

JAPAN INTERNATIONAL COOPERATION AGENCY (JICA)

SCIENCE AND TECHNOLOGY COMMISSION OF
SHANGHAI MUNICIPAL PEOPLE'S GOVERNMENT,
PEOPLE'S REPUBLIC OF CHINA

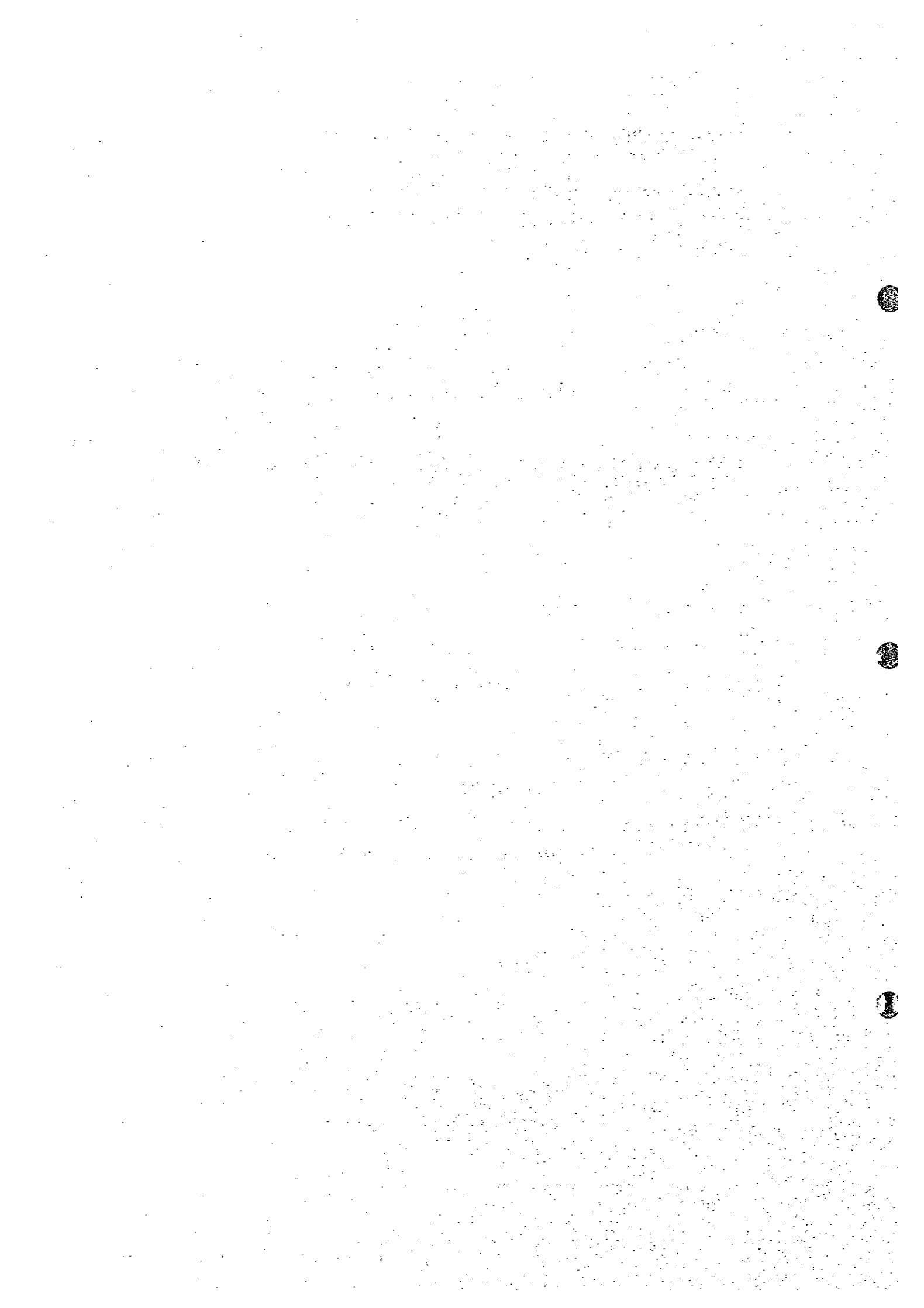
**DETAILED DESIGN
OF
SHANGHAI PUDONG INTERNATIONAL
AIRPORT
FINAL REPORT**

**VOLUME III
TENDER DOCUMENT**

**PART III -2
CONDITION OF CONTRACT
FOR
AIREFIELD LIGHTING SYSTEM**

SEPTEMBER 1997

**NIPPON KOEI CO., LTD.
NIKKEN SEKKEI LTD.**



INTRODUCTION

The Conditions of Contract are based on the Conditions of Contract for "Electrical and Mechanical Works including Erection on Site" as published by the International Federation of Consulting Engineers/ Federation Internationale des Ingenieurs-Conseils (FIDIC) third Edition 1987 governing this Contract.

The Conditions of Contract for Airfield Lighting (AFL) System consists of followings:

1. PREAMBLE
2. GENERAL CONDITIONS
3. Section A of SPECIAL CONDITIONS
4. Section B of SPECIAL CONDITIONS

The General Conditions are linked with the Preamble and the Special Conditions by the corresponding numbering of the Clauses, so that General Conditions and Special Conditions together comprise the Conditions governing the rights and obligations of the parties.

In case of any inconsistency between the conditions contained in the Preamble, the General Conditions and the Special Conditions, the conditions shall prevail over those contained in following priority:

1. PREAMBLE
2. SECTION A of SPECIAL CONDITIONS
3. SECTION B of SPECIAL CONDITIONS
4. GENERAL CONDITIONS

A copy of "GENERAL CONDITIONS" is attached to this Tender Document.

The version in English of the Conditions is considered to be the official and authentic text for the purpose of translation.

The Conditions of Contract for the AFL substations (Architecture) are applied to the previous PART III-1 but only Special conditions to the General Conditions of the PART III-1 are explained in this part as Section 5.

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SECTION 1
PREAMBLE



SECTION 1

PREAMBLE

Sub-Clause 1.1.1 Commencement Date

The date for commencement of the Works is the data when the Contract becomes effective that shall be informed the Contractor by the Employer.

Sub-Clause 1.1.12 The Employer

The Employer is the Shanghai Municipal People's Government represented by the Chief Commander of Shanghai Pudong International Airport Construction Headquarters.

Sub-Clause 1.1.15 The Engineer

The Engineer is _____

Sub-Clause 1.1.35 Time for Completion

The time for Completion is _____ days from the Commencement Date.

Sub-Clause 1.6 Contractor's Profit

The percentage to cover profit entitlement, where appropriate, is _____ %.

Sub-Clause 5.1 Ruling Language

The version of English (ruling language) shall prevail.

Sub-Clause 5.2 Day to Day Communications

The language for day to day communication are English and Chinese languages.

Sub-Clause 12.1 Programme to be Furnished

The Programme must be submitted in the form Critical Path Method (CPM), Bar Chart Schedule and Project Execution Plan defined in Sub-Clause 3.11 of Instructions to Tenderers, PART II-1.

Sub-Clause 14.3 Electricity, Water, Gas and Other Services

Supplies on the Site are:

- a. Electricity: _____
- b. Water: _____
- c. Gas: _____
- d. Other Services: _____

Sub-Clause 14.4 Employer's Equipment

The following Employer's equipment is available for use by the Contractor under the Employer's operation:

Sub-Clause 18.3 Working Hours

The Contractor shall pay rates of wages observe hours and conditions of employment not less favourable than those established for similar trades or industries in the district where the Works are carried out and are in compliance with such statutes, ordinances and Government regulations or orders for the time being in force. The Contractor shall acquaint himself with and conform to all labour regulations as may be issued from time to time by the Ministry of Labour or other concerned authorities, and, in particular, with:

- Regulations concerning Employer's Social Guarantee
- Regional Minimum Wages

Sub-Clause 27.1 Delay in Completion

Failure to meet the Time for entitles the Employer to reduction in Contract Price as follows:

- Percentage per day: 0.1% of total contract price
- Maximum: 10% of total contract price

Sub-Clause 33.1 Terms of Payment

In addition to provisions under Clause 33, the terms of payment shall be given in Appendix 1.

Sub-Clause 35.1 Payment in Foreign Currencies

The Employer will pay the Contractor in accordance with the Appendix 1.

Sub-Clause 36.4 Payment against Provisional Sums

The percentage to be applied to the Provisional Sums shall be _____% of the Contract Price.

Sub-Clause 43.1 Insurance of Works

The terms of insurance shall be defined in Appendix 2.

Sub-Clause 43.3 Third Party Liability

The amount of insurance against the third party liability taken out by the Contractor is explained in the Appendix 2.

Sub-Clause 46.3 Payment on Termination for Employer's Default

The additional amount payable by the Employer on termination shall not exceed ten percent (10%) of the Contract Price.

Sub-Clause 47.1 Labour, Materials and Transport

No price adjustment shall be made to the Contract Sum due to rise or fall in the cost of labour, materials and transport.

Sub-Clause 49.2 Notices to Employer and Engineer

The address of the **Employer** for notices is:
Shanghai Pudong International Airport Construction
Headquarters,
220 Si Chuan Road (M), Shanghai, China 200002.
The address of the **Engineer** for notices is:

Sub-Clause 51.1 Applicable Law

The applicable law of this Contract shall be the law in the People's Republic of China.

Sub-Clause 51.2 Procedural Law for Arbitration

The procedural law for arbitration is the law in the People's Republic of China.

Sub-Clause 51.3 Language and Place of Arbitration

The language of arbitration is Chinese language.
The place of arbitration is Shanghai.

Appendix 1

Terms of Payment

In accordance with the provisions of PREAMBLE of Conditions of Contract Sub-Clause 33.1 (Terms of Payment), the Employer shall pay the Contractor in the following manner and at the following times, based on the Price Breakdown given in the Schedules of Prices. Payments will be made in the currencies quoted by the Tenderer unless otherwise agreed between the parties. Applications for payment in respect of part deliveries may be made by the Contractor as work proceeds.

Followings are attached as Annex to this Appendix 1.

- i) Annex 1: Form of Advance Payment Guarantee.
- ii) Annex 2: Payment Procedures.
- iii) Annex 3: Payment Declaration (Form of OECF)
- iv) Annex 4: Flowchart of Payment Procedures.

1 Plant and Equipment Supplied from Abroad

A. Foreign Currency Portion

In respect of Plant and Equipment supplied from abroad, the following payments shall be made :

Twenty (20) % of the total CIF amount as an Advance Payment against receipt of correct and complete invoice and an irrevocable Advance Payment Guarantee for the equivalent amount made out in favour of the Employer, against payment certificate issued by the Employer. The Advance Payment Guarantee may be reduced in proportion to the value of the Plant and Equipment shipped CIF delivered to Site, as evidenced by shipping and delivery documents.

Seventy (70) % of the total CIF amount after receipt of correct and complete invoice and shipping documents as mentioned below, against payment certificate issued by the Employer. In the event that shipping is delayed upon the written instruction of the Employer for more than 28 days beyond the date shown in the Programme, the Contractor may make application for this part of the payment against warehouse receipts, provided always that the Plant and Equipment are ready for shipment on the date shown in the said Programme.

- Clean on board vessel bill of landing or charter party bill of landing
- Contractor's detailed invoice showing commodity description, quantity, unit price and total price of delivery
- Inspection Certificate issued by the Employer or the Engineer
- Packing list and weight certificate
- Insurance policy or certificate
- Manufacturer's inspection certificate issued by the manufacturer
- Other documents required by the formality of loan Agreement, if any.

Five (5) % of the total CIF amount upon issue of the Taking-Over Certificate after receipt of correct and complete invoice, against payment certificate issued by the Employer.

Five (5) % of the total CIF amount upon issue of the Final Certificate after receipt of correct and complete invoice, against payment certificate issued by the Employer.

B. Local Currency Portion

Not Applicable. Applications for payment in respect of part deliveries may be made by the Contractor as work proceeds.

2 Plant and Equipment Supplied from Employer's Country

A. Foreign Currency Portion (where applicable)

In respect of plant and equipment supplied from within the Employer's country, the following payments shall be made :

Twenty (20) % of the total Ex-Works (EXW) amount as an Advance Payment against receipt of correct and complete invoice and an irrevocable Advance Payment Guarantee for the equivalent amount made out in favour of the Employer, against payment certificate issued by the Employer. The Advance Payment Guarantee may be reduced in proportion to the value of the Plant and Equipment delivered to the Site, as evidenced by shipping and delivery documents.

Seventy (70) % of the total EXW amount upon delivery to the site after receipt of correct and complete invoice :

Five (5) % of the total EXW amount upon issue of the Taking-Over Certificate after receipt of correct and complete invoice, against payment certificate issued by the Employer.

Five (5) % of the total EXW amount upon issue of the Final Certificate after receipt of correct and complete invoice, against payment certificate issued by the Employer.

B. Local Currency Portion

In respect of Plant and Equipment supplied from the Employer's country, the following payments shall be made :

Twenty (20) % of the total EXW amount as an Advance Payment against receipt of correct and complete invoice and an irrevocable Advance Payment Guarantee for the equivalent amount made out in favour of the Employer, against payment certificate issued by the Employer. The Advance Payment Guarantee may be reduced in proportion to the value of the Plant and Equipment delivered to Site, as evidenced by shipping and delivery documents.

Eighty (80) % of the total EXW amount upon delivery to Site after receipt of correct and complete invoice, against payment certificate issued by the Employer.

Five (5) % of the total EXW amount upon issue of the Taking-Over Certificate after receipt of correct and complete invoice, against payment certificate issued by the Employer.

Five (5) % of the total EXW amount upon issue of the Final Certificate after receipt of correct and complete invoice, against payment certificate issued by the Employer.

Applications for payment in respect or part deliveries may be made by the Contractor as work proceeds.

3. Local Transportation and Insurance to Site

A. Foreign Currency Portion

Not applicable.

B. Local Currency Portion

In respect of local transportation and insurance to the site, the following payments shall be made :

Ten (10) % of total local transportation and insurance to the site amount as Advance Payment against receipt of correct and complete invoice and an irrevocable Advance Payment Guarantee for the equivalent amount made out in favour of the Employer, against payment certificate issued by the Employer. The Advance Payment Guarantee may be reduced in proportion to the value of the Plant and Equipment delivered to Site, as evidence by shipping and delivery documents.

Eighty (80%) of the total local transportation and insurance to the site amount upon delivery to Site after receipt of correct and complete invoice, against payment certificate issued by the Employer.

Five (5) % of the total local transportation and insurance to the site amount upon issue of the Taking-Over Certificate after receipt of correct and complete invoice, against payment certificate issued by the Employer.

Five (5) % of the total local transportation and insurance amount upon issue of the Defect Liability Certificate after receipt of correct and complete invoice, against payment certificate issued by the Employer.

Applications for payment in respect of part deliveries may be made by the Contractor as work proceeds.

4 Installation Services (Erection on Site and Insurance)

A. Foreign Currency Portion

In respect of Installation Services, the following payments shall be made :

No Advance Payment will be made in respect of Installation Services.

Ninety (90) % of the measured value of work performed by the Contractor during the preceding one (1) month as evidenced by the Employer's authorization of the Contractor's application, will be made monthly after receipt of correct and complete invoice, against payment certificate issued by the Employer.

Five (5) % of the total value of the Installation Services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Taking-Over Certificate after receipt of correct and complete invoice, against payment certificate issued by the Employer.

Five (5) % of the total value of the Installation Services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Final Certificate after receipt of correct and complete invoice, against payment certificate issued by the Employer.

B. Local Currency Portion

In respect of Installation Services, the following payments shall be made :

No Advance Payment will be made in respect of Installation Services.

Ninety (90) % of the measured value of work performed by the Contractor during the preceding one (1) month as evidenced by the Employer's authorization of the Contractor's application, will be made monthly after receipt of correct and complete invoice, against payment certificate issued by the Employer.

Five (5) % of the total value of Installation Services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Taking-Over Certificate after receipt of correct and complete invoice, against payment certificate issued by the Employer.

Five (5) % of the total value of Installation Services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Final Certificate after receipt of correct and complete invoice, against payment certificate issued by the Employer.

Other Services

A. Foreign Currency Portion

In respect of Other Services, the following payments shall be made :

No Advance Payment will be made in respect of Other Services.

One hundred (100%) of the measured value of Other Services performed by the Contract during the preceding month as evidence by the Employer's authorization of the Contractor's application, will be made each monthly after receipt of correct and complete invoice, against monthly interim certificate and payment certificate issued by the Employer.

B. Local Currency Portion

In respect of Other Services, the following payments shall be made :

No Advance Payment will be made in respect of the other services.

One hundred (100%) of the measured value of Other Services performed by the Contract during the preceding month as evidence by the Employer's authorization of the Contractor's application, will be made each monthly after receipt of correct and complete invoice, against monthly interim certificate and payment certificate issued by the Employer.

Annex 1
FORM OF ADVANCE PAYMENT GUARANTEE

Loan No. :
Contract No. :
Date :

To: Attention
Shanghai Pudong International Airport Construction Headquarters
220 Si Chung Road (M)
Shanghai, China 200002

Dear sirs,

We refer to the Contract (the Contract") signed on
between you and ("the Contractor")
concerning design, execution and completion of **SHANGHAI PUDONG
INTERNATIONAL AIRPORT PROJECT: AIR FIELD LIGHTING (AFL)
SYSTEM.**

Whereas, in accordance with the terms of the said Contract, the Employer has agreed to pay or cause to be paid to the Contractor and advance Payment in the amount of twenty (20%) percent of the CIF Price and Ex-Works Price of the Plant and Equipment, and ten (10%) percent of the Local Transportation and Insurance of the Plant and Equipment to Site due to the Contractor, namely a payment of :

.....
(Amount of Japanese Yen in Words)

.....
(Amount in Figures)

and

.....
(Amount of Chinese RMB in Words)

.....
(Amount in Figures)

By this letter we, the undersigned,
a Bank (or company) organized under the laws of and
having its registered/principal office at do hereby jointly
and severally with the Contractor irrevocably guarantee repayment of the said amounts
upon the first demand of the Employer without cavil or argument in the event that the
Contractor fails to commence or fulfill its obligations under the terms of the said Contract
and in the event of such failure, refuses to repay all or part (as the case may be) of the said
advance payment to the Employer.

Provided always that the Bank's obligation shall be limited to an amount equal to the
outstanding balance of the advance payment, taking into account such amounts which
have been repaid by the Contractor from time to time in accordance with the terms of
payment of the said Contract as evidenced by appropriate payment certificates.

This Guarantee shall remain in full force from the date upon which the said advance
payment is received by the Contractor until the date upon which the Contractor has fully
repaid the amount so advance to the Employer in accordance with the terms of the
Contract. At the time at which the outstanding amounts is NIL, this Guarantee shall
become null and void, whether the original is returned to us or not.

Any claims to be made under this Guarantee must be received by the Bank during its
period of validity.

Yours truly,
Name of the Bank

.....
Authorized Signature

Annex 2

Payment Procedures

The Terms of Payment are as stated in Appendix 1 (Terms of Payment) to the Contract Agreement.

The Procedures to be followed in making application for, certifying and making payments shall be as follows :

1. Payment Procedures

The Employer shall pay to the Contractor in the following procedures the Contract Price adjusted to give effect to such additions thereto and such deductions therefrom as are provided in the conditions :

The payment of Foreign Currency Portion of the Contract Price will be made under the Letter of Credit. Letter of Credit will be opened by Bank of China against the request of the Employer.

The Employer will establish an irrevocable Letter of Credit of the Bank of China through a correspondent bank selected by the Bank of China in favour of the Contractor within ninety (90) days after the Effective Date of the Contract. The Letter of Credit shall be valid for the full period of time necessary to effect the payment.

Any expenses associated with the opening and modification and/or amendment of the Letter of Credit shall be borne by the Contractor.

The payment of Local Currency Portion of the Contract Price financed by the Government of of China to the Contractor will be made by directly to an account of the Contractor in the bank nominated by the Contractor through Bank of China upon presentation of the Application for Disbursement (Employer's specific disbursement request) and Transfer and the supporting documents including statement of performance by the Employer to the Bank (hereinafter referred to as "Transfer Procedure").

The payment of Local currency Portion of the Contract Price financed by the Government of of China or Employer to the Contractor will be made by direct payment.

2. Method of Application

Applications by the Contractor for payment shall be made to the Employer/Engineer as follows :

For all application for payment, in the manner and volume, and accompanied by such security and evidence of the value of the works in accordance with Appendix 1 (Terms of Payment) to the Contract Agreement and as the Employer or the Engineer may require.

Any other application for payment shall state the amounts claimed and the detailed particulars in respect of which the application is made.

3. Issue of Certificate of Payment

- (a) The Contractor may at the times and in the following manner apply to the Employer/ Engineer for interim certificates as referred to in Appendix 1 (Terms of payment) to the Contract agreement for work executed on the Site and or of the services rendered.
- (b) Application for interim certificates may be made to the Employer/ Engineer monthly as the work progress. Each such application shall state the amount claimed and shall set forth in detailed, in the order of the Price Schedules, particulars of work on the Facilities executed on the Site, the Plant and Equipment delivered to the site and the services to a date named in the application and since the period covered by the last preceding certificate, if any.
- (c) The Employer shall, after examining such application, prepare an interim certificate and issue to Contractor an interim certificate countersigned by the Engineer within 45 days after receiving an application thereof made in accordance with this provision. The interim certificate shall not be issued at frequency of more than once in One month.

- (d) Every interim certificate shall certify the total value of the erection work of the Plant and equipment duly executed on the Site, the Plant and Equipment delivered to the Site for use in the Facilities and the services provided by the Contractor pursuant to the Contract up to date named in the application for the certificate, all as determined by the Employer, less the total of any sum previously certified in interim certificates, provided that no sum shall be included in any interim certificate in respect of any work on the Facilities that, according to the decision of the Employer, does not comply with the Contract, or has been brought, and is at the date of the certificate prematurely upon the site.
- (e) No interim certificate shall be relied upon as conclusive evidence of any matter stated therein nor affect or prejudice any rights of the Employer or the Contractor against the other.

4. **Correction to Certificates of Payment**

Any sum payable under the Contract by or to the Contractor otherwise than for the Plant delivered or works executed shall be included or deducted in the next certificate issued by the Employer.

The Employer may in any certificate of payment make any correction or modification that should properly be made in respect of any previous certificate.

5. **Payment**

The Employer shall pay the certified amount of the foreign and the local currencies to the Contractor within one hundred twenty (120) days after each application of payment according to the procedure for Withdrawal Proceed between the Government and the Bank, at his accounts in the Contractor's country and in of China.

All commission or expenses related to the procedure for Withdrawal Proceed of the Fund, such as advising commission, payment commission, cable cost, interbank costs, etc., shall be borne by the Contractor's country and in of China.

All commission or expenses related to the procedure for Withdrawal Proceed of the bank, such as advising commission, payment commission, cable cost, interbank costs, etc., shall be borne by the Contractor.

6. Remedies on Failure to Certify or Make Payment

The Contractor shall be entitled to stop to work on the Facilities by giving 45 days notice to the Employer, if either :

- (a) the Employer fails to issue a certificate of payment upon proper application by the Contractor, or
- (b) the Employer fails to make any payment as provided in his provision.

The Contractor shall also be entitled to terminate the Contract by giving 60 days notice to the Employer in any case where the Employer has failed to issue a certificate of payment upon proper application by the Contractor.

7. Payment by Measurement

For any part of the Facilities which is to be paid according to quantity supplied or work done, the measurement shall be made for payment for payment in installed percentage approved by the Employer.

8. Application for Final Certificate of Payment

Application for the final certificate of payment may be made to the Employer at any time after the issue of the Final Acceptance Certificate with regard to the Facilities, or if more than one, the last Final Acceptance Certificate.

9. **Issue of Final Certificate of Payment**

The final Certificate of Payment will be issued by the Employer within 60 days after receiving an application in accordance with the above provision 8.

If the Contractor has not applied for a Final Certificate of Payment under the above provision 8 the Employer shall request the Contractor to do so.

A Final Certificate of Payment shall certify the total of all amount comprised in interim certificates previously issued in respect of work on the Facilities subject to such additions thereto or deductions therefrom as may be authorized under the above provision 5.

10. **Final Certificate of Payment Conclusive**

A Final certificate of Payment shall be conclusive evidence of the value of work on the Facilities, that the work on the Facilities are in accordance with the Contract and that the Contractor has performed all his obligations under the Contract.

Payment of the amount certified in the Final Certificate of Payment shall be conclusive evidence that the Employer has performed all his obligations under the Contract.

A Final Certificate of Payment of payment shall not be conclusive :

- (a) to the extent that fraud or dishonesty relates to or affects any matter dealt with in the certificate, or
- (b) if any arbitration or court proceedings under the Contract have been commenced by either party before the expiry of 84 days after the issue of the Final Certificate of Payment.

Annex 3 (1/2)
Payment Declaration (Form of OECF)

(Form OECF-PD-1)
(When not final payment)

Payment Declaration

Date:.....

To whom it may concern,

We hereby certify that this is Payment under Contract
(number)

No., and that the next payment is scheduled on and around
..... with the amount of latter being
(date) *(amount)*

Very truly yours,

(Supplier's Signature)

Annex 3 (2/2)
Payment Declaration (Form of OECF)

(Form OECF-PD-2)
(When final payment)

Payment Declaration

Date:.....

To whom it may concern,

We hereby certify that this is the final Payment under Contract
No. , and we agree to cancel the unused balance of the amount
stipulated in the * Notice of Conclusion of Contract or the * Notice regarding Contract,
the amount of that unused balance being
(amount of unused balance)

Very truly yours,

(Supplier's Signature)

* Notice of Conclusion of Contract or Notice regarding Contract is a form defined by the
Master Agreement.

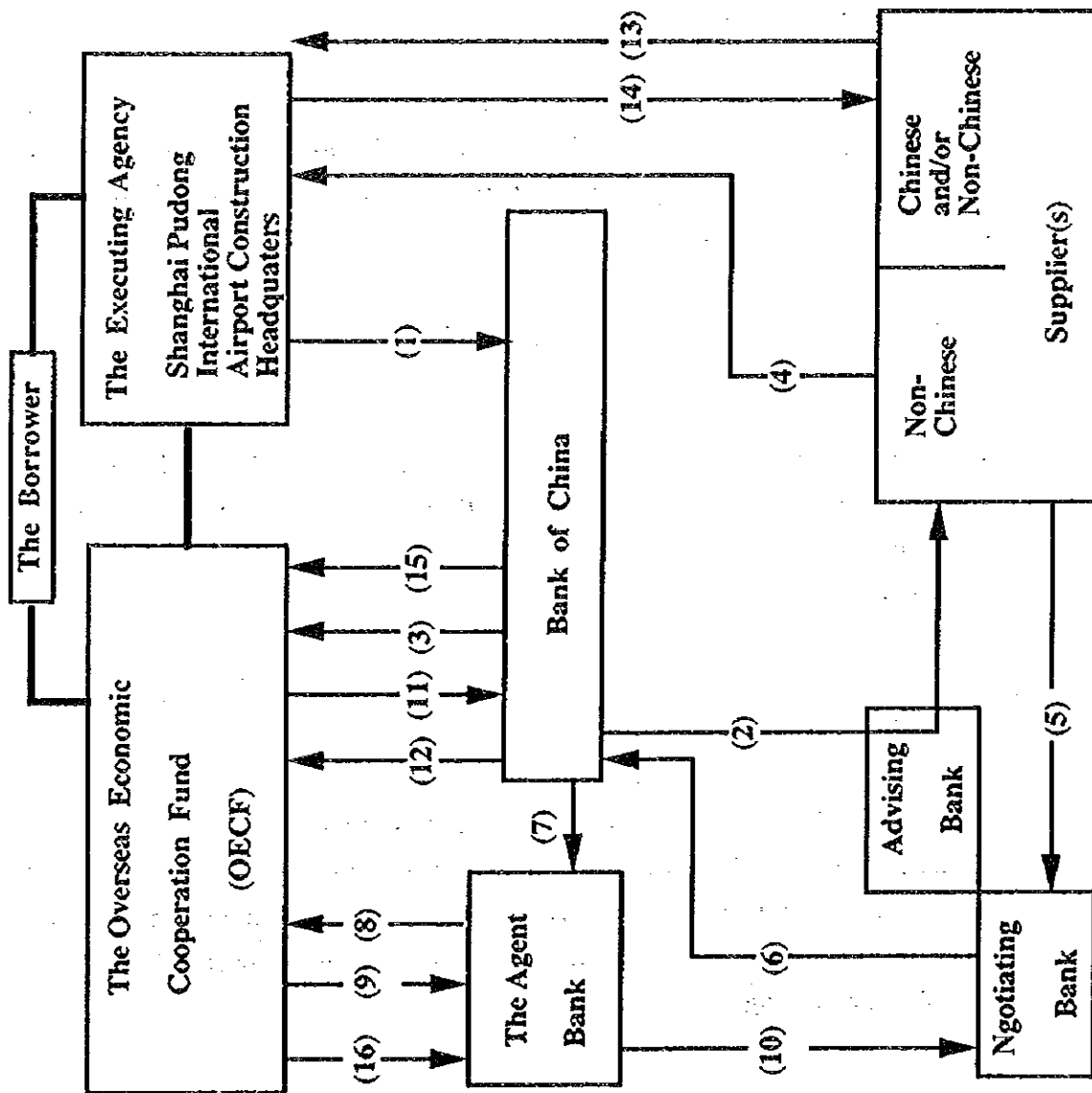
Annex 4
Flowchart of Payment Procedures

INSTRUCTION PROCEDURE: In case of the Contract with a non-Chinese Supplier

- (1) Request of Issuance of L/C.
- (2) Issuance and advising of the L/C.
- (3) Sending of a copy of the L/C.
- (4) Execution (shipment) of the Contract.
- (5) Negotiation.
- (6) Sending of the shipping documents, etc.
- (7) Instruction for following (8) and (10).
- (8) Presentation of "Request for Disbursement".
- (9) Disbursement.
- (10) Transfer.

REIMBURSEMENT PROCEDURE: In case of the Contract with a Chinese Supplier and/or non-Chinese Supplier

- (13) Execution of the Contract.
 - (14) Payment.
 - (15) Request for Re-Imbursement.
 - (16) Re-Imbursement.
- Both Procedures:**
- (11) Notice of the Disbursement.
 - (12) Confirmation of the above.



Appendix 2

Insurance Requirements

Insurances to be taken out by the Contractor

In accordance with the provisions of Clause 43 of the Conditions of Contract, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified. The identify of the insurances and the form of the policies shall be subject to the approval of the Employer, such approval not to be unreasonably withheld.

(a) **Cargo Insurance During Transport**

covering loss or damage occurring, whilst in transit from the supplier's or manufacturer's works or stores until arrival at the Site, to the Materials (including spare parts therefor) and to the Construction Equipment to be provided by the Contractor or its Sub-contractors.

Amount	Deductible limits	Parties Insured
110% of CIF value of goods shipped and full replacement value of the Contractor's Equipment	Minimum equivalent of <u>US\$ 5,000</u>	The Employer and the Contractor

(b) **Installation All Risks Insurance**

covering physical loss or damage to the Facilities at the Site, occurring prior to Completion of the Facilities, with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the Defect Liability Period while the Contractor is on the Site for the purpose of performing its obligations during the Defect Liability Period.

Amount	Deductible limits	Parties Insured
110% of value of work on the Facilities and full replacement value of Contractor's Equipment	Minimum equivalent of US\$ 5,000	The Employer, the Contractor and its Sub-contractors

(c) Third Party Liability Insurance

covering bodily injury or death suffered by third parties (including the Employer's personnel) and loss of or damage to property (including the Employer's property and any parts of the Facilities which have been accepted by the Employer) occurring in connection with the supply and installation of the Facilities.

The insurance policy shall include a clause such that the insurance shall apply to the Contractor and to the Employer as separate insureds.

Amount	Deductible limits	Parties Insured
Not less than equivalent US\$ 10 million combined single limit for bodily injury and property damage any one occurrence	Minimum equivalent of US\$ 5,000	The Employer, the Contractor and its Sub-contractors

(d) Automobile Liability Insurance

covering use of all Vehicles used by the Contractor or its Sub-contractor's (whether or not owned by them) in connection with the supply and installation of the Facilities.

Comprehensive insurance in accordance with statutory requirements.

In the People's Republic of China, the liability limits shall be not less than :

Bodily injury	equivalent of US\$ 500,000 each person equivalent of US\$ 500,000 each occurrence
Property damage	equivalent of US\$ 200,000 each person equivalent of US\$ 200,000 in aggregate

(e) Workmen's Compensation Insurance

in accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

(f) Employer's Liability Insurance

in accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to Conditions of Contract Sub-Clause 43.1 above except for the Workmen's Compensation and Employer's Liability Insurances and the Contractor's Sub-contractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to Conditions of Contract Sub-Clause 43.1 above except for the Cargo Insurance During Transport, Workmen's Compensation Insurance and Employer's Liability Insurance, and all insurance's rights of subrogation against such to co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.

SECTION 2
GENERAL CONDITIONS



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1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud.

2. The second part of the document outlines the specific requirements for record-keeping, including the need to maintain original documents and to keep copies of all records for a minimum of seven years. It also discusses the importance of ensuring that records are stored in a secure and accessible manner.

3. The third part of the document discusses the role of the auditor in verifying the accuracy of the records. It emphasizes that the auditor must exercise due diligence and must be able to trace all transactions back to their source. It also discusses the importance of the auditor's independence and objectivity.

4. The fourth part of the document discusses the consequences of non-compliance with the record-keeping requirements. It emphasizes that failure to maintain accurate records can result in severe penalties, including fines and imprisonment. It also discusses the importance of the auditor's role in identifying and reporting non-compliance.

5. The fifth part of the document discusses the importance of the auditor's communication with the client. It emphasizes that the auditor must provide clear and concise reports that identify any areas of concern and provide recommendations for improvement. It also discusses the importance of the auditor's independence and objectivity in providing these reports.

6. The sixth part of the document discusses the importance of the auditor's communication with the public. It emphasizes that the auditor must provide clear and concise information about the results of their audits and about any areas of concern. It also discusses the importance of the auditor's independence and objectivity in providing this information.

7. The seventh part of the document discusses the importance of the auditor's communication with the regulatory authorities. It emphasizes that the auditor must provide clear and concise information about any areas of concern and about any actions taken to address these concerns. It also discusses the importance of the auditor's independence and objectivity in providing this information.

8. The eighth part of the document discusses the importance of the auditor's communication with the media. It emphasizes that the auditor must provide clear and concise information about the results of their audits and about any areas of concern. It also discusses the importance of the auditor's independence and objectivity in providing this information.

9. The ninth part of the document discusses the importance of the auditor's communication with the public. It emphasizes that the auditor must provide clear and concise information about the results of their audits and about any areas of concern. It also discusses the importance of the auditor's independence and objectivity in providing this information.

10. The tenth part of the document discusses the importance of the auditor's communication with the public. It emphasizes that the auditor must provide clear and concise information about the results of their audits and about any areas of concern. It also discusses the importance of the auditor's independence and objectivity in providing this information.



PREAMBLE

This Preamble must be completed in all cases referring to completed schedules where appropriate. When completed, this Preamble, the General Conditions, Specification, Employer's and Contractor's Drawings, Schedules and other documents can constitute a contract on the basis of the General Conditions in Part I. If this is not what is required, Part II must also be completed.

The Employer

Sub-Clause 1.1.12.

The Employer is _____

The Engineer

Sub-Clause 1.1.15.

The Engineer is _____

Time for Completion

Sub-Clause 1.1.35.

The Time for Completion is _____ days from the Commencement Date.

Contractor's Profit

Sub-Clause 1.6.

The percentage to cover profit entitlement, where appropriate, is _____ %.

Ruling Language

Sub-Clause 5.1.

The version in _____ language (ruling language) shall prevail.

Day to Day Communications

Sub-Clause 5.2

The language for day to day communications is _____

Programme to be Furnished

Sub-Clause 12.1.

The Programme must be submitted in the form of _____

Electricity Water, Gas and Other Services

Sub-Clause 14.3.

Supplies on the Site are:

a. Electricity: _____

b. Water: _____

c. Gas: _____

d. Other services: _____

**Employer's
Equipment**

Sub-Clause 14.4.
The following Employer's equipment is available for use by the Contractor under
the Employer's operation: _____

Working Hours

Sub-Clause 18.3.
The normal working hours are _____

Delay in Completion

Sub-Clause 27.1.
Failure to meet the Time for Completion entitles the Employer to reduction in
Contract Price as follows:
Percentage per day _____ %
Maximum _____ %

Prolonged Delay

Sub-Clause 27.2.
Maximum amount recoverable from the Contractor by the Employer:

Terms of Payment

Sub-Clause 33.1.
In addition to the provisions under Clause 33, the terms of payment shall be:

**Payment In Foreign
Currencies**

Sub-Clause 35.1.
Payment in foreign currencies shall be arranged as follows:

Rates of Exchange

Sub-Clause 35.3.
The rates of exchange for the purpose of the Contract are:

**Payment against
Provisional Sums**

Sub-Clause 36.4.
The percentage to be applied to Provisional Sums shall be Sums
_____ %.

Maximum Liability

Sub-Clause 42.2.
The maximum liability of the Contractor to the Employer shall be

Insurance of Works

Sub-Clause 43.1.

The deductible limits in the insurance cover of the Works shall not exceed _____

Sub-Clause 43.1. (a)

The additional risks to be insured are:

Third Party Liability

Sub-Clause 43.3.

The amount of insurance against third party liability taken out by the Contractor shall not be less than:

Payment on Termination for Employer's Default

Sub-Clause 46.3.

The additional amount payable by the Employer on termination shall not exceed:

Labour, Materials and Transport

Sub-Clause 47.1.

The method of calculating adjustments for changes in costs shall be:

Notices to Employer and Engineer

Sub-Clause 49.2.

The address of the Employer for notices is:

The address of the Engineer for notices is:

Applicable Law

Sub-Clause 51.1.

The applicable law is _____ law.

Procedural Law for Arbitration

Sub-Clause 51.2.

The procedural law for arbitration is _____

Language and Place of Arbitration

Sub-Clause 51.3.

The language of arbitration is _____ language.

The place of arbitration is _____

PART I: GENERAL CONDITIONS

Definitions and Interpretations

- Definitions** 1.1 In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them:
- 1.1.1 "Commencement Date" means whichever is the latest of:
 - i) the date specified in the Preamble as the date for commencement of the Works or the date when the Contractor receives:
 - ii) such payment in advance of the commencement of the Works as may be specified in the terms of payment, or
 - iii) notice of the issue of any import licence necessary for commencing performance of the Contract, or
 - iv) notice that any legal requirements necessary for the Contract to enter into force have been fulfilled, or
 - v) notice that any necessary financial or administrative requirements specified in Part II as conditions precedent to commencement have been fulfilled.
 - 1.1.2 "Conditions" means the Preamble to and these Conditions of Contract, Parts I and II.
 - 1.1.3 "Contract" means the agreement between the Employer and the Contractor for the execution of the Works incorporating the Conditions, Specification, Employer's Drawings and Contractor's Drawings, priced and completed Schedules, Tender, Letter of Acceptance and such further documents as may be expressly incorporated by the Letter of Acceptance.
 - 1.1.4 "Contract Agreement" means the document recording the terms of the Contract between the Employer and the Contractor.
 - 1.1.5 "Contract Price" means the sum stated in the Letter of Acceptance as payable to the Contractor for the execution of the Works.
 - 1.1.6 "Contractor" means the person whose tender has been accepted by the Employer and the legal successors in title to the Contractor but not (except with the consent of the Employer) any assignee of the Contractor.
 - 1.1.7 "Contractor's Drawings" means all drawings, samples, patterns, models and operation and maintenance manuals to be submitted by the Contractor in accordance with Clause 6.
 - 1.1.8 "Contractor's Equipment" means all appliances or things of whatsoever nature required for the purposes of the Works but does not include Plant.
 - 1.1.9 "Contractor's Risks" means the risks defined in Sub-Clause 37.3.
 - 1.1.10 "Defects Liability Certificate" means the certificate to be issued by the Engineer to the Contractor in accordance with Sub-Clause 30.11.
 - 1.1.11 "Defects Liability Period" means one year or the period stated in Part II following taking over, during which the Contractor is responsible for making good defects and damage in accordance with Clause 30.
 - 1.1.12 "Employer" means the person named as such in the Preamble and the legal successors in title to the Employer but not (except with the consent of the Contractor) any assignee of the Employer.

- 1.1.13 "Employer's Drawings"** means all the drawings and information provided by the Employer or the Engineer to the Contractor under the Contract.
- 1.1.14 "Employer's Risks"** means those risks defined in Sub-Clause 37.2.
- 1.1.15 "Engineer"** means the person appointed by the Employer to act as Engineer for the purposes of the Contract and designated as such in the Preamble.
- 1.1.16 "Engineer's Representative"** means any representative of the Engineer appointed from time to time by the Engineer under Sub-Clause 2.2.
- 1.1.17 "Final Certificate of Payment"**, means the certificate to be issued by the Engineer to the Employer in accordance with Sub-Clause 33.10.
- 1.1.18 "Force Majeure"** has the meaning assigned to it under Sub-Clause 44.1.
- 1.1.19 "Foreign Currency"** means a currency of a country other than that in which Plant is to be installed.
- 1.1.20 "Gross Misconduct"** means any act or omission of the Contractor in violation of the most elementary rules of diligence which a conscientious contractor in the same position and under the same circumstances would have followed.
- 1.1.21 "Letter of Acceptance"** means the formal acceptance by the Employer of the Tender incorporating any adjustments or variations to the Tender agreed between the Employer and the Contractor.
- 1.1.22 "Performance Security"** means the security to be provided by the Contractor in accordance with Sub-Clause 10.1. for the due performance of the Contract.
- 1.1.23 "Plant"** means machinery, apparatus, materials and all things to be provided under the Contract for incorporation in the Works.
- 1.1.24 "Programme"** means the Programme to be submitted by the Contractor in accordance with Sub-Clause 12.1. and any approved revisions thereto.
- 1.1.25 "Provisional Sum"** means a sum, described as such for the execution of work or for the supply of goods or services, to be used in accordance with Sub-Clause 36.1.
- 1.1.26 "Risk Transfer Date"** means the date when the risk of loss of or damage to the Works passes from the Contractor to the Employer in accordance with Sub-Clause 39.1.
- 1.1.27 "Schedule of Prices"** means the completed and priced Schedule of Prices, or any part or individual schedule thereof, submitted by the Contractor with his Tender and forming a part of the Contract documents.
- 1.1.28 "Section"** means a part of the Works specifically identified as such in the Contract.
- 1.1.29 "Site"** means the place or places, provided or made available by the Employer where work is to be done by the Contractor or to which Plant is to be delivered, together with so much of the area surrounding the same as the Contractor shall with the consent of the Employer use in connection with the Works otherwise than merely for the purposes of access.
- 1.1.30 "Specification"** means the specification of the Works included in the Contract and any modification thereof made under Clause 31.

- 1.1.31 "Subcontractor" means any person (other than the Contractor) named in the Contract for any part of the Works, or any person to whom any part of the Contract has been subcontracted with the consent of the Engineer, and the Subcontractor's legal successors in title but not any assignee of the Subcontractor.
- 1.1.32 "Taking-Over Certificate" means the certificate to be given by the Engineer to the Contractor in accordance with Clause 29.
- 1.1.33 "Tender" means the Contractor's priced offer to the Employer for the execution of the Works.
- 1.1.34 "Tests on Completion" means the tests specified in the Contract or otherwise agreed by the Engineer and the Contractor to be performed before the Works are taken over by the Employer.
- 1.1.35 "Time for Completion" means the time stated in the Preamble for completing the Works or any Section thereof and passing the Tests on Completion calculated from the Commencement Date unless extended in accordance with Clause 26.
- 1.1.36 "Variation Order" means any written order, identified as such, issued to the Contractor by the Engineer under Sub-Clause 31.1.
- 1.1.37 "Works" means all Plant to be provided and work to be done by the Contractor under the Contract.

Headings and Titles

- 1.2 The headings and titles in these Conditions shall not be deemed part thereof or be taken into consideration in the interpretation or construction of the Contract.

Interpretation

- 1.3 Words importing persons or parties shall include firms and corporations and any organisation having legal capacity.
Words importing the singular only also include the plural and vice versa where the context requires.

Written Communications

- 1.4 Wherever in the Contract provision is made for a communication to be "written" or "in writing" this means any hand-written, type-written or printed communication, including telex, cable and facsimile transmission.

Notices, Consents and Approvals

- 1.5 Wherever in the Contract provision is made for the giving of notice, consent or approval by any person, such consent or approval shall not be unreasonably withheld. Unless otherwise specified, such notice, consent or approval shall be in writing and the word "notify" shall be construed accordingly.

Costs, Overhead Charges and Profit

- 1.6 Whenever by these Conditions the Contractor is entitled to be paid cost, such cost shall be properly incurred and shall include any overhead charges properly allocable thereto but not profit unless so stated. Any profit entitlement shall be added to cost at the percentage stated in the Preamble.

Periods

- 1.7 In these Conditions "day" means calendar day and "year" means 365 days.

Engineer and Engineer's Representative

Engineer's Duties

- 2.1 The Engineer shall carry out the duties specified in the Contract.
If the Engineer is required, under the terms of his appointment by the Employer, to obtain the specific approval of the Employer before carrying out any of these duties, full particulars of such requirements shall be set out in Part II.
Except as expressly stated in the Contract the Engineer shall have no authority to relieve the Contractor of any of his obligations under the Contract.

- Engineer's Representative** 2.2 The Engineer's Representative shall be appointed by and be responsible to the Engineer and shall only carry out such duties and exercise such authority as may be delegated to him by the Engineer under Sub-Clause 2.3.
- Engineer's Power to Delegate** 2.3 The Engineer may from time to time delegate to the Engineer's Representative any of the duties vested in the Engineer and may at any time revoke such delegation.
- Any such delegation or revocation shall be in writing and shall not take effect until a copy thereof has been delivered to the Contractor and the Employer.
- Any decision, instruction or approval given by the Engineer's Representative to the Contractor in accordance with such delegation shall have the same effect as though it had been given by the Engineer. However:
- (a) any failure of the Engineer's Representative to disapprove any Plant or workmanship shall not prejudice the right of the Engineer to disapprove such Plant or workmanship and to give instructions for the rectification thereof;
- (b) if the Contractor questions any decision or instruction of the Engineer's Representative he may refer the matter to the Engineer who shall confirm, reverse or vary such decision or instruction.
- Engineer to Act Impartially** 2.4 Wherever under the Contract the Engineer is required to exercise his discretion by:
- (a) giving his decision, opinion or consent, or
- (b) expressing his satisfaction or approval, or
- (c) determining value, or
- (d) otherwise taking action which may affect the rights and obligations of the Employer or the Contractor,
- he shall exercise such discretion impartially within the terms of the Contract and having regard to all the circumstances.
- Engineer's Decisions and Instructions** 2.5 The Contractor shall proceed with the decisions and instructions given by the Engineer in accordance with these Conditions.
- Confirmation in Writing** 2.6 The Contractor may require the Engineer to confirm in writing any decision or instruction of the Engineer which is not in writing. The Contractor shall notify the Engineer of such requirement without undue delay. Such a decision or instruction shall not be effective until written confirmation thereof has been received by the Contractor.
- Disputing Engineer's Decisions and Instructions** 2.7 If the Contractor disputes or questions any decision or instruction under Clause 2.5 or a written confirmation under Clause 2.6, he shall give notice to the Engineer within 28 days after receipt thereof, giving his reasons.
- The Engineer shall within a further period of 28 days by notice to the Contractor and the Employer with reasons, confirm, reverse or vary such decision or instruction.
- If either party disagrees with the action taken by the Engineer, or if the Engineer fails to reply to the Contractor's notice within the stipulated 28 days, and the matter cannot be settled amicably that party shall be at liberty, subject to Sub-Clause 50.1, to refer the matter to arbitration in accordance with the Contract.
- Replacement of Engineer** 2.8 The Employer shall not appoint any person to act in replacement of the Engineer without the consent of the Contractor.

Assignment and Subcontracting

- Assignment** 3.1 The Contractor shall not assign the Contract or any part of his obligations under the Contract. A charge in favour of the Contractor's bankers of any monies due under the Contract shall not be considered an assignment.
- Subcontracting** 4.1 The Contractor shall not subcontract the whole of the Works.
- Except where otherwise provided by the Contract the Contractor shall not subcontract any part of the Works without the prior consent of the Engineer.
- The Contractor shall however, not require such consent for purchases of materials or to place contracts for minor details or for any part of the Works of which the manufacturer or supplier is named in the Contract.
- The Contractor shall be responsible for the acts, defaults and neglects of any Subcontractor, his agents or employees as fully as if they were the acts, defaults or neglects of the Contractor, his agents or employees.

Contract Documents

- Ruling Language** 5.1 Where versions of the Contract are prepared in different languages, the version which is to prevail shall be specified in the Preamble. The language of such version is referred to as the ruling language.
- Day to Day Communications** 5.2 The language for day to day communications is stated in the Preamble.
- Priority of Contract Documents** 5.3 Unless otherwise provided in the Contract the priority of the Contract documents shall be as follows:
1. The Letter of Acceptance
 2. The Preamble
 3. The Conditions of Contract, Part II
 4. The Conditions of Contract, Part I
 5. Any other documents forming part of the Contract.
- Documents Mutually Explanatory** 5.4 Subject to Sub-Clause 5.3. the Contract documents shall be taken as mutually explanatory. Any ambiguities or discrepancies shall be resolved by the Engineer, who shall then instruct the Contractor thereon.
- If the Contractor considers that compliance with such instructions will result in any cost which the Contractor could not reasonably have anticipated, he shall forthwith inform the Engineer with full supporting details. The Engineer shall then, if he approves, certify such costs as may be reasonable, together with profit where appropriate, which shall be added to the Contract Price.
- If on the other hand compliance with such instructions results in lower costs for the Contractor than he had reason to anticipate, the Engineer shall certify a deduction from the Contract Price allowing for profit where appropriate.
- Contractor's Drawings** 6.1 The Contractor shall submit to the Engineer for approval:
- (a) within the time given in the Contract or in the Programme such drawings, samples, models or information as may be called for therein, and in the numbers therein required, and
 - (b) during the progress of the Works, such drawings of the general arrangement and details of the Works as specified in the Contract or as the Engineer may require.
- The Engineer shall signify his approval or disapproval thereof. If he fails to do so within the time given in the Contract or the Programme or if no time limit is specified, within 28 days of receipt, they shall be deemed to be approved.

Approved drawings, samples and models shall be signed or otherwise identified by the Engineer.

The Contractor shall supply additional copies of approved drawings in the form and numbers stated in the Contract.

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| Consequences of Disapproval of Contractor's Drawings | 6.2 Any Contractor's Drawings which the Engineer disapproves, shall be forthwith modified to meet the requirements of the Engineer and shall be re-submitted. |
| Approved Contractor's Drawings | 6.3 Approved Contractor's Drawings shall not be departed from except as provided in Clause 31. |
| Inspection of Contractor's Drawings | 6.4 The Engineer shall have the right at all reasonable times to inspect, at the Contractor's premises, all Contractor's Drawings of any part of the Works. |
| Erection Information | 6.5 The Contractor shall provide, within the times stated in the Contract or in the Programme, drawings showing how the Plant is to be affixed and any other information required for:
<ul style="list-style-type: none">(a) preparing suitable foundations or other means of support, and(b) providing suitable access on the Site for the Plant and any necessary equipment to the place where the Plant is to be erected, and(c) making necessary connections to the Plant. |
| Operation and Maintenance Manuals | 6.6 Before the Works are taken over in accordance with Clause 29 the Contractor shall supply operation and maintenance manuals together with drawings of the Works as built. These shall be in such detail as will enable the Employer to operate, maintain, adjust and repair all parts of the Works.

Unless otherwise stated in Part II the manuals and drawings shall be in the ruling language, and in such form and numbers as stated in the Contract.

Unless otherwise agreed, the Works shall not be considered to be completed for the purposes of taking over until such manuals and drawings have been supplied to the Employer. |
| Employer's Use of Contractor's Drawings | 6.7 Contractor's Drawings may be used by the Employer for no other purpose than completing, operating, maintaining, adjusting and repairing the Works. |
| Contractor's Use of Employer's Drawings | 6.8 The Employer's Drawings, Specification and other information submitted by the Employer or the Engineer to the Contractor shall remain the property of the Employer. They shall not, without the consent of the Employer, be used, copied or communicated to a third party by the Contractor unless necessary for the purposes of the Contract. |
| Manufacturing Drawings | 6.9 Unless otherwise specified in Part II the Contractor shall not be required to disclose to the Employer or the Engineer the Contractor's confidential manufacturing drawings, designs, know-how or manufacturing practices, processes or operations. |
| Errors in Contractor's Drawings | 7.1 The Contractor shall be responsible for any errors or omissions in the Contractor's Drawings unless they are due to incorrect Employer's Drawings or other written information supplied by the Employer or the Engineer. Approval by the Engineer of the Contractor's Drawings shall not relieve the Contractor from any responsibility under this Sub-Clause. |

The Contractor shall bear any costs he may incur as a result of delay in providing Contractor's Drawings and other information or as a result of errors or omissions therein, for which the Contractor is responsible.

The Contractor shall at his own cost carry out any alterations or remedial work necessitated by such errors or omissions for which he is responsible and modify the Contractor's Drawings and such other information accordingly.

The performance of his obligations under this Clause shall be in full satisfaction of the Contractor's liability under this Clause but shall not relieve him of his liability under Sub-Clause 27.1.

Errors by Employer or Engineer

- 7.2 The Employer shall be responsible for the Employer's Drawings and for other written information supplied by the Employer or the Engineer and for the details of special work specified by either of them. If such Employer's Drawings, information or details are incorrect and necessitate alterations of the work, the Employer shall pay the Contractor the cost of the alterations together with profit as certified by the Engineer.

Obligations of the Contractor

General Obligations

- 8.1 The Contractor shall, in accordance with the Contract, with due care and diligence, design, manufacture, deliver to Site, erect, test and commission the Plant and carry out the Works within the Time for Completion. The Contractor shall also provide all necessary Contractor's Equipment, superintendence, labour and, except as stated in Part II, all necessary facilities therefor.

Setting Out

- 8.2 The Contractor shall set out the Works in relation to original points, lines and levels of reference given by the Engineer in writing and provide all necessary instruments, appliances and labour for such purposes.

If, at any time during the execution of the Works, any error appears in the positions, levels, dimensions or alignment of the Works, the Contractor shall rectify the error.

The Contractor shall bear the cost of rectifying the error, unless the error results from incorrect information supplied in writing by the Employer, the Engineer or from default by another contractor, in which case the cost together with profit shall be borne by the Employer.

The checking of any setting-out by the Engineer shall not relieve the Contractor of his responsibility for the accuracy thereof.

Contract Agreement

- 9.1 The Contractor shall, if called upon so to do, execute a Contract Agreement recording all the terms of the Contract, to be prepared by and completed at the cost of the Employer in the form annexed hereto.

Performance Security

- 10.1 If Part II requires the Contractor to obtain a Performance Security, he shall obtain the same in the sum required, within 28 days after the receipt of the Letter of Acceptance. The Performance Security shall be provided by a person and in a form approved by the Employer. The cost of complying with the requirements of this Clause shall be borne by the Contractor.

Period of Validity

- 10.2 The Performance Security shall be valid until the Contractor has executed, completed and remedied defects in the Works in accordance with the Contract. No claim shall be made against the Performance Security after the issue of the Defects Liability Certificate and the Performance Security shall be returned to the Contractor within 14 days of the issue of the Defects Liability Certificate.

Claims under Performance Security

- 10.3 Whether or not the Performance Security is stated by its terms to be payable on the demand of the Employer the Employer shall not make a claim under the Performance Security unless one of the following conditions is satisfied:

(a) the Contractor is in breach of the Contract and fails to remedy the breach within 42 days after receiving written notice from the Employer requiring him so to do. The notice shall state the intention to claim under the Performance Security, the amount claimed and the breach relied upon, or

(b) the Employer and the Contractor have agreed in writing that the amount demanded is payable to the Employer, and the amount has not been paid within 42 days thereafter, or

(c) the Employer has obtained an award in arbitration under Clause 50 and the amount awarded has not been paid within 42 days after the award, or

(d) the Contractor has gone into liquidation or is bankrupt.

In every case the Employer shall, when making the claim, send a copy to the Contractor.

Site Data 11.1 The Tender shall be deemed to have been based on such data on climatic, hydrological and general conditions on the Site and for the operation of the Works as the Employer or the Engineer has made available to the Contractor for the purposes of the Tender. The Contractor shall be responsible for his own interpretation of such data.

Sufficiency of Contract Price 11.2 The Contractor shall be deemed to have satisfied himself on and taken account of in his Tender:

(a) all the conditions and circumstances affecting the Contract Price,

(b) the possibility of carrying out the Works as described in the Contract,

(c) the general circumstances at the Site (if access has been made available to him) and

(d) the general labour position at the Site.

The Contractor shall not be responsible for the accuracy of information given in writing by the Employer or the Engineer but shall be responsible for his interpretation of information received from whatever source.

Physical Obstructions and Conditions 11.3 If during the execution of the Works on Site the Contractor encounters physical obstructions or conditions of the kind stipulated in Sub-Clause 26.1. c) the Contractor shall be entitled to recover the additional cost incurred in consequence.

The Engineer shall certify and there shall be added to the Contract Price the additional cost of:

(a) complying with any instruction which the Engineer, after due consultation with the Employer and the Contractor, issues to the Contractor in connection therewith, and

(b) any necessary measures which the Contractor may take in the absence of specific instructions from the Engineer.

Programme to be Furnished 12.1 The Contractor shall submit to the Engineer for his approval the Programme which shall contain the following:

(a) the order in which the Contractor proposes to carry out the Works (including design, manufacture, delivery to Site, erection, testing and commissioning),

(b) the times when submission and approval of the Contractor's Drawings are required,

(c) the times by which the Contractor requires the Employer:

- (i) to furnish any Employer's Drawings,
- (ii) to provide access to the Site,
- (iii) to have completed the necessary civil engineering work (including foundations for the Plant) and
- (iv) to have obtained any import licences, consents, wayleaves and approvals necessary for the purpose of the Works.

The Contractor shall submit the Programme in the form stated in the Preamble within 28 days after the Commencement Date.

The approval by the Engineer of the Programme shall not relieve the Contractor or the Employer from any obligation under the Contract.

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| Alteration to Programme | 12.2 | No material alteration to the Programme shall be made without the approval of the Engineer. |
| Revision of Programme | 12.3 | If the progress of the Works does not conform to the Programme, the Engineer may instruct the Contractor to revise the Programme.

If such modifications are required for reasons for which the Contractor is not responsible, the cost of preparing the revised Programme shall be certified by the Engineer and added to the Contract Price. |
| Contractor's Representative | 13.1 | The Contractor shall employ one or more competent representatives to superintend the carrying out of the Works on Site. They shall be fluent in the language for day to day communications. Their names shall be communicated in writing to the Engineer before work on Site begins.

Any instruction or notice which the Engineer gives to the Contractor's representatives shall be deemed to have been given to the Contractor. |
| Objection to Contractor's Employees | 13.2 | The Contractor shall, upon the Engineer's written instruction, remove from the Works any person employed by him in the execution of the Works, who misconducts himself or is incompetent or negligent. |
| Contractor's Equipment | 14.1 | Except to the extent specified in Part II, the Contractor shall provide all Contractor's Equipment necessary to complete the Works.

All Contractor's Equipment shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the Works. The Contractor shall not remove from the Site any such equipment, except:
<ul style="list-style-type: none">(a) when it is no longer required for the completion of the Works, or(b) when the Engineer has given his consent. |
| Safety Precautions | 14.2 | The Contractor shall observe all applicable regulations regarding safety on the Site.

Unless otherwise agreed, the Contractor shall, from the commencement of work on Site until taking over provide:
<ul style="list-style-type: none">(a) fencing, lighting, guarding and watching of the Works, and(b) temporary roadways, footways, guards and fences which may be necessary for the accommodation and protection of owners and occupiers of adjacent property, the public and others. |
| Electricity, Water and Gas | 14.3 | The Contractor shall be entitled to use for the purposes of the Works such supplies of electricity, water, gas and other services as may be available on the Site and of which details are given in the Preamble. The Contractor shall pay the Employer a fair price for such use. The Contractor shall at his own cost provide any apparatus necessary for such use. |

- Employer's Equipment** 14.4 The Employer shall, if the Contractor so requests for the execution of the Works, operate any available equipment of which details are given in the Preamble. The Contractor shall pay the Employer a fair price for such use.
- The Employer shall during such operation retain control of and be responsible for the safe working of the equipment.
- Clearance of Site** 14.5 The Contractor shall from time to time during the progress of the Works clear away and remove all surplus materials and rubbish. On completion of the Works the Contractor shall remove all Contractor's Equipment and leave the whole of the Site and the Works clean and in a workmanlike condition, to the satisfaction of the Engineer.
- Opportunities for Other Contractors** 14.6 The Contractor shall, in accordance with the Engineer's instructions, afford to other contractors engaged by the Employer to work on the Site and persons lawfully upon the Site all reasonable opportunities for carrying out their work provided that the same shall not obstruct or disturb the progress of the Works. The Contractor shall also afford such opportunities to the employees of the Employer.
- If the Contractor, on the written request of the Engineer, makes available any Contractor's Equipment or provides any other service, the Employer shall pay the Contractor accordingly. The amount to be paid shall be certified by the Engineer and added to the Contract Price.
- Authority for Access** 14.7 No persons other than the employees of the Contractor and his Subcontractors shall be allowed on the Site except with the consent of the Engineer.
- Facilities to inspect the Works shall at all times be afforded by the Contractor to the Engineer and his representatives, the Employer's representatives, authorities and officials.
- Information for Import Permits and Licences** 14.8 The Contractor shall submit to the Employer in good time such details of all Plant and Contractor's Equipment as will enable the Employer to obtain all necessary import permits or licences.
- Compliance with Statutes, Regulations** 15.1 The Contractor shall, in all matters arising in the performance of the Contract, comply in all respects with, give all notices and pay all fees required by the provisions of any national or state statute, ordinance or other law or any regulation or bye-law of any duly constituted authority.
- Compliance with Laws** 15.2 The Contractor shall comply with the laws of the country of manufacture concerning the manufacture of the Plant, and the laws of the country where the Plant is to be erected so far as such laws concern the manufacture, erection and operation of the Works.
- Patent Rights** 16.1 The Contractor shall indemnify the Employer against all claims of infringement of any patent, registered design, copyright, trade mark or trade name or other intellectual property right provided that all of following conditions are satisfied:
- (a) The claim or proceedings arise out of the design, construction, manufacture or use of the Works or any Plant supplied by the Contractor.
- (b) The right was protected at the date of the Contract in the Contractor's country or the country in which the Plant is to be manufactured or erected.
- (c) The infringement or allegation of infringement was not caused by any use of the Works otherwise than for the purpose indicated by or reasonably to be inferred from the Specification.
- (d) The infringement or allegation of infringement was not caused by the use of any Plant in association or combination with any plant not supplied by the Contractor, unless such association or combination was disclosed to the Contractor prior to the date of the Tender.

(e) The infringement or allegation of infringement was not caused by the Contractor following the design or instructions of the Employer or the Engineer.

- Claims in respect of Patent Rights** 16.2 The Contractor shall be promptly notified of any claim under this Clause made against the Employer. The Contractor may at his own cost conduct negotiations for the settlement of such claim, and any litigation that may arise therefrom.
- The Employer shall not make any admission which might be prejudicial to the Contractor unless the Contractor has failed to take over the conduct of the negotiations or litigation within a reasonable time after having been so requested.
- The Contractor may not, however, conduct such negotiations or litigation before he has given the Employer such reasonable security as the Employer may require. The security shall be for an amount which is an assessment of the compensation, damages, expenses and costs for which the Employer may become liable and which are the subject of the indemnity under Sub-Clause 16.1.
- The Employer shall, at the request of the Contractor, provide all available assistance for the purpose of contesting any such claim or action, and shall be repaid all reasonable costs incurred in so doing.
- Employer's Warranty for Patent Rights** 16.3 If any matter for which the Contractor is not liable to indemnify the Employer under Sub-Clause 16.1 causes the infringement or allegation of infringement by the Contractor of any patent, registered design, trade mark, copyright or other intellectual property right, the Employer shall indemnify the Contractor against all claims, damages, expenses and costs which the Contractor may incur in relation thereto. The provisions of Sub-Clause 16.2 shall apply mutatis mutandis.

Obligations of the Employer

- Access to and Possession of the Site** 17.1 The Employer shall in reasonable time grant the Contractor access to and possession of the Site, which may, however, not be exclusive to the Contractor.
- The Employer shall to the extent stated in the Specification provide means of access for the delivery of all Plant and Contractor's Equipment to the Site.
- Assistance with Local Regulations** 17.2 The Employer shall assist the Contractor in ascertaining the nature and extent of any laws, regulations, orders or bye-laws, and customs in the country where the Plant is to be erected, which may affect the Contractor in the performance of his obligations under the Contract. The Employer shall if so requested procure for the Contractor copies thereof and information relating thereto at the Contractor's cost.
- Civil Works on Site** 17.3 Any building, structure, foundation or means of access on the Site to be provided by the Employer shall be in a condition suitable for the reception, movement, installation and maintenance of the Works within the time or times indicated in the Programme.
- Consents and Wayleaves** 17.4 The Employer shall in due time obtain or grant all consents including permits-to-work, wayleaves and approvals required for the Works.
- Import Permits and Licences** 17.5 The Employer shall obtain all import permits or licences required for any part of the Plant or Works in reasonable time having regard to the time for delivery of the Plant and completion of the Works.

Labour

- Engagement of Labour** 18.1 The Contractor shall, unless otherwise provided in the Contract, make his own arrangements for the engagement of all labour and for their payment, housing, feeding and transport.

Returns of Labour 18.2 The Contractor shall submit detailed returns showing the supervisory staff and the numbers of the several classes of labour from time to time employed by the Contractor and Subcontractors on the Site. The returns shall be submitted in such form and at such intervals as the Engineer may prescribe.

Working Hours 18.3 On the Site the Contractor shall observe the normal working hours stated in the Preamble. The Employer shall allow the Contractor to carry out work on the Site continuously during such working hours.

The Engineer may after consulting the Employer and the Contractor, direct that work shall be done at other times. The extra cost, together with profit, shall be added to the Contract Price unless it has become necessary for the completion of the Works within the Time for Completion, and this is due to default of the Contractor.

Restriction on Working Hours 18.4 No work shall be carried out on the Site outside normal working hours or on the locally recognised days of rest, unless:

(a) the Contract so provides, or

(b) the work is unavoidable or 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, or

(c) the Engineer gives his consent.

Workmanship and Materials

Manner of Execution 19.1 All Plant to be supplied shall be manufactured and all work to be done shall be executed in the manner set out in the Contract.

Where the manner of manufacture and execution is not set out in the Contract, the work shall be executed in a proper and workmanlike manner in accordance with recognised good practice.

Covering up Work 19.2 The Contractor shall give the Engineer full opportunity to examine, measure and test any work on Site which is about to be covered up or put out of view.

The Contractor shall give due notice to the Engineer whenever such work is ready for examination, measurement or testing.

The Engineer shall then, unless he notifies the Contractor that he considers it unnecessary, without unreasonable delay carry out the examination, measurement or testing.

Uncovering Work 19.3 If so instructed by the Engineer, the Contractor shall expose any parts of the Works. The Contractor shall reinstate and make good such parts to the Engineer's satisfaction.

If any parts of the Works have been covered up or put out of view by the Contractor after complying with Sub-Clause 19.2 and are found to be in accordance with the Contract the cost incurred by the Contractor in complying with the Engineer's instructions including profit shall be certified by the Engineer and added to the Contract Price.

Independent Inspection 20.1 The Engineer may, if so provided in the Contract or with the Contractor's consent, delegate inspection and testing of Plant to an independent inspector.

Any such delegation shall be effected in the manner required by Sub-Clause 2.3, and for this purpose such independent inspector shall be considered as an Engineer's Representative. Notice of such appointment (being not less than 14 days) shall be given by the Engineer to the Contractor.

- Inspection and Testing During Manufacture** 20.2 The Engineer shall be entitled during manufacture to inspect, examine and test the materials and workmanship and check the progress of manufacture of all Plant to be supplied under the Contract. This shall take place on the Contractor's premises during working hours. If Plant is being manufactured on other premises, the Contractor shall obtain permission for the Engineer to carry out such inspection, examination and testing on those premises.
- No such inspection, examination or testing shall release the Contractor from any obligation under the Contract.
- Dates for Inspection and Testing** 20.3 The Contractor shall agree with the Engineer the time and place for the testing of any Plant as provided in the Contract. The Engineer shall give the Contractor 24 hours notice of his intention to attend the tests.
- If the Engineer does not attend on the date agreed, the Contractor may, unless the Engineer instructs the Contractor not to do so, proceed with the tests, which shall be deemed to have been made in the Engineer's presence.
- The Contractor shall forthwith forward to the Engineer duly certified copies of the test results. If the Engineer has not attended the test, he shall accept the validity of the test readings.
- Facilities for Testing** 20.4 Where the Contract provides for tests on the premises of the Contractor or of any Sub-contractor, the Contractor shall provide such assistance, labour, materials, electricity, fuel, stores, apparatus and instruments as may be necessary to carry out the tests efficiently.
- Certificate of Testing** 20.5 When Plant has passed the tests referred to in this Clause, the Engineer shall furnish to the Contractor a certificate or endorse the Contractor's test certificate to that effect.
- Rejection** 21.1 If, as a result of the inspection, examination or testing referred to in Clause 20, the Engineer decides that any Plant is defective or otherwise not in accordance with the Contract, he may reject such Plant and shall notify the Contractor thereof immediately. The notice shall state the Engineer's objections with reasons. The Engineer shall not reject any Plant for minor defects which do not affect the commercial operation of such Plant.
- The Contractor shall then with all speed make good the defect or ensure that any rejected Plant complies with the Contract.
- If the Engineer requires such Plant to be retested, the tests shall be repeated under the same terms and conditions. All costs incurred by the Employer by the repetition of the tests shall be deducted from the Contract Price.
- Permission to Deliver** 22.1 The Contractor shall apply in writing to the Engineer for permission to deliver any Plant or Contractor's Equipment to the Site. No Plant or Contractor's Equipment may be delivered to the Site without the Engineer's written permission.
- The Contractor shall be responsible for the reception on Site of the Plant and Contractor's Equipment.

Suspension of Works, Delivery or Erection

- Order to Suspend** 23.1 The Engineer may at any time instruct the Contractor to:
- (a) suspend progress of the Works, or
 - (b) suspend delivery of Plant or Contractor's Equipment which is ready for delivery to the Site at the time for delivery specified in the Programme, or if no time is specified, at the time appropriate for it to be delivered, or

(c) suspend the erection of Plant which has been delivered to the Site.

When the Contractor is prevented from delivering or erecting Plant in accordance with the Programme the Engineer shall be deemed to have instructed a suspension except when such prevention is caused by the Contractor's default.

The Contractor shall during suspension protect and secure the Works or Plant affected at the Contractor's works or elsewhere or at the Site, as the case may be, against any deterioration, loss or damage.

Cost of Suspension 24.1 The additional cost incurred by the Contractor in protecting, securing and insuring the Works or Plant and in following the Engineer's instructions under Sub-Clause 23.1 and in resumption of the work, shall be added to the Contract Price.

The Contractor shall not be entitled to be paid any additional costs if such suspension is necessary by reason of a default on the part of the Contractor.

The Contractor shall not be entitled to additional costs unless he notifies the Engineer of his intention to make such claim, within 28 days after receipt of the order to suspend progress or delivery or of the date of deemed suspension under Sub-Clause 23.1.

Payment In Event of Suspension 24.2 The Contractor shall be entitled to payment for Plant which has not been delivered to Site if the work on Plant or delivery of Plant has been suspended for more than 28 days. After 28 days of suspension, the Contractor shall be entitled to payment of the value of such Plant as at the date of suspension.

A certificate of payment shall be issued on condition that:

(a) the Contractor has marked the Plant as the Employer's property in accordance with the Engineer's instructions, and

(b) the suspension is not due to the Contractor's default.

Prolonged Suspension 24.3 If suspension under Clause 23.1 has continued for more than 84 days, and the suspension is not due to the Contractor's default, the Contractor may by notice to the Engineer require permission to proceed within 28 days.

If permission is not granted within that time, the Contractor may treat the suspension as an omission under Clause 31 of the Section it affects, or if the suspension affects the whole of the Works, terminate the Contract and the provisions of Clause 46 shall apply.

Resumption of Work 24.4 If the Contractor chooses not to treat prolonged suspension as an omission or termination under Sub-Clause 24.3, the Employer shall upon the request of the Contractor, take over the responsibility for protection, storage, security and insurance of the suspended Works and the risk of loss or damage thereto shall thereupon pass to the Employer.

After receipt of permission or an order to proceed, the Contractor shall, after due notice to the Engineer, examine the Works and the Plant affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant that may have occurred during the suspension. Cost properly incurred by the Contractor which would not have been incurred but for the suspension shall be added to the Contract Price together with profit.

The Contractor shall not be entitled to payment for costs incurred in making good any deterioration, defect or loss caused by faulty workmanship or materials or by the Contractor's failure to take the measures specified in Sub-Clause 23.1.

If the Employer has taken over risk and responsibility for the suspended Works under this Sub-Clause, risk and responsibility shall revert to the Contractor 14 days after receipt of the permission or order to proceed.

Completion

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| Time for Completion | 25.1 | The Works shall be completed and shall have passed the Tests on Completion within the Time for Completion. |
| Extension of Time for Completion | 26.1 | <p>The Contractor may claim an extension of the Time for Completion if he is or will be delayed in completing the Works by any of the following causes:</p> <ul style="list-style-type: none"> (a) extra or additional work ordered in writing under Clause 31, (b) exceptional adverse weather conditions, (c) physical obstructions or conditions which could not reasonably have been foreseen by the Contractor, (d) Employer's or Engineer's instructions, otherwise than by reason of the Contractor's default, (e) the failure of the Employer to fulfil any of his obligations under the Contract, (f) delay by any other contractor engaged by the Employer, (g) any suspension of the Works under Clause 23, except when due to the Contractor's default, (h) any industrial dispute, (i) the Employer's Risks. (j) Force Majeure. <p>The Contractor shall give to the Engineer notice of his intention to make a claim for an extension of time within 14 days of the circumstances for such a claim becoming known to the Contractor. The notice shall be followed as soon as possible by the claim with full supporting details.</p> <p>The Engineer shall, after due consultation with the Employer and the Contractor, grant the Contractor from time to time, either prospectively or retrospectively, such extension of Time for Completion as may be justified. The Engineer shall notify the Employer and the Contractor accordingly.</p> <p>The Contractor shall be entitled to such extension whether the delay occurs before or after the Time for Completion.</p> |
| Delays by Subcontractors | 26.2 | The Contractor shall be entitled to claim an extension of time if delay on the part of a Subcontractor is due to a cause mentioned in Clause 26.1, and such delay prevents the Contractor from meeting the Time for Completion. |
| Earlier Completion | 26.3 | <p>The Employer may require completion of the Works or part thereof earlier than the Time for Completion, on the following conditions:</p> <ul style="list-style-type: none"> (a) The Employer and the Contractor shall first agree the extra sum to be paid for each day by which the Contractor completes the Works or part thereof earlier than the Time for Completion. (b) The Contractor shall not become liable under Sub-Clause 27.1 for any failure to complete the Works or the part thereof by the earlier time. |
| Delay In Completion | 27.1 | <p>If the Contractor fails to complete the Works within the Time for Completion, the Employer shall be entitled to a reduction in the Contract Price unless it can be reasonably concluded from the circumstances that the Employer will suffer no loss.</p> <p>The Employer shall within a reasonable time give the Contractor notice of his intention to claim a reduction.</p> |

The reduction shall be the percentage per day stated in the Preamble of that part of the Contract Price which is attributable to such part of the Works as cannot in consequence of the failure be put to the intended use. The reduction shall be computed for each day between the Time for Completion and the actual date of completion.

The reduction shall in no case exceed the maximum percentage of the Contract Price of such part stated in the Preamble.

Except as provided in Sub-Clause 27.2, such reduction shall be to the exclusion of any other remedy of the Employer in respect of the Contractor's failure to complete within the Time for Completion.

27.2 **Profonged Delay** If the Employer has become entitled to the maximum reduction under Clause 27.1 for any part of the Works, he may by notice require the Contractor to complete. Such notice shall fix a final time for completion which shall be reasonable.

If the Contractor fails to complete within such time, and this is not due to a cause for which the Employer or some other contractor employed by him is responsible, the Employer may by further notice to the Contractor either:

(a) require the Contractor to complete, or

(b) may himself complete at the Contractor's cost provided that he does so in a reasonable manner, or

(c) terminate the Contract.

If the Employer terminates the Contract, he shall be entitled to recover from the Contractor any loss he has suffered up to the maximum amount stated in the Preamble. If no maximum amount is stated, the Employer shall not be entitled to recover more than that part of the Contract Price which is attributable to that part of the Works which cannot by reason of the Contractor's failure be put to the intended use.

The Employer shall give credit for the value of any part of the Works which he retains.

Tests on Completion

28.1 **Notice of Tests** The Contractor shall give to the Engineer 21 day's notice of the date after which he will be ready to make the Tests on Completion (the Tests). Unless otherwise agreed, the Tests shall take place within 14 days after the said date on such day or days as the Engineer shall notify the Contractor.

28.2 **Time for Tests** If the Engineer fails to appoint a time after having been asked to do so, or does not attend at the time and place appointed, the Contractor shall be entitled to proceed with the Tests in his absence. The Tests shall then be deemed to have been made in the presence of the Engineer and the results of the Tests shall be accepted as accurate.

28.3 **Delayed Tests** If the Tests are being unduly delayed by the Contractor the Engineer may by notice require the Contractor to make the Tests within 21 days after the receipt of such notice. The Contractor shall make the Tests on such days within that period as the Contractor may fix and of which he shall give notice to the Engineer.

If the Contractor fails to make the Tests within 21 days the Engineer may himself proceed with the Tests. All Tests so made by the Engineer shall be at the risk and cost of the Contractor and the cost thereof shall be deducted from the Contract Price. The tests shall then be deemed to have been made in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

- Facilities for Tests on Completion** 28.4 Except where otherwise specified, the Employer shall provide free of charge such labour, materials, electricity, fuel, water, stores, apparatus and feedstock as may be reasonably required by the Contractor to carry out the Tests.
- Retesting** 28.5 If the Works or any Section fails to pass the Tests, the Engineer or the Contractor may require such Tests to be repeated on the same terms and conditions. All costs to which the Employer may be put by the repetition of the Tests under this Sub-Clause or under Sub-Clause 30.7 shall be deducted from the Contract Price.
- Disagreement as to Result of Tests** 28.6 If the Engineer and the Contractor disagree on the interpretation of the Test results, each shall give a statement of his views to the other within 14 days after such disagreement arises. The statement shall be accompanied by all relevant evidence.
- Consequences of Failure to Pass Tests on Completion** 28.7 If the Works or any Section fails to pass the Tests on the repetition thereof under Sub-Clause 28.5, the Engineer, after due consultation with the Employer and the Contractor, shall be entitled to:
- (a) order one further repetition of the Tests under the conditions of Sub-Clause 28.5, or
 - (b) reject the Works or Section in which event the Employer shall have the same remedies against the Contractor as are provided under Sub-Clause 30.5 (c), or
 - (c) issue a Taking-Over Certificate, if the Employer so wishes, notwithstanding that the Works are not complete. The Contract Price shall then be reduced by such amount as may be agreed by the Employer and the Contractor or, failing agreement, as may be determined by arbitration.
- Use by the Employer** 28.8 In considering the results of Tests carried out under Sub-Clauses 29.3, 29.4 and 30.7 the Engineer shall make allowances for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works.
- Test Certificate** 28.9 As soon as the Works or any Section thereof has passed the Tests, the Engineer shall issue a Certificate to the Contractor and the Employer to that effect.

Taking Over

- Taking Over** 29.1 The Works shall be taken over by the Employer when they have been completed in accordance with the Contract, except in minor respects that do not affect the use of the Works for their intended purpose, have passed the Tests on Completion and a Taking-Over Certificate has been issued or deemed to have been issued in accordance with Sub-Clause 29.2.
- Taking-Over Certificate** 29.2 The Contractor may apply by notice to the Engineer for a Taking-Over Certificate not earlier than 14 days before the Works will in the Contractor's opinion be complete and ready for taking over under Sub-Clause 29.1.
- The Engineer shall within 28 days after the receipt of the Contractor's application either:
- (a) issue the Taking-Over Certificate to the Contractor with a copy to the Employer stating the date on which the Works were complete and ready for taking over, or
 - (b) reject the application giving his reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued.
- If the Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days he shall be deemed to have issued the Taking-Over Certificate on the last day of that period.
- If the Works are divided by the Contract into Sections the Contractor shall be entitled to apply for separate Taking-Over Certificates for each such Section.

**Use before
Taking Over**

29.3 The Employer shall not use any part of the Works unless a Taking-Over Certificate has been issued in respect thereof.

If nevertheless the Employer uses any part of the Works, that part which is used shall be deemed to have been taken over at the date of such use. The Engineer shall on request of the Contractor issue a Taking-Over Certificate accordingly. If the Employer uses any part of the Works before taking over the Contractor shall be given the earliest opportunity of taking such steps as may be necessary to carry out the Tests on Completion.

The provisions of Sub-Clause 27.1 shall not apply to any part of the Works while being so used by the Employer. Clause 30 shall apply as if the part had been taken over on the date it was taken into use.

**Interference with
Tests on Completion**

29.4 If the Contractor is prevented from carrying out the Tests on Completion by a cause for which the Employer or the Engineer or other contractors employed by the Employer are responsible, the Employer shall be deemed to have taken over the Works on the date when the Tests on Completion would have been completed but for such prevention. The Engineer shall issue a Taking-Over Certificate accordingly.

The Works shall not be deemed to have been taken over if they are not substantially in accordance with the Contract.

If the Works are taken over under this Clause the Contractor shall nevertheless carry out the Tests on Completion during the Defects Liability Period. The Engineer shall require the Tests on Completion to be carried out by 14 days notice and in accordance with the relevant provisions of Clause 28.

Any additional costs to which the Contractor may be put in making the Tests on Completion during the Defects Liability Period, shall be added to the Contract Price.

Defects after Taking Over

**Defects Liability
Period**

30.1 Where any part of the Works is taken over separately from the Works the Defects Liability Period for that part shall commence on the date it was taken over.

**Making Good
Defects**

30.2 The Contractor shall, subject to Sub-Clause 30.9, be responsible for making good any defect in or damage to any part of the Works which may appear or occur during the Defects Liability Period and which arises from, either:

(a) any defective materials, workmanship or design, or

(b) any act or omission of the Contractor during the Defects Liability Period.

The Contractor shall make good the defect or damage as soon as practicable and at his own cost.

Notice of Defects

30.3 If any such defect appears or damage occurs, the Employer or the Engineer shall forthwith notify the Contractor thereof.

**Extension of Defects
Liability Period**

30.4 The provisions of this Clause shall apply to all replacements or renewals carried out by the Contractor as if the replacements and renewals had been taken over on the date they were completed.

The Defects Liability Period for the Works shall be extended by a period equal to the period during which the Works cannot be used by reason of a defect or damage. If only part of the Works is affected the Defects Liability Period shall be extended only for that part.

In neither case shall the Defects Liability Period be extended by more than one year.

When erection or delivery of Plant has been suspended under Sub-Clause 23.1, the Contractor's obligations under this Clause shall not apply to any defects occurring more than three years after it would have been delivered but for the suspension or such period as may be stated in Part II.

