

GOVERNMENT OF THE UNITED ARAB EMIRATES  
MINISTRY OF AGRICULTURE AND FISHERIES



MARICULTURE CENTER

UMM AL QUWAIN U.A.E.

VOLUME 1

TENDERING CONDITIONS  
AND  
CONDITIONS OF CONTRACT

NOVEMBER 1980

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JAPAN INTERNATIONAL COOPERATION AGENCY (JICA)

Name of Tenderer .....

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AND  
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Name of Tenderer .....

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## INSTRUCTIONS TO TENDERERS

### 1. Examining Tender Documents and Visiting Site

The Tenderer shall carefully examine all Tender Documents, the Drawings, the Site of the Works and, in general, obtain all information as to: availability and cost of labour and materials, transportation, weather conditions which may prevail, access to and the nature of the work itself, soil conditions, underground water, availability of water, and all risks and contingencies which may arise that could affect his Tender Price and the completion of the Works. The Tenderer shall submit a statement with his tender that he has visited and inspected the Site of the Works and acquainted himself with the nature of the earthwork and that he has no objections whatsoever. All costs and charges in connection with visits to and examination of the Site and the preparation of the Tender shall be borne by the Tenderer.

The determining of the Bid Unit Prices shall be made by the Tenderer at his own cost and responsibility, and, under no circumstances, he will be entitled to claims for reasons of not knowing or ignorance of the conditions related to the Works.

### 2. Partnership of Contractors

"Partnership of Contractors" as used in these instructions shall mean an actual partnership, mergers of companies, joint ventures or any combination of contractors or contracting companies joined together for the purpose of tendering for this Tender.

Where several contractors (local or local with foreign) decide to tender in partnership, such partnership will have to be registered in U.A.E. The partnership shall be registered either before the submission of the Tender, or before the signing of the Contract, the later case being where the partners would have decided to become associated only if they were awarded the Contract.

The Partnership of Contractors shall be for the whole duration of the Contract, otherwise the Employer shall be entitled to cancel the Contract immediately without any formalities, and to apply the procedures stipulated in Clause 63 (1), (2) and (3) of the Conditions of Contract concerning the forfeiture of the Contract.

It is imperative that the Partnership of Contractors shall present a copy of the registered partnership agreement indicating the persons who have the right to enter into Contract in the name of the partnership, the extent and limits of such rights, the responsible persons who will execute this Contract, provided that they have the right to give correct statements in the name of the partnership. Samples of the signatures of the aforesaid persons are required. The Tenderers shall also submit a copy of their commercial register as legally approved by the Government Authorities.

The "Partnership of Contractors" shall submit with the Tender:

- An affidavit, signed by the parties to the partnership declaring that they may be held jointly liable.
- The Contract of Partnership they intend to register or an affidavit signed by all parties of the proposed partnership declaring their intent to form a partnership and the draft of the proposed contract.

3. No Alteration to be made to Tender Documents

No alteration (other than filling in all the blanks intended to be filled in) shall be made in the Tender Form or in any of the Documents attached to it. If any alteration is made and if these instructions are not fully complied with, the Tender may be rejected.

4. Alternative Tender

Should the Tenderer wish to offer any alternative for any design, method of construction, material or thing specified he must first complete the Tender strictly in accordance with the Tender Documents and submit in addition his alternative (in duplicate) fully described and priced in a separate document attached to the Form of Tender clearly indicating the items of the Specification and Bill of Quantities it is intended to supersede and the aggregate difference in the total Tender Price.

5. Tender Guarantee

The Tender shall be accompanied by a letter of guarantee from a Bank located in U.A.E. in the form enclosed in favour of and payable to the Employer for the amount of percent (5%) of the Tender Sum as a guarantee of good faith otherwise, the tender will be rejected. The Tender Guarantee will be returned to the unsuccessful tenderers within ninety (90) days from the latest date fixed for receiving tenders or at such earlier time as a tender shall have been accepted by the Employer. In the case of the successful tenderer the Tender Guarantee will be returned as soon as the Formal Contract and Performance Bond have been entered into.

6. Formal Contract and Performance Bond

The Contractor whose tender is accepted will be required to execute and the Employer agrees to execute within fifteen (15) days of the issuance of the Notice of Acceptance of Tender a Formal Contract in the Form of Agreement annexed to the Tendering Conditions and the Tenderer will be required to provide within the above mentioned period a Performance Bond in the form enclosed from a Bank approved by the Employer located in U.A.E. in the amount as stated in the Conditions of Contract for the due performance of the Contract. His Tender Guarantee will then be returned, if the tenderer fails, neglects or refuses to execute a Contract Agreement and furnish a Bond, as required by Clause 9 and 10 of the Conditions of Contract then in that event the Employer has full right to seize and confiscate the full value of the Tender Guarantee and the Tenderer shall have no right to claim refund or compensation. The Performance bond will be retained by the Employer during the period of the Contract and will be returned upon the completion of the Works in accordance with the Conditions of Contract.

7. Addenda and Obscurities

Should there be any doubt or obscurity in the meaning of any of the Tender Documents or as to anything to be done or not to be done or as to any other matter or thing, the Tenderer must set forth such doubt or obscurity in writing and submit the same to the Employer not later than 15 days before the date fixed for the delivery of tenders. Any interpretations of the Tender Documents will be made only by formal Addenda to the Tender Documents. The Employer will not be responsible for any other interpretations. Each addendum issued will be distributed to all Tenderers to whom a set of Tender Documents have been issued. All addenda issued will become an integral part of the Tender Documents, and eventually part of the Contract. In no case any procedure in connection with clarification and interpretation of Tender Documents will give the right to Tenderers to claim the prolongation of the term set for submitting tenders. The Tenderer shall be responsible for any error which he may make in computing any quantity of materials and labour required or costs involved, or through any lack of knowledge of the Site or misunderstanding of anything shown or implied on the Drawings or in the Specifications.



8. Acceptance

- The Employer has the indisputable right to accept or reject any offer or to cancel the Tender and stop the bidding without giving any justification.
- The Employer will not be responsible or pay for expenses or losses which may be incurred by any tenderer in the preparation of the Tender.
- The tender of any Tenderer which does not comply with the foregoing Instructions of Tendering will not be considered.

9. Period of Validity

The Tender shall be irrevocable for a period of ninety (90) days from the latest date fixed for receiving tenders.

10. Pricing

All items in the Tender Documents priced by the Tenderer are to be priced and monied in ink. Any alteration must be initialed by the person signing the Tender Form.

The rates and prices set down by the Tenderer against the items in the Bill of Quantities are to be the full inclusive value of the finished work described thereunder and are to include for profit and all obligations and liabilities of every kind which under the Contract are to be borne by the Contractor.

Each item in the Bill of Quantities is to be priced or if any items are left unpriced the Tenderer must indicate the value of the work described thereunder is allowed for elsewhere.

11. Address

The successful Tenderer should have an address in U.A.E. Each Tenderer shall give with his tender an address at which notices may be validity served on him. All notices shall be deemed to be validity served which are left at such address or are sent there by post and every letter sent by post shall be deemed to have arrived in due course of post unless the contracty is shown.

12. Price Analysis

The successful Tenderer shall submit a Price Analysis for all the priced items quoted by him in the Priced Bill of Quantities, prior to signing the Contract. The rates for labour, materials and plant in the Price Analysis should be compatible with the rates of labour, materials and plant inserted by the Tenderer in the Schedule of Dayworks. In the event that the rates in the Price Analysis do not match with respective rates in the Schedule of Dayworks the Contractor shall rectify the rates in the Schedule of Daywork to match with those in the Price Analysis.

13. Qualified Tenders

Tenders shall be strictly in accordance with the Condition of Contract, Specifications, Bills of Quantities and these Instructions to Tenderers and shall not be qualified in any way. Any such qualification is liable to result in a tender which is otherwise favourable not being considered. Tenderers shall therefore ensure that any explanatory or descriptive matter included with their tender must be evaluated in terms of money. Tenderers who qualify their tenders without inserting or stating the monetary value of their condition or reservation shall subject their Tender to be rejected.

UNITED ARAB EMIRATES  
MINISTRY OF AGRICULTURE & FISHERIES

FORM OF TENDER

(Note: Appendix "A" forms part of the Tender)

To: His Excellency The Minister of  
Agriculture & Fisheries  
U.A.E.  
Dubai

Excellency,

U.A.E. MARICULTURE CENTRE  
IN UMM AL QUWAIN

Having examined the Tender and Contract Documents for the construction of the above-named Works, we, the undersigned, hereby offer to construct, complete, maintain and deliver up the whole of the said Works, in strict conformity to the said Tender and Contract Documents for the sum of -----  
----- (Dhm. -----) or such other sum as may be ascertained in accordance with the said Conditions.

We undertake in the event of this Tender being accepted, with the understanding that you are not bound to accept any tender you may receive, to execute when called upon by you to do so, a Contract for the Works in the terms of the Articles of Agreement which may be altered and added to in such a manner as you may require for the purpose of adapting it to the circumstances of this Tender.

We undertake to complete and deliver up the whole of the Works within the period named in Appendix "A" to the Forms of Tender from the date of receipt by us of the Order to Commence with the Works and furthermore complete the different parts of the Works defined in our Program of Works within the time limits therein guaranteed.

We enclose our Provisional Bank Guarantee, the name and qualifications of the Site Agent whom we propose to put in charge of the Works, and also Specifications of Constructional Plant which we undertake to provide for the execution of the Works.

Until and until a formal Agreement is prepared and executed this Tender, together with your written acceptance thereof, shall constitute a binding Contract between us.

APPENDIX A

Reference Clause of Conditions of Contract

|    |     |   |   |  |
|----|-----|---|---|--|
| 1  | (1) | Name of Employer                                    | : | Ministry of Agriculture & Fisheries, United Arab Emirates  |
| 10 |     | Amount of Performance Bond                          | : | Ten Percent of Tender Sum  |
| 15 |     | Qualifications and Experience of Contractor's Agent | : | Ten(10)Years with a University Degree and has been responsible for a similar job.                  |
| 22 | (2) | Minimum Amount of Third Party Insurance             | : | Dhm. Three Million (3,000,000 Dirhams).  |
| 41 | (1) | Commencement of Works                               | : | Date of Engineer's Written Order to Commence.  |
| 43 |     | Time for Completion                                 | : | Twelve(12) Calendar Months after Receipt of Engineer's Written Order to Commence.                  |
| 47 | (1) | Liquidated Damage for Delay                         | : | Dhm. 2,000 per Day   |
| 49 | (1) | Period of Maintenance                               | : | Twelve Calendar Months from Practical Completion of Works.   |
| 60 | (1) | Period of Interim Payment Certificates              | : | Monthly.   |
| 60 | (2) | Percentage of certified                             | : | Ten Percent (10%) until practical completion.<br>: Five Percent (5%) during period of Maintenance. |
| 60 | (5) | Currency to be used for this Contract.              | : | Dirham   |
| 68 | (1) | Contractor's Address for service of Notices         | : | -----<br>-----   |
| 68 | (2) | Employer's Address for service of Notices           | : | Ministry of Agriculture & Fisheries, United Arab Emirates, Dubai.                                  |

Date this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_  
 Signature \_\_\_\_\_ in the capacity of \_\_\_\_\_  
 duly authorized to sign tenders for and on behalf of \_\_\_\_\_

-----  
 (IN BLOCK CAPITALS)  
 -----

Witness -----  
 Address -----  
 Occupation -----

UNITED ARAB EMIRATES  
MINISTRY OF AGRICULTURE & FISHERIES

FORM OF PROVISIONAL GUARANTEE

To: His Excellency The Minister of  
Agriculture & Fisheries  
U.A.E.  
Dubai

Excellency,

U.A.E. MARICULTURE CENTRE  
IN UMM AL QUWAIN

We have the honour to inform you that we guarantee Messrs.

-----  
-----  
for the amount of U.A.E. Dirhams -----  
----- (5% of Tender Sum), as a guarantee for  
their good intention in the presentation of their Tender for the  
construction, completion, maintenance and delivering up of the  
above-named Works in conformity to the provisions of the Contract  
Documents.

The guarantee shall remain valid and irrevocable for a period  
of ninety (90) days starting at twelve (12) o'clock noon on the  
date indicated in the foregoing Invitation to Tender.

In the event of Messrs. -----  
----- withdrawing their Tender before the  
expiration of the period of validity of this letter of guarantee  
we definitely undertake to deposit with you upon demand and not-  
withstanding any objections on the part of the said Messrs.

-----  
the aforesaid sum of -----  
----- in cash.

Yours truly,

(Signature)

UNITED ARAB EMIRATES

MINISTRY OF AGRICULTURE AND FISHERIES

Contract Number:

Tender Number:

Project Name: MARICULTURE CENTER

FORM OF AGREEMENT

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

BETWEEN:

Firstly: The Ministry of Agriculture and Fisheries of the United Arab Emirates represented in signing this contract by His Excellency Saeed Mohamed Al Raghabani, the Minister of Agriculture and Fisheries.

(As First Party)

Secondly: The Contractor Messrs. \_\_\_\_\_

of \_\_\_\_\_

represented in signing this contract by \_\_\_\_\_

in his capacity as \_\_\_\_\_

(As Second Party)

NOW THIS AGREEMENT WITNESSETH as follows:-

1. The Second Party shall carry out, complete and maintain the above said Works in accordance with the Conditions of Contract, Drawings, Specification and all the Contract Documents and the Second Party hereby certifies that he has examined and studied such documents and that he shall carry out the Works accordingly.

2. The estimated value of the Contract is \_\_\_\_\_  
\_\_\_\_\_ Dirhams (Dh \_\_\_\_\_).

This sum shall consist of payments made by the First Party to the Second Party for carrying out the Works as stated in the Contract Documents, provided that the value of quantities of work exceeding or less than those quantities stated in the priced Bill of Quantities and according to the Drawings and Conditions of Contract shall be added or deducted from such sum. The First Party shall pay to the Second Party monthly payments according to the progress of work based on the quantities actually executed during each month in the manner shown in the Contract Documents.

3. The Time for Completion shall be twelve (12) calendar months after receipt of Engineer's written order to commence.

4. The Delay Penalty in carrying out the Works to be made as stipulated in Section 2 of the Conditions of Contract.
5. The First Party shall deduct from the monthly payments due to the Second Party ten (10) percent of such payments payable to ensure the performance of the Works. The First Party shall retain the total of such deductions until the issue of the Maintenance Certificate.
6. Any damage occurring to the Works executed by the Second Party during the Period of Maintenance shall be repaired and rectified by the Second Party at his own expense. He shall proceed with the repair work within seven days from the date of being notified in writing by the First Party. If the Second Party has not carried out such repair work within such period, the First Party is entitled to carry out and repair at the expense of the Second Party and costs incurred in so doing shall be deducted from the Retention Money.
7. In spite of the issue of the Maintenance Certificate after the expiry of the Period of Maintenance, the refunding of the Retention Money and the settling of all the accounts of this Contract, the Second Party shall still be responsible for any faults or defects which may appear in the main parts of the Works whether they are concrete or steel, due to any negligence or deceit made by the Second Party and he shall be responsible for any consequences of such fault or defect. The Second Party's responsibility shall be material and punitive as compensation for any damage of any type and extent.
8. This Contract is issued in eight copies in English and Arabic. The English text shall be the only prevailing text with regard to the construing and application of this Contract and its Documents. A copy in both English and Arabic has been given to the Second Party to work to accordingly. The First Party keeps the remaining copies.

First Party

Second Party

Saeed Mohamed Al Raghabani

Representative of the

Minister of Agriculture and Fisheries

Contractor

UNITED ARAB EMIRATES  
MINISTRY OF AGRICULTURE & FISHERIES  
FORM OF PERFORMANCE BOND OR SURETY

To: His Excellency Minister of  
Agriculture & Fisheries  
U.A.E.  
Dubai

Excellency,

U.A.E. MARICULTURE CENTRE  
IN UMM AL QUWAIN

As Messrs. \_\_\_\_\_  
\_\_\_\_\_ have declared that their  
Tender for the construction of the above-named Works has been  
accepted, we hereby undertake to hold at your disposal the sum of  
\_\_\_\_\_ as Performance Bond or Surety, which  
constitutes (10%) Ten Percent of the Tender Sum. This Bond shall  
be free of interest and payable in cash on your first demand in  
the manner ordered, without the Contractor or any person on his  
behalf or ourselves having the right to suspend or delay payment  
or to object thereto for any reason whatsoever and in particular  
for any ground of seizures, cessions, oppositions, etc.

This undertaking shall remain in force for the period and  
subject to the conditions stipulated in the Conditions of Contract  
and other Contract Documents for the said Works.

Yours truly,

(Signature)



CONTRACTOR'S AGENT IN CHARGE  
OF WORKS

1. Full Name \_\_\_\_\_  
\_\_\_\_\_
  
2. Nationality \_\_\_\_\_  
\_\_\_\_\_
  
3. Previous Ex-  
perience \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
4. Technical  
Qualifica-  
tions (Giving  
Dates, Places,  
etc.) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
5. Specimen  
Signature  
of the  
Above-Named  
Agent \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Contractor's Signature

Date: \_\_\_\_\_



SECTION 2

CONDITIONS OF CONTRACT

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CONDITIONS OF CONTRACT

DEFINITIONS AND INTERPRETATION

Definitions

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

- (a) "Employer" means the person or party named in Appendix "A", who has called for Tenders to build or construct, erect or deliver the Works and who will employ the Contractor and the legal successors in title to the Employer but not (except with the consent of the Contractor) any assignee of the Employer.
- (b) "Contractor" means the person or persons, firm or company whose tender has been accepted by the Employer and includes the Contractor's personal representatives, successors and permitted assigns.
- (c) "Engineer" means ..... acting directly within the scope of the particular duties assigned to him and the authority given to him by the "Employer" for the supervision of the execution of this Contract according to the Context of the ments.
- (d) "Engineer's Representative" means any resident engineer or assistant of the Engineer or any clerk of works appointed from time to time by the Employer or the Engineer to perform the duties set forth in Clause 2 hereof whose authority shall be notified in writing to the Contractor by the Engineer.
- (e) "Works" means the works to be executed in accordance with the Contract.
- (f) "Contract" means collectively the Contract documents listed in the Form of Agreement (including accompanying Documents) and any letters exchanged which letters both contracting parties agree shall be part of the Contract.

- (g) "Contract Price" means the sum named in the Tender subject to such additions thereto or deductions therefrom as may be made under the provisions hereinafter contained.
- (h) "Constructional Plant" means all appliances or things of whatsoever nature required in or about the execution, completion or maintenance of the Works or Temporary Works (as hereinafter defined) but does not include materials or other things intended to form or forming part of the permanent work.
- (i) "Temporary Works" means all temporary works of every kind required in or about the execution, completion or maintenance of the Works.
- (j) "Drawings" means the drawings referred to in the Specifications and any modification of such drawings approved in writing by the Engineer and such other drawings as may from time to time be furnished or approved in writing by the Engineer.
- (k) "Site" means the lands and other places on, under, in or through which the Works are to be executed or carried out and any other lands or places provided by the Employer for the purposes of the Contract together with such other places as may be specifically designated in the Contract as forming part of the Site.
- (l) "Month" means calendar month according to the Gregorian Calendar.
- (m) "Approved" means approved in writing by the Engineer including subsequent written confirmation or previous verbal approval and "approval" means approval in writing by the Engineer including as aforesaid.

Singular &  
Plural

(2) Words importing the singular only also include the plural and vice versa and words importing persons shall include corporations where the context requires.

Marginal  
Headings  
or Notes

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

## ENGINEER AND ENGINEER'S REPRESENTATIVE

### Powers and Authorities of the Engineer

2. (1) The Engineer is designated by the Employer to supervise and direct the Works. He shall have vested in him, under the Contract, the following specific powers and authorities.
- (a) Approval of the Works or any part thereof shall not be considered final and effective until approval of same is confirmed and endorsed by the Engineer.
  - (b) Approval of all payment certificates including the final one.
  - (c) Approval of documents, (if any), presented by the Contractor (design, specifications, etc.).
  - (d) The variation or modification of the design, quality or quantity of the Works or the addition or omission or substitution of any work.
  - (e) Rectifying any discrepancy in or divergence between the Contract Drawings, Specification and/or Bills of Quantities.
  - (f) The removal from the Site of any materials brought thereon by the Contractor and the substitution of any other materials therefor.
  - (g) The removal and/or re-execution of any works executed by the Contractor.
  - (h) The postponement of any work to be executed under the provisions of this Contract.
  - (i) The dismissal from the Works of any person employed thereon.
  - (j) The opening up for inspection of work covered up.
  - (k) The amending and making good of any defects under Clause 49 of these Conditions.

Concerning items (e, d, e, h, & k) written approval should be obtained from the Employer. As regards items the payments are not considered to be final until the Employer approves it.

The Engineer shall issue written instructions, directions or explanations involving a variation to the Contractor or his Agent. If any verbal instructions, directions or explanations involving a variation are given

to the Contractor or his Agent by the Engineer or his Representative, such instructions, directions or explanations shall be confirmed in writing by the Contractor to the Engineer within seven days, and if not dissented from in writing by the Engineer to the Contractor with a further seven days shall be deemed to be Engineer's Instructions. If compliance with Engineer's Instructions involves any variation, such variation shall be dealt with under Clause 52 of these Conditions and the value thereof shall be added to or deducted from the Tender Price.

If within seven days after receipt of a written notice from the Engineer requiring compliance with Engineer's Instructions the Contractor does not comply therewith, the Employer may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to such instructions and all costs incurred in connection therewith shall be recoverable from the Contractor by the Employer as a debt or may be deducted by him from any monies due or to become due to the Contractor under this Contract.

Engineer's  
Representative

(2) The Engineer will appoint a Representative on the Site. The Contractor shall afford him every facility for the performance of his duties.

Duties and  
Power of  
Engineer's  
Representative

(3) The duties of the Engineer's Representative are to watch and supervise the Works and to test and examine any materials to be used or workmanship employed in connection with the Works. He shall have no authority to relieve the Contractor of any of his duties or obligations under the Contract nor (except as expressly provided hereunder or elsewhere in the Contract) to order any work involving delay or any extra payment by the Employer not to make any variation of or in the works.

The Engineer may from time to time in writing delegate to the Engineer's Representative any of the power and authorities vested in the Engineer and shall furnish to the Contractor a copy of all such written delegations of powers and authorities. Any written instructions or approval given by the Engineer's Representative to the Contractor within the terms of such delegation (but not otherwise) shall bind the Contractor and the Employer as though it has been given by the Engineer. Provided always as follows:

(a) Failure of the Engineer's Representative to disapprove any work or materials shall not prejudice the power of the Engineer thereafter to disapprove such work or materials and to order the pulling down, removal or breaking up thereof.

- (b) If the Contractor shall be dissatisfied by reason of any decision of the Engineer's Representative, he shall be entitled to refer the matter to the Engineer who shall thereupon confirm, reverse or vary such decision.

#### ASSIGNMENT AND SUB-LETTING

Assignment 3. The Contractor shall not assign the Contract or any part thereof or any benefit or interest therein or thereunder (otherwise than by a charge in favour of the Contractor's Bankers of any monies due or to become due under this Contract) without the prior written consent of the Employer.

Sub-Letting 4. The Contractor shall not sub-let the whole of the Works. Except where otherwise provided by the Contract, the Contractor shall not sub-let any part of the Works without the prior written consent of the Engineer (which shall not be unreasonably withheld) and such consent if given shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any sub-contractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen. Provided always that the provision of labour on a piecework basis shall not be deemed to be a sub-letting under this Clause.

#### EXTENT OF CONTRACT

Extent of Contract 5. The Contractor comprises the construction, completion and maintenance of the Works and except in so far as the Contract otherwise provides the provision of all labour, materials, Constructional Plant, Temporary Works, and everything whether of a temporary or permanent nature required in and for such construction, completion and maintenance so far as the necessity for providing the same is specified in, or reasonably to be inferred from the Contract.

#### CONTRACT DOCUMENTS

Language/s 6. (1) The language in which the Contract Documents shall be drawn up, shall be English.

If, in any case, Arabic or any other language is used an English version shall be obligatory and this English version shall be the governing one in all matters namely administrative, legal, or technical.

Documents  
Mutually  
Explanatory

(2) Except if and to the extent otherwise provided by the Contract, the provisions of the Conditions of Contract shall prevail over those of any other document forming part of the Contract. Subject to the foregoing, the several documents forming the Contract are to be taken as mutually explanatory of one another, but in case of ambiguities or discrepancies the same shall be explained and adjusted by the Engineer who shall thereupon issue to the contractor instructions thereon. Provided always that if, in the opinion of the Engineer, compliance with any such instructions shall involve the Contractor in any cost, which by reason of any such ambiguity or discrepancy could not reasonably have been foreseen by the Contractor, the Engineer shall evaluate and recommend the issuing of a certificate for additional sums as may be reasonable to cover such expenses and the Employer shall pay such sums only after due study and approval of same.

Custody of  
Drawings

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

The Contractor shall give adequate notice in writing to the Engineer or the Engineer's Representative of any further drawing or specification that may be required for the execution of the Works or otherwise under the Contract.

One Copy of  
Drawings to  
be Kept on  
Site

(2) One copy of the Drawings furnished to the Contractor as aforesaid shall be kept by the Contractor on the Site and the same shall at all reasonable times be available for inspection and use by the Engineer and the Engineer's Representative and by any other person authorized by the Engineer in writing.

Further  
Drawings  
and In-  
structions

8. The Engineer shall have full power and authority to supply to the Contractor from time to time during the progress of the Works such further drawings and instructions as shall be necessary for the purpose of the proper and adequate execution and maintenance of the Works and the Contractor shall carry out and be bound by the same.

#### GENERAL OBLIGATIONS

Contract  
Agreement

9. The Contractor shall, when called upon so to do, enter into and execute a contract agreement (to be prepared at the cost of the Employer) in the form annexed, with such modifications as may be necessary.

Performance  
Bond

10. Within 10 days of being informed of the acceptance of his Tender and prior to him coming to sign the Contract, the successful Tenderer shall furnish a Performance Bank Guarantee (Bond) of a Bank operating in the U.A.E. to be jointly and severally bound with the Contractor to the Employer for the due performance of the Contract at the time of the execution of the Contract in an amount equal to 10% of his total Tender Price (no interest being payable on this bond). The Bank Guarantee and the Bank issuing the same shall be acceptable to the Employer and the Contractor shall at his own cost bear all the expenses for furnishing such Guarantee. Should the amount of the Performance Bond be decreased due to any retention or should the value of the Works become more than the Tender Price, then the Contractor shall immediately within 10 days after the request of the Employer increase the value of the Performance Bond to reach 10% of the value of the whole Works. Should the Contractor fail to fulfil the above-mentioned duty then the Employer has the right to deduct the required sum from any payment due to the Contractor under this Contract or any other Contract he is performing for the Employer. The validity of this Guarantee must remain for a period of 90 days after the end of the Contract unless it is decided otherwise by the Employer. If the successful Tenderer fails to furnish and submit an acceptable Performance Bank Guarantee within the period mentioned above, the Employer, at the end of this period has the right to confiscate the Tender Guarantee and to execute the Works and the Contractor must bear the difference in addition to 5% of the total value of the new Contract as administration expenses. The Employer has the right to recover all these sums from any money due to the Contractor from the Employer or from any other Government department or any other party and to cancel the Contractor's name from the registered list of Contractors.

Inspection  
of Site

11. The Tender shall be deemed to have been based on such data regarding hydrological, climatic and physical conditions as shall have been supplied by the Employer in the documents furnished to the Contractor by the Employer for the purpose of tendering. The Contractor shall nevertheless inspect, and examine the Site and its surroundings and shall satisfy himself (so far as is practicable) before submitting his tender as to the form and nature of the Site, the quantities and nature of the work and materials necessary for the completion of the Works and the means of access to the Site, the accommodation he may require and in general shall himself obtain all necessary information as to risks, contingencies and other circumstances which may influence or affect his Tender.

Sufficiency  
of Tender

12. (1) The Contractor shall be deemed to have satisfied himself before tendering as to the correctness and sufficiency of his Tender for the Works and of the rates and prices stated in the Priced Bills of Quantities and the Schedule of Dayworks which rates and prices shall except in so far as it is otherwise provided in the Contract cover all his obligations under the Contract and all matters and things necessary for the proper completion and maintenance of the Works. If however during the execution of the Works the Contractor shall encounter physical conditions or artificial obstructions which conditions or obstructions could not have been reasonably foreseen by an experienced contractor. The Contractor shall forthwith give written notice thereof to the engineer's Representative and if in the opinion of the Engineer such conditions or artificial obstructions could not have been reasonably foreseen by an experienced contractor then the Engineer shall certify and forward to the Employer for approval the additional expense to which the Contractor may be entitled.

Errors in  
Computing  
Tender

(2) The Contractor shall be responsible for any error which he may make in computing any quantities of materials and labour required or costs involved or through any lack of knowledge of the Site or misunderstanding of anything shown or implied on the Drawings or in the Specifications.

The Contractor must refer any discrepancy in the Drawings and/or the Specifications to the Engineer before submitting his Tender otherwise the decision of the Engineer as to the interpretation of the discrepancy will be final.

Any item or items or work not specifically shown on the Drawings or referred to in the Specifications but which would be necessary for the proper construction of the Works in accordance with the best practice is implied and must be included for in the Tender sum.

Any item for which the Contractor has not inserted a price in the Bills of Quantities shall be deemed to be covered by other prices or rates therein.

Work to be  
to the Satis-  
faction of  
Engineer

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



Programme to  
be Furnished

14. (1) Within 15 days the Contractor shall, after the acceptance of his Tender, submit to the Engineer for his approval a programme showing the order of procedure in which he proposes to carry out the Works. The Contractor shall whenever required by the Engineer or Engineer's Representative, also provide in writing for his information a general description of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works.

(2) If at any time it should appear to the Engineer that the actual progress of the Works does not conform to the approved programme referred to in sub-clause (1) of this Clause, the Contractor shall produce, at the request of the Engineer, a revised programme showing the modifications to the approved programme necessary to ensure completion of the Works within the time for completion as defined in Clause 43 hereof.

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

Contractor's  
Superin-  
tendence

15. The Contractor shall give or provide all necessary superintendence during the execution of the Works and as long thereafter as the Engineer may consider necessary for the proper fulfilling of the Contractor's obligations under the Contract. The Contractor or a competent and authorized agent or representative approved of in writing by the Engineer (which approval may at any time be withdrawn) is to be constantly on the Works and shall give his whole time to the superintendence of the same. If such approval shall be withdrawn by the Engineer the Contractor shall as soon as is practicable (having regard to the requirement of replacing him as hereinafter mentioned) after receiving written notice of such withdrawal remove the agent from the Site and shall not thereafter employ him again on the Site in any capacity and shall replace him by another agent approved by the Engineer. Such authorized agent or representative shall receive on behalf of the Contractor directions and instructions from the Engineer or (subject to the limitations of Clause 2 hereof) the Engineer's Representative. The authorized agent or representative shall be a holder of a university degree of recognized standing having a practical experience not less than the number of years stated in Appendix "A" and he shall be fluent in both the Arabic and English languages.

Contractor's  
Employees

16. (1) The Contractor shall provide and employ on the Site in connection with the execution and maintenance of the Works:

(a) Only such technical assistants as are skilled and experienced in their respective callings and such sub-agents, foremen and leading hands as are competent to give proper supervision to the work they are required to supervise,

and

(b) Such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution and maintenance of the Works.

Removal of  
Contractor's  
Employees

(2) The Engineer shall be at liberty to object to and require the Contractor to remove forthwith from the Works any person employed by the Contractor in or about the execution or maintenance of the Works who in the opinion of the Engineer misconducts himself or is incompetent or negligent in the proper performance of his duties or whose employment is otherwise considered by the Engineer to be undesirable and such person shall not be again employed upon the Works without the written permission of the Engineer. Any person so removed from the Works shall be replaced as soon as possible by a competent substitute approved by the Engineer.

Returns of  
Employees

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

Setting-Out

17. (1) The Contractor shall be responsible for the true and proper setting-out of the Works in relation to original points, lines and levels of reference given by the Engineer in writing and for the correctness (subject as above-mentioned) of the position, levels, dimensions and alignment of all parts of the Works and for the provision of all necessary instruments, appliances and labour in connection therewith. If at any time during the progress of the Works any error shall appear, or arise in the position, levels, dimensions or alignment of any part of the Works the Contractor on being required so to do by the Engineer or Engineer's Representative shall at his own expense rectify such error to the satisfaction of the Engineer or Engineer's Representative. The checking of any setting-out or of any line or level by the Engineer or the Engineer's Representative shall not in any way relieve the Contractor of his responsibility for the correctness thereof and the Contractor shall carefully protect and preserve all benchmarks, sight-rails, pegs and other things used in setting-out the Works.

Boreholes &  
Explotatory  
Excavatuon

(2) If at any time during the execution of the Works the Engineer shall require the Contractor to make boreholes or to carry out exploratory excavation such requirements

shall be ordered in writing and shall be deemed to be an addition ordered under the provisions of Clause 51 hereof unless a provisional sum in respect of such anticipated work shall have been included in the Bills of Quantities.

Watching and  
Lighting

18. The Contractor shall in connection with the Works provide and maintain, at his own cost all lights, guards, fencing and watching when and where necessary or required by the Engineer or Engineer's Representative or by any duly constituted authority for the protection of the Works or for the safety and convenience of the public or others.

Care of  
Works

19. (1) From the commencement to the completion of the Works the Contractor shall take full responsibility for the care thereof and of all Temporary Works and in case any damage, loss or injury shall happen to the Works on to any part thereof or to any Temporary Works from any cause whatsoever (save and except the excepted risks as defined in sub-clause (2) of this clause) shall at his own cost repair and make good the same so that at completion the Works shall be in good order and condition and in conformity in every respect with the requirements of the Contract and the Engineer's instructions. In the event of any such damage, loss or injury happening from any of the excepted risks the Contractor shall if and to the extent required by the Engineer and subject always to the provisions of clause 65 hereof repair and make good the same as aforesaid at the cost of the Employer. The Contractor shall also be liable for any damage to the Works occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations under clause 49 hereof.

During the progress of the works, all drift sand which accumulates on the Site, or in trenches and excavations is to be removed according to the requirements of the Engineer's Representative and at the Contractor's expense and no claim for additional payment delay on this account.

Excepted  
Risks

(2) The "excepted risks" are war hostilities (whether war be declared or not) invasion act of foreign enemies, rebellion, revolution, insurrection or military or usurped power, civil war or (otherwise than among the Contractor's own employees) riot, commotion or disorder or use or occupation by the Employer of any portion of the Works in respect of which a Certificate of Completion has been issued for a cause of force majeure or any such operation of the forces of nature as reasonable foresight and ability on the part of the Contractor could not foresee or reasonably provide against (all of which are herein collectively referred to as "the excepted risks").

Insurance of  
Works, etc.

20. Without limiting his obligations and responsibilities under Clause 19 hereof, the Contractor shall insure in the joint names of the Employer and the Contractor against all loss or damage from whatever cause arising (other than the excepted risks) for which he is responsible under the terms of the Contract and in such manner that the Employer and Contractor are covered during the period of construction of the Works and are also covered during the Period of Maintenance for loss or damage arising from a cause occurring prior to the commencement of the Period of Maintenance and for any loss or damage occasioned by the Contractor in the course of any operations carried out by him for the purpose of complying with his obligations under Clause 49 hereof:

- (a) The Works and the Temporary Works to the full value of such works executed from time to time.
- (b) The materials, Constructional Plant and other things brought on to the Site by the Contractor or the Employer to the full value of such materials, Constructional Plant and other things.

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

Damage to  
Persons and  
Property

21. (1) The Contractor shall (except if and so far as the Specification provides otherwise) indemnify and keep indemnified the Employer against all losses and claims for injuries or damage to any person or any property whatsoever (other than surface or other damage to land being or crops being on the Site suffered by tenants or occupiers) which may arise out of or in consequence of the construction and maintenance of the Works and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of or in relation thereto. Provided always that nothing herein contained shall be deemed to render the Contractor liable for or in respect of or to indemnify the Employer against any compensation or

damages for or with respect to:

- (a) The permanent use or occupation of land by the Works or any part thereof or (save as hereinafter provided) surface or other damage as aforesaid.
- (b) The right of the Employer to construct the Works or any part thereof, on, over, under, in or through any land.
- (c) Interference, whether temporary or permanent, with any right of light, air way or water or other easement or quasi-easement, which is the unavoidable result of the construction of the Works in accordance with the Contract.
- (d) Injuries or damage to persons or property resulting from any act or neglect done or committed during the currency of the Contract, of the Employer, his agents, servants, or other contractors (not being employed by the Contractor) or for or in respect of any claims, demands, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto.

Provided further that for the purposes of this clause the expression "the Site" shall be deemed to be limited to the area defined in the specification or shown on the drawings in which land and crops will be disturbed or damaged as an inevitable consequence of the carrying out of the Works.

Indemnity  
by Employer

(2) The Employer will save harmless and indemnify the Contractor from and against all claims, demands, proceedings, damages, costs, charges and expenses in respect of the matters referred to in the proviso to Clause 21 (1) hereof.

Third Party  
Insurance

22. (1) Before commencing the execution of the Works the Contractor (but without limiting his obligations and responsibilities under Clause 21 hereof) shall insure against any damage, loss or injury which may occur to any property (including that of the Employer) or to any person (including any employee of the Employer) by or arising out of the execution of the Works or Temporary Works or in the carrying out of the Contract, otherwise than due to the matters referred to in the proviso to Clause 21 (1) hereof.

Minimum  
Amount of  
Third Party  
Insurance

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

Provision to  
Indemnify  
Employer

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

Accident  
of Injury  
to Workmen

23. (1) The Employer shall not be liable for or in respect of any damages or compensation payable at Law in respect or in consequence of any accident or injury to any workman or other person in the employment of the Contractor or any sub-contractor save and except an accident or injury resulting from any act or default of the Employer, his agents or servants and the Contractor shall indemnify and keep indemnified the Employer against all such damages and compensation (save and except as aforesaid) and against all claims, demands, proceedings, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.

Insurance  
Against  
Accident,  
etc. to  
Workmen

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

Remedy on  
Contractor's  
Failure to  
Insure

24. If the Contractor shall fail to effect and keep in force the insurances referred to in Clause 20, 22 and 23 hereof or any other insurance which he may be required to effect under the terms of the Contract then and in any such case the Employer may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the Employer as aforesaid from any monies due or which may become due to the Contractor or recover the same as a debt due from the Contractor.

Giving of  
Notices &  
Payment  
of Fees

25. (1) The Contractor shall give all notices and pay all fees required to be given or paid by any National or State Statute, Ordinance or other Law or any Regulation or Bye-Law of any local or other duly constituted authority in relation to the execution of the Works or of any Temporary Works and by the rules and regulations of all public bodies and companies whose property or rights are affected or may be affected in any way by the Works or any Temporary Works.

Compliance  
with Statutes,  
Regulations,  
etc.

(2) The Contractor shall observe and conform in all respects with the provisions of any such Statute, Ordinance or Law as aforesaid and the Regulations or Bye-Laws of any local or other duly constituted authority which may be applicable to the Works, or to any Temporary Works and with such rules and regulations of public bodies and companies as aforesaid and shall keep the Employer indemnified against all penalties and liability of every kind for breach of any such Statute, Ordinance or Law, Regulation, or Bye-Law. Provided always that the Employer will repay or allow to the Contractor all such sums as the Engineer shall certify to have been properly payable and paid by the Contractor in respect of such fees.

Dues

(3) The Contractor shall observe and include in his Tender Price for all state dues, tolls, rates, duties and charges.

Fossils,  
etc.

26. All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the site of the Works shall as between the Employer and the Contractor be deemed to be the absolute property of the Employer and the Contractor shall take reasonable precautions to prevent his workmen or any other persons from removing or damaging any such article or thing and shall immediately upon discovery thereof and before removal acquaint the Engineer's Representative of such discovery and carry out at the expense of the Employer the Engineer's orders as to the disposal of the same.

Patents,  
Rights &  
Royalties

27. The Contractor shall save harmless and indemnify the Employer from and against all claims and proceedings for or on account of infringement of any patent rights, design trademark or name or other protected rights in respect of any Constructional Plant, machine, work or material used for or in connection with the Works or Temporary Works and from and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto. Except where otherwise specified the Contractor shall pay all tonnage and other royalties, rent and other payments or compensation (if any) for getting stone, sand, gravel, clay or other materials required for the Works or Temporary Works.

Interference  
with Traffic  
& Adjoining  
Properties

28. All operations necessary for the execution of the Works and for the construction of any Temporary Works shall so far as compliance with the requirements of the Contract permits, be carried on so as not to interfere unnecessarily or improperly with the public convenience or the access to use and occupation of public or private roads and footpaths or to or of properties whether in the possession of the Employer or of any other person and the Contractor shall save harmless and indemnify the Employer in respect of all claims, demands, proceedings, damages, costs, charges, and expenses whatsoever arising out of or in relation to any such matters in so far as the Contractor is responsible therefor.

Extraordinary  
Traffic

29. (1) The Contractor shall use every reasonable means to prevent any of the highways or bridges communicating with or on the routes to the Site from being damaged or injured by any traffic of the Contractor or any of his sub-contractors and in particular shall select routes, choose and use vehicles and restrict and distribute loads so that any such extra-ordinary traffic as will inevitably arise from the moving of plant and material from and to the Site shall be limited as far as reasonably possible and so that no unnecessary damage or injury may be occasioned to such highways and bridges.

Special  
Loads

(2) Should it be found necessary for the Contractor to move one or more loads of Constructional Plant, machinery or pre-constructed units or parts of units of work over part of a highway or bridge the moving whereof is likely to damage any highway or bridge unless special protection or strengthening is carried out then the Contractor shall before moving the load on to such highway or bridge give notice to the Engineer or Engineer's Representative of the weight and other



particulars of the load to be moved and his proposals for protecting or strengthening the said highway or bridge. Unless within fourteen days of the receipt of such notice the Engineer shall by counter-notice direct that such protection or strengthening is unnecessary then the Contractor will carry out such proposals or any modification thereof that the Engineer shall require and the costs and expenses thereof shall be paid by the Employer to the Contractor.

Settlement  
of Extraor-  
dinary Traf-  
fic Claims

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

Waterborne  
Traffic

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

Opportuni-  
ties for  
Other  
Contractors

30. The Contractor shall in accordance with the requirements of the Engineer afford all reasonable opportunities for carrying out their work to any other contractors employed by the Employer and their workmen and to the workmen of the Employer and of any other duly constituted authorities who may be employed in the execution on or near the Site of any work not included in the Contract or of any Contract which the Employer may enter into in connection with or ancillary to the Works. If however, the Contractor shall on the written request of the Engineer or the Engineer's Representative make available to any such other Contractor or to the Employer or any such authority any roads or ways for the maintenance of which the Contractor is responsible or permit the use by any such of the Contractor's scaffolding or other plant on the Site, or provide any other service of whatsoever nature for any such other than is provided

for herein, the Employer shall pay to the Contractor in respect of such use or service such sum or sums as shall in the opinion of the Engineer be reasonable.

Supply of  
Plant,  
Materials  
and Labour

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

Site Offices,  
Latrines,  
etc.

(2) The Contractor shall provide and maintain on the site in connection with the execution of the Works:

- (a) A temporary office for accommodation of his Agent and Staff, such office shall be open at reasonable hours to receive instructions, notices or other communications. This office shall be provided with a telephone.
- (b) A suitable and adequate temporary office, minimum 15 meters superficial area, and a lavatory for the Engineer's Representative and his staff and shall be equipped with one desk, 3 chairs, one drawing table, one filing cabinet, one air conditioning unit, necessary lighting and a telephone. All shall be of a good quality and in good working condition.
- (c) A sufficient temporary latrines to the approval of the Public Health Department for the use of his staff and employees.
- (d) An adequate fire fighting equipment to the approval of the Local Fire Authority.
- (e) An approved painted sign board, written in Arabia and English. The size of the sign board and the wordings shall be as directed by the Engineer.

Clearance  
of Site on  
Completion

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

L A B O U R

Engagement  
of Labour

33. (1) The Contractor shall make his own arrangements for the engagement of all labour, local or otherwise, and save in so far as the Contract otherwise provides for the transport and payment thereof.

Supply of  
Water

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

Festivals &  
Religious  
Customs

(3) The Contractor shall in all dealings with labour in his employ have due regard to all recognized festivals, days of rest and religious or other customs.

Epidemics

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

Disorderly  
Conduct,  
etc.

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

Observance  
by Sub-  
Contractors

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

Compliance  
with Labour  
Code

(7) The Contractor shall be responsible for ascertaining the requirements and complying fully with any local labour code in force before the date of tender or any labour code or amendment to any existing labour code enacted subsequent to the date of tender but notice of which was published before the said date. The Sum figure inserted in the Form of Tender will be deemed to include for complying in all respect with the provisions and requirements of such Code.

Safeguard  
of Life and  
Health

(8) The Contractor shall take and apply all necessary measures for the safeguard of the life and health of his workmen, including the provision and maintenance of adequate First Aid Facilities throughout the Contract Period.

Returns of  
Labour, etc.

34. The Contractor shall if required by the Engineer deliver to the Engineer's Representative or at his office a return in detail in such form and at such intervals as the Engineer may prescribe showing the supervisory staff and the numbers of the several classes of labour from time to time employed by the Contractor on the Site and such information respecting Constructional Plant as the Engineer's Representative may require.

#### MATERIALS AND WORKMANSHIP

Quality of  
Materials &  
Workmanship  
& Tests

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

Cost of  
Samples

(2) All samples shall be supplied by the Contractor at his own cost if the supply thereof is clearly intended by or provided for in the Specification or Bill of Quantities and/or requested by the Engineer.

Cost of  
Tests

(3) The cost of making any test shall be borne by the Contractor if such test is clearly intended by or provided for in the Specification or Bill of Quantities.

Costs of  
Tests not  
Provided  
for, etc.

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

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

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

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

Alternative  
Materials

36. (1) Should the Contractor wish to offer alternative items or materials to those specified he shall supply details of such alternatives at the time of tendering together with details of any reduction in Tender Price should the alternative be allowed to be substituted for the specified items or materials. All offered alternatives shall comply fully in all respects with the Specifications of the particular items or materials. Acceptance or refusal of such alternatives will be entirely at the discretion of the Engineer.

If during the course of the Contract certain materials or items required for use in the Works should be unobtainable, despite the best effort of the Contractor, the Contractor may offer for the approval of the Engineer alternative materials or items.

The alternative, if not complying fully with the appropriate Specification, shall nevertheless be suitable and appropriate for use in the Works and be of an equal standard to the materials or items originally specified. Acceptance or refusal of such alternative will be entirely at the discretion of the Engineer.

In the event of acceptance of any alternative materials or items a suitable price reduction shall be made in respect of any decrease in value but no price addition shall be made in respect of increase in value.

In the event of refusal of any alternative materials or items the Contractor shall not be relieved of any of his obligations under the Contract and shall be solely liable for any delay or loss occasioned by his failure to provide the materials or items as specified.

Imported  
Materials

(2) The Contractor will be required to produce documentary evidence that all imported materials or items have been ordered immediately after the Site is handed over for the commencement of the Works. This means materials or items which are not obtainable on the local market and which have to be ordered from abroad. As soon as orders have been placed, copies of such orders shall be submitted to the Engineer.

Unless such proof has been produce, no claim will be considered for extension of the Contract Period due to non-availability of materials, and it will be assumed that all materials necessary for the completion of the Works were readily available for purchase locally.

Access to  
Site

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

Examination  
of Work be-  
fore Cover-  
ing Up

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

Uncovering  
and Making  
Openings

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

Removal of  
Improper  
Work and  
Materials

39. (1) The Engineer shall during the progress of the Works have power to order in writing from time to time:

(a) The removal from the Site within such time or times as may be specified in the order of any materials which in the opinion of the Engineer are not in accordance with the Contract.

(b) The substitution of proper and suitable materials, and

(c) The removal and proper re-execution (notwithstanding any previous test thereof or interim payment therefor) of any work which in respect of materials or workmanship, is not in the opinion of the Engineer in accordance with the Contract.

Default of Contractor in Compliance

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

Suspension of Work

40. (1) The Contractor shall upon the written order of the Engineer suspend the progress of the Works or any part thereof for such time or times and in such manner as the Engineer may consider necessary and shall during such suspension properly protect and secure the work so far as is necessary in the opinion of the Engineer. The extra cost including all running wages to be paid on the Site, salaries, depreciation and maintenance of plant, Site on-costs and general overhead costs of the Contract incurred by the Contractor in giving effect to the Engineer's instructions under this Clause shall be borne and paid by the Employer unless such suspension is:

- (a) Otherwise provided for in the Contract or
- (b) Necessary for the proper execution of the work or by reason of weather conditions affecting the safety or quality of the Works or by some default on the part of the Contractor or
- (c) Necessary for the safety of the Works or any part thereof or
- (d) Due to the Contractor's failure to follow the Engineer's instructions in carrying out the Works.

Provided that the Contractor shall not be entitled to recover any such extra cost unless he gives notice in writing of his intention to claim to the Engineer within 28 days of the Engineer's order. The Engineer shall settle and determine such extra payment to be made to the Contractor in respect of such claim as shall in the opinion of the Engineer be fair and reasonable.

Suspension  
Lasting More  
than 90 Days

(2) If upon the written order of the Engineer (in this sub-clause referred to as a "Suspension Order") the progress of the Works or any part thereof shall be suspended for a period or consecutive periods amounting in all to 90 days or if the Engineer having previously issued a Suspension Order for a period which has lasted less than 90 days shall within less than 90 days from the expiration of that period of suspension issue a further Suspension Works or (where the previous suspension order has affected only a part) affecting or including that part then and in any such case the Contractor may serve a written notice on 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 and if such permission is not granted within that time the Contractor by a further written notice so served may (but is not bound to) elect to treat the suspension where it affects part only of the Works as an omission of such part under clause 51 hereof or where it affects the whole Works as an abandonment of the Contract by the Employer.

#### COMMENCEMENT TIME AND DELAYS

Commencement  
of Works

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

Possession  
of Site

42. (1) Save in so far as the Contract may prescribe the extent of portions of the Site of which the Contractor is to be given possession from time to time and the order in which such portions shall be made available to him and subject to any requirement in the Contract as to the order in which the Works shall be executed the Employer will with the Engineer's written order to commence the Works give to the Contractor possession of so much of the Site as may be required to enable the Contractor to commence and proceed with the construction of the Works in accordance with the programme referred to in Clause 14 hereof and otherwise in accordance with such reasonable proposals of the Contractor as he shall by notice in writing to the Engineer make and will from time to time as the Works proceed give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to despatch



in accordance with the said programme or proposals (as the case may be). If the Contractor suffers delay or incurs expense from failure on the part of the Employer to give possession in accordance with the terms of this clause the Engineer shall grant an extension of time for the completion of the Works and certify such sum as in his opinion shall be fair to cover the expense incurred which sum shall be paid by the Employer.

Wayleaves,  
etc.

(2) The Contractor shall bear all expenses and charges for special or temporary wayleaves required by him in connection with access to the Site. The Contractor shall also provide at his own cost any additional accommodation outside the Site required by him for the purposes of the Works.

Time for  
Completion

43. Subject to any requirement in the Specification as to completion of any portion of the Works before completion of the whole; the whole of the Works shall be completed within the time stated in the Appendix "A" to these Conditions calculated from the date of receipt of the order to commence, or such extended time as may be allowed under Clause 44 hereof.

Extension of  
Time for  
Completion

44. Should the amount of extra or additional work of any kind or other special circumstances of any kind whatsoever which may occur be such as fairly to entitle the Contractor to an extension of time for the completion of the work, the Engineer shall determine the amount of such extension. Provided that the Engineer is not bound to take into account any extra or additional work or other special circumstances unless the Contractor has within 28 days after such work has been commenced or such circumstances have arisen or as soon thereafter as is practicable delivered to the Engineer's Representative full and detailed particulars of any claim to extension of time to which he may consider himself entitled in order that such claim may be investigated at the time.

No Night  
or Days of  
Rest Work

45. Subject to any provision to the contrary contained in the Contract, none of the permanent work shall save as hereinafter provided be carried on during the night or on the locally recognized days of rest without the permission in writing of the Engineer, save when the work is unavoidable or absolutely necessary for the saving of life or property or for the safety of the Works in which case the Contractor shall immediately advise the Engineer. Provided always that the provisions of this clause shall not be applicable in the case of any work which it is customary to carry out by rotary or double shifts.

If such authority be given by the Engineer, the costs of the inspection for all night, rest days and other than normal working hours shall be borne by the Contractor, and the Engineer's overtime fees shall be paid by the Employer and the amount shall be deducted from the Contractor's Monthly Certificates thereof.

In such cases, charges for overtime are to be calculated as one hour is equivalent to 1.75 hour during normal days and as 1.80 hour during Ramadan.

Rate of  
Progress

46. (1) The whole of the materials, plant and labour to be provided by the Contractor under Clause 5 hereof and the mode manner and speed of execution and maintenance of the Works are to be of a kind and conducted in a manner to the satisfaction of the Engineer. Should the rate of progress of the Works or any part thereof be at any time in the opinion of the Engineer, too slow, to ensure the completion of the Works by the prescribed time or extended time for completion, the Engineer shall so notify the Contractor in writing and the Contractor shall thereupon take such steps as he may think necessary and the Engineer may approve to expedite progress so as to complete the Works by the prescribed time or extended time for completion. If the work is not being carried on by day and by night and the Contractor shall request permission to work by night as well as by day then, if the Engineer shall grant such permission the Contractor shall not be entitled to any additional payment for so doing but if such permission shall be refused and there shall be no equivalent practicable method of expediting the progress of the work the time for completion shall be extended by such period as is solely attributable to such refusal. All work permitted to be carried out at night shall be carried out without unreasonable noise and disturbance. The Contractor shall indemnify the Employer from and against any liability for damages on account of noise or other disturbance created while or in carrying out the work and from and against all claims, demands, proceedings, costs, charges and expenses whatsoever in

regard or in relation to such liability.

Periodic  
Reports

(2) The Contractor must present to the Engineer's Representative detailed weekly reports and monthly summary reports showing the following:

- (a) Labour force working during that period.
- (b) Quantity and quality of materials and equipment used during that period.
- (c) Quantity of work executed.
- (d) Climatic conditions with special reference to any direct effect they may have on the Works.
- (e) Unforeseen circumstances (if any) which may hamper the progress of the work.
- (f) Graph showing the relation between the executed portions of the Works and the corresponding portions in the work programme.

The Contractor shall prove to the Engineer's Representative and upon his request the correctness of the above mentioned reports without having the right to use such documents to support a claim for any extra payment or compensation whatsoever in regard or in relation to such reports.

Photographs &  
Advertising

(3) The Contractor shall supply once a month at his own cost and as directed by the Engineer three unmounted copies of progress photographs of a size not less than 10 inches by 8 inches of such portions of the Works completed and in progress as may be directed by the Engineer. The negatives of the photographs shall be the property of the Employer and no prints from these negatives may be supplied to any person unless the authority of the Engineer.

The Contractor shall treat all details relating to the Contract as confidential. No photographs or other documents may be used for advertising or other purposes without the written authority of the Employer, which authority shall not be unreasonably withheld.

Shop  
Drawings

(4) If at any time before the commencement or during the progress of the work it appears to the Contractor that for the proper execution of a specified or part of the works, shop drawings are necessary, these drawings shall be established by the Contractor and submitted to the Engineer's Representative for approval. On the other hand, the Engineer's Representative shall have authority to order at any time and the Contractor agrees to provide any number of shop drawing which, in the opinion of the Engineer's Representative are necessary for the proper execution of a specified work. The Contractor shall not proceed with the above mentioned work until these shop drawings are approved by the Engineer's Representative. The Contractor shall not be entitled to any extra compensation or extension of time for the preparation of the above mentioned drawings.

These details shall be dimensioned in the metric system and shall describe accurately the method of fabrication applied finish and sizes of all members and fixings and shall indicate methods of marking or components for site erection.

As-Built  
Drawings

(5) The Engineer shall furnish the Contractor transparencies of the original drawings to be corrected as the Works proceed. The Contractor shall correct where required, prepare and supply the Engineer's Representative the new transparencies marked "As-Built" for his approval. When the correction of the "As-Built" Drawings is finished payment to the Contractor shall be made accordingly. No final payment shall be made except for work that has been completed in accordance with the Specification and has been duly presented on the "As-Built" Drawings.

The Contractor shall not be entitled to any extra payment or extension of time for the preparation of the above-mentioned Drawings.

Omission  
Due to Lack  
of Progress

(6) If the Engineer shall be of the opinion that having regard to the state of the Works at any time, the Contractor will be unable to complete any section of the Works by the time specified in the Appendix "A" or by such extension thereof as he may be entitled to under the Contract and the Contractor has failed to carry out steps to expedite the work in accordance with Clause 46 (1) or, if the Engineer is of the opinion that such steps are inadequate, the Engineer may, by written order, omit the whole or any part of the uncompleted work included in that section and the Employer shall be at liberty to execute such omitted

work by his own workmen or by other Contractors. If the cost of such omitted or uncompleted work shall exceed the sum which would have been payable to Contractor on due completion of the said work, 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.

Liquidated  
Damages  
for Delay

47. (1) If the Contractor shall fail to complete the Works within the time prescribed by Clause 43 hereof or extended time then the Contractor shall pay to the Employer the sum stated in the Appendix "A" to these Conditions as liquidated damages for such default and not as a penalty for every day or part of a day which shall elapse between the time prescribed by Clause 43 hereof or extended time (as the case may be) and the date of completion of the Works. The Employer may without prejudice to any other method of recovery deduct the amount of such damages from any monies in his hands due or which may become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligations to complete the Works or from any other of his obligations and liabilities under the Contract. Notwithstanding any other provisions of the Contract, all costs of supervision for all the work done after the stipulated Contract period shall be borne by the Contractor, and the Engineer's normal expenses shall be paid by the Employer and the amount shall be deducted from the Contractor's Monthly Certificate thereof.

Reduction of  
Liquidated  
Damages

(2) If before the completion of the whole of the Works any part of the Works has been certified by the Engineer as completed pursuant to Clause 47 hereof and occupied or used by the Employer the liquidated damages for delay shall for any period of delay after such certification be reduced in the proportion which the value of the part so certified bears to the value of the whole of the Works.

Certificate  
of Comple-  
tion of  
Works

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

- (a) The Contractor shall with his application have undertaken to complete all outstanding works deficiencies and defects within a period of one month of the first inspection by the Provisional Handover Committee, as referred to hereinafter.

- (b) Any outstanding parts of the Works, deficiencies or defects are not such as to prevent the use by the Employer of the Works.
- (c) The Works shall have passed any final test that may be prescribed by the Contract saving such tests as it is practical to carry out during the process of handover.

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

Employer - One representative  
Engineer - One representative  
Contractor - One representative

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

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

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

The Provisional Handover Committee will on the date appointed examine the Works, witness the carrying out by the Engineer of the programme of tests and will add to the Contractor's list any additional defects, deficiencies and uncompleted items of work and in the event of any dispute arising as to the Contractor's responsibilities for such items will decide, subject to Clause 67 hereof, the extent of such responsibilities. The Engineer will furnish the Contractor and the Employer with copies of this consolidated list to which shall be appended the test

results. Insofar as any such defects or deficiencies are not due to failure on the part of the Contractor to perform the Works in accordance with the Contract the Committee shall determine an appropriate period of grace for the rectification of defects and deficiencies. The Contractor shall make good at his own expense the effects of sampling for the purpose of testing.

The Provisional Handover Committee will make a further examination of the Works one month after the first inspection or after any period of grace determine in accordance with the preceding paragraph and may require the repetition of any tests for which unacceptable results were previously obtained. Provided that no defects, deficiencies or uncomplete works remain as listed the Engineer shall issue a Certificate of Completion of Works with effect from the date of handover first recommended and the Period of Maintenance shall be deemed to have commenced from such date.

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

The Contractor's liability for liquidated damages shall apply to the period of any delay in applying for a Certificate of Completion in accordance with the Contract together with any period of delay in completion of any outstanding parts of the Works, deficiencies and defects compared with the one month or period of grace referred to above. In the event that it is impracticable to rectify any defect or deficiency without major reconstruction and the Employer is prepared to take over the Works as constructed albeit to a reduced standard, the Contractor shall have the option of either reconstructing the Works or accepting payment at revised rates to be fixed by the Engineer in accordance with Clause 52 hereof as though the departure from the requirements of the Contract were a variation ordered by the Engineer under Clause 51 hereof. In the former case the Certificate of Completion of Works shall be issued subject to the foregoing procedure following completion of the Works of reconstruction and the Period of Maintenance and the Contractor's liability for liquidated damages if any shall be determined accordingly.

The foregoing procedure shall apply in respect of any substantial portion of the Works which is substantially completed and is occupied or used by the Employer. The Provisional Handover Committee shall be formed by a decree from the Minister of Public Works & Housing. Wherever it is mentioned in this Clause that the Works are completed the actual meaning is that the Contractor has performed 97% of the works in the Contract according to the specifications and drawings and other attached documents provided that the remaining part of the work or defect is not a main part of the Works and not such as to prevent the use by the Employer.

#### MAINTENANCE AND DEFECTS

Definition of "Period of Maintenance"

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

Execution of Work of Repair, etc.

(2) To the intent that the Works shall at or as soon as practicable after the expiration of the Period of Maintenance be delivered up to the Employer in as good and perfect a condition (fair wear and tear excepted) to the satisfaction of the Engineer as that in which they were at the commencement of the Period of Maintenance the Contractor shall execute all such work of repair, amendment, reconstruction, rectification and making good of defects, imperfections, shrinkages or other faults as may during the Period of Maintenance or within fourteen days after its expiration as a result of an inspection made by or on behalf of the Engineer prior to its expiration.

Cost of Execution of Work of Repair, etc.

(3) All such work shall be carried out by the Contractor at his own expense if the necessity thereof shall in the opinion of the Engineer be due to the use of materials or workmanship not in accordance with the Contract or to neglect or failure on the part of the Contractor to comply with any obligation expressed or implied on the Contractor's part under the Contract. If in the opinion of the Engineer such necessity shall be due to any other cause the value of such work shall be ascertained and paid for as if it were additional work.



Remedy on  
Contractor's  
Failure to  
Carry Out  
Work  
Required

(4) If the Contractor shall fail to do any such work as aforesaid required by the Engineer, the Employer shall be entitled to carry out such work by his own workmen or by other Contractors and if such work is work which the Contractor should have carried out at the Contractor's own cost, shall be entitled to recover from the Contractor the cost thereof or may deduct the same from any monies due or that become due to the Contractor.

Temporary  
Reinstatement

(5) If in the course of or for the purposes of the 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:

(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 on 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 or 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 all claims demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

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

Damages to  
Existing  
Services

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

Contractor  
to Search

50. The Contractor shall if required by the Engineer in writing search for the cause of any defect, imperfection or fault under the directions of the Engineer. Unless such defect, imperfection or fault shall be one for which the Contractor is not liable under the Contract the cost of the work carried out by the Contractor in searching as aforesaid shall be borne by the Employer. But if such defect, imperfection or fault shall be one for which the Contractor, is liable as aforesaid the cost of the work carried out in searching as aforesaid shall be borne by the Contractor and he shall in such case repair, rectify and make good such defect, imperfection or fault at his own expense in accordance with the provisions of Clause 49 hereof.

#### ALTERATIONS, ADDITIONS AND OMISSIONS

Variations

51. (1) Provided the Employer gives his consent in writing the Engineer can 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 any other reason it shall in his opinion be desirable shall have power to order the Contractor to do and the Contractor shall do any of the following:

- (a) Increase or decrease the quantity of any work included in the Contract.
- (b) Omit any such work.
- (c) Change the character or quality or kind of any such work.
- (d) Change the levels, lines, position, and dimensions of any part of the Works,

and

- (e) Execute additional work of any kind necessary for the completion of the works and no such variation shall in any way vitiate or invalidate the Contract, but the value, if any, of all such variations shall be taken into account in ascertaining the amount of the Contract Price. Before ordering any variation which involves additional cost the Engineer shall obtain the prior approval of the Employer.

Orders for  
Variations  
to be in  
Writing

(2) No such variation shall be made by the Contractor without an order in writing of the Engineer. Provided that if for any reason the Engineer shall consider it desirable to give any such order verbally the Contractor shall comply with such order and any confirmation in writing of such verbal order given by the Engineer whether before or after the carrying out of the order shall be deemed to be an order in writing within the meaning of this Clause. Provided further that if the Contractor shall confirm in writing to the Engineer any verbal order of the Engineer and such confirmation shall not be contradicted in writing by the Engineer it shall be deemed to be an order in writing by the Engineer.

Valuation of  
Variations

52. (1) All extra or additional work done or work omitted by order of the Engineer shall be valued at the rates and prices set out in the Contract if, in the opinion of the Engineer, the same shall be applicable. If the Contract does not contain any rates or prices applicable to the extra or additional work, then suitable rates or prices shall be agreed upon between the Engineer and the Contractor. In the event of disagreement the Engineer shall fix such rates or prices as shall, in his opinion, be reasonable and proper. The Engineer shall recommend the agreed rates or the rates which in his opinion are reasonable to the Employer for his evaluation and approval. Such rates will not be considered binding until the written approval of the Employer is received.

Power of  
Engineer  
to Fix  
Rates

(2) Provided that if the nature or amount of any omission or addition relative to the nature or amount of the whole of the contract work or to any part thereof shall be such that in the opinion of the Engineer the rate or price contained in the Contract for any item of the Works is by reason of such omission or addition rendered unreasonable or inapplicable then a suitable rate or price shall be agreed upon between the Engineer and the Contractor and approved by the Employer. In the event of disagreement the Engineer shall fix such other rate or price as shall in his opinion be reasonable and proper having regard to the circumstances, these fixed rates should be approved by the Employer.

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

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

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

Variation  
Exceeding  
15 per cent

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

(a) the aggregate effect of all Variation Orders, and

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

but not from any other cause, the amount of the Contract Price shall be adjusted by such sum as may be agreed between the Contractor, the Engineer and the Employer or, failing agreement, fixed by the Engineer and the Employer having regard to all material and relevant factors, including the Contractor's Site and general overhead costs of the Contract. The Contractor has no right for Contract Price amendment if the percentage variation is 15 per cent or less.

Daywork

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

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

In respect of all work executed on a daywork basis the Contractor shall during the continuance of such work deliver each day to the Engineer's Representative an exact list in duplicate of the names, occupation and time of all workmen employed on such work and a statement, also in duplicate, showing the description and quantity of all materials and plant used thereon and therefor (other than plant which is included in the percentage addition in accordance with the Schedule hereinbefore referred to). One copy of each list and statement will if correct or when agreed be signed by the Engineer's Representative and returned to the Contractor. At the end of each month the Contractor shall deliver to the Engineer's Representative, a priced statement of the labour, material and plant (except as aforesaid) used and the Contractor shall not be entitled to any payment unless such lists and statement have been fully and punctually rendered. Provided always that if the Engineer shall consider that for any reason the sending of such list or statement by the Contractor in accordance with the foregoing provision was impracticable he shall nevertheless be entitled to authorize payment for such work either as daywork (on being satisfied as to the time employed and plant and materials used on such work) or at such value therefor as shall in his opinion be fair and reasonable.

#### Claims

(5) The Contractor shall send to the Engineer's Representative once in every month an account giving particulars (as full and detailed as possible) of all claims for any additional expense to which the Contractor may consider himself entitled and of all extra or additional work ordered by the Engineer which he has executed during the preceding month and no claim for payment for any such work will be considered which has not been included in such particulars. Provided always that the Engineer shall be entitled to authorize payment to be made for any such work notwithstanding the Contractor's failure to comply with this condition if the Contractor has at the earliest practicable opportunity notified the Engineer that he intends to make a claim for such work and has submitted details supporting such claims within a period of three months from such notification.

PLANT, TEMPORARY WORKS AND MATERIALS

Plant, etc.  
Exclusive  
Use for the  
Works

53. (1) All Constructional Plant, Temporary Works and materials provided by the Contractor shall when brought on to the Site be deemed to be exclusively intended for the construction and completion of the Works and the Contractor shall not remove the same or any part thereof (save for the purpose of moving if from one part of the Site to another) without the consent in writing of the Engineer which shall not be unreasonably withheld.

Removal of  
Plant, etc.

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

Employer not  
Liable for  
Damage to  
Plant, etc.

(3) The Employer shall not at any time be liable for the loss of or injury to any of the said Constructional Plant, Temporary Works or materials save as mentioned in Clauses 19 and 65 hereof.

Customs,  
Duty, etc.

(4) The Contractor shall be deemed to have included in his prices for payment of all customs or other import duties, Harbour and Port dues, wharfage, landing, piloting and any other charges or dues on all plant and materials imported for the purpose of this Contract.

Boycott of  
Israel

(5) The Contractor shall familiarise himself with and abide by all rules and regulations applicable to the boycotting of Israel.

Approval of  
Materials  
etc. not  
Implied

54. The operation of Clause 53 hereof shall not be deemed to imply any approval by the Engineer of the materials or other matters referred to therein nor shall it prevent the rejection of any such materials at any time by the Engineer.

Temporary  
Works and  
Reinstatement

55. The Contractor shall provide and maintain all temporary roads and tracks necessary for movement of plant and materials, and clear same away at completion and make good all works damaged or disturbed.

The Contractor shall submit drawings and full particulars of all Temporary Works to the Engineer before commencing same. The Engineer may require modifications to be made if he considers them to be insufficient and the Contractor shall give effect to such modifications but shall not be relieved of his responsibilities for the sufficiency thereof.

The Contractor shall provide and maintain weather-proof sheds for storage of materials both for his own use and for the use of the Employer and clear same away at completion of the Works.

The Contractor shall divert as required, at his own cost and to the approval of the Engineer, all public utilities encountered during the progress of the Works, except those specially indicated on the drawings as being included in the Contract.

Where diversions of services are not required in connection with the permanent Works, the Contractor shall uphold, maintain and keep the same in working order in existing locations.

The Contractor shall make good, at his own expense, all damage to telephone, telegraph and electric cable or wires, sewers, water, or other pipes, except where the Public Authority or Private Party owing or responsible for the same elects to make good the damage. The cost incurred in so doing shall be paid by the Contractor to the Public Authority or Private Party on demand.

All injury to the surface of the land, to the beds of water-courses, projecting banks, etc., where disturbed by the Works (other than where specifically ordered by the Engineer) shall be repaired by the Contractor or the Authorities concerned, at the Contractor's expense. All such making good shall be to the approval of the Engineer.

The Employer shall not be liable for loss or injury to any Temporary Works.

#### MEASUREMENT

Quantities

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

Works to be Measured

57. The Engineer shall, except as otherwise stated, ascertain and determine by measurement the value in terms of the Contract of work done in accordance with the Contract. He shall, when he requires any part or parts of the Works to be measured, give notice to the Contractor's authorised agent or representative, who shall forthwith attend or send a qualified agent to assist the Engineer or the Engineer's Representative in making such measurement, and shall furnish

all particulars required by either of them. Should the Contractor not attend, or neglect or omit to send such agent, then the measurement made by the Engineer or approved by him shall be taken to be the correct measurement of the work. For the purpose of measuring such permanent work as is to be measured by records and drawings, the Engineer's Representative shall prepare records and drawings month by month of such work and the Contractor, as and when called upon to do so in writing, shall, within fourteen days, attend to examine and agree such records and drawings with the Engineer's Representative and shall sign the same when so agreed. If the Contractor does not so attend to examine and agree such records and drawings, they shall be taken to be correct. If, after examination of such records and drawings, the Contractor does not agree the same or does not sign the same as agreed, they shall nevertheless be taken to be correct, unless the Contractor shall, within fourteen days of such examination, lodge with the Engineer's Representative, for decision by the Engineer, notice in writing of the respects in which such records and drawings are claimed by him to be incorrect.

Method of  
Measure-  
ment

58. The work required to be measured shall be measured net notwithstanding any general or local custom except where otherwise specifically described or prescribed in the Contract.

#### PROVISIONAL AND PRIME COST SUMS

Provisional  
Sums

59. (1) The term "Provisional Sum" shall mean a sum provided for work or for costs which cannot be entirely foreseen defined or detailed at the time the tendering documents are issued.

All such sums included in the Bills of Quantities will be deducted in whole from the Contract and any work carried out on the instructions of the Engineer will be measured and valued in accordance with the terms of this Contract.

Prime Cost  
Sums

(2) The term "Prime Cost Sum" shall mean a sum provided for work or services to be executed by Nominated Sub-Contractor or statutory authority or for materials or goods to be obtained from the Nominated Supplier.

All such sums included in the Bills of Quantities will be adjusted and payment will be made on the nett amount of the final invoice of the approved Sub-Contractor or Supplier. Profit items on Prime Cost Sums where priced in the Bills of Quantities will be adjusted accordingly.

Contingency  
Sum

(3) The sum set out in the Bills of Quantities for contingencies shall be used only at the direction and discretion of the Engineer and only the part that is used shall be included in the final Contract Price and the Contractor shall not be allowed any "loss of profit" on any unused portion.



The Contractor shall when required by the Engineer produce all quotations, invoices, vouchers and accounts on receipts in connection with expenditure in respect or Provisional, Prime Cost and Contingency Sums.

#### CERTIFICATES AND PAYMENT

#### Monthly Statements

60. (1) The Contractor shall be paid on account on the basis of the progress of the work according to statements submitted by him of the work executed. After the Engineer has performed due technical and financial checks that these statements are in accordance with the specifications a certificate shall be issued accepting these statements after the Employer has checked it arithmetically and checked that it is according to the quantities mentioned in the Contract. The sum paid to the Contractor shall not exceed 90% of the certified sum. Statements of the payments shall be made at monthly intervals in accordance with the conditions set out hereunder:

- (a) The Contractor shall prepare and submit to the Engineer's Representative at the end of each month a statement signed by him showing the estimated quantities and the estimated amounts of permanent works executed on Site. Unless otherwise mentioned in this Contract, the statements shall incorporate amounts of the net cost of materials (if any) for permanent work delivered by the Contractor to the Site, or to the approved temporary works areas. The monthly statements shall be prepared on official forms consisting of one original and eight copies duly signed by the Contractor's agent. The Engineer's Representative shall check these statements then forward Interim Certificates for issue by the Engineer.
- (b) The rates and prices in such monthly statements shall be those in the priced Bill of Quantities.
- (c) If the said Bill of Quantities shall not in the opinion of the Engineer's Representative contain any rates or prices applicable to some or any part of the work executed and the Engineer has not fixed a rate or a price at the time when the monthly statement is prepared then temporary rates or prices shall be assigned thereto by the Engineer's Representative.
- (d) Neither the temporary rates nor prices assigned under paragraph (c) of this sub-clause nor the quantities mentioned in the statements submitted under paragraph (a) of this sub-clause shall be binding on the Employer or on the Contractor.

(e) Unless otherwise mentioned in this Contract, the Contractor shall be paid payments on account for materials brought on Site to help him complete the Works on a basis of 75% of the net cost of these materials after he has submitted a statement showing a list of these materials and after the Engineer has performed due technical checks that the statement is in accordance with the specifications and the Employer has checked it arithmetically. The Contractor is responsible for the safety of all materials stored on site until used in the permanent works, and shall not remove any surplus materials from the site before the completion of the works.

Interim  
Certificates

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

Correction  
and with-  
holding of  
Certificates

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

Payment on  
Completion  
Certificate  
and after  
Maintenance  
Certificate

(4) (a) When the Engineer has issued a Certificate or Certificates of Completion for the whole of the Works under Clause 48 hereof and when the Engineer has ascertained (excluding in so doing unsettled or disputed claims of the Contractor) the estimated final sum (that is to say the estimated gross payment for the completion of the whole of the Works) due to the Contractor, the Engineer shall after allowing for the amount of all previous certificates and after determining and allowing for any sum due to the Employer from the Contractor for delay or otherwise howsoever and after allowing for all other payments due

from the Contractor to the Employer, certify as payable to the Contractor the balance so calculated as remaining due to the Contractor, as will leave to be retained by the Employer, a sum equal to the Retention Money and the Employer will on such Certificate pay the amounts so certified to the Contractor retaining as aforesaid a sum equal to the Retention Money.

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

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

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

(a) Five percent (5%) of the Certificate of Completion, as retention during the Maintenance Period, and

(b) The total amount of all previous Interim Payments,

On issue by the Engineer of the Maintenance Certificate referred to under Clause 62, the Engineer shall release to the Contractor the five percent (5%) of the Certificate of Completion held as retention money less any amount due to the Employer under Clause 39 and 49 hereof.

Provided further that in the event of different maintenance period having become applicable to different parts of the Works pursuant to Clause 48 of the Conditions of Contract the expression "expiration of the Period of Maintenance" shall for the purpose of this Clause be deemed to mean the expiration of the latest of such periods.

Time of  
Payment

(5) Payment upon each of the Engineer's Certificates shall be made by the Employer within 30 days after such certificate have been issued by the Engineer and have been delivered to the Employer.

Currency

(6) The pricing of all Bills of Quantities, Schedules, Variation Orders, Payment Certificates and other Documents shall be in the Currency of the country wherein the Site is situated or as stated in Appendix "A".

Payment shall be made only in that currency. Any exchange differences or fluctuations, costs and expenses of Letters of Credit, bank charges, premiums, etc., incurred in exchange transactions shall be borne by the Contractor. The Employer will not open any Letters of Credit or enter into any other transactions other than as provided for in this Contract.

Approval  
only by  
Maintenance  
Certificate

61. No certificate other than the Maintenance Certificate referred to in Clause 62 hereof shall be deemed to constitute approval of any work of other matter in respect of which it is issued or shall be taken as an admission of the due performance of the Contract or any part thereof or of the accuracy of any claim or demand made by the Contractor or of additional or varied work having been ordered by the Engineer nor shall any other certificate conclude or prejudice any of the powers of the Engineer. Provided that in cases of fraud, dishonesty or fraudulent concealment relating to the works or materials or to any matter dealt with in any certificate the Maintenance Certificate shall not be conclusive evidence as to the sufficiency of the said Works and Materials.

Maintenance Certificate

62. (1) After completion of the Period of Maintenance the Final Handover Committee which shall be formed by a decree from the Minister of Public Works & Housing and shall consist of representatives of the Ministry of Public Works & Housing and the concerned department of the Engineer and of the Contractor shall perform a final handover and make sure that the Contractor had completed all his obligations for completing the Works according to the Contract and the final Certificate of Completion shall be issued by which the Contractor shall collect his Bank Guarantee. The Contract shall not be considered as completed until a Maintenance Certificate shall have been signed by the representatives of the Ministry of Public Works & Housing and the concerned department and the Engineer stating that the Works have been completed and maintained to their satisfaction.

Cessation of Employer's Liability

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

Unfulfilled Obligations

(3) Notwithstanding the issue of the Maintenance Certificate the Contractor and (subject to sub-clause (2) of this clause) the Employer shall remain liable for the fulfilment of any obligation incurred under the provisions of the Contract prior to the issue of Maintenance Certificate which remains unperformed at the time such certificate is issued and for the purposes of determining the nature and extent of any such obligation the Contract shall be deemed to remain in force between the parties hereto.

REMEDIES AND POWERS

Forfeiture

63. (1) If the Contractor shall become bankrupt or have a receiving order made against him or shall present his petition in bankruptcy or shall make an arrangement with or assignment in favour of his creditors or shall agree to carry out the Contract under a committee of inspection of his creditors or (being a corporation) shall go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction) or if the Contractor shall assign the Contract without the consent in writing of the Employer first obtained or shall have an execution levied on his goods or if the Engineer shall certify in writing to the Employer that in his opinion the Contractor:

- (a) has abandoned the Contract, or
- (b) without reasonable excuse has failed to commence the Works or has suspended the progress of the Works for 28 days after receiving from the Engineer written notice to proceed, or
- (c) has failed to remove materials from the Site or to pull down and replace work for 28 days after receiving from the Engineer written notice that the said materials or work had been condemned and rejected by the Engineer under these conditions, or
- (d) is not executing the Works in accordance with the Contract or is persistently or flagrantly neglecting to carry out his obligations under the Contract, or
- (e) has to the detriment of good workmanship or in defiance of the Engineer's instructions to the contrary sub-let any part of the Contract, or

then the Employer may after giving 14 days notice in writing to the Contractor enter upon the Site and the Works and expel the Contractor therefrom without thereby voiding the Contract or releasing the Contractor from any of his obligations or liabilities under the Contract or affecting the rights and powers conferred on the Employer or the Engineer by the Contract and may himself complete the Works or may employ any other Contractor to complete the Works and the Employer or such other contractor may use for such completion so much of the Constructional Plant, Temporary Works and materials which have been deemed to be reserved exclusively for the construction and completion of the Works under the provisions of the Contract as he or they may think proper and the Employer may at any time sell any of the said Constructional Plant, Temporary Works and unused materials and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to him from the Contractor under the Contract. The Contractor shall bear all claims and costs of the Employer for any damages and expenses due to the above-mentioned, and in order to complete the work, an additional sum of 10% of the value of the Works that he failed to execute as the Employer's administration charges.

Valuation  
at Date of  
Forfeiture

(2) The Engineer shall as soon as may be practicable after any such entry and expulsion by the Employer fix and determine ex-parte or by or after reference to the parties or after such investigation or enquiries as he may think fit to make or institute and shall certify what amount (if any) had at the time of such entry and expulsion been reasonably earned by or would reasonably accrue to the Contractor in respect of work then actually done by him under the Contract and what was the value of any of the said unused or partially used materials, any Constructional Plant and any Temporary Works,

Payment  
After  
Forfeiture

(3) If the Employer shall enter and expel the Contractor under this Clause he shall not be liable to pay to the Contractor any money on account of the Contract until the expiration of the Period of Maintenance and thereafter until the costs of completion and maintenance damages for delay in completion (if any) and all other expenses incurred by the Employer have been ascertained and the amount thereof certified by the Engineer. The Contractor shall then be entitled to receive only such sum or sums (if any) as the Engineer may certify would have been due to him upon due completion by him after deducting the said amount. But if such amount shall exceed the sum which would have been payable to the Contractor on due completion by him then the Contractor shall upon demand pay to the Employer the amount of such excess and it shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly. The Employer has the full right to confiscate the final guarantee in any case.

Urgent  
Repairs

64. If by reason of any accident or failure or other event occurring to in or in connection with the Works or any part thereof either during the execution of the Works or during the Period of Maintenance any remedial or other work or repair shall in the opinion of the Engineer or the Engineer's Representative be urgently necessary for security and the Contractor is unable or unwilling at once to do such work or repair the Employer may by his own or other workmen do such work or repair as the Engineer or the Engineer's Representative may consider necessary. If the work or repair so done by the Employer is work which in the opinion of the Engineer the Contractor was liable to do at his own expense under the Contract all costs and charges properly incurred by the Employer in so doing shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor. Provided always that the Engineer or the Engineer's Representative (as the case may be) shall as soon after the occurrence of any such emergency as may be reasonably practicable notify the Contractor thereof in writing.

## SPECIAL RISKS

65. Notwithstanding anything in the Contract contained.

No Liability  
for War, etc.,  
Risks

(1) The Contractor shall be under no liability whatsoever whether by way of indemnity or otherwise for or in respect of destruction of or damage to the Works (save to work condemned under the provisions of Clause 39 hereof prior to the occurrence of any special risk hereinafter mentioned) or Temporary Works or to property whether of the Employer or third parties or for or in respect of injury or loss of life which is the consequence whether direct or indirect or war hostilities (whether war be declared or not) invasion act of foreign enemies, rebellion, revolution, insurrection or military or usurped power, civil war or (otherwise than among the Contractor's own employees) riot, commotion, or disorder (hereinafter comprehensively referred to as "the said special risks") and the Employer shall indemnify and save harmless the Contractor against and from the same and against and from all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising thereout or in connection therewith and shall compensate the Contractor for any loss of or damage to property of the Contractor used or intended to be used for the purposes of the Works and occasioned either directly or indirectly by said special risks.

Damage to  
Works, etc.,  
by Special  
Risks

(2) If the Works or Temporary Works or any materials (whether for the former or the latter) on the Site shall sustain destruction or damage by reason of any of the said special risks the Contractor shall nevertheless be entitled to payment for any permanent work and for any materials so destroyed or damaged and the Contractor shall be entitled to be paid by the Employer the cost of making good any such destruction or damage whether to the Works or the Temporary Works and of replacing or making good such materials so far as may be required by the Engineer or as may be necessary basis plus such profit as the Engineer may certify to be reasonable.

Projectile,  
Missile, etc.

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



Increased  
Costs arising from  
Special  
Risks

(4) The Employer shall repay to the Contractor any increased cost of or incidental to the execution of the Works (other than such as may be attributable to the cost of reconstructing work condemned under the provisions of Clause 39 hereof prior to the occurrence of any special risk) which is howsoever attributable to or consequent on or the result of or in any way whatsoever connected with the said special risks (subject however to the provisions in this Clause hereinafter contained in regard to outbreak of war) but the Contractor shall as soon as any such increase of cost shall come to his knowledge forthwith notify the Engineer thereof in writing. The Contractor shall report to the Engineer within a period of 15 days from the date the special risk happened the extension of time needed due to this special risk. If the Contractor does not lay down any claim for extension, it will be understood that no delay has happened due to this special risk.

Outbreak  
of War

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

Removal of  
Plant on  
Termination

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

Payment if  
Contract  
Terminated

(7) If the Contract shall be terminated as aforesaid the Contractor shall be paid by the Employer (in so far as such amounts or items shall not have already been covered by payments on account made to the Contractor) for all work executed prior to the date of termination at the rates and prices provided in the Contract and in addition:

(a) The amount payable in respect of any preliminary items so far as the work or service comprised therein has been carried out or performed and a proper proportion as certified by the Engineer of any such items the work or service comprised in which has been partially carried out or performed.

- (b) The cost of materials or good reasonably ordered for the Works or Temporary Works which shall have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery (such materials or goods becoming the property of the Employer upon such payment being made by him).
- (c) A sum to be certified by the Engineer being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works in so far as such expenditure shall not have been covered by the payments in this sub-clause before mentioned.
- (d) Any additional sum payable under the provisions of sub-clauses (1), (2) and (4) of this clause.
- (e) The reasonable cost of removal under sub-clause (6) of this clause and (if required by the Contractor) return thereof to the Contractor's main plant yard in his country of registration or to any other destination at no greater cost.

Provided always that against any payments due from the Employer under this sub-clause the Employer shall be entitled to be credited with any outstanding balances due from the Contractor for advances in respect of plant and materials and any sum previously paid by the Employer to the Contractor in respect of the execution of the Works.

#### FRUSTRATION

Payment in  
Event of  
Frustration

66. In the event of the Contract being frustrated whether by war or otherwise howsoever the sum payable by the Employer to the Contractor in respect of the work executed shall be the same as that which would have been payable under Clause 65 hereof if the Contract had been terminated under the provisions of Clause 65 hereof.

## SETTLEMENT OF DISPUTES

### Settlement of Disputes- Arbitration

67. If any dispute or difference of any kind whatsoever shall arise between the Employer or the Engineer and the Contractor in connection with or arising out of the Contract or the carrying out of the Works (whether during the progress of the Works or after their completion and whether before or after the termination, abandonment or breach of the Contract) it shall in the first place be referred to and settled by the Engineer who within a period of 30 days after being requested by either party to do so shall give written notice of his decision to the Employer and the Contractor. Save as hereinafter provided such decision in respect of every matter so referred shall be final and binding upon the Employer and the Contractor until the completion of the work and shall forthwith be given effect to by the Contractor who shall proceed with the Works with all due diligence whether he or the Employer requires arbitration as hereinafter provided or not. If the Engineer has given written notice of his decision to the Employer and the Contractor and no claim to arbitration has been communicated to him by either the Employer or the Contractor within a period of 90 days from receipt of such notice the said decision shall remain final and binding upon the Employer and the Contractor. If the Engineer shall fail to give notice of his decision as aforesaid within a period of 30 days after being requested as aforesaid or if either the Employer or the Contractor be dissatisfied with any such decision then and in any such case either the Employer or the Contractor may within 90 days after receiving notice of such decision or within 90 days after the expiration of the first named period of 30 days (as the case may be) require that the matter or matters in dispute be referred to arbitration as hereinafter provided. All disputes or differences in respect of which the decision (if any) of the Engineer has not become final and binding as aforesaid shall be referred to the decision of three arbitrators, of which one shall be appointed by the Contractor, and the third shall be a judge appointed by the Minister of Justice. Unless otherwise agreed between the parties the place of arbitration shall be the United Arab Emirates. The decision of the arbitrators shall be final and binding upon the parties. The said arbitrators shall have full power to open up revise and review any decision opinion direction certificate or valuation of the Engineer and

neither party shall be limited in the proceedings before such arbitrators to the evidence or arguments put before the Engineer for the purpose of obtaining his said decision. No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute or difference referred to the arbitrators as aforesaid. The arbitrators shall not enter on the reference until after the completion or alleged completion of the Works unless with the written consent of the Employer and the Contractor provided always

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

#### N O T I C E S

Service of  
Notices on  
Contractor

68. (1) Any notice to be given to the Contractor under the terms of the Contract shall be served by sending the same by post to or leaving the same at the Contractor's principal place of business (or in the event of the Contractor being a Company to or at its registered office) as stated in Appendix "A" to these Conditions, or by handing the same to the Contractor's Site Agent or leaving the same at his Site Office. Any change thereof shall be notified in writing to the Engineer who shall not be bound to recognize any change of address until so notified.

Service of  
Notices on  
Employer

(2) Any notice to be given to the Employer under the terms of the Contract shall be served by sending the same by post to or leaving the same at the Employer's address as stated in Appendix "A" to these Conditions.

Change of  
Address

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

#### DEFAULT OF EMPLOYER

Default of  
Employer

69. (1) In the event of the Employer giving formal 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 after giving fourteen days' prior written notice to Employer, with a copy to the Engineer.

(2) Upon the giving of such notice the Contractor shall (notwithstanding the provisions of Clause 53 (1) hereof) with all reasonable despatch remove from the Site all Constructional Plant brought by him thereof.

(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 hereof but in addition to the payment specified in Clause 65 (7) the Employer shall pay to the Contractor the amount of any loss or damage to the Contractor arising out or in connection with or by consequence of such termination.

(4) Nothing in this Clause contained shall prejudice the right of the Contractor to exercise either in lieu of or in addition to the rights and remedies in this Clause specified any other rights or remedies to which the Contractor may be entitled.

|   |  |
|---|--|
| Increase<br>or Decrease<br>of Costs             | 70. No adjustments are to be made in respect of rise or fall in the costs of labour and for materials or any other costs affecting the cost of execution of the Works unless such rise or fall is occasioned by the operation of any law, statute, etc. promulgated by the Government of the United Arab Emirates after the signing of the Contract.   |
| Income and<br>Other Taxes                       | 71. The Contractor and his staff will be responsible for the payment of any taxes in force at the times material to the Contract.  |
| Staff Lia-<br>bility                            | 72. Neither any member of the staff of the Employer nor the Engineer nor any of his staff nor the Engineer's Representative shall be in any way personally liable for the acts or obligations under the Contract or answerable for any default or omission on the part of the Employer in the observance or performance of any of the acts, matters or things which are herein contained.  |
| Law Govern-<br>ing Contract                     | 73. This Contract shall be subject to and construed in accordance with the Laws of the country wherein the Site is situated.   |
| Major Eco-<br>nomic Dis-<br>location            | 74. In the event of there being subsequent to the date of Tender such a major economic dislocation within the country in which the Works are being or are to be constructed as to result in the imposition by the Government of that country of currency restrictions or in devaluation of the currency of that country the Employer shall pay to the Contractor any increased costs of or incidental to the execution of the Works which is howsoever attributable to or consequent on or the result of or in any way whatsoever connected with such economic dislocation provided always that nothing in this Clause contained shall prejudice the right of the Contractor to exercise any other rights or remedies to which the Contractor may be entitled in such event. |
| Safety of<br>Adjoining<br>Existing<br>Buildings | 75. (1) The Contractor shall take all necessary precautions during the excavation for the Works particularly those excavations which are adjoining existing buildings and shall protect such buildings from the damage or collapse by means of temporary or permanent shoring, strutting, sheet piling or underpinning or excavations in short lengths and/or other methods as he deems fit also he shall properly support   |

all foundations, trenches, walls, floors, etc., affecting the safety of the adjoining existing buildings.

The construction and efficiency of the shoring, underpinning, strutting, etc. for the purpose for which it is erected shall be the responsibility of the Contractor, should any subsidence or any other damage occur due to the inefficiency of the shoring, underpinning, strutting, etc. or any other support provided, the damage shall be made good by the Contractor at his own expense and responsibility.

The shoring, strutting, piling, etc. shall be executed in such a manner as to cause as little inconvenience as possible to adjoining owners or the public and the Contractor shall be responsible for negotiating with the adjoining owners the means of safeguard, their property and for the use of any portion of their land for the purpose of executing the excavations and no claims submitted on this ground will be entertained.

The Contractor shall be held solely responsible for the safety of the adjoining existing buildings, the sufficiency of all temporary or permanent shoring, underpinning, strutting, piling, etc.

The Contractor shall keep the Engineer or the Engineer's Representative informed as to the manner in which he intends to proceed the execution of the excavations and obtain his approval, such approval if given shall not absolve the Contractor of his responsibility under this Clause.

Indemnity  
by Contractor

(2) The Contractor shall save harmless and indemnify the Employer in respect of all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in relation to any such matters in so far as the Contractor is responsible under this Clause.

SECTION 3

PARTICULAR CONDITIONS



SECTION 3 - PARTICULAR CONDITIONS

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PARTICULAR CONDITIONS

Site Offices, Latrines, etc. 31 (2-b) Replace with Paragraph 6 of Section 1C of the Specification.

Engagement of Labour 33. (1) Add the following paragraph to this sub-clause.

The Contractor shall give favourable consideration for employing locals (labour, employees, etc.) wherever possible without creating any harm to the efficiency and progress of the work.

Compliance with Labour Code (7) Add the following paragraph to this sub-clause.

The Contractor shall pay rates of wages and ensure hours of work and other conditions of labour not less favourable than the general level observed in the similar trade or industry or those approved for comparable works by the Government of the country wherein the Site is situated and/or in the area where work is being carried out.

Safeguard of Life and Health (8) Add the following paragraph to this sub-clause.

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

Add the following sub-clause 33.

Expatriate Labour (9) The Contractor shall make his own arrangements for the engagement of expatriate labour and staff if required and for the housing health welfare and repatriation of same and shall conform in all respects with the conditions and requirements of any law and of any Regulations or Orders of the Government of the country wherein the Site is situated or any Authority which may

be applicable including any such Law, Regulation or Order passed or made or coming into force after the date of Tender.

Alcoholic  
Liquor or  
Drugs

(10) The Contractor shall not otherwise than in accordance with the Statutes Ordinances and Government Regulations or Orders for the time being in force import, sell, give barter or otherwise dispose of any alcoholic liquor or drugs or permit or suffer any such importation sale gift barter or disposal by his sub-contractors agents or employees.

Arms and  
Ammunition

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

Provisions  
of Samples

Add the following sub-clause to clause 35.

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

