forthwith execute such part of the Works as the CONTRACTOR may have neglected to do, or
- (b) if the BMA considers it to be lawful for him, without prejudice to any other rights he may have under the Contract, to take the Works wholly or in part off the CONTRACTOR's hands and re-contract with any other person or persons to complete the Works or any part thereof.

In such event the BMA will have the free use of the CONTRACTOR's equipment that may be at any time on the Site in connection with the Works, without being responsible to the CONTRACTOR for normal wear and tear thereof and to the exclusion of any right of the CONTRACTOR over the same, and the BMA will be entitled to retain any balance which may be otherwise due to the CONTRACTOR, or

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such part thereof as may be necessary, for the payment of the cost of executing the said part of the Works or of completing the Works as the case may be.

If the cost of completing the Works or re-executing a part thereof as aforesaid shall exceed the balance due to the CONTRACTOR, the CONTRACTOR shall pay such excess.

17.2 FORFEITURE

The BMA may take the Works off the CONTRACTOR's hand as provided under Section 17.1 "NOTICE TO CONTRACTOR" hereof, if the CONTRACTOR:

- (a) has violated the law, or
- (b) is guilty of bribery or having accepted bribes, or
- (c) shall have had imposed on him a restraint or alienation or if a lien shall have attached to items to be supplied, or
- (d) has abandoned the Contract, or
- (e) without reasonable excuse has failed to commence the Works or has suspended the progress of the Works for thirty (30) days after receiving due notice from the ENGINEER, or
- (f) has failed to remove materials from the Site or to pull down and replace Work for thirty (30) 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
- (g) 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
- (h) has, in defiance of the ENGINEER's instructions to the contrary, sub-let any part of the Contract, or
- (i) has repeatedly violated the conditions stipulated in the Contract.

In such event, the BMA may after giving fourteen (14) day's 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 BMA or the ENGINEER by the Contract and may himself complete the Works or may employ any other contractor to complete the Works and the BMA or such other contractor may use for such completion so much of the construction Plant, Temporary Works and materials which have been deemed to be reserved exclusively for

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the construction and completion of the Works under the provisions of the Contract as he or they may consider proper and the BMA may at any time sell any of the said construction 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.

17.3 VALUATION AT DATE OF FORFEITURE

In the event of the Works being taken off the CONTRACTOR's hands, the ENGINEER with the approval of the BMA will as soon as may be practicable after any such entry and expulsion by the BMA fix and determine on his own or by and after reference to the parties, or after such investigation or enquiries as he may consider fit to make and will 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 Works then actually done by him under the Contract and what was the value of any of the said unused or partially used materials, any construction Plant and any Temporary Works.

This assessment which shall be subject to the approval of the BMA and which shall take into account all relevant facts shall be completed even if the CONTRACTOR may not be present, in which case the CONTRACTOR shall receive a report setting forth the results. If he shall not have raised any objection within two (2) weeks, such assessment shall be deemed accepted by him.

17.4 BANKRUPTCY

Should the CONTRACTOR become bankrupt or insolvent, or have a receiving order made against him, or compound with his creditors, or being a corporation, commence to be wound up, not being a member's voluntary winding up for the purpose of amalgamation or reconstruction, or carry on its business under a receiver for the benefit of its creditors or any of them, the BMA shall have the right:

- (a) to terminate the Contract forthwith by notice in writing to the CONTRACTOR or to the receiver or liquidator or to any person in whom the Contract may become vested, and to act in the manner provided in Section 17.1, "NOTICE TO CONTRACTOR" as though the last mentioned notice had been the notice referred to in the said section and the Works had been taken out of the CONTRACTOR's hand, or

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(b) to give such receiver, liquidator or other person the option of carrying out the Contract up to an amount to be agreed.

17.5 PAYMENT AFTER FORFEITURE AND BANKRUPTCY

If the BMA will enter and expel the CONTRACTOR he shall not be liable to pay to the CONTRACTOR any money on account of the Contract until the expiration of the Guarantee Period and thereafter until the costs of completion and maintenance, damage for delay in completion (if any) and all other expenses incurred by the BMA 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 due to him upon due completion by him after deducting the said amount. But if such deductible amount shall exceed the sum which would have been due to the CONTRACTOR on due completion of the Works by him, then the CONTRACTOR shall upon demand pay to the BMA the amount of such excess and it shall be deemed a debt due by the CONTRACTOR to the BMA and shall be recoverable accordingly.

17.6 URGENT REPAIRS

If by reason of any accident or failure or other event occurring to, in, or in connection of the Works or any part thereof either during the execution of the Works or during the Guarantee Period any remedial or other Work or repair shall in the opinion of the ENGINEER be urgently necessary for security and the CONTRACTOR is unable or unwilling at once to do such Work or repair, the BMA may by his own or other workmen do such Work or repair as the ENGINEER may consider necessary. If the Work or repair so done by the BMA is Work which, in the opinion of the ENGINEER, the CONTRACTOR was liable to do at his own expense under the Contract, all costs and charges properly incurred by the BMA in so doing shall on demand be paid by the CONTRACTOR to the BMA or may be deducted by the BMA from any monies due or which may become due to the CONTRACTOR, provided always that the ENGINEER shall as soon after the occurrence of any such emergency as may be reasonably practicable notify the CONTRACTOR thereof in writing.

18.0 : SETTLEMENT OF DISPUTES AND ARBITRATION

18.1 ENGINEER'S DECISION

If a dispute of any kind whatsoever arises between the BMA 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), the matter in dispute shall, in the first place, be referred to in writing to the ENGINEER, with a copy to the other party. The ENGINEER shall within a period of ninety (90) days after receiving such reference give written notice of his decision to the BMA and the CONTRACTOR.

If the ENGINEER has given notice of his decision as to a matter in dispute to the BMA and the CONTRACTOR and no notification of intention to commence arbitration to such dispute has been given by either party on or before the seventieth day after receiving the ENGINEER's notice of decision, the said decision shall become final and binding upon the BMA and the CONTRACTOR.

Where neither the BMA nor the CONTRACTOR has given notice of intention to commence arbitration of a dispute and the ENGINEER's decision has become final and binding, either party may, if the other party fails to comply with such decision, and without prejudice to any other rights it may have, refer the failure to arbitration.

18.2 ARBITRATION

If the ENGINEER fails to give notice of his decisions as aforesaid within ninety (90) days of receiving the reference or if either the BMA or the CONTRACTOR is dissatisfied with any such decision, then either the BMA or the CONTRACTOR may on or before the seventieth day after the day on which he received notice of such decision, or on or before the seventieth day after the said period of ninety days expired, as the case may be, give notice to the other party and the ENGINEER of his intention to commence arbitration as to the matter in dispute. No arbitration in respect thereof may be commenced unless such notice is given.

Where notice of intention to commence arbitration as to a dispute has been given, arbitration of such dispute shall not be commenced unless an attempt has first been made by the parties to settle such dispute amicably.

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Any dispute in respect of which the decision of the ENGINEER has not become final and binding and amicable settlement has not been reached within sixty (60) days of giving the notice to commence arbitration shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed under the Rules. The said arbitrator(s) shall have full power to open up, review and revise any decision, opinion, instruction, determination, certificate or valuation of the ENGINEER related to the dispute.

Neither party shall be limited in the proceedings before such arbitrator(s) to the evidence or arguments put before the ENGINEER for the purpose of obtaining his decision. No such decision shall disqualify the ENGINEER from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute.

18.3 CONTRACTOR TO CONTINUE WITH WORKS

Unless the Contract has already been terminated or the BMA has ordered suspension of all or any part of the Works, the CONTRACTOR shall, in every case, continue to proceed with the Works with all diligence and the CONTRACTOR and the BMA shall give effort forthwith to every such decision of the ENGINEER unless and until the same shall be revised in an amicable settlement or an arbitral award. No payment due or payable by the BMA shall be withheld on account of a pending reference to arbitration.

19.0 : TAXES AND DUTIES

19.1 FOREIGN TAXES AND DUTIES

The Tender Prices in the Schedules of Rates and Prices shall include all taxes and charges applied or made applicable directly by the government of the country of origin upon the production, manufacture, sale, or shipment of the equipment, materials, and supplies to be furnished to the BMA under the Contract.

19.2 CONTRACTOR'S EQUIPMENT

The BMA will be responsible for all duties and/or taxes that might be imposed by the Government of Thailand upon CONTRACTOR-owned construction equipment that he may decide to bring into the country for use in connection with this Contract, provided that said equipment shall

PART C : GENERAL CONDITIONS

be shipped in the name of the BMA. Said equipment shall also be re-exported free of taxes and/or duties after the completion of the Work. However, should the CONTRACTOR wish to dispose off his equipment in Thailand, he shall be responsible for the payment of all taxes that will be imposed by the Government of Thailand.

19.3 LOCAL TAXES AND DUTIES

It is the CONTRACTOR's responsibility to inform himself of all taxes, fees, and duties for which he is liable to the Government of Thailand, its instrumentalities, and subdivisions, and it shall be understood that these obligations have been included in the CONTRACTOR's Schedule of Rates and Prices. Among these obligations, but not necessarily limited to those listed, are the following:

- (a) All immigration fees and income and other taxes assessed or collected by the Government of Thailand or any of its instrumentalities and political sub-divisions thereof on the foreign personnel who are not residents of Thailand.
- (b) Corporate taxes and/or any other personal taxes which may be imposed by the Government of Thailand on the CONTRACTOR as required by law.
- (c) CONTRACTOR's tax.

20.0 : NOTICE, CORRESPONDENCE AND PUBLICATION

20.1 NOTICES TO CONTRACTOR

Any notice to be given to the CONTRACTOR under the terms of the Contract shall be sent by mail, cable, telex, or facsimile transmission or delivered to the CONTRACTOR's principal place of business in Thailand.

20.2 NOTICES TO BMA/ENGINEER

Any notice to be given to the BMA or the ENGINEER under the terms of the Contract shall be sent by mail or delivered to the BMA or the ENGINEER address as stated in the Contract.

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20.3 CORRESPONDENCE

Correspondence between the CONTRACTOR and the BMA shall conform to the following:

- (a) the BMA shall receive the original and five copies,
- (b) the ENGINEER shall receive three copies.

Correspondence between the CONTRACTOR and the ENGINEER shall be conducted as follows:

- (a) two copies shall be sent to the ENGINEER's Head Office and five (5) copies to the BMA.

20.4 PUBLICATIONS

Any publications concerning the object of this Contract shall require approval of the BMA prior to publication.