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| Failure to Remedy Defects | 30.5 | <p>If the Contractor fails to remedy a defect or damage within a reasonable time, the Employer may fix a final time for remedying the defect or damage.</p> <p>If the Contractor fails to do so, the Employer may:</p> <p>(a) carry out the work himself or by others at the Contractor's risk and cost, provided that he does so in a reasonable manner. The costs properly incurred by the Employer in remedying the defect or damage shall be deducted from the Contract Price, but the Contractor shall have no responsibility for such work, or</p> <p>(b) require the Contractor to grant the Employer a reasonable reduction in the Contract Price to be agreed or fixed by arbitration under Clause 50, or</p> <p>(c) if the defect or damage is such that the Employer has been deprived of substantially the whole of the benefit of the Works or a part thereof, he may terminate the Contract in respect of such parts of the Works as cannot be put to the intended use. The Employer shall to the exclusion of any remedy under Clause 45 be entitled to recover all sums paid in respect of such parts of the Works together with the cost of dismantling the same, clearing the Site and returning Plant to the Contractor or otherwise disposing of it in accordance with the Contractor's instructions.</p> |
| Removal of Defective Work | 30.6 | <p>If the defect or damage is such that repairs cannot be expeditiously carried out on the Site, the Contractor may with the consent of the Engineer or the Employer remove from the Site for the purposes of repair any part of the Works which is defective or damaged.</p> |
| Further Tests on Completion | 30.7 | <p>If the replacements or renewals are such that they may affect the performance of the Works, the Employer may request that Tests on Completion be repeated to the extent necessary. The request shall be made by notice within 28 days after the replacement or renewal. The Tests shall be carried out in accordance with Clause 28.</p> |
| Right of Access | 30.8 | <p>Until the Final Certificate of Payment has been issued, the Contractor shall have the right of access to all parts of the Works and to records of the working and performance of the Works.</p> <p>Such right of access shall be during the Employer's normal working hours at the Contractor's risk and cost. Access shall also be granted to any duly authorised representative of the Contractor whose name has been communicated in writing to the Engineer.</p> <p>Subject to the Engineer's approval, the Contractor may also at his own risk and cost make any tests which he considers desirable.</p> |
| Defects in Employer's and Engineer's Designs | 30.9 | <p>The Contractor shall not be liable for any defects resulting from designs furnished or specified by the Employer or the Engineer.</p> |
| Contractor to Search | 30.10 | <p>The Contractor shall, if required by the Engineer in writing, search for the cause of any defect, under the direction of the Engineer. Unless the defect is one for which the Contractor is liable under this Clause, the cost of the work carried out by the Contractor in searching for the cause of the defect shall be added to the Contract Price.</p> |
| Defects Liability Certificate | 30.11 | <p>When the Defects Liability Period for the Works or any part thereof has expired and the Contractor has fulfilled all his obligations under the Contract for defects in the Works or that part, the Engineer shall issue within 28 days to the Employer and the Contractor a Defects Liability Certificate to that effect.</p> |

Exclusive Remedies 30.12 Except in the case of Gross Misconduct, the Employer's remedies under this Clause shall be in place of and to the exclusion of any other remedy in relation to defects whatsoever.

Variations

Engineer's Right to Vary 31.1 The Engineer may by Variation Order to the Contractor at any time before the Works are taken over, instruct the Contractor to alter, amend, omit, add to or otherwise vary any part of the Works.

The Contractor shall not vary or alter any of the Works, except in accordance with a Variation Order from the Engineer. The Contractor may, however, at any time propose variations of the Works to the Engineer.

Variation Order Procedure 31.2 Prior to any Variation Order under Sub-Clause 31.1 the Engineer shall notify the Contractor of the nature and form of such variation.

As soon as possible after having received such notice, the Contractor shall submit to the Engineer:

(a) a description of work, if any, to be performed and a programme for its execution, and

(b) the Contractor's proposals for any necessary modifications to the Programme according to Sub-Clause 26.1 or to any of the Contractor's obligations under the Contract, and

(c) the Contractor's proposals for adjustment to the Contract Price.

Following the receipt of the Contractor's submission the Engineer shall, after due consultation with the Employer and the Contractor, decide as soon as possible whether or not the variation shall be carried out.

If the Engineer decides that the variation shall be carried out, he shall issue a Variation Order clearly identified as such in accordance with the Contractor's submission or as modified by agreement. If the Engineer and the Contractor are unable to agree the adjustment of the Contract Price, the provisions of Sub-Clause 31.3 shall apply.

Disagreement on Adjustment of the Contract Price 31.3 If the Contractor and the Engineer are unable to agree on the adjustment of the Contract Price, the adjustment shall be determined in accordance with the rates specified in the Schedule of Prices.

If the rates contained in the Schedule of Prices are not directly applicable to the specific work in question, suitable rates shall be established by the Engineer reflecting the level of pricing in the Schedule of Prices.

Where rates are not contained in the said Schedule, the amount shall be such as is in all the circumstances reasonable. Due account shall be taken of any over- or under-recovery of overheads by the Contractor in consequence of the variation.

The Contractor shall also be entitled to be paid:

(a) the cost of any partial execution of the Works rendered useless by any such variation, and

(b) the cost of making necessary alterations to Plant already manufactured or in the course of manufacture or of any work done that has to be altered in consequence of such a variation, and

(c) any additional costs incurred by the Contractor by the disruption of the progress of the Works as detailed in the Programme, and

(d) the net effect of the Contractor's finance costs, including interest, caused by the variation.

The Engineer shall on this basis determine the rates or prices to enable on-account payment to be included in certificates of payment.

Contractor to Proceed 31.4 On receipt of a Variation Order, the Contractor shall forthwith proceed to carry out the variation and be bound to these Conditions in so doing as if such variation was stated in the Contract.

The work shall not be delayed pending the granting of an extension of the Time for Completion or an adjustment to the Contract Price under Sub-Clause 31.3.

Records of Costs 31.5 In any case where the Contractor is instructed to proceed with a variation prior to the determination of the adjustment to the Contract Price in respect thereof the Contractor shall keep records of the cost of undertaking the variation and of time expended thereon. Such records shall be open to inspection by the Engineer at all reasonable times.

Ownership of Plant

Ownership of Plant 32.1 Plant to be supplied pursuant to the Contract shall become the property of the Employer at whichever is the earlier of the following times:

(a) when Plant is delivered to Site, or

(b) when by virtue of Sub-Clause 24.2 the Contractor becomes entitled to payment of the value of the Plant

Certificates and Payment

Terms of Payment 33.1 The terms of payment shall be as stated in the Preamble.

Method of Application 33.2 Unless otherwise specified in Part II applications by the Contractor for payment shall be made to the Engineer as follows:

(a) in respect of the progress of the Works accompanied by such evidence of the value of the work done as the Engineer may require, and

(b) in respect of Plant shipped and en route to the Site identifying the Plant concerned and accompanied by such evidence of shipment and of payment of freight and insurance and by such other documents as the Engineer may require, and

(c) for additional payment in accordance with Clause 34.

Any other application for payment shall state the amounts claimed and the detailed particulars in respect of which the application is made.

Issue of Certificate of Payment 33.3 Within 14 days after receiving an application for payment which the Contractor was entitled to make the Engineer shall issue a Certificate of Payment to the Employer showing the amount due, with a copy to the Contractor.

A certificate of payment, other than the Final Certificate of Payment, shall not be withheld on account of:

(a) defects of a minor character which are not such as to affect the use of the Works, or

(b) any part of the payment applied for being disputed. In such case a certificate of payment for the undisputed amount shall be issued.

Corrections to Certificates of Payment 33.4 The Engineer may in any certificate of payment make any correction or modification that should properly be made in respect of any previous certificate.

Payment 33.5 Unless otherwise specified in Part II, the Employer shall pay the amount certified within 28 days from the date of issue of each certificate of payment to the Contractor at his principal place of business.

- Delayed Payment** 33.6 If payment of any sum payable under Sub-Clause 33.5 is delayed, the Contractor shall be entitled to receive interest on the amount unpaid during the period of delay. Unless otherwise stated in Part II the interest shall be at the annual rate three percentage points above the discount rate of the central bank in the Contractor's country. The Contractor shall be entitled to such payment without formal notice and without prejudice to any other right or remedy.
- Remedies on Failure to Certify or Make Payment** 33.7 The Contractor shall be entitled to stop the Works by giving 14 days notice to the Engineer and the Employer, if either:
 (a) the Engineer fails to issue a certificate of payment upon proper application by the Contractor, or
 (b) the Employer fails to make any payment as provided in this Clause.
 The cost to the Contractor together with profit occasioned by the stoppage and the subsequent resumption of work, shall be added to the Contract Price.
 The Contractor shall also be entitled to terminate the Contract by giving 28 days notice to the Engineer and the Employer in any case where the Engineer has failed to issue a certificate of payment upon proper application by the Contractor.
- Payment by Measurement** 33.8 For any part of the Works which is to be paid according to quantity supplied or work done, the provisions for measurement shall be stated in Part II.
- Application for Final Certificate of Payment** 33.9 The Contractor shall make application to the Engineer for the Final Certificate of Payment within 28 days after the issue of the Defects Liability Certificate, or if more than one, the last Defects Liability Certificate.
 The application for the Final Certificate of Payment shall be accompanied by a final account prepared by the Contractor. The final account shall give full details of the value of all Plant supplied and work done under the Contract together with:
 (a) such additions to or deductions from the Contract Price as have been agreed, and
 (b) all claims for additional payment to which the Contractor may consider himself entitled.
- Issue of Final Certificate of Payment** 33.10 The Engineer shall issue to the Employer with a copy to the Contractor, the Final Certificate of Payment within 28 days after receiving an application in accordance with Sub-Clause 33.9.
 If the Contractor has not applied for a Final Certificate of Payment within the time specified in Sub-Clause 33.9 the Engineer shall request the Contractor to do so within a further period of 28 days. If the Contractor fails to make such an application, the Engineer shall issue the Final Certificate of Payment for such amount as he deems correct.
- Final Certificate of Payment Conclusive** 33.11 A Final Certificate of Payment shall be conclusive evidence of the value of the Works, that the Works are in accordance with the Contract and that the Contractor has performed all his obligations under the Contract.
 Payment of the amount certified in the Final Certificate of Payment shall be conclusive evidence that the Employer has performed all his obligations under the Contract.
 A Final Certificate of Payment or payment shall not be conclusive:
 (a) to the extent that fraud or dishonesty relates to or affects any matter dealt with in the certificate, or
 (b) if any arbitration or court proceedings under the Contract have been commenced by either party before the expiry of 84 days after the issue of the Final Certificate of Payment.

Claims

Procedure 34.1 In any case where under these Conditions there are circumstances which the Contractor considers entitle him to claim additional payment, the Contractor shall:

(a) if he intends to make any claim for additional payment give to the Engineer notice of his intention to make such claim within 28 days after the said circumstances became known to the Contractor stating the reasons for his claim, and

(b) as soon as reasonably practical after the date of such notice submit to the Engineer full and detailed particulars of his claim but not later than 182 days after such notice unless otherwise agreed by the Engineer. In any event such particulars shall be submitted no later than the application for the Final Certificate of Payment. The Contractor shall thereafter promptly submit such further particulars as the Engineer may reasonably require to assess the validity of the claim.

Assessment 34.2 When the Engineer has received full and detailed particulars of the Contractor's claim in accordance with Sub-Clause 34.1 and such further particulars as he may reasonably have required he shall after due consultation with the Employer and the Contractor determine whether the Contractor is entitled to additional payment and notify the parties accordingly.

The Engineer may reject any claim for additional payment which does not comply with the requirements of Sub-Clause 34.1.

Foreign Currency and Rates of Exchange

Payment in Foreign Currencies 35.1 Arrangements for payment in foreign currencies shall be as stated in the Preamble.

Currency Restrictions 35.2 The Employer shall reimburse the Contractor for any loss arising from:

(a) currency restrictions, and

(b) restrictions on the transfer of currency in which the Contractor is to be paid which are imposed by the government or authorised agency of the government of the country from which any payments under the Contract are to be made.

This Sub-Clause only applies to restrictions imposed after the date 28 days prior to the latest date for submission of tenders for the Works.

Rates of Exchange 35.3 Where the Contract provides for payment in Foreign Currency the rates of exchange between the currencies shall be fixed for the purpose of the Contract and shall be as stated in the Preamble.

If such rates of exchange are not stated in the Preamble the rates to be used shall be those quoted by the central bank of the country whose currency is to be sold 28 days or the nearest day thereto prior to the latest date for submission of tenