

- Compliance with Statutes, Regulations** 26.1 The Contractor shall conform in all respects, including by the giving of all notices and the paying of all fees, with the provisions of:
- (a) any National or State Statute, Ordinance, or other Law, or any regulation, or bye-law of any local or other duly constituted authority in relation to the execution and completion of the Works and the remedying of any defects therein, and
 - (b) the rules and regulations of all public bodies and companies whose property or rights are affected or may be affected in any way by the Works,
- and the Contractor shall keep the Employer indemnified against all penalties and liability of every kind for breach of any such provisions. Provided always that the Employer shall be responsible for obtaining any planning, zoning or other similar permission required for the Works to proceed and shall indemnify the Contractor in accordance with Sub-Clause 22.3.
- Fossils** 27.1 All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the Site shall, as between the Employer and the Contractor, be deemed to be the absolute property of the Employer. The Contractor shall take reasonable precautions to prevent his workmen or any other persons from removing or damaging any such article or thing and shall, immediately upon discovery thereof and before removal, acquaint the Engineer of such discovery and carry out the Engineer's instructions for dealing with the same. If, by reason of such instructions, the Contractor suffers delay and/or incurs costs then the Engineer shall, after due consultation with the Employer and the Contractor, determine:
- (a) any extension of time to which the Contractor is entitled under Clause 44, and
 - (b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer.
- Patent Rights** 28.1 The Contractor shall save harmless and indemnify the Employer from and against all claims and proceedings for or on account of infringement of any patent rights, design trademark or name or other protected rights in respect of any Contractor's Equipment, materials or Plant used for or in connection with or for incorporation in the Works and from and against all damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, except where such infringement results from compliance with the design or Specification provided by the Engineer.
- Royalties** 28.2 Except where otherwise stated, the Contractor shall pay all tonnage and other royalties, rent and other payments or compensation, if any, for getting stone, sand, gravel, clay or other materials required for the Works.
- Interference with Traffic and Adjoining Properties** 29.1 All operations necessary for the execution and completion of the Works and the remedying of any defects therein shall, so far as compliance with the requirements of the Contract permits, be carried on so as not to interfere unnecessarily or improperly with:
- (a) the convenience of the public, or
 - (b) the access to, use and occupation of public or private roads and footpaths to or of properties whether in the possession of the Employer or of any other person.
- The Contractor shall save harmless and indemnify the Employer in respect of all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of, or in relation to, any such matters insofar as the Contractor is responsible therefor.

- Avoidance of Damage to Roads** 30.1 The Contractor shall use every reasonable means to prevent any of the roads or bridges communicating with or on the routes to the Site from being damaged or injured by any traffic of the Contractor or any of his Subcontractors and, in particular, shall select routes, choose and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of materials, Plant, Contractor's Equipment or Temporary Works from and to the Site shall be limited, as far as reasonably possible, and so that no unnecessary damage or injury may be occasioned to such roads and bridges.
- Transport of Contractor's Equipment or Temporary Works** 30.2 Save insofar as the Contract otherwise provides, the Contractor shall be responsible for and shall pay the cost of strengthening any bridges or altering or improving any road communicating with or on the routes to the Site to facilitate the movement of Contractor's Equipment or Temporary Works and the Contractor shall indemnify and keep indemnified the Employer against all claims for damage to any such road or bridge caused by such movement, including such claims as may be made directly against the Employer, and shall negotiate and pay all claims arising solely out of such damage.
- Transport of Materials or Plant** 30.3 If, notwithstanding Sub-Clause 30.1, any damage occurs to any bridge or road communicating with or on the routes to the Site arising from the transport of materials or Plant, the Contractor shall notify the Engineer with a copy to the Employer, as soon as he becomes aware of such damage or as soon as he receives any claim from the authority entitled to make such claim. Where under any law or regulation the haulier of such materials or Plant is required to indemnify the road authority against damage the Employer shall not be liable for any costs, charges or expenses in respect thereof or in relation thereto. In other cases the Employer shall negotiate the settlement of and pay all sums due in respect of such claim and shall indemnify the Contractor in respect thereof and in respect of all claims, proceedings, damages, costs, charges and expenses in relation thereto. Provided that if and so far as any such claim or part thereof is, in the opinion of the Engineer, due to any failure on the part of the Contractor to observe and perform his obligations under Sub-Clause 30.1, then the amount, determined by the Engineer, after due consultation with the Employer and the Contractor, to be due to such failure shall be recoverable from the Contractor by the Employer and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer. Provided also that the Employer shall notify the Contractor whenever a settlement is to be negotiated and, where any amount may be due from the Contractor, the Employer shall consult with the Contractor before such settlement is agreed.
- Waterborne Traffic** 30.4 Where the nature of the Works is such as to require the use by the Contractor of waterborne transport the foregoing provisions of this Clause shall be construed as though "road" included a lock, dock, sea wall or other structure related to a waterway and "vehicle" included craft, and shall have effect accordingly.
- Opportunities for Other Contractors** 31.1 The Contractor shall, in accordance with the requirements of the Engineer, afford all reasonable opportunities for carrying out their work to:
- (a) any other contractors employed by the Employer and their workmen,
 - (b) the workmen of the Employer, and
 - (c) the workmen of any duly constituted authorities who may be employed in the execution on or near the Site of any work not included in the Contract or of any contract which the Employer may enter into in connection with or ancillary to the Works.
- Facilities for Other Contractors** 31.2 If, however, pursuant to Sub-Clause 31.1 the Contractor shall, on the written request of the Engineer:
- (a) make available to any such other contractor, or to the Employer or any such authority, any roads or ways for the maintenance of which the Contractor is responsible, or

(b) permit the use, by any such, of Temporary Works or Contractor's Equipment on the Site, or

(c) provide any other service of whatsoever nature for any such, the Engineer shall determine an addition to the Contract Price in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the Employer.

**Contractor to
Keep Site Clear**

32.1 During the execution of the Works the Contractor shall keep the Site reasonably free from all unnecessary obstruction and shall store or dispose of any Contractor's Equipment and surplus materials and clear away and remove from the Site any wreckage, rubbish or Temporary Works no longer required.

**Clearance of Site
on Completion**

33.1 Upon the issue of any Taking-Over Certificate the Contractor shall clear away and remove from that part of the Site to which such Taking-Over Certificate relates all Contractor's Equipment, surplus material, rubbish and Temporary Works of every kind, and leave such part of the Site and Works clean and in a workmanlike condition to the satisfaction of the Engineer. Provided that the Contractor shall be entitled to retain on Site, until the end of the Defects Liability Period, such materials, Contractor's Equipment and Temporary Works as are required by him for the purpose of fulfilling his obligations during the Defects Liability Period.

Labour

**Engagement of
Staff and Labour**

34.1 The Contractor shall, unless otherwise provided in the Contract, make his own arrangements for the engagement of all staff and labour, local or other, and for their payment, housing, feeding and transport.

**Returns of Labour
and Contractor's
Equipment**

35.1 The Contractor shall, if required by the Engineer, deliver to the Engineer a return in detail, in such form and at such intervals as the Engineer may prescribe, showing the staff and the numbers of the several classes of labour from time to time employed by the Contractor on the Site and such information respecting Contractor's Equipment as the Engineer may require.

Materials, Plant and Workmanship

**Quality of
Materials, Plant
and Workmanship**

36.1 All materials, Plant and workmanship shall be
(a) of the respective kinds described in the Contract and in accordance with the Engineer's instructions, and

(b) subjected from time to time to such tests as the Engineer may require at the place of manufacture, fabrication or preparation, or on the Site or at such other place or places as may be specified in the Contract, or at all or any of such places.

The Contractor shall provide such assistance, labour, electricity, fuels, stores, apparatus and instruments as are normally required for examining, measuring and testing any materials or Plant and shall supply samples of materials, before incorporation in the Works, for testing as may be selected and required by the Engineer.

Cost of Samples

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

Cost of Tests

36.3 The cost of making any test shall be borne by the Contractor if such test is

(a) clearly intended by or provided for in the Contract, or

(b) particularised in the Contract (in cases only of a test under load or of a test to ascertain whether the design of any finished or partially finished work is appropriate for the purposes which it was intended to fulfil) in sufficient detail to enable the Contractor to price or allow for the same in his Tender.

- Cost of Tests not Provided for** 36.4 If any test required by the Engineer which is
- (a) not so intended by or provided for, or
 - (b) (in the cases above mentioned) not so particularised, or
 - (c) (though so intended or provided for) required by the Engineer to be carried out at any place other than the Site or the place of manufacture, fabrication or preparation of the materials or Plant tested,
- shows the materials, Plant or workmanship not to be in accordance with the provisions of the Contract to the satisfaction of the Engineer, then the cost of such test shall be borne by the Contractor, but in any other case Sub-Clause 36.5 shall apply.
- Engineer's Determination where Tests not Provided for** 36.5 Where, pursuant to Sub-Clause 36.4, this Sub-Clause applies the Engineer shall, after due consultation with the Employer and the Contractor, determine:
- (a) any extension of time to which the Contractor is entitled under Clause 44, and
 - (b) the amount of such costs, which shall be added to the Contract Price,
- and shall notify the Contractor accordingly, with a copy to the Employer.
- Inspection of Operations** 37.1 The Engineer, and any person authorised by him, shall at all reasonable times have access to the Site and to all workshops and places where materials or Plant are being manufactured, fabricated or prepared for the Works and the Contractor shall afford every facility for and every assistance in obtaining the right to such access.
- Inspection and Testing** 37.2 The Engineer shall be entitled, during manufacture, fabrication or preparation to inspect and test the materials and Plant to be supplied under the Contract. If materials or Plant are being manufactured, fabricated or prepared in workshops or places other than those of the Contractor, the Contractor shall obtain permission for the Engineer to carry out such inspection and testing in those workshops or places. Such inspection or testing shall not release the Contractor from any obligation under the Contract.
- Dates for Inspection and Testing** 37.3 The Contractor shall agree with the Engineer on the time and place for the inspection or testing of any materials or Plant as provided in the Contract. The Engineer shall give the Contractor not less than 24 hours notice of his intention to carry out the inspection or to attend the tests. If the Engineer, or his duly authorised representative, does not attend on the date agreed, the Contractor may, unless otherwise instructed by the Engineer, proceed with the tests, which shall be deemed to have been made in the presence of the Engineer. The Contractor shall forthwith forward to the Engineer duly certified copies of the test readings. If the Engineer has not attended the tests, he shall accept the said readings as accurate.
- Rejection** 37.4 If, at the time and place agreed in accordance with Sub-Clause 37.3, the materials or Plant are not ready for inspection or testing or if, as a result of the inspection or testing referred to in this Clause, the Engineer determines that the materials or Plant are defective or otherwise not in accordance with the Contract, he may reject the materials or Plant and shall notify the Contractor thereof immediately. The notice shall state the Engineer's objections with reasons. The Contractor shall then promptly make good the defect or ensure that rejected materials or Plant comply with the Contract. If the Engineer so requests, the tests of rejected materials or Plant shall be made or repeated under the same terms and conditions. All costs incurred by the Employer by the repetition of the tests shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer and may be deducted from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

- Independent Inspection** 37.5 The Engineer may delegate inspection and testing of materials or Plant to an independent inspector. Any such delegation shall be effected in accordance with Sub-Clause 2.4 and for this purpose such independent inspector shall be considered as an assistant of the Engineer. Notice of such appointment (not being less than 14 days) shall be given by the Engineer to the Contractor.
- Examination of Work before Covering up** 38.1 No part of the Works shall be covered up or put out of view without the approval of the Engineer and the Contractor shall afford full opportunity for the Engineer to examine and measure any such part of the Works which is about to be covered up or put out of view and to examine foundations before any part of the Works is placed thereon. The Contractor shall give notice to the Engineer whenever any such part of the Works or foundations is or are ready or about to be ready for examination and the Engineer shall, without unreasonable delay, unless he considers it unnecessary and advises the Contractor accordingly, attend for the purpose of examining and measuring such part of the Works or of examining such foundations.
- Uncovering and Making Openings** 38.2 The Contractor shall uncover any part of the Works or make openings in or through the same as the Engineer may from time to time instruct and shall reinstate and make good such part. If any such part has been covered up or put out of view after compliance with the requirement of Sub-Clause 38.1 and is found to be executed in accordance with the Contract, the Engineer shall, after due consultation with the Employer and the Contractor, determine the amount of the Contractor's costs in respect of such of uncovering, making openings in or through, reinstating and making good the same, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer. In any other case all costs shall be borne by the Contractor.
- Removal of Improper Work, Materials or Plant** 39.1 The Engineer shall have authority to issue instructions from time to time, for:
- (a) the removal from the Site, within such time or times as may be specified in the instruction, of any materials or Plant which, in the opinion of the Engineer, are not in accordance with the Contract,
 - (b) the substitution of proper and suitable materials or Plant, and
 - (c) the removal and proper re-execution, notwithstanding any previous test thereof or interim payment therefor, of any work which, in respect of
 - (i) materials, Plant or workmanship, or
 - (ii) design by the Contractor or for which he is responsible,
 is not, in the opinion of the Engineer, in accordance with the Contract.
- Default of Contractor in Compliance** 39.2 In case of default on the part of the Contractor in carrying out such instruction within the time specified therein or, if none, within a reasonable time, the Employer shall be entitled to employ and pay other persons to carry out the same and all costs consequent thereon or incidental thereto shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

Suspension

- Suspension of Work** 40.1 The Contractor shall, on the instructions of the Engineer, suspend the progress of the Works or any part thereof for such time and in such manner as the Engineer may consider necessary and shall, during such suspension, properly protect and secure the Works or such part thereof so far as is necessary in the opinion of the Engineer. Unless such suspension is
- (a) otherwise provided for in the Contract, or

(b) necessary by reason of some default of or breach of contract by the Contractor or for which he is responsible, or

(c) necessary by reason of climatic conditions on the Site, or

(d) necessary for the proper execution of the Works or for the safety of the Works or any part thereof (save to the extent that such necessity arises from any act or default by the Engineer or the Employer or from any of the risks defined in Sub-Clause 20.4),

Sub-Clause 40.2 shall apply.

**Engineer's
Determination
following
Suspension**

40.2 Where, pursuant to Sub-Clause 40.1, this Sub-Clause applies the Engineer shall, after due consultation with the Employer and the Contractor, determine

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

(b) the amount, which shall be added to the Contract Price, in respect of the cost incurred by the Contractor by reason of such suspension,

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

**Suspension
lasting more
than 84 Days**

40.3 If the progress of the Works or any part thereof is suspended on the written instructions of the Engineer and if permission to resume work is not given by the Engineer within a period of 84 days from the date of suspension then, unless such suspension is within paragraph (a), (b), (c) or (d) of Sub-Clause 40.1, the Contractor may give notice to the Engineer requiring permission, within 28 days from the receipt thereof, to proceed with the Works or that part thereof in regard to which progress is suspended. If, within the said time, such permission is not granted, the Contractor may, but is not bound to, elect to treat the suspension, where it affects part only of the Works, as an omission of such part under Clause 51 by giving a further notice to the Engineer to that effect, or, where it affects the whole of the Works, treat the suspension as an event of default by the Employer and terminate his employment under the Contract in accordance with the provisions of Sub-Clause 69.1, whereupon the provisions of Sub-Clauses 69.2 and 69.3 shall apply.

Commencement and Delays

**Commencement
of Works**

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

**Possession of
Site and Access
There to**

42.1 Save insofar as the Contract may prescribe:

(a) the extent of portions of the Site of which the Contractor is to be given possession from time to time, and

(b) the order in which such portions shall be made available to the Contractor and subject to any requirement in the Contract as to the order in which the Works shall be executed, the Employer will, with the Engineer's notice to commence the Works, give to the Contractor possession of

(c) so much of the Site, and

(d) such access as, in accordance with the Contract, is to be provided by the Employer

		as may be required to enable the Contractor to commence and proceed with the execution of the Works in accordance with the programme referred to in Clause 14, if any, and otherwise in accordance with such reasonable proposals as the Contractor shall, by notice to the Engineer with a copy to the Employer, make. The Employer will, from time to time as the Works proceed, give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to proceed with the execution of the Works with due dispatch in accordance with such programme or proposals, as the case may be.
Failure to Give Possession	42.2	If the Contractor suffers delay and/or incurs costs from failure on the part of the Employer to give possession in accordance with the terms of Sub-Clause 42.1, the Engineer shall, after due consultation with the Employer and the Contractor, determine: <ul style="list-style-type: none"> (a) any extension of time to which the Contractor is entitled under Clause 44, and (b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer.
Wayleaves and Facilities	42.3	The Contractor shall bear all costs and charges for special or temporary wayleaves required by him in connection with access to the Site. The Contractor shall also provide at his own cost any additional facilities outside the Site required by him for the purposes of the Works.
Time for Completion	43.1	The whole of the Works and, if applicable, any Section required to be completed within a particular time as stated in the Appendix to Tender, shall be completed, in accordance with the provisions of Clause 48, within the time stated in the Appendix to Tender for the whole of the Works or the Section (as the case may be), calculated from the Commencement Date, or such extended time as may be allowed under Clause 44.
Extension of Time for Completion	44.1	In the event of <ul style="list-style-type: none"> (a) the amount or nature of extra or additional work, or (b) any cause of delay referred to in these Conditions, or (c) exceptionally adverse climatic conditions, or (d) any delay, impediment or prevention by the Employer, or (e) other special circumstances which may occur, other than through a default of or breach of contract by the Contractor or for which he is responsible, being such as fairly to entitle the Contractor to an extension of the Time for Completion of the Works, or any Section or part thereof, the Engineer shall, after due consultation with the Employer and the Contractor, determine the amount of such extension and shall notify the Contractor accordingly, with a copy to the Employer.
Contractor to Provide Notification and Detailed Particulars	44.2	Provided that the Engineer is not bound to make any determination unless the Contractor has <ul style="list-style-type: none"> (a) within 28 days after such event has first arisen notified the Engineer with a copy to the Employer, and (b) within 28 days, or such other reasonable time as may be agreed by the Engineer, after such notification submitted to the Engineer detailed particulars of any extension of time to which he may consider himself entitled in order that such submission may be investigated at the time.

- Interim Determination of Extension** 44.3 Provided also that where an event has a continuing effect such that it is not practicable for the Contractor to submit detailed particulars within the period of 28 days referred to in Sub-Clause 44.2(b), he shall nevertheless be entitled to an extension of time provided that he has submitted to the Engineer interim particulars at intervals of not more than 28 days and final particulars within 28 days of the end of the effects resulting from the event. On receipt of such interim particulars, the Engineer shall, without undue delay, make an interim determination of extension of time and, on receipt of the final particulars, the Engineer shall review all the circumstances and shall determine an overall extension of time in regard to the event. In both such cases the Engineer shall notify the Contractor accordingly, with a copy to the Employer. No final review shall result in a decrease of any extension of time already determined by the Engineer.
- Restriction on Working Hours** 45.1 Subject to any provision to the contrary contained in the Contract, none of the Works shall, save as hereinafter provided, be carried on during the night or on locally recognised days of rest without the consent of the Engineer, except when work is unavoidable or absolutely necessary for the saving of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer. Provided that the provisions of this Clause shall not be applicable in the case of any work which it is customary to carry out by multiple shifts.
- Rate of Progress** 46.1 If for any reason, which does not entitle the Contractor to an extension of time, the rate of progress of the Works or any Section is at any time, in the opinion of the Engineer, too slow to comply with the Time for Completion, the Engineer shall so notify the Contractor who shall thereupon take such steps as are necessary, subject to the consent of the Engineer, to expedite progress so as to comply with the Time for Completion. The Contractor shall not be entitled to any additional payment for taking such steps. If, as a result of any notice given by the Engineer under this Clause, the Contractor considers that it is necessary to do any work at night or on locally recognised days of rest, he shall be entitled to seek the consent of the Engineer so to do. Provided that if any steps, taken by the Contractor in meeting his obligations under this Clause, involve the Employer in additional supervision costs, such costs shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.
- Liquidated Damages for Delay** 47.1 If the Contractor fails to comply with the Time for Completion in accordance with Clause 48, for the whole of the Works or, if applicable, any Section within the relevant time prescribed by Clause 43, then the Contractor shall pay to the Employer the relevant sum stated in the Appendix to Tender as liquidated damages for such default and not as a penalty (which sum shall be the only monies due from the Contractor for such default) for every day or part of a day which shall elapse between the relevant Time for Completion and the date stated in a Taking-Over Certificate of the whole of the Works or the relevant Section, subject to the applicable limit stated in the Appendix to Tender. The Employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies due or to become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the Contract.
- Reduction of Liquidated Damages** 47.2 If, before the Time for Completion of the whole of the Works or, if applicable, any Section, a Taking-Over Certificate has been issued for any part of the Works or of a Section, the liquidated damages for delay in completion of the remainder of the Works or of that Section shall, for any period of delay after the date stated in such Taking-Over Certificate, and in the absence of alternative provisions in the Contract, be reduced in the proportion which the value of the part so certified bears to the value of the whole of the Works or Section, as applicable. The provisions of this Sub-Clause shall only apply to the rate of liquidated damages and shall not affect the limit thereof.

Taking-Over Certificate 48.1 When the whole of the Works have been substantially completed and have satisfactorily passed any Tests on Completion prescribed by the Contract, the Contractor may give a notice to that effect to the Engineer, with a copy to the Employer, accompanied by a written undertaking to finish with due expedition any outstanding work during the Defects Liability Period. Such notice and undertaking shall be deemed to be a request by the Contractor for the Engineer to issue a Taking-Over Certificate in respect of the Works. The Engineer shall, within 21 days of the date of delivery of such notice, either issue to the Contractor, with a copy to the Employer, a Taking-Over Certificate, stating the date on which, in his opinion, the Works were substantially completed in accordance with the Contract, or give instructions in writing to the Contractor specifying all the work which, in the Engineer's opinion, is required to be done by the Contractor before the issue of such Certificate. The Engineer shall also notify the Contractor of any defects in the Works affecting substantial completion that may appear after such instructions and before completion of the Works specified therein. The Contractor shall be entitled to receive such Taking-Over Certificate within 21 days of completion, to the satisfaction of the Engineer, of the Works so specified and remedying any defects so notified.

Taking Over of Sections or Parts 48.2 Similarly, in accordance with the procedure set out in Sub-Clause 48.1, the Contractor may request and the Engineer shall issue a Taking-Over Certificate in respect of:

(a) any Section in respect of which a separate Time for Completion is provided in the Appendix to Tender, or

(b) any substantial part of the Permanent Works which has been both completed to the satisfaction of the Engineer and, otherwise than as provided for in the Contract, occupied or used by the Employer, or

(c) any part of the Permanent Works which the Employer has elected to occupy or use prior to completion (where such prior occupation or use is not provided for in the Contract or has not been agreed by the Contractor as a temporary measure).

Substantial Completion of Parts 48.3 If any part of the Permanent Works has been substantially completed and has satisfactorily passed any Tests on Completion prescribed by the Contract, the Engineer may issue a Taking-Over Certificate in respect of that part of the Permanent Works before completion of the whole of the Works and, upon the issue of such Certificate, the Contractor shall be deemed to have undertaken to complete with due expedition any outstanding work in that part of the Permanent Works during the Defects Liability Period.

Surfaces Requiring Reinstatement 48.4 Provided that a Taking-Over Certificate given in respect of any Section or part of the Permanent Works before completion of the whole of the Works shall not be deemed to certify completion of any ground or surfaces requiring reinstatement, unless such Taking-Over Certificate shall expressly so state.

Defects Liability

Defects Liability Period 49.1 In these Conditions the expression "Defects Liability Period" shall mean the defects liability period named in the Appendix to Tender, calculated from:

(a) the date of substantial completion of the Works certified by the Engineer in accordance with Clause 48, or

(b) in the event of more than one certificate having been issued by the Engineer under Clause 48, the respective dates so certified

and in relation to the Defects Liability Period the expression "the Works" shall be construed accordingly.

Completion of Outstanding Work and Remedying Defects 49.2 To the intent that the Works shall, at or as soon as practicable after the expiration of the Defects Liability Period, be delivered to the Employer in the condition required by the Contract, fair wear and tear excepted, to the satisfaction of the Engineer, the Contractor shall:

(a) complete the work, if any, outstanding on the date stated in the Taking-Over Certificate as soon as practicable after such date and

(b) execute all such work of amendment, reconstruction, and remedying defects, shrinkages or other faults as the Engineer may, during the Defects Liability Period or within 14 days after its expiration, as a result of an inspection made by or on behalf of the Engineer prior to its expiration, instruct the Contractor to execute.

Cost of Remedying Defects

49.3 All work referred to in Sub-Clause 49.2 (b) shall be executed by the Contractor at his own cost if the necessity thereof is, in the opinion of the Engineer, due to:

(a) the use of materials, Plant or workmanship not in accordance with the Contract, or

(b) where the Contractor is responsible for the design of part of the Permanent Works, any fault in such design, or

(c) the neglect or failure on the part of the Contractor to comply with any obligation, expressed or implied, on the Contractor's part under the Contract.

If, in the opinion of the Engineer, such necessity is due to any other cause, he shall determine an addition to the Contract Price in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the Employer.

Contractor's Failure to Carry Out Instructions

49.4 In case of default on the part of the Contractor in carrying out such instruction within a reasonable time, the Employer shall be entitled to employ and pay other persons to carry out the same and if such work is work which, in the opinion of the Engineer, the Contractor was liable to do at his own cost under the Contract, then all costs consequent thereon or incidental thereto shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

Contractor to Search

50.1 If any defect, shrinkage or other fault in the Works appears at any time prior to the end of the Defects Liability Period, the Engineer may instruct the Contractor, with copy to the Employer, to search under the directions of the Engineer for the cause thereof. Unless such defect, shrinkage or other fault is one for which the Contractor is liable under the Contract, the Engineer shall, after due consultation with the Employer and the Contractor, determine the amount in respect of the costs of such search incurred by the Contractor, which shall be added to the Contract Price and shall notify the Contractor accordingly, with a copy to the Employer. If such defect, shrinkage or other fault is one for which the Contractor is liable, the cost of the work carried out in searching as aforesaid shall be borne by the Contractor and he shall in such case remedy such defect, shrinkage or other fault at his own cost in accordance with the provisions of Clause 49.

Alterations, Additions and Omissions

Variations

51.1 The Engineer shall make any variation of the form, quality or quantity of the Works or any part thereof that may, in his opinion, be necessary and for that purpose, or if for any other reason it shall, in his opinion, be appropriate, he shall have the authority to instruct the Contractor to do and the Contractor shall do any of the following:

(a) increase or decrease the quantity of any work included in the Contract,

(b) omit any such work (but not if the omitted work is to be carried out by the Employer or by another contractor),

(c) change the character or quality or kind of any such work,

(d) change the levels, lines, position and dimensions of any part of the Works,

(e) execute additional work of any kind necessary for the completion of the Works,

(f) change any specified sequence or timing of construction of any part of the Works.

No such variation shall in any way vitiate or invalidate the Contract, but the effect, if any, of all such variations shall be valued in accordance with Clause 52. Provided that where the issue of an instruction to vary the Works is necessitated by some default of or breach of contract by the Contractor or for which he is responsible, any additional cost attributable to such default shall be borne by the Contractor.

Instructions for Variations

51.2 The Contractor shall not make any such variation without an instruction of the Engineer. Provided that no instruction shall be required for increase or decrease in the quantity of any work where such increase or decrease is not the result of an instruction given under this Clause, but is the result of the quantities exceeding or being less than those stated in the Bill of Quantities.

Valuation of Variations

52.1 All variations referred to in Clause 51 and any additions to the Contract Price which are required to be determined in accordance with Clause 52 (for the purposes of this Clause referred to as "varied work"), shall be valued at the rates and prices set out in the Contract if, in the opinion of the Engineer, the same shall be applicable. If the Contract does not contain any rates or prices applicable to the varied work, the rates and prices in the Contract shall be used as the basis for valuation so far as may be reasonable, failing which, after due consultation by the Engineer with the Employer and the Contractor, suitable rates or prices shall be agreed upon between the Engineer and the Contractor. In the event of disagreement the Engineer shall fix such rates or prices as are, in his opinion, appropriate and shall notify the Contractor accordingly, with a copy to the Employer. Until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on-account payments to be included in certificates issued in accordance with Clause 60.

Power of Engineer to Fix Rates

52.2 Provided that if the nature or amount of any varied work relative to the nature or amount of the whole of the Works or to any part thereof, is such that, in the opinion of the Engineer, the rate or price contained in the Contract for any item of the Works is, by reason of such varied work, rendered inappropriate or inapplicable, then, after due consultation by the Engineer with the Employer and the Contractor, a suitable rate or price shall be agreed upon between the Engineer and the Contractor. In the event of disagreement the Engineer shall fix such other rate or price as is, in his opinion, appropriate and shall notify the Contractor accordingly, with a copy to the Employer. Until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on-account payments to be included in certificates issued in accordance with Clause 60.

Provided also that no varied work instructed to be done by the Engineer pursuant to Clause 51 shall be valued under Sub-Clause 52.1 or under this Sub-Clause unless, within 14 days of the date of such instruction and, other than in the case of omitted work, before the commencement of the varied work, notice shall have been given either:

(a) by the Contractor to the Engineer of his intention to claim extra payment or a varied rate or price, or

(b) by the Engineer to the Contractor of his intention to vary a rate or price.

Variations Exceeding 15 per cent

52.3 If, on the issue of the Taking-Over Certificate for the whole of the Works, it is found that as a result of:

(a) all varied work valued under Sub-Clauses 52.1 and 52.2, and

(b) all adjustments upon measurement of the estimated quantities set out in the Bill of Quantities, excluding Provisional Sums, dayworks and adjustments of price made under Clause 70,

but not from any other cause, there have been additions to or deductions from the Contract Price which taken together are in excess of 15 per cent of the "Effective Contract Price" (which for the purposes of this Sub-Clause shall mean the Contract Price, excluding Provisional Sums and allowance for dayworks, if any) then and in such event (subject to any action already taken under any other Sub-Clause of this Clause), after due consultation by the Engineer with the Employer and the Contractor, there shall be added to or deducted from the Contract Price such further sum as may be agreed between the Contractor and the Engineer or, failing agreement, determined by the Engineer having regard to the Contractor's Site and general overhead costs of the Contract. The Engineer shall notify the Contractor of any determination made under this Sub-Clause, with a copy to the Employer. Such sum shall be based only on the amount by which such additions or deductions shall be in excess of 15 per cent of the Effective Contract Price.

Daywork 52.4 The Engineer may, if in his opinion it is necessary or desirable, issue an instruction that any varied work shall be executed on a daywork basis. The Contractor shall then be paid for such varied work under the terms set out in the daywork schedule included in the Contract and at the rates and prices affixed thereto by him in the Tender.

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

In respect of such of the Works executed on a daywork basis, the Contractor shall, during the continuance of such work, deliver each day to the Engineer an exact list in duplicate of the names, occupation and time of all workmen employed on such work and a statement, also in duplicate, showing the description and quantity of all materials and Contractor's Equipment used thereon or therefor other than Contractor's Equipment which is included in the percentage addition in accordance with such daywork schedule. One copy of each list and statement will, if correct, or when agreed, be signed by the Engineer and returned to the Contractor.

At the end of each month the Contractor shall deliver to the Engineer a priced statement of the labour, materials and Contractor's Equipment, except as aforesaid, used and the Contractor shall not be entitled to any payment unless such lists and statements have been fully and punctually rendered. Provided always that if the Engineer considers that for any reason the sending of such lists or statements by the Contractor, in accordance with the foregoing provision, was impracticable he shall nevertheless be entitled to authorise payment for such work, either as daywork, on being satisfied as to the time employed and the labour, materials and Contractor's Equipment used on such work, or at such value therefor as shall, in his opinion, be fair and reasonable.

Procedure for Claims

Notice of Claims 53.1 Notwithstanding any other provision of the Contract, if the Contractor intends to claim any additional payment pursuant to any Clause of these Conditions or otherwise, he shall give notice of his intention to the Engineer, with a copy to the Employer, within 28 days after the event giving rise to the claim has first arisen.

Contemporary Records 53.2 Upon the happening of the event referred to in Sub-Clause 53.1, the Contractor shall keep such contemporary records as may reasonably be necessary to support any claim he may subsequently wish to make. Without necessarily admitting the Employer's liability, the Engineer shall, on receipt of a notice under Sub-Clause 53.1, inspect such contemporary records and may instruct the Contractor to keep any further contemporary records as are reasonable and may be material to the claim of which notice has been given. The Contractor shall permit the Engineer to inspect all records kept pursuant to this Sub-Clause and shall supply him with copies thereof as and when the Engineer so instructs.

- Substantiation of Claims** 53.3 Within 28 days, or such other reasonable time as may be agreed by the Engineer, of giving notice under Sub-Clause 53.1, the Contractor shall send to the Engineer an account giving detailed particulars of the amount claimed and the grounds upon which the claim is based. Where the event giving rise to the claim has a continuing effect, such account shall be considered to be an interim account and the Contractor shall, at such intervals as the Engineer may reasonably require, send further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. In cases where interim accounts are sent to the Engineer, the Contractor shall send a final account within 28 days of the end of the effects resulting from the event. The Contractor shall, if required by the Engineer so to do, copy to the Employer all accounts sent to the Engineer pursuant to this Sub-Clause.
- Failure to Comply** 53.4 If the Contractor fails to comply with any of the provisions of this Clause in respect of any claim which he seeks to make, his entitlement to payment in respect thereof shall not exceed such amount as the Engineer or any arbitrator or arbitrators appointed pursuant to Sub-Clause 67.3 assessing the claim considers to be verified by contemporary records (whether or not such records were brought to the Engineer's notice as required under Sub-Clauses 53.2 and 53.3).
- Payment of Claims** 53.5 The Contractor shall be entitled to have included in any interim payment certified by the Engineer pursuant to Clause 60 such amount in respect of any claim as the Engineer, after due consultation with the Employer and the Contractor, may consider due to the Contractor provided that the Contractor has supplied sufficient particulars to enable the Engineer to determine the amount due. If such particulars are insufficient to substantiate the whole of the claim, the Contractor shall be entitled to payment in respect of such part of the claim as such particulars may substantiate to the satisfaction of the Engineer. The Engineer shall notify the Contractor of any determination made under this Sub-Clause, with a copy to the Employer.

Contractor's Equipment, Temporary Works and Materials

- Contractor's Equipment, Temporary Works and Materials; Exclusive Use for the Works** 54.1 All Contractor's Equipment, Temporary Works and materials provided by the Contractor shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the Works and the Contractor shall not remove the same or any part thereof, except for the purpose of moving it from one part of the Site to another, without the consent of the Engineer. Provided that consent shall not be required for vehicles engaged in transporting any staff, labour, Contractor's Equipment, Temporary Works, Plant or materials to or from the Site.
- Employer not Liable for Damage** 54.2 The Employer shall not at any time be liable, save as mentioned in Clauses 20 and 65, for the loss of or damage to any of the said Contractor's Equipment, Temporary Works or materials.
- Customs Clearance** 54.3 The Employer will use his best endeavours in assisting the Contractor, where required, in obtaining clearance through the Customs of Contractor's Equipment, materials and other things required for the Works.
- Re-export of Contractor's Equipment** 54.4 In respect of any Contractor's Equipment which the Contractor has imported for the purposes of the Works, the Employer will use his best endeavours to assist the Contractor, where required, in procuring any necessary Government consent to the re-export of such Contractor's Equipment by the Contractor upon the removal thereof pursuant to the terms of the Contract.

- Conditions of Hire of Contractor's Equipment** 54.5 With a view to securing, in the event of termination under Clause 63, the continued availability, for the purpose of executing the Works, of any hired Contractor's Equipment, the Contractor shall not bring on to the Site any hired Contractor's Equipment unless there is an agreement for the hire thereof (which agreement shall be deemed not to include an agreement for hire purchase) which contains a provision that the owner thereof will, on request in writing made by the Employer within 7 days after the date on which any termination has become effective, and on the Employer undertaking to pay all hire charges in respect thereof from such date, hire such Contractor's Equipment to the Employer on the same terms in all respects as the same was hired to the Contractor save that the Employer shall be entitled to permit the use thereof by any other contractor employed by him for the purpose of executing and completing the Works and remedying any defects therein, under the terms of the said Clause 63.
- Costs for the Purpose of Clause 63** 54.6 In the event of the Employer entering into any agreement for the hire of Contractor's Equipment pursuant to Sub-Clause 54.5, all sums properly paid by the Employer under the provisions of any such agreement and all costs incurred by him (including stamp duties) in entering into such agreement shall be deemed, for the purpose of Clause 63, to be part of the cost of executing and completing the Works and the remedying of any defects therein.
- Incorporation of Clause in Subcontracts** 54.7 The Contractor shall, where entering into any subcontract for the execution of any part of the Works, incorporate in such subcontract (by reference or otherwise) the provisions of this Clause in relation to Contractor's Equipment, Temporary Works or materials brought on to the Site by the Subcontractor.
- Approval of Materials not Implied** 54.8 The operation of this Clause shall not be deemed to imply any approval by the Engineer of the materials or other matters referred to therein nor shall it prevent the rejection of any such materials at any time by the Engineer.

Measurement

- Quantities** 55.1 The quantities set out in the Bill of Quantities are the estimated quantities for the Works, and they are not to be taken as the actual and correct quantities of the Works to be executed by the Contractor in fulfilment of his obligations under the Contract.
- Works to be Measured** 56.1 The Engineer shall, except as otherwise stated, ascertain and determine by measurement the value of the Works in accordance with the Contract and the Contractor shall be paid that value in accordance with Clause 60. The Engineer shall, when he requires any part of the Works to be measured, give reasonable notice to the Contractor's authorised agent, who shall:
- (a) forthwith attend or send a qualified representative to assist the Engineer in making such measurement, and
 - (b) supply all particulars required by the Engineer.

Should the Contractor not attend, or neglect or omit to send such representative, then the measurement made by the Engineer or approved by him shall be taken to be the correct measurement of such part of the Works. For the purpose of measuring such Permanent Works as are to be measured by records and drawings, the Engineer shall prepare records and drawings as the work proceeds and the Contractor, as and when called upon to do so in writing, shall, within 14 days, attend to examine and agree such records and drawings with the Engineer and shall sign the same when so agreed. If the Contractor does not attend to examine and agree such records and drawings, they shall be taken to be correct. If, after examination of such records and drawings, the Contractor does not agree the same or does not sign the same as agreed, they shall nevertheless be taken to be correct, unless the Contractor, within 14 days of such examination, lodges with the Engineer notice of the respects in which such records and drawings are claimed by him to be incorrect. On receipt of such notice, the Engineer shall review the records and drawings and either confirm or vary them.

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

Provisional Sums

- Definition of "Provisional Sum"** 58.1 "Provisional Sum" means a sum included in the Contract and so designated in the Bill of Quantities for the execution of any part of the Works or for the supply of goods, materials, Plant or services, or for contingencies, which sum may be used, in whole or in part, or not at all, on the instructions of the Engineer. The Contractor shall be entitled to only such amounts in respect of the work, supply or contingencies to which such Provisional Sums relate as the Engineer shall determine in accordance with this Clause. The Engineer shall notify the Contractor of any determination made under this Sub-Clause, with a copy to the Employer.
- Use of Provisional Sums** 58.2 In respect of every Provisional Sum the Engineer shall have authority to issue instructions for the execution of work or for the supply of goods, materials, Plant or services by:
- (a) the Contractor, in which case the Contractor shall be entitled to an amount equal to the value thereof determined in accordance with Clause 52,
- (b) a nominated Subcontractor, as hereinafter defined, in which case the sum to be paid to the Contractor therefor shall be determined and paid in accordance with Sub-Clause 59.4.
- Production of Vouchers** 58.3 The Contractor shall produce to the Engineer all quotations, invoices, vouchers and accounts or receipts in connection with expenditure in respect of Provisional Sums, except where work is valued in accordance with rates or prices set out in the Tender.

Nominated Subcontractors

- Definition of "Nominated Subcontractors"** 59.1 All specialists, merchants, tradesmen and others executing any work or supplying any goods, materials, Plant or services for which Provisional Sums are included in the Contract, who may have been or be nominated or selected or approved by the Employer or the Engineer, and all persons to whom by virtue of the provisions of the Contract the Contractor is required to subcontract shall, in the execution of such work or the supply of such goods, materials, Plant or services, be deemed to be subcontractors to the Contractor and are referred to in this Contract as "nominated Subcontractors".
- Nominated Subcontractors; Objection to Nomination** 59.2 The Contractor shall not be required by the Employer or the Engineer, or be deemed to be under any obligation, to employ any nominated Subcontractor against whom the Contractor may raise reasonable objection, or who declines to enter into a subcontract with the Contractor containing provisions:
- (a) that in respect of the work, goods, materials, Plant or services the subject of the subcontract, the nominated Subcontractor will undertake towards the Contractor such obligations and liabilities as will enable the Contractor to discharge his own obligations and liabilities towards the Employer under the terms of the Contract and will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection therewith, or arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities, and

- (b) that the nominated Subcontractor will save harmless and indemnify the Contractor from and against any negligence by the nominated Subcontractor, his agents, workmen and servants and from and against any misuse by him or them of any Temporary Works provided by the Contractor for the purposes of the Contract and from all claims as aforesaid.
- Design Requirements to be Expressly Stated** 59.3 If in connection with any Provisional Sum the services to be provided include any matter of design or specification of any part of the Permanent Works or of any Plant to be incorporated therein, such requirement shall be expressly stated in the Contract and shall be included in any nominated Subcontract. The nominated Subcontract shall specify that the nominated Subcontractor providing such services will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities.
- Payments to Nominated Subcontractors** 59.4 For all work executed or goods, materials, Plant or services supplied by any nominated Subcontractor, the Contractor shall be entitled to:
- (a) the actual price paid or due to be paid by the Contractor, on the instructions of the Engineer, and in accordance with the subcontract;
- (b) in respect of labour supplied by the Contractor, the sum, if any, entered in the Bill of Quantities or, if instructed by the Engineer pursuant to paragraph (a) of Sub-Clause 58.2, as may be determined in accordance with Clause 52;
- (c) in respect of all other charges and profit, a sum being a percentage rate of the actual price paid or due to be paid calculated, where provision has been made in the Bill of Quantities for a rate to be set against the relevant Provisional Sum, at the rate inserted by the Contractor against that item or, where no such provision has been made, at the rate inserted by the Contractor in the Appendix to Tender and repeated where provision for such is made in a special item provided in the Bill of Quantities for such purpose.
- Certification of Payments to Nominated Subcontractors** 59.5 Before issuing, under Clause 60, any certificate, which includes any payment in respect of work done or goods, materials, Plant or services supplied by any nominated Subcontractor, the Engineer shall be entitled to demand from the Contractor reasonable proof that all payments, less retentions, included in previous certificates in respect of the work or goods, materials, Plant or services of such nominated Subcontractor have been paid or discharged by the Contractor. If the Contractor fails to supply such proof then, unless the Contractor
- (a) satisfies the Engineer in writing that he has reasonable cause for withholding or refusing to make such payments and
- (b) produces to the Engineer reasonable proof that he has so informed such nominated Subcontractor in writing,
- the Employer shall be entitled to pay to such nominated Subcontractor direct, upon the certificate of the Engineer, all payments, less retentions, provided for in the nominated Subcontract, which the Contractor has failed to make to such nominated Subcontractor and to deduct by way of set-off the amount so paid by the Employer from any sums due or to become due from the Employer to the Contractor.
- Provided that, where the Engineer has certified and the Employer has paid direct as aforesaid, the Engineer shall, in issuing any further certificate in favour of the Contractor, deduct from the amount thereof the amount so paid, direct as aforesaid, but shall not withhold or delay the issue of the certificate itself when due to be issued under the terms of the Contract.

Certificates and Payment

Monthly Statements

60.1 The Contractor shall submit to the Engineer after the end of each month six copies, each signed by the Contractor's representative approved by the Engineer in accordance with Sub-Clause 15.1, of a statement, in such form as the Engineer may from time to time prescribe, showing the amounts to which the Contractor considers himself to be entitled up to the end of the month in respect of

- (a) the value of the Permanent Works executed
- (b) any other items in the Bill of Quantities including those for Contractor's Equipment, Temporary Works, dayworks and the like
- (c) the percentage of the invoice value of listed materials, all as stated in the Appendix to Tender, and Plant delivered by the Contractor on the Site for incorporation in the Permanent Works but not incorporated in such Works
- (d) adjustments under Clause 70
- (e) any other sum to which the Contractor may be entitled under the Contract.

Monthly Payments

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

(a) firstly, to the retention of the amount calculated by applying the Percentage of Retention stated in the Appendix to Tender, to the amount to which the Contractor is entitled under paragraphs (a), (b), (c) and (e) of Sub-Clause 60.1 until the amount so retained reaches the Limit of Retention Money stated in the Appendix to Tender, and

(b) secondly, to the deduction, other than pursuant to Clause 47, of any sums which may have become due and payable by the Contractor to the Employer.

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

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

Payment of Retention Money

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

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

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

- Correction of Certificates** 60.4 The Engineer may by any interim certificate make any correction or modification in any previous certificate which shall have been issued by him and shall have authority, if any work is not being carried out to his satisfaction, to omit or reduce the value of such work in any interim certificate.
- Statement at Completion** 60.5 Not later than 84 days after the issue of the Taking-Over Certificate in respect of the whole of the Works, the Contractor shall submit to the Engineer a Statement at Completion with supporting documents showing in detail, in the form approved by the Engineer,
- (a) the final value of all work done in accordance with the Contract up to the date stated in such Taking-Over Certificate
 - (b) any further sums which the Contractor considers to be due and
 - (c) an estimate of amounts which the Contractor considers will become due to him under the Contract.
- Estimated amounts shall be shown separately in such Statement at Completion. The Engineer shall certify payment in accordance with Sub-Clause 60.2.
- Final Statement** 60.6 Not later than 56 days after the issue of the Defects Liability Certificate pursuant to Sub-Clause 62.1, the Contractor shall submit to the Engineer for consideration a draft final statement with supporting documents showing in detail, in the form approved by the Engineer,
- (a) the value of all work done in accordance with the Contract and
 - (b) any further sums which the Contractor considers to be due to him under the Contract.
- If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Engineer the final statement as agreed (for the purposes of these Conditions referred to as the "Final Statement").
- Discharge** 60.7 Upon submission of the Final Statement, the Contractor shall give to the Employer, with a copy to the Engineer, a written discharge confirming that the total of the Final Statement represents full and final settlement of all monies due to the Contractor arising out of or in respect of the Contract. Provided that such discharge shall become effective only after payment due under the Final Certificate issued pursuant to Sub-Clause 60.8 has been made and the performance security referred to in Sub-Clause 10.1, if any, has been returned to the Contractor.
- Final Certificate** 60.8 Within 28 days after receipt of the Final Statement, and the written discharge, the Engineer shall issue to the Employer (with a copy to the Contractor) a Final Certificate stating
- (a) the amount which, in the opinion of the Engineer, is finally due under the Contract, and
 - (b) after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled under the Contract, other than Clause 47, the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer as the case may be.
- Cessation of Employer's Liability** 60.9 The Employer shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or execution of the Works, unless the Contractor shall have included a claim in respect thereof in his Final Statement and (except in respect of matters or things arising after the issue of the Taking-Over Certificate in respect of the whole of the Works) in the Statement at Completion referred to in Sub-Clause 60.5.

- Time for Payment** 60.10 The amount due to the Contractor under any interim certificate issued by the Engineer pursuant to this Clause, or to any other term of the Contract, shall, subject to Clause 47, be paid by the Employer to the Contractor within 28 days after such interim certificate has been delivered to the Employer, or, in the case of the Final Certificate referred to in Sub-Clause 60.8, within 56 days, after such Final Certificate has been delivered to the Employer. In the event of the failure of the Employer to make payment within the times stated, the Employer shall pay to the Contractor interest at the rate stated in the Appendix to Tender upon all sums unpaid from the date by which the same should have been paid. The provisions of this Sub-Clause are without prejudice to the Contractor's entitlement under Clause 69.
- Approval only by Defects Liability Certificate** 61.1 Only the Defects Liability Certificate, referred to in Clause 62, shall be deemed to constitute approval of the Works.
- Defects Liability Certificate** 62.1 The Contract shall not be considered as completed until a Defects Liability Certificate shall have been signed by the Engineer and delivered to the Employer, with a copy to the Contractor, stating the date on which the Contractor shall have completed his obligations to execute and complete the Works and remedy any defects therein to the Engineer's satisfaction. The Defects Liability Certificate shall be given by the Engineer within 28 days after the expiration of the Defects Liability Period, or, if different defects liability periods shall become applicable to different Sections or parts of the Permanent Works, the expiration of the latest such period, or as soon thereafter as any works instructed, pursuant to Clauses 49 and 50, have been completed to the satisfaction of the Engineer. Provided that the issue of the Defects Liability Certificate shall not be a condition precedent to payment to the Contractor of the second portion of the Retention Money in accordance with the conditions set out in Sub-Clause 60.3.
- Unfulfilled Obligations** 62.2 Notwithstanding the issue of the Defects Liability Certificate the Contractor and the Employer shall remain liable for the fulfilment of any obligation incurred under the provisions of the Contract prior to the issue of the Defects Liability Certificate which remains unperformed at the time such Defects Liability Certificate is issued and, for the purposes of determining the nature and extent of any such obligation, the Contract shall be deemed to remain in force between the parties to the Contract.

Remedies

- Default of Contractor** 63.1 If the Contractor is deemed by law unable to pay his debts as they fall due, or enters into voluntary or involuntary bankruptcy, liquidation or dissolution (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or becomes insolvent, or makes an arrangement with, or assignment in favour of, his creditors, or agrees to carry out the Contract under a committee of inspection of his creditors, or if a receiver, administrator, trustee or liquidator is appointed over any substantial part of his assets, or if, under any law or regulation relating to reorganization, arrangement or readjustment of debts, proceedings are commenced against the Contractor or resolutions passed in connection with dissolution or liquidation or if any steps are taken to enforce any security interest over a substantial part of the assets of the Contractor, or if any act is done or event occurs with respect to the Contractor or his assets which, under any applicable law has a substantially similar effect to any of the foregoing acts or events, or if the Contractor has contravened Sub-Clause 3.1, or has an execution levied on his goods, or if the Engineer certifies to the Employer, with a copy to the Contractor, that, in his opinion, the Contractor:
- (a) has repudiated the Contract, or
 - (b) without reasonable excuse has failed
 - (i) to commence the Works in accordance with Sub-Clause 41.1, or

(ii) to proceed with the Works, or any Section thereof, within 28 days after receiving notice pursuant to Sub-Clause 46.1, or

(c) has failed to comply with a notice issued pursuant to Sub-Clause 37.4 or an instruction issued pursuant to Sub-Clause 39.1 within 28 days after having received it, or

(d) despite previous warning from the Engineer, in writing, is otherwise persistently or flagrantly neglecting to comply with any of his obligations under the Contract, or

(e) has contravened Sub-Clause 4.1,

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

Valuation at Date of Termination

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

(a) what amount (if any) had, at the time of such entry and termination, been reasonably earned by or would reasonably accrue to the Contractor in respect of work then actually done by him under the Contract, and

(b) the value of any of the said unused or partially used materials, any Contractor's Equipment and any Temporary Works.

Payment after Termination

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

Assignment of Benefit of Agreement

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

Urgent Remedial Work 64.1 If, by reason of any accident, or failure, or other event occurring to, in, or in connection with the Works, or any part thereof, either during the execution of the Works, or during the Defects Liability Period, any remedial or other work is, in the opinion of the Engineer, urgently necessary for the safety of the Works and the Contractor is unable or unwilling at once to do such work, the Employer shall be entitled to employ and pay other persons to carry out such work as the Engineer may consider necessary. If the work or repair so done by the Employer is work which, in the opinion of the Engineer, the Contractor was liable to do at his own cost under the Contract, then all costs consequent thereon or incidental thereto shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer. Provided that the Engineer shall, as soon after the occurrence of any such emergency as may be reasonably practicable, notify the Contractor thereof.

Special Risks

No Liability for Special Risks 65.1 The Contractor shall be under no liability whatsoever in consequence of any of the special risks referred to in Sub-Clause 65.2, whether by way of indemnity or otherwise, for or in respect of:

- (a) destruction of or damage to the Works, save to work condemned under the provisions of Clause 39 prior to the occurrence of any of the said special risks, or
- (b) destruction of or damage to property, whether of the Employer or third parties, or
- (c) injury or loss of life.

Special Risks 65.2 The special risks are:
(a) the risks defined under paragraphs (a), (c), (d) and (e) of Sub-Clause 20.4, and
(b) the risks defined under paragraph (b) of Sub-Clause 20.4 insofar as these relate to the country in which the Works are to be executed.

Damage to Works by Special Risks 65.3 If the Works or any materials or Plant on or near or in transit to the Site, or any of the Contractor's Equipment, sustain destruction or damage by reason of any of the said special risks, the Contractor shall be entitled to payment in accordance with the Contract for any Permanent Works duly executed and for any materials or Plant so destroyed or damaged and, so far as may be required by the Engineer or as may be necessary for the completion of the Works, to payment for:

- (a) rectifying any such destruction or damage to the Works, and
- (b) replacing or rectifying such materials or Contractor's Equipment

and the Engineer shall determine an addition to the Contract Price in accordance with Clause 52 (which shall in the case of the cost of replacement of Contractor's Equipment include the fair market value thereof as determined by the Engineer) and shall notify the Contractor accordingly, with a copy to the Employer.

Projectile, Missile 65.4 Destruction, damage, injury or loss of life caused by the explosion or impact, whenever and wherever occurring, of any mine, bomb, shell, grenade, or other projectile, missile, munition, or explosive of war, shall be deemed to be a consequence of the said special risks.

- Increased Costs arising from Special Risks** 65.5 Save to the extent that the Contractor is entitled to payment under any other provision of the Contract, the Employer shall repay to the Contractor any costs of the execution of the Works (other than such as may be attributable to the cost of reconstructing work condemned under the provisions of Clause 39 prior to the occurrence of any special risk) which are howsoever attributable to or consequent on or the result of or in any way whatsoever connected with the said special risks, subject however to the provisions in this Clause hereinafter contained in regard to outbreak of war, but the Contractor shall, as soon as any such cost comes to his knowledge, forthwith notify the Engineer thereof. The Engineer shall, after due consultation with the Employer and the Contractor, determine the amount of the Contractor's costs in respect thereof which shall be added to the Contract Price and shall notify the Contractor accordingly, with a copy to the Employer.
- Outbreak of War** 65.6 If, during the currency of the Contract, there is an outbreak of war, whether war is declared or not, in any part of the world which, whether financially or otherwise, materially affects the execution of the Works, the Contractor shall, unless and until the Contract is terminated under the provisions of this Clause, continue to use his best endeavours to complete the execution of the Works. Provided that the Employer shall be entitled, at any time after such outbreak of war, to terminate the Contract by giving notice to the Contractor and, upon such notice being given, the Contract shall, except as to the rights of the parties under this Clause and to the operation of Clause 67, terminate, but without prejudice to the rights of either party in respect of any antecedent breach thereof.
- Removal of Contractor's Equipment on Termination** 65.7 If the Contract is terminated under the provisions of Sub-Clause 65.6, the Contractor shall, with all reasonable dispatch, remove from the Site all Contractor's Equipment and shall give similar facilities to his Subcontractors to do so.
- Payment if Contract Terminated** 65.8 If the Contract is terminated as aforesaid, the Contractor shall be paid by the Employer, insofar as such amounts or items have not already been covered by payments on account made to the Contractor, for all work executed prior to the date of termination at the rates and prices provided in the Contract and in addition:
- (a) The amounts payable in respect of any preliminary items referred to in the Bill of Quantities, so far as the work or service comprised therein has been carried out or performed, and a proper proportion of any such items which have been partially carried out or performed.
 - (b) The cost of materials, Plant or goods reasonably ordered for the Works which have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery, such materials, Plant or goods becoming the property of the Employer upon such payments being made by him.
 - (c) A sum being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works insofar as such expenditure has not been covered by any other payments referred to in this Sub-Clause.
 - (d) Any additional sum payable under the provisions of Sub-Clauses 65.3 and 65.5.
 - (e) Such proportion of the cost as may be reasonable, taking into account payments made or to be made for work executed, of removal of Contractor's Equipment under Sub-Clause 65.7 and, if required by the Contractor, return thereof to the Contractor's main plant yard in his country of registration or to other destination, at no greater cost.
 - (f) The reasonable cost of repatriation of all the Contractor's staff and workmen employed on or in connection with the Works at the time of such termination.

Provided that against any payment due from the Employer under this Sub-Clause, the Employer shall be entitled to be credited with any outstanding balances due from the Contractor for advances in respect of Contractor's Equipment, materials and Plant and any other sums which, at the date of termination, were recoverable by the Employer from the Contractor under the terms of the Contract. Any sums payable under this Sub-Clause shall, after due consultation with the Employer and the Contractor, be determined by the Engineer who shall notify the Contractor accordingly, with a copy to the Employer.

Release from Performance

Payment in Event of Release from Performance

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

Settlement of Disputes

Engineer's Decision

- 67.1 If a dispute of any kind whatsoever arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after repudiation or other termination of the Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation of the Engineer, the matter in dispute shall, in the first place, be referred in writing to the Engineer, with a copy to the other party. Such reference shall state that it is made pursuant to this Clause. No later than the eighty-fourth day after the day on which he received such reference the Engineer shall give notice of his decision to the Employer and the Contractor. Such decision shall state that it is made pursuant to this Clause.

Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case, continue to proceed with the Works with all due diligence and the Contractor and the Employer shall give effect forthwith to every such decision of the Engineer unless and until the same shall be revised, as hereinafter provided, in an amicable settlement or an arbitral award.

If either the Employer or the Contractor be dissatisfied with any decision of the Engineer, or if the Engineer fails to give notice of his decision on or before the eighty-fourth day after the day on which he received the reference, then either the Employer or the Contractor may, on or before the seventieth day after the day on which he received notice of such decision, or on or before the seventieth day after the day on which the said period of 84 days expired, as the case may be, give notice to the other party, with a copy for information to the Engineer, of his intention to commence arbitration, as hereinafter provided as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to Sub-Clause 67.4, no arbitration in respect thereof may be commenced unless such notice is given.

If the Engineer has given notice of his decision as to a matter in dispute to the Employer and the Contractor and no notification of intention to commence arbitration as to such dispute has been given by either the Employer or the Contractor on or before the seventieth day after the day on which the parties received notice as to such decision from the Engineer, the said decision shall become final and binding upon the Employer and the Contractor.

Amicable Settlement 67.2 Where notice of intention to commence arbitration as to a dispute has been given in accordance with Sub-Clause 67.1, arbitration of such dispute shall not be commenced unless an attempt has first been made by the parties to settle such dispute amicably. Provided that, unless the parties otherwise agree, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of intention to commence arbitration of such dispute was given, whether or not any attempt at amicable settlement thereof has been made.

Arbitration 67.3 Any dispute in respect of which:
(a) the decision, if any, of the Engineer has not become final and binding pursuant to Sub-Clause 67.1, and
(b) amicable settlement has not been reached within the period stated in Sub-Clause 67.2

shall be finally settled, unless otherwise specified in the Contract, under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed under such Rules. The said arbitrator/s shall have full power to open up, review and revise any decision, opinion, instruction, determination, certificate or valuation of the Engineer related to the dispute.

Neither party shall be limited in the proceedings before such arbitrator/s to the evidence or arguments put before the Engineer for the purpose of obtaining his said decision pursuant to Sub-Clause 67.1. No such decision shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrator/s on any matter whatsoever relevant to the dispute.

Arbitration may be commenced prior to or after completion of the Works, provided that the obligations of the Employer, the Engineer and the Contractor shall not be altered by reason of the arbitration being conducted during the progress of the Works.

Failure to Comply with Engineer's Decision 67.4 Where neither the Employer nor the Contractor has given notice of intention to commence arbitration of a dispute within the period stated in Sub-Clause 67.1 and the related decision has become final and binding, either party may, if the other party fails to comply with such decision, and without prejudice to any other rights it may have, refer the failure to arbitration in accordance with Sub-Clause 67.3. The provisions of Sub-Clauses 67.1 and 67.2 shall not apply to any such reference.

Notices

Notice to Contractor 68.1 All certificates, notices or instructions to be given to the Contractor by the Employer or the Engineer under the terms of the Contract shall be sent by post, cable, telex or facsimile transmission to or left at the Contractor's principal place of business or such other address as the Contractor shall nominate for that purpose.

Notice to Employer and Engineer 68.2 Any notice to be given to the Employer or to the Engineer under the terms of the Contract shall be sent by post, cable, telex or facsimile transmission to or left at the respective addresses nominated for that purpose in Part II of these Conditions.

Change of Address 68.3 Either party may change a nominated address to another address in the country where the Works are being executed by prior notice to the other party, with a copy to the Engineer, and the Engineer may do so by prior notice to both parties.

Default of Employer

Default of Employer 69.1 In the event of the Employer:

- (a) failing to pay to the Contractor the amount due under any certificate of the Engineer within 28 days after the expiry of the time stated in Sub-Clause 60.10 within which payment is to be made, subject to any deduction that the Employer is entitled to make under the Contract, or
- (b) interfering with or obstructing or refusing any required approval to the issue of any such certificate, or
- (c) becoming bankrupt or, being a company, going into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation, or
- (d) giving notice to the Contractor that for unforeseen reasons, due to economic dislocation, it is impossible for him to continue to meet his contractual obligations

the Contractor shall be entitled to terminate his employment under the Contract by giving notice to the Employer, with a copy to the Engineer. Such termination shall take effect 14 days after the giving of the notice.

Removal of Contractor's Equipment 69.2 Upon the expiry of the 14 days' notice referred to in Sub-Clause 69.1, the Contractor shall, notwithstanding the provisions of Sub-Clause 54.1, with all reasonable despatch, remove from the Site all Contractor's Equipment brought by him thereon.

Payment on Termination 69.3 In the event of such termination the Employer shall be under the same obligations to the Contractor in regard to payment as if the Contract had been terminated under the provisions of Clause 65, but, in addition to the payments specified in Sub-Clause 65.8, the Employer shall pay to the Contractor the amount of any loss or damage to the Contractor arising out of or in connection with or by consequence of such termination.

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

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

- (a) any extension of time to which the Contractor is entitled under Clause 44, and
- (b) the amount of such costs, which shall be added to the Contract Price,

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

Resumption of Work 69.5 Where the Contractor suspends work or reduces the rate of work, having given notice in accordance with Sub-Clause 69.4, and the Employer subsequently pays the amount due, including interest pursuant to Sub-Clause 60.10, the Contractor's entitlement under Sub-Clause 69.1 shall, if notice of termination has not been given, lapse and the Contractor shall resume normal working as soon as is reasonably possible.

Changes in Cost and Legislation

Increase or Decrease of Cost 70.1 There shall be added to or deducted from the Contract Price such sums in respect of rise or fall in the cost of labour and/or materials or any other matters affecting the cost of the execution of the Works as may be determined in accordance with Part II of these Conditions.

Subsequent Legislation 70.2 If, after the date 28 days prior to the latest date for submission of tenders for the Contract there occur in the country in which the Works are being or are to be executed changes to any National or State Statute, Ordinance, Decree or other Law or any regulation or bye-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation or bye-law which causes additional or reduced cost to the Contractor, other than under Sub-Clause 70.1, in the execution of the Contract, such additional or reduced cost shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be added to or deducted from the Contract Price and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

Currency and Rates of Exchange

Currency Restrictions 71.1 If, after the date 28 days prior to the latest date for submission of tenders for the Contract, the Government or authorised agency of the Government of the country in which the Works are being or are to be executed imposes currency restrictions and/or transfer of currency restrictions in relation to the currency or currencies in which the Contract Price is to be paid, the Employer shall reimburse any loss or damage to the Contractor arising therefrom, without prejudice to the right of the Contractor to exercise any other rights or remedies to which he is entitled in such event.

Rates of Exchange 72.1 Where the Contract provides for payment in whole or in part to be made to the Contractor in foreign currency or currencies, such payment shall not be subject to variations in the rate or rates of exchange between such specified foreign currency or currencies and the currency of the country in which the Works are to be executed.

Currency Proportions 72.2 Where the Employer has required the Tender to be expressed in a single currency but with payment to be made in more than one currency and the Contractor has stated the proportions or amounts of other currency or currencies in which he requires payment to be made, the rate or rates of exchange applicable for calculating the payment of such proportions or amounts shall, unless otherwise stated in Part II of these Conditions, be those prevailing, as determined by the Central Bank of the country in which the Works are to be executed, on the date 28 days prior to the latest date for the submission of tenders for the Contract, as has been notified to the Contractor by the Employer prior to the submission of tenders or as provided for in the Tender.

Currencies of Payment for Provisional Sums 72.3 Where the Contract provides for payment in more than one currency, the proportions or amounts to be paid in foreign currencies in respect of Provisional Sums shall be determined in accordance with the principles set forth in Sub-Clauses 72.1 and 72.2 as and when these sums are utilised in whole or in part in accordance with the provisions of Clauses 58 and 59.

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CONDITIONS OF CONTRACT PART 2

NAIROBI BYPASS ROAD PROJECT

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PART 2 CONDITIONS OF PARTICULAR APPLICATION

General

The Conditions of Contract Part II - Conditions of Particular Application, modify and supplement like-numbered Clauses of Conditions of Contract Part I - General Conditions. Both shall be read together, with the Conditions of Particular Application prevailing in case of conflict or discrepancy. Clauses of the General Conditions not specifically modified and supplemented shall remain in effect.

Definitions and Interpretation

Definitions

1.1 ADD the following words or definitions:

- (a) (i) *The Employer is the Government of Kenya represented by the Permanent Secretary, Ministry of of Public Works, P.O. Box 30260, Nairobi, Kenya.*
- (iv) *The Engineer is the Chief Engineer (Roads) Ministry of Public Works, P.O. Box 30260, Nairobi, Kenya.*
- (v) *"OECF" means the Overseas Economic Cooperation Fund of Japan*
- (vi) *"Eligible Source Countries" means the countries listed in the Appendix to the Instructions to Tenderers, which are defined as eligible source countries in the Loan Agreement between the OECF of Japan and the Government of the Republic of Kenya.*

ADD to (b)(i):

Every rate entered by the Contractor in the Bills of Quantities shall form part of the Contract whether or not such rate be employed in computation of the Contract Price.

AMEND (c)(i) as follows:

"Commencement Date" for the purposes of Clause 43 means the last day of the period of commencement named in the appendix to the Form of Tender.

ADD (b)(ix) as follows:

"Effectiveness of the Contract" means receipt of the Agreement between the Employer and the Contractor.

**Engineer's
Duties and
Authority**

Assignment and Subcontracting

Sub-contracting

- 4.1 (a) Redesignate the existing text as Subclause 4.1(1)

ASSIGNMENT AND SUBCONTRACTING

AMEND Sub-clause 4.1 - Sub Contracting as follows:

DELETE the second and third sentence and substitute:

No single subcontract may be for more than 10 per cent of the Contract Price nor shall the sum of all subcontracts exceed 25 per cent of the Contract Price. No one Sub-Contractor may be awarded subcontracts to a total value greater than 10 per cent of the Contract Price. All subcontracts greater than 2 per cent of the Contract Price are to have the consent of the Engineer. Such consent if given shall not relieve the Contractor from any ability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any Sub-Contractor, his agents servants or workmen as fully as if they were the acts, defaults or neglects of any Sub-Contractor, his agents servants or workmen.

- (b) ADD the following Subclause (2):-

- 4.2 *The Contractor shall include the necessary provisions in his subcontracts and supply contracts to ensure that his Subcontractors and Suppliers comply with the provisions of the Contract, insofar as they apply to the Subcontracted work or to the goods and materials to be supplied. The Contractor shall, when requested by the Engineer, produce copies of his subcontracts and Supplier's contracts, to allow the Engineer to satisfy himself that the provisions of this Clause have been fulfilled. Prices and rates in such documents need not be disclosed to the Engineer.*

Contract Documents

Language/s and Law

- 5.1 (a) *The language is English. Communication between the Contractor and the Engineer or the Engineer's Representative shall be in English.*

- (b) *The law is that in force in the Republic of Kenya.*

The Contractor shall indemnify and save harmless the Employer from any claim or liability incurred by, or based upon the violation of any national and/or local Kenyan law, ordinance, regulation, order or decree, whether committed by himself, his employees, his Subcontractors or any other persons and parties related in any manner to the Contractor in respect of performance of the Works.

Priority of Contract Documents

- 5.2 Delete the documents listed 1-6 and substitute:

- (1) *the Contract Agreement (if completed);*
- (2) *the Letter of Acceptance;*
- (3) *the Tender;*
- (4) *the Conditions of Contract Part II;*
- (5) *the Conditions of Contract Part I; (FIDIC 4th Edition)*
- (6) *the Special Specification;*
- (7) *the Standard Specification for Road and Bridge Construction 1986*
- (8) *Any other standards, provisions and regulations dictated by the Employer and the OECF;*
- (9) *Clarifications and rectifications accepted by the Employer and OECF;*
- (10) *the Drawings; and*
- (11) *the priced Bill of Quantities*

General Obligations

Responsibility Unaffected by Approval

7.3 Supplement Sub-Clause 7.3 as follows:

It is expressly understood that approval of the Contractor's drawings by the Engineer shall not be construed as a detailed check but will indicate only that the general method of construction and detailing is satisfactory, nor shall it be construed as permitting any departure from the Contract requirements.

Contractor's General Responsibilities

8.1 ADD to Sub-Clause 8.1 the following:

- (a) *Insofar as may be consistent with his obligations under the Contract and available supply, the Contractor shall make maximum feasible use of local labour, local materials and local services.*
- (b) *Within twenty-eight (28) days after receipt of the Engineer's Order to Commence the Works, the Contractor shall establish at the Site an office duly equipped for the Contractor's Representative and his supervisory personnel. The Contractor shall maintain this office throughout the Contract period. The said office shall be the legal domicile of the Contractor. All correspondence sent to this office shall be deemed to have been sent to the Contractor's head office.*
- (c) *A foreign Contractor or a Kenya-foreign joint venture, if not registered in Kenya under the applicable laws of Kenya, shall undertake registration upon receipt of the Letter of Acceptance and prior to signing of the Contract.*
- (d) *Procurement of all goods and services shall be in accordance with the requirements of the OECF. The Contract shall give priority to the employment of local personnel and the purchase of local supplies wherever and whenever this can be accomplished without prejudicing the quality of the Works. All other materials shall be purchased and originate solely from the eligible countries as designated by the procurement requirements of the OECF.*

Contract Agreement

9.1 In line 1 delete "if called upon to do so,"

ADD the following paragraph:

Within fourteen (14) days of executing the Contract Agreement, the Contractor shall also furnish, at his own cost ten (10) bound copies of the Contract Documents as listed in the Agreement in the form and manner approved by the Employer.

Performance Security

10.1 (a) DELETE the first sentence and substitute:

"The Contractor shall obtain within 15 days after receipt of the Letter of Acceptance a Performance Securities in the sum stated in the Appendix to the Tender separately in respect of the local and foreign currency portions.

(b) Add the following at the end of this Clause:

The Performance Security shall be in the form of bank guarantees or bonds at the Contractor's option. The amount of bonds or guarantees shall be as stated in the Appendix to Tender.

If the Performance Security is in the form of bank guarantees they shall be issued either (a) by eligible institutions under the "Guidelines for Procurement under OECF Loans", or by banks or insurance companies duly authorised to operate in Kenya, subject to the approval of the Employer. The Performance Securities shall be in the currency or currencies requested for payment by the Contractor and in the proportions of the currencies to be in accordance with the requested proportions for payment in different currencies. Surety bonds shall be issued by the bonding companies or financial institutions which have been determined by the successful Tenderer to be acceptable to the Employer.

The Performance Security may, subject to the approval of the Engineer, be adjusted at the end of each period of twelve (12) months to reflect the residual value of the contract work.

The Performance Security will be released by the Employer not later than 30 days following the date of delivery of the Defects Liability Certificate pursuant to Clause 62 provided that the Contractor provides the Employer with documentary proof from the Department of Customs in proof of having removed all duty-exempt equipment, materials and plant which has not been sold in Kenya that duty thereon has been duly paid by the purchaser on any that has been sold in Kenya. In the case of material incorporated into the Works no such certificate or payment of duty is required.

**Work to be
to the
Satisfaction
of the
Engineer**

13.1 (a) Redesignate the heading to the existing text as "Work to be to the Satisfaction of the Engineer".

(b) Add the following Subclause 13.2:

13.2 Submission to the Engineer

Wherever the Contractor is required to submit to the Engineer proposals, details, drawings, calculations, information, literature, materials, test reports and certificates, the Engineer shall consider each submission and, if appropriate, will reply to the Contractor in accordance with the relevant provision of the Conditions of Contract. Unless a defined period of time is stated in the Specification, each submission shall be made by dates to be agreed with the Engineer having regard to the approved programme and the need to give the Engineer adequate time to consider each submission.

Documents submitted, other than drawings and manufacturer's literature, shall be A4 in size. All shall be explained. All calculations and technical information shall be in units conforming to the Systems International d'Unites (SI).

All drawings shall be A1 in size to the ink border. Notes shall be in English. All dimensions shall be in metres or millimeters and all weights in metric units.

All drawings shall include the title of the Contract at the bottom of the drawing followed by the title of the drawing concerned. All drawings shall have the appropriate scales drawn on them and shall be dated. All amendments to such drawings shall be noted and dated on the drawings.

**Programme
to be
Submitted**

14.1 DELETE the text of Sub-Clause 14.1 and substitute the following:

Within twenty eight (28) calendar days after receiving the Order to Commence, the Contractor shall submit to the Engineer for his consent a detailed construction programme based on the key dates stated in the Tender Documents. The programme shall be in the form of a Critical Path Method Network (CPM Network) showing the order of procedure and a description of the construction methods and arrangement by which he proposes to carry out the Works and construct his temporary facilities including design, manufacture, delivery to the Site, transport, storage, survey, test, erection and maintenance.

This program shall also be submitted in the form of a Time Bar-chart.

The CPM Network shall be prepared in accordance with commonly accepted practices and shall show graphically the chain of activities/sub-activities and their sequential relationship with each other from the start of construction to the completion of the Contract. It shall show clearly all activities and their durations along with earliest and latest event times, dates for issue of the Drawing by the Engineer

Upon approval by the Engineer of the Contractor's construction programme, it shall be referred to as the Contractual Construction Programme, and it shall become a part of the Contract. The Contractual Construction Programme shall supersede all other programmes and shall be deemed to be the programme on which the Contractor has his

Contract Price and in accordance with which he will undertake to execute the Works. The approval by the Engineer of such programme, however, shall not relieve the Contractor of any of his duties or responsibilities under the Contract.

The Contractual Construction programme shall be based upon the programme submitted by the Contractor as part of his Tender and shall, in no material manner, deviate from the said programme. The Contractor shall whenever required by the Engineer also provide in writing for his information a general description of the arrangement and methods which the Contractor proposes to adopt for the execution of the Works.

The Contractual Construction Programme shall be co-ordinated with climatic, groundwater and other conditions and shall provide for completion of the Works in the order and by the time required under the Contract and shall include a chart of the principal quantities of work forecast for execution monthly.

Revised Programme

14.2 DELETE the text of Sub-Clause 14.2 and substitute:

If at any time it should immediately appear to the Engineer that the actual progress of the Works does not conform to or could be foreseen to be delayed from the Contractual Construction Programme to which consent has been give under Sub-Clause 14.1, the Contractor shall submit, at the request of the Engineer or immediately after identification of such possibility, a revised programme showing the modifications to such programme to ensure completion of the Works within the Time for Completion.

The revised programme shall be prepared in the form of a CPM Network and a Time-Bar-chart schedule, and shall be submitted within ten (10) days of the request, together with a report outlining the necessary corrective actions to be taken to ensure completion of the Works within the Time of Completion.

The Employer shall have the right to withhold the payment at any time if the contractor fails to submit the Contractual Construction Programme or revised construction programmes due to his failure, negligence or omission.

Cash Flow Estimate to be Submitted

14.3 Supplement Sub-Clause 14.3 as follows:

The time within which the detailed cash flow estimate shall be submitted shall be twenty eight (28) days after receipt by the Contractor of the Engineer's Order to Commence the Works.

Revised cash flow estimates shall be provided at quarterly intervals.

In preparing the estimates, provision shall be made for Advance Payment, repayment of Advance, retention, payment for services provided by the Employer, and timing implications of Sub-clause 60.10 - Time for Payment.

Methods Statement

14.4 *The Contractor shall submit to the Engineer not later than twenty-eight days from the date of award of the Contract with the Contractual Construction Programme a general description of his proposed arrangements and methods for the execution of the Works, including inter-alia temporary offices, buildings, access roads, construction plant and its intended production output, working shift arrangements, labour strength, skilled and unskilled and supervision arrangements, power arrangements, supply of materials including a materials utilisation programme, stone crushing, aggregate production and storage, cement handling, concrete mixing and handling, methods of excavation, dealing with water, testing methods and facilities.*

During the execution of the works, the Contractor shall also submit to the Engineer full and detailed particulars of any proposed amendments to the arrangements and methods submitted in accordance with the foregoing.

14.5 *If details of the Contractor's proposals for Temporary Works are required by the Engineer for his own information the Contractor shall submit such details within fourteen (14) days of being requested to do so.*

14.6 The Contractor shall submit in writing to the Engineer, not later than twenty-eight (28) days from the date of award of the Contract, the hours which shall be considered normal working hours together with Sunday to be set aside for rest.

These working hours shall be maintained throughout the continuance of the Contract. If the Contractor wishes to execute permanent work outside these hours, he shall obtain the written permission of the Engineer at least one full working day in advance to enable the Engineer to make provision for supervision of such work. The Contractor shall not be permitted to work during the hours of darkness.

14.7 The various operations pertaining to the Works shall be carried out in such a progressive sequence as will achieve a continuous and consecutive output of fully completed road-works inclusive of all bridge works and culverts within the time limits specified in the Contract. Generally the Contractor shall start at the one end of the road and progress continuously towards the other without leaving any isolated section or sections of uncompleted road.

**Public
Holidays**

14.11 The Contractor shall allow in his programme for the following 11 public holidays per calendar year as observed in the Republic of Kenya and upon which the Contractor shall not be permitted to work.

*New Year Day (1st January)
Good Friday
Easter Monday
Labour Day (1st May)
Madaraka Day
Idd-ul-Fitr
Moi Day (October 10th)
Kenyatta day (October 20th)
Independence Day (12th December)
Christmas Day (25th December)
Boxing Day (26th December)*

The Contractor shall also allow in each calendar year for a further two unspecified public holidays, which may be announced by the Government of Kenya with no prior notification, and upon which days he shall not be permitted to work.

**Contractor's
Superinten-
dence**

15.1 ADD to the first paragraph of Sub-Clause 15.1 the following:

The Contractor shall advise the Engineer in writing, within seven(7) days of receipt of the Engineer's Order to commence the Works, the name of the Contractor's Representative and the anticipated date of his arrival on Site.

**Language
Ability of
Contractor's
Representative**

15.2 The Contractor's authorised representative shall be able to read, write and speak the English language fluently.

**Engineer at
Liberty to
Object**

16.2 It is the Contractor's responsibility to cover all expenses related to replacements under this Clause by a competent substitute approved by the Engineer.

**Language
Ability of
Superin-
tending
Staff**

16.3 A reasonable proportion of the Contractor's superintendent staff shall have a working knowledge of the English language and a reasonable proportion of foremen shall have a working knowledge of English and local languages to ensure the proper transmission of instructions and information.

Safety, Security and Protection of the Environment	<p>19.1 <i>During work in the Ngong forest, the Contractor shall at all times use his best endeavours to protect wildlife and the natural vegetation as advised by the Kenya forestry Department.</i></p> <p>ADD to Sub-Clause 19.1 as follows:</p> <p><i>The formulation and enforcement of an adequate safety programme shall be an obligation of the Contractor with respect to all the Works under this Contract, regardless of whether performed by the Contractor or his Subcontractors. The Contractor shall, within fourteen (14) calendar days after commencement of the Works, meet the Engineer to present and discuss his plan for the establishment of such safety measures as may be necessary to provide against accidents, unsafe acts, and so forth. Within twenty eight (28) calendar days after commencement of the Works, the Contractor shall submit a written safety programme to the Engineer covering the overall Works, and which shall be based on the laws and regulations of Kenya. In addition, he shall prepare special safety programmes for blasting and handling of explosives as stipulated in the General and Technical Specifications.</i></p>
Pollution Control	<p>19.3 ADD the following Sub-clause:</p> <p><i>The Contractor shall at all times use his best endeavours to prevent the dumping of debris, oil, oily mixtures, or other substances which might cause pollution of the atmosphere, land, river or other places. Wash water from concrete production or grouting operations shall be clarified in settlement basins or by other means that will prevent discharge of cement into rivers or streams. The Contractor shall submit for the consent of the Engineer his proposals for handling and disposal of such materials. The proposals shall meet relevant Kenyan regulations.</i></p>
Insurance of Works and Contractor's Equipment	<p>21.1 In Sub-Clause 21.1(b) delete the words, "or as may be specified in Part II of these Conditions,".</p> <p><i>Supplement Sub-Clause 21.1 by the following: Insurance of the Works and Insurance of the Contractor's Equipment, including transportation both overseas and inland, shall be obtained by the Contractor from eligible insurers under the "Guidelines for Procurement under OECF Loans", or from an Insurance Company duly authorised to operate in Kenya, subject to the approval of the Employer. The insurances in paragraphs (a) and (b) hereof in Sub-Clause 21.1 of Part I shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.</i></p>
Notification of Changes	<p>21.5 Add the following Subclause 21.5</p> <p><i>It shall be responsibility of the Contractor to notify the insurer of any change in nature and extent of the Works and to ensure the adequacy of the insurance cover at all times in accordance with the provisions of this Clause</i></p>
Remedy on the Contractor Failure to Insure	<p>25.1 Add the following Subclause 25.2 and 25.3:-</p> <p>25.2 <i>Insurance Notices</i></p> <p><i>Each policy of insurance effected by the Contractor for the purpose of the Contract shall include a provision to the effect that the Insurer shall have a duty to give notice in writing to the Contractor and to the Employer of the date when a premium becomes payable not more than twenty-eight (28) days before that date and the policy shall remain in force until twenty-eight (28) days after the giving of such notice.</i></p>
Re- Insurance In Kenya	<p>25.3 <i>The risks against which the Contractor is obliged to insure under the Contract shall be insured through approved Companies in Kenya and any cover against risks which the Contractor may enjoy under a global policy of insurance shall be reinsured in Kenya by a Kenyan Insurance Company in respect of the Contractor's obligations under the Contract.</i></p>

- Add the following Sub-Clause 25.6:
- Duty of Contractor to Notify** 25.6 *It shall be the duty of the Contractor to notify the insurers under any of the insurances referred to in Clause 21,23 and 24 hereof of any matter or event which by the terms of such insurances are required to be so notified and the Contractor shall indemnify and keep indemnified the Employer against all losses, claims, demands, proceedings, costs, charges, and expenses whatsoever arising out of or resulting from any default by the Contractor in complying with the requirements of this sub-clause whether as a result of the avoidance of such insurance or otherwise.*
- Compliance with Statutes, Regulations** ADD the following Sub-Clause 26.2
- 26.1 *The Employer will repay or allow to the Contractor all such*
- The Employer will Repay** 26.2 *sums as the Engineer shall certify to have been properly payable and paid by the Contractor in respect of such fees. Provided always that, without prejudice to Subclause (1) of this Clause, nothing contained in this Clause shall be deemed to render the Employer liable to repay or allow sums in respect of fees for services or facilities provided (by way of illustration but not limitation: immigration fees, port dues, wharfage dues, demurrage, pilotage or anchorage charges, clearance charges, charges for connections to or diversion of services, training levels) save and except to the extent that an item or provisional sum in respect of such fees shall have been included in the Bills of Quantities.*
- Royalties** 28.2 Add a second sentence as follows:
- The Contractor shall also be liable for all payments or compensation, if any, levied in relation to the dumping of part or all of any such materials.*
- Interference with and Traffic Adjoining Properties** 29.1 *The Contractor will be permitted to use existing public roads for access to the Site. The Contractor shall pay vehicle licence tax and road-maintenance duty in accordance with the relevant regulations, and shall obtain any necessary permits or licences from Government authorities for transporting his equipment.*
- Reinstatement and Compensation for Damage to Persons or Property** 29.2 Add the following 29.2:-
- The Contractor shall reinstate all properties whether public or private which are damaged in consequence of the construction and maintenance of the Works to a condition as specified and at least equal to that obtaining before his first entry on them.*
- If in the opinion of the Engineer the Contractor shall have failed to take reasonable and prompt action to discharge his obligations in the matter of reinstatement the Engineer will inform the Contractor in writing of his opinion, in which circumstances the Employer reserves the right to employ others to do the necessary work of reinstatement and to deduct the cost thereof from any money due or which shall become due from the Employer to the Contractor.*
- The Contractor shall refer to the Employer without delay all claims which may be considered to fall within the provisions of Clause 22.*
- Transport or Plant, Materials etc.** 30 Delete the whole of Sub-Clauses 30.1, 30.2, and 30.3 and their marginal headings. Insert the following new Subclauses 30.1 and 30.2.

30.1 Save insofar as the Contract provides otherwise the

Contractor shall be responsible for and shall pay the cost of strengthening any bridges or altering or improving any highway communications with the Site to facilitate the movement of Constructional Plant, Labour, Temporary Works or materials required in the execution of the Works and the Contractor shall indemnify and keep indemnified the Employer against all claims for damage to any highway or bridge communications with the Site caused by such movement including such claims as may be made by any competent authority directly against the Employer and shall negotiate and pay all claims arising out of such damage.

30.2 For the purpose of this Subclause 'Special Load' shall mean such load as is outside the normal limits imposed by the highway Authority in Kenya, in respect of dimension and/or weight, but within the limits for which permission to transport may be given by the said Authority provided certain charges are paid and/or conditions complied with.

Ample prior notification shall be given by the Contractor to the Engineer of any intention to apply for permission to transport a Special Load.

Unless expressly covered by items in the Bills of Quantities no other payments to the Contractor or others will be made by the Employer in respect of the transport of Special Loads.

Water-borne Traffic

30.3 Re-number existing Sub-Clause 30.4 as 30.3.

Labour

Conditions of Employment of Labour

34 ADD the following Sub-Clauses 34.2 to 34.23

Rates of Wages and Condition of Labour

34.2 a) *The Contractor shall pay rates of wages and observe hours and conditions of labour not less favourable than those established where the work is carried out by machinery of negotiation or arbitration to which the parties are organizations of employers and trade unions representative respectively of substantial proportions of the employers and workers engaged in the trade or industry in the District in the Regulation of Wages (Building and Construction Industry) Order.*

Attention is drawn to the Agreement on wage rates, terms and conditions of employment between the Kenya Association of Building and Civil Engineering Contractors and the Kenya Building, Construction, Civil Engineering and Allied Trade Workers' Union.

b) *Where the absence of established rates of wages hours and conditions of labour or the dissimilarity of the general circumstances in the trade or industry in which the Contractor is engaged prevent the Contractor observing rates of wages, hours and conditions of labour ascertained under sub-paragraph (a) or (b) above the Contractor in fixing the rates of wages, hours and conditions of labour of his employees shall be guided by the advice of the Labour Department.*

Trade Unions

34.3 *The Contractor shall recognize the freedom of his employees to be members of trade unions.*

Employment of Persons in the Service of Others

34.4 *The Contractor shall not recruit or attempt to recruit his staff and labour from amongst persons in the service of the Employer or the Engineer.*

Repatriation of Labour

34.5 *The Contractor shall be responsible for the return to the place where they were recruited or to their domicile of all such persons as he recruited and employed for the purpose of or in connection with the Contract and shall maintain such persons as are to be so returned in a suitable manner until they shall have left the Site or, in the case of persons who are not nationals of and have been recruited outside Kenya shall have left Kenya.*

- 34.6** *The Contractor shall maintain records in English of the time worked by, and the wages paid to, his employees adequate to show that his is complying with the requirements of this Clause and these records shall be made available to the Engineer at his request.*
- The Contractor shall furnish to the Government if called upon to do so such particulars of the rates of wages, hours and conditions of labour referred to above as the Government may direct.*
- Display of Information to Employer** **34.7** *The Contractor shall at all times during the continuance of the Contract display, for the information of his employees in every factory, workshop or place occupied or used by him for the execution of the Contract a copy of this Clause, together with a notice setting out the general rates of wages, hours and conditions of labour of his employees.*
- The Contractor shall be responsible for observance of this Clause by Sub-Contractors employed in the execution of the Contract and shall, if required, notify the Employer of the names and addresses of such Sub-Contractors.*
- Breach of Fair Wages Clause** **34.8** a) *Any Contractor or Sub-Contractor who is found to be in breach of Fair Wages Clause shall cease to be approved as Contractor or Sub-Contractor for such period as the Permanent Secretary for Works may determine.*
- b) *Should a claim be made to the Employer alleging the Contractor's default in payment of Fair Wages of any workman employed on the Contract and if proof thereof satisfactory to the Employer is furnished by the Labour Department the Employer may failing payment by the Contractor pay the claims out of any monies due or which may become due to the Contractor under the Contract.*
- Recruitment of Labour** **34.9** *Any additional unskilled labour which is required by the Contractor for the works and which is not in his employ at the time of the acceptance of the Tender shall be recruited by the Contractor from the Labour Exchange or Exchanges nearest to the Site or Sites of the Works.*
- Housing for Labour** **34.10** *Save insofar as the Contract otherwise provides, the Contractor shall provide and maintain such accommodation and amenities as he may consider necessary for all his staff and labour, employed for the purposes of or in connection with the Contract, including all fencing, water supply (both for drinking and other purposes), electricity supply, sanitation, cookhouses, fire prevention and fire fighting equipment, and other requirements in connection with such accommodation or amenities. On completion of the Contract, unless otherwise agreed with the Employer, the temporary campshousing provided by the Contractor shall be removed and the site reinstated to its original condition, all to the approval of the Engineer.*
- Accident Prevention Officer Accidents** **34.11** *The Contractor shall have on his staff at the Site an officer dealing only with questions regarding the safety and protection against accidents of all staff and labour. This officer shall be qualified for this work and shall have the authority to issue instructions and shall take protective measures to prevent accidents.*
- Health and Safety** **34.12** *Due precautions shall be taken by the Contractor, and at his own cost, to ensure the safety of his staff and labour and, in collaboration with and to the requirements of the local health authorities, to ensure that medical staff, first aid equipment and stores, sick bay and suitable ambulance service are available at the camps, housing and on the Site at all times throughout the period of the Contract and that suitable arrangements are made for the prevention of epidemics and for all necessary welfare and hygiene requirements.*
- Compensation of Injury** **34.13** *The Contractor shall in accordance with the Workman's Compensation Act Chapter 236 of the Laws of Kenya and regulations in force from time to time in Kenya pay compensation for loss or damage suffered in consequence of any accident or injury or disease resulting from his work to any workman or other person in the employment of the Contractor or any sub-contractor.*
- Labour Standards** **34.14** a) *The Contractor shall comply with the existing local labour laws, regulations and labour standards.*
- b) *The Contractor shall formulate and enforce an adequate safety programme with respect to all work under this Contract, whether performed by the Contractor or sub-contractor. The Contractor has assurance from the Employer of co-operation where the implementation of these safety measures requires joint co-operation.*

- c) Upon the written request of the Employer the Contractor will remove or replace any of his employees employed on the Works.
- d) The Contractor shall be responsible for making all arrangements for and shall bear all costs relating to the obtaining of all necessary visas, permits, documents or other official permission for movement of staff or labour.
- Alcoholic Liquor or Drugs** 34.19 The Contractor shall not, otherwise than in accordance with the Statutes, Ordinances and Government Regulations or Orders for the time being in force, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs or permit or suffer any such importation, sale, gift, barter or disposal by his Sub-Contractors, agents staff or labour.
- Arms and Ammunition** 34.20 The Contractor shall not give, barter or otherwise dispose of to any person or persons, any arms or ammunition of any kind or permit or suffer the same as aforesaid.
- Festivals and Religious Customs** 34.21 The Contractor shall in all dealings with his staff and labour have due regard to all recognised festivals, days of rest and religious or other customs in Kenya
- Disorderly Conduct** 34.22 The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst his staff and labour and for the preservation of peace and protection of persons and property in the neighbourhood of the Works against the same.
- The Contractor shall be responsible for keeping discipline on the Site and shall obey all police, health and municipal regulations and all other regulations which may from time to time require his observance and he shall instruct his agents, Sub-contractors and other employees to obey such regulations.
- Observance by Sub-Contractors** 34.23 The Contractor shall be responsible for observance by his sub-contractors of the foregoing provisions which shall apply to all persons employed by his Subcontractors, for the purposes of or in connection with the Contract.
- Fees, Wages and Payrolls** 34.24
- a) The time books, payroll records or records of similar nature of the Contractor and all Subcontractors shall be open to the inspection of the Engineer at all times.
 - b) The wages of Kenyan labour shall be paid in the currency of Kenya in cash.
 - c) No fee of any kind shall be asked or accepted by the Contractor or any of his agents from any person as a condition of employment on the Project.
 - d) Every employee on the Works covered by this Contract shall be permitted to lodge, board and trade where and with whom he elects and neither the Contractor nor his agents, nor his employees shall directly or indirectly require, as a condition of employment, that an employee shall board, lodge or trade at a particular place or with a particular person.
 - e) No charge shall be made to any person employed on the Works for any transportation furnished by the Contractor or his agents.
 - f) No money earned by any employee of the Contractor shall be retained or withheld even with the consent of the employee, except as required by the laws of the Republic of Kenya.
 - g) Before payment of any amount to the Contractor, the Contractor shall furnish to the Employer a statement certifying that all persons or labourers employed at the Works by the Contractor or by his Subcontractors have been paid all wages due to them. The Employer has the right to request the Contractor to show evidence of payments, and the Employer may withhold payment of any amount due or becoming due to the Contractor if the Contractor or his Subcontractor, without any reasonable reason, fails to pay or withholds any payment to persons or labourers employed by him until such certificate has been made and delivered to the Employer.

**Records of
Safety and
Health**

35.2 ADD Sub-Clauses 35.2 and 35.3

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

**Reporting of
Accidents**

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

The Contractor shall also notify the competent authority whenever such report is required by the law.

Commencement and Delays

4 1 DELETE Clause 41.1 and SUBSTITUTE:

**Commence-
ment of
Works**

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

**Definition of
Commence-
ment**

41.2 *For the purposes of this Clause, the Works shall be deemed to have commenced when the following conditions are satisfied:-*

- a) The approved competent and authorised Agent or representative of the Contractor is resident in the Project Area and is giving his whole time to the Superintendence of the Works.*
- b) The provision by the Contractor of evidence that all insurances required by the Contract are in force.*
- c) The Contractor has an established office in the Project Area with a postal address for the receipt of correspondence.*
- d) The principal items of Constructional Plan have been brought onto the Site and put to work in execution of the Permanent Works.*

4 2 ADD to Sub-Clause 42.1 - Possession of Site and Access Thereto:

The Contractor shall not enter any part of the Site until he has received notification of its availability from the Employer or the Engineer.

The Contractor shall not use any portion of the Site for any purposes not connected with the Works.

4 5 ADD to Sub-Clause 45.1

**Working
Hours**

45.1 *If the Contractor requests permission to work by night as well as by day and if the Engineer shall grant such permission the Contractor shall not be entitled to any additional payments for so doing. All such work at night shall be carried out without unreasonable noise or other disturbance and the Contractor shall indemnify the Employer from and against any liability for damages on account of noise or other disturbance created while or in carrying out night work and from and against all claims demands proceedings costs charges and expenses whatsoever in regard or in relation to such liability.*

Rates of Progress	<p>46.1 Supplement Sub-Clause 46.1 as follows:</p> <p><i>Such necessary steps to expedite progress so as to comply with the Time for Completion stipulated above shall include any one or more or all of the following:</i></p> <ul style="list-style-type: none"> <i>a) to increase his working forces,</i> <i>b) to increase his construction plant and equipment,</i> <i>c) to execute additional shifts,</i> <i>d) to perform overtime work, and</i> <i>e) to take whatever other steps which may be necessary to complete the Works in accordance with the approved Contractual Construction Programme stipulated in Sub-Clause 14.1 within the Time for Completion.</i>
Bonus for Completion	<p>47.3 <i>No bonus for early completion of the Works shall be paid to the Contractor by the Employer.</i></p>
Defects Liability Period	<p>49.1 ADD new Subclause 49.2:</p>
Reinstatement of Highways etc.	<p>49.2 Add the following Subclause (5):</p> <p><i>Provided always that if in the course of or for the purpose of execution of the Works or any part thereof any Highway or other Road or way shall have been broken into then notwithstanding anything herein contained:-</i></p> <ul style="list-style-type: none"> <i>a) If the permanent reinstatement of such Highway or other Road or Way is to be carried out by the appropriate Highway Authority or by some person other than the Contractor (or any sub-contractor to him) the Contractor shall at his own cost and independently of any requirement of or notice from the Engineer be responsible for the making good of any subsidence or shrinkage or other defect imperfection or fault in the temporary reinstatement of such Highway or other Road or Way and for the execution of any necessary repair or amendment thereof from whatever cause the necessity arises until the end of the period of maintenance in respect of the Works beneath such Highway or other Road way or until the Highway Authority or other person as aforesaid shall have taken possession of the site for the purpose of carrying out permanent reinstatement (whichever is the earlier) and shall indemnify and save harmless the Employer against and from any damage or injury to the Employer or to third parties arising out of or in consequence of any neglect or failure of the Contractor to comply with the foregoing obligations or any of them and against and from all claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto. As from the end of such Period of Maintenance or the taking of possession as aforesaid (whichever shall first happen) the Employer shall indemnify and save harmless the Contractor against and from any damage or injury as aforesaid arising out of or in consequence of or in connection with the said permanent reinstatement and against and from all claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in the relation thereto.</i> <i>b) Where the Highway Authority or other person as aforesaid shall take possession of the Site as aforesaid in sections or lengths the responsibility of the Contractor under paragraph (a) of this Subclause shall cease in regard to any such section or length at the time possession thereof is taken but shall during the continuance of the said Period of Maintenance continue in regard to any length of which possession has not been so taken and the indemnities given by the Contractor and the Employer respectively under the said paragraph shall be construed and have effect accordingly.</i> <i>c) any work ordered to be executed under Clause 49.1 shall be done at a time and in a manner as directed by the Engineer so as to interfere as little as possible with the operations of the Employer or of other contractors and no extensions of the Defects Liability Period will be allowed for the execution of this work.</i>

Valuation of Variations

52.1 ADD final sentence as follows:

The agreement, fixing or determination of any rates or prices as aforesaid shall include any foreign currency and the proportion thereof.

Power of Engineer to Fix Rates

52.2 ADD to first paragraph final sentence as follows:

The agreement or fixing of any rates or prices as aforesaid shall include any foreign currency and the proportion thereof.

Variations Exceeding 15 percent

52.3 ADD final sentence as follows:

The adjustment or fixing of any sum as aforesaid shall have due regard to any foreign currency included in the Effective Contract Price and the proportion thereof.

Daywork

52.4 In the fourth paragraph of Sub-Clause 52.4, amend the first sentence by changing the words "At the end of each month" to "As early as possible after the end of each month".

Supplement Sub-Clause 52.4 as follows:

The work so ordered shall immediately become part of the Works to be executed under the contract. The Contractor shall, as soon as practicable after receiving the Daywork Order from the Engineer, undertake all the necessary steps for due execution of such work. Prior to commencement of any work to be done on a Daywork basis, the Contractor shall give an advance notice to the Engineer stating the exact time of such commencement.

Where the rates and/or prices inserted in the Schedule herein above referred to do not apply in part or in whole of work carried out on a Daywork basis, suitable rates and/or prices shall be calculated by the Engineer for the purposes of payment.

Contractor's Equipment, Temporary Works and Materials

54 AMEND Clause 54 as follows:

Sub-Clauses 54.2 and 54.3 shall be re-numbered as 54.3 and 54.4; Sub-Clauses 54.4 to 54.6 shall be re-numbered as 54.6 to 54.8 and Sub-Clauses 54.7 and 54.8 shall be re-numbered as 54.14 and 54.15. Add additional Sub-Clauses as follows:

Vesting

54.2 *All Contractor's Equipment, Temporary Works and materials owned by the Contractor, or by any company in which the Contractor has a controlling interest, shall, when on the Site, be deemed to be the property of the Employer. Provided always that the vesting of such property in the Employer shall not prejudice the right of the Contractor to the sole use of the said Contractor's Equipment, Temporary Works and materials for the purpose of the Works nor shall it affect the Contractor's responsibility to operate and maintain the same under the provisions of the Contract.*

54.4 ADD to new Sub-Clause 54.4

The Contractor and his Subcontractors shall be allowed to import into the Republic of Kenya all materials, supplies, construction equipment, spare parts including tyres and tubes, and other items which are needed to execute the Works without payment of any import duties and taxes in accordance with the provisions of Clause 73 hereof.

The import of construction equipment shall be made on the basis of temporary admission into Kenya and re-export thereafter upon completion of the Works. If the Contractor's equipment is not re-exported, duties and taxes shall then be paid based upon their residual value at the date of completion of the Contract, or the date of withdrawal from the Works if earlier.

The list of construction equipment and associated spare parts to be imported shall be approved by the Employer before importation.

The Contractor shall not import any items which are prohibited by the laws of Kenya.

If the Employer or Engineer so require, the Contractor shall furnish satisfactory proof of ownership of or right to use the construction equipment, Temporary Works, materials, etc., placed on the Site.

- Notification of Equipment Ownership** 54.7 *The Contractor shall upon request made by the Engineer at any time in relation to any item of Equipment forthwith notify to the Engineer in writing the name and address of the owner thereof and shall in the case of hired Equipment certify that the agreement for the hire thereof contains a provision in accordance with the requirements of Subclause (3) of this Clause.*
- Avoidance of Seizure by Owner of Equipment** 54.8 *The Employer shall in order to avoid seizure by the owner of Equipment be entitled to pay such owner the amount of any overdue instalment or other payable under any agreement relating to such Equipment and in the event of his doing so any amount so paid by him shall be a debt due from the Contractor to the Employer and may be deducted by the Employer from any monies due or that may become due to the Contractor under the Contract or may be recovered by the Employer from the Contractor at Law.*
- Irremovability of Equipment etc.** 54.9 *No equipment or any part thereof shall be removed from the Site without the written consent of the Engineer, which consent shall not be unreasonably withheld, whereby same is no longer immediately required for the purpose of completion and maintenance of the Works but the Employer will permit the Contractor the exclusive use of all such Equipment in and for the completion and maintenance of the works until the occurrence of any event which gives the Employer the right to exclude the Contractor from the Site and to proceed with completion and maintenance of the works.*
- Revesting and Removal** 54.10 *Upon the removal, with the consent of the Engineer under Sub-Clauses 54.1, of any such Contractor's Equipment, Temporary Works or materials as have been deemed to have become the property of the Employer under Sub-Clauses 54.2, the property therein shall be deemed to revest in the Contractor and, upon completion of the Works, the property in the remainder of such Contractor's Equipment, Temporary Works and materials shall, subject to Clause 63, be deemed to revest in the Contractor.*
- Disposal of Equipment** 54.11 *If the Contractor shall fail to remove any Equipment as required pursuant to Clause 33 within such reasonable time as may be allowed by the Engineer then the Employer may:*
- a) sell any Equipment which is the property of the Contractor, and*
 - b) return any Equipment which is not the property of the Contractor to the owner thereof at the Contractor's expense; and after deducting from any proceeds of sale the costs charges and expenses of and in connection with such sale and in connection with return as aforesaid shall pay the balance (if any) to the Contractor but to the extent that the proceeds of any sale are insufficient to meet all such costs, charges and expenses the excess shall be a debt due from the Contractor to the Employer and shall be deductible or recoverable by the Employer from any monies due or that may become due to the Contractor under the Contract or may be recovered by the Employer from the Contractor at Law.*
- Liability for Loss or Injury to Equipment Origin of Equipment** 54.12 *The Employer shall not at any time be liable for the loss of or injury to any of the Equipment which has been deemed to become the property of the Employer under Subclause (2) of this Clause save as mentioned in Clause 20 and 65.*
- 54.13 *The Contractor is free to use for the performance of the Works Equipment from any origin subject to the OECF rules for procurement.*

Measurement

Works to be Measured

56.1 Delete the Sub-Clause 56.1 and substitute the following:

The Contractor shall prepare and submit to the Engineer all necessary field notes and other records taken and computations made for the purpose of quantity measurement, of which the forms shall be approved by the Engineer, for the monthly progress payment as prescribed in Clause 60. The measurement of work quantities made by the Contractor shall be verified and certified by the Engineer based on the such documents as mentioned above.

The Contractor shall furnish all personnel, equipment and materials to make such surveys and computations as necessary to determine the quantities of work performed. Unless otherwise prescribed in the Specifications or the Drawings, all measurement for payment shall be made by the dimensions, lines and grades as shown on the Drawings or by direct survey of which the methods shall be approved by the Engineer.

The documents submitted for measurement and payment shall become the property of the Employer and shall be used to the extent necessary to determine the monthly progress payment to be made to the Contractor under the Contract. Direct survey if done shall be subject to check and verification by the Engineer and all errors in the said survey work and relating computations as found in such checking shall be immediately corrected by the Contractor.

Method of Measurement

57.1 Delete Sub-clause 57.1 and substitute the following:

The methods of measurement shall be subject to the approval of the Engineer. The Works shall be measured net with deductions made in accordance with the measurement Clauses of the Specification. All measurement shall be performed in metric units.

Unless otherwise prescribed in the Specifications or the Drawings, all measurement for payment shall be made by use of the dimensions, lines and grades shown on approved Drawings, or by direct survey or by direct quantity measurement of which methods shall be approved by the Engineer.

Mass, for payment purposes, shall be determined by calculation in all cases except where otherwise approved by the Engineer.

Where direct measurements by weighing are approved they shall only be accepted if taken in the presence of the Engineer and the record of the weighing is accordingly certified, and if a statement containing all the necessary information on the weight of packing materials, struts, blocks, chains, etc., is presented to the Engineer for certification at the time of the weighing.

Unit of Measurement

57.3 ADD Sub-Clause 57.3:

Except where otherwise specifically stated, the International Metric System (Systems International (SI) - kg, m, s) of measurement shall be used for the purpose of the Contract.

Nominated Sub-Contractors

59 ADD to Sub-Clause 59.5: - Certification of Payments to Nominated Sub-Contractors.

If the Engineer desires to secure final payment to any nominated Sub-Contractor before final payment is due to the Contractor and if such Sub-Contractor has satisfactorily indemnified the Contractor against any latent defects, the Engineer may, in an Interim Certificate, include an amount to cover the said final payment, and thereupon the Contractor shall pay to such nominated Sub-Contractor the amount so certified. Upon such final payment, the amount named in the appendix to Tender as Limit of Retention Money shall be reduced by the sum which bears the same ratio to the amount as does the Sub-Contract and the Sub-Contractor shall be discharged from all liability for the work, materials or goods executed or supplied by such Sub-Contractor under the Sub-Contract to which the payment relates.

Certificates and Payment

60 AMEND Clause 60.1 - Monthly Statements as follows:

DELETE "six" from the first sentence and ADD "and number" between "in such form - as the Engineer may from time to time prescribe"

DELETE subsections c) and (d), re-number subsections (d) and (e) as (c) and (d), and add the following subsections:

e) *any amount to be withheld under retention provisions*

f) *any payment due to the Employer for materials/services provided.*

g) *The proportion of local and foreign currency requirements applicable as determined by applying the percentages indicated in Schedule V, subject to any changes thereto pursuant to Clauses 52 and 72.*

The Engineer shall after examining such statement approve as he deems fit or directs the Contractor to amend if the Engineer considers if necessary to do so.

AMEND Sub-Clause 60.10 - Time for Payment:

DELETE the last two sentences and replace with:

If the period laid down for payment to the Contractor of Interim or Final Certificates, by the Employer, have been exceeded, the Contractor shall be entitled to claim simple interest calculated pro-rata on the basis of the number of days delays at the maximum lending interest rate specified by the Central Bank for Commercial Banks to charge the borrowers. The Contractor will be required to notify the Employer within 14 days of receipt of delayed payment his intention to claim interest.

Payment of interest on delay shall be subject to submission by the Contractor, in his next certificate or not later than the 56 calendar date following the day for payment of the Final Certificate, of a written request having the effect of a statement of Account.

ADD Sub-Clause 60.11 as follows:

Currency of Account and Rates of Exchange

60.11 *The currency of account shall be the Kenya Shilling and for the purposes of the Contract conversion between the Kenya Shilling and other currencies stated in the Appendix to Tender shall be made in accordance with the Table of Exchange Rates in the Appendix to Tender. Conversion between the currencies stated in such Table other than the Kenya Shilling shall be made at rates of exchange determined by use of the relative rates of exchange between such currencies and the Kenya Shilling set out therein.*

Payment of Retention Money

60.12 *One half of the retention money shall become due and shall be paid to the Contractor when the Engineer shall certify in writing that the last section of the whole Works has been substantially completed and the other half shall be paid to the Contractor within 56 days after expiration of the Period of Maintenance notwithstanding that at such time there may be outstanding claims by the Contractor against the Employer. Provided always that if at such time there shall remain to be executed by the Contractor any works ordered during such period pursuant to Clause 49 and 50 thereof the Employer shall be entitled to withhold payment until completion of such works of so much of the second half of the retention money as shall in the opinion of the Engineer represent the costs of the works so remaining to be executed.*

Provided further that in the event of different maintenance periods having become applicable to different parts of the works pursuant to Clause 48 hereof the expression "expiration of the Period of Maintenance" shall for the purposes of this Subclause be deemed to mean the expiration of the latest of such periods such sub-contractor under the sub-contract to which the payment relates.

Proportion of Foreign Currency

60.13 *Subject to the provisions of Sub-Clause 60.12 the proportion of foreign currency in any amount due to the Contractor or the Employer shall be determined in the following manner.*

- a) For all measured work the percentages of foreign currency for the appropriate section of the Bill of Quantities as stated in Schedule 5 shall be applied.*
- b) Variations in costs of Specified Materials stated in the Schedule of Basic Rates - Schedule 2 - in the Schedules of Supplementary Information and those due to changes of legislation shall be paid in local currency.*
- c) The provisions for the deduction and release of Retention money and the payment of interest shall be applied similarly to both the local and foreign portions.*
- d) The advance payment and the repayment thereof under Clause 60.17, and liquidated damages shall all be apportioned on the basis of the ratio between local and foreign currency indicated in the Contract Price.*
- e) In the event that the payment is for an item not covered in the foregoing paragraphs the Engineer shall determine the proportion of foreign and local currency based on the information given in Schedule 6, 6a and 6b, together with any additional information he may request the Contractor to provide.*

Payments to Contractor

60.14 *All payments to the Contractor by the Employer shall be made*

- a) in the case of payment(s) under Sub-Clause(s) 70.1, in Kenya Shillings.*
- b) in any other case in the currencies and proportions stated in the Appendix to Tender*

Payments to Employer

60.15 *All payments to the Employer by the Contractor including payments made by way of deduction or set-off shall be made*

- a) in the case of credit(s) under Sub-Clause(s) 70.1 and other applicable Clauses in Kenya Shillings*
- b) in the case of liquidated damages under Clause 47, in Kenya Shillings*
- c) in the case of reimbursement of any sum previously expended by the Employer, in the currency in which the sum was expended by the Employer;*
- d) in any other case, in such currency as may be agreed.*

If the part payable in a particular currency of any sum payable to the Contractor is wholly or partly insufficient to satisfy by way of deduction or set-off a payment due to the Employer in that currency, in accordance with the provisions of this Sub-Clause, then the Employer may if he so desires make such deduction or set-off wholly or partly as the case may be from the balance of such sum payable in other currencies.

Place of Payment 60.16 *Payments to the Contractor by the Employer shall be made into a bank account nominated by the Contractor in the country of the currency of payment. Where payment is to be made in more than one currency separate bank accounts shall be nominated by the Contractor in the country of each currency and payments shall be made by the Employer accordingly.*

Advance Payments 60.17 *An advance payment of the amount stated in the Appendix to Tender shall, following the presentation by the Contractor to the Employer of an approved performance security in accordance with Sub-Clause 10.1 and a Guarantee in terms approved by the Employer for the full value of the advance payment, be certified by the Engineer for payment to the Contractor. Such Guarantee shall be progressively reduced by the amount repaid by the Contractor as indicated in interim certificates of the Engineer issued in accordance with this Clause. The advance payments shall not be subject to retention. The advance payment shall be repaid by way of reduction in interim certificates commencing with the next certificate issued after the total certified value of the Permanent Works and any other items in the Bill of Quantities (excluding the deduction of retention) exceeds (twenty) percent of the sum stated in the Letter of Acceptance. The amount of the reduction in each interim certificate shall be one (fifth) of the difference between the total value of the permanent Works and any other items in the Bill of Quantities (excluding the deduction of retention) due for certification in such interim certificate and the said value in the last preceding interim certificate until the advance payment has been repaid in full. Provided that upon the issue of a Taking-Over Certificate for the whole of the Works or upon the happening of any of the events specified in Sub-Clause 63.1 or termination under Clauses 65, 66 or 69 the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Employer.*

No separate advance payment shall be made under this Contract for provision of plant on site, erection of camp facilities, provision of sureties and insurance, movement of plant onto the works and off the works on completion, and it shall be deemed that the Contractor has allowed for these costs and associated costs in the pricing of the Bills of Quantities.

Special Risks

65 ADD Sub-Clause 65.9 as follows:

- Frustration of the Contract** 65.9
- a) *In the event of the Employer unilaterally ordering the final cessation of performance of the Contract, for reasons not specified elsewhere in the Conditions of Contract, the Contract shall be considered to be frustrated and the Contractor shall be indemnified as provided for by Clause 65.1.*
 - b) *In the event of the Employer ordering the adjournment of the Contract before or after commencement of the Works for reasons not specified elsewhere in the Conditions of Contract, the Contractor shall be entitled to indemnity for any injury which he may have suffered as a consequence of such adjournment. The Engineer shall award the Contractor payment of such sum as in his opinion shall be reasonable regard being had to all material and relevant factors including the Contractor's on costs and overheads, and the nature of the instruction to adjourn the Contract.*

Settlement of Disputes

67.3 In lines 6 to 8 of this Sub-Clause, delete the words:

".... under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed under such Rules" and substitute "by Arbitration in Nairobi in accordance with the provisions of the Arbitration Act, Chapter 49 of the Laws of Kenya or any enactment replacing or modifying the same for the time being in force. The Appointer of Arbitrator/s will be the Chairman of the Institution of Engineers of Kenya".

After the last paragraph add the following paragraph:

Arbitration shall take place in Nairobi, Kenya. The language of all arbitration proceedings shall be "English". If the Arbitrator finds that one party to the dispute is wholly in the wrong, that party shall pay the entire cost of arbitration; otherwise the cost of Arbitration shall be apportioned between the Employer and the Contractor by the Arbitrator. Neither party shall have recourse to a court of law or other authority for the purpose of appealing against the decision of the Arbitrator, which will be binding upon the Employer and the Contractor.

Notices

68 DELETE Sub-Clauses 68.1 and 68.2 and replace with the following:

Notice to Contractor

68.1 *All certificates, notices or instructions to be given to the Contractor by the Employer or the Engineer under the terms of this Contract shall be sent by post or left at the Contractor's principle place of business or such other address as the Contractor shall nominate for that purpose. Notwithstanding the foregoing, in addition, the Contractor shall either maintain an address close to the Works or appoint an agent residing close to the Works for the purpose of receiving notices to be given to the Contractor under the terms of the Contract; this obligation being terminated upon issue of the Certificate of Completion.*

DELETE Sub-Clause 68.2 and replace with:

Notice to Employee and Engineer

68.2 *Any notice to be given to the Employer or to the Engineer under the terms of the Contract shall be sent by post or left at the following addresses:*

a) *The Employer - Permanent Secretary
Ministry of Public Works
P O Box 30260
Nairobi.*

b) *The Engineer - Chief Engineer (Roads)
Ministry of Public Works
P O Box 30260
Nairobi*

ADD Sub-Clause 68.4 as follows:

Medium of Transmission

68.4 *Transmission by telex, telefax, telegraph or like methods shall only be provisional. It shall require confirmation via the avenues referred to in Sub-Clauses 68.1 and 68.2 within the time limits, if any, which must be observed.*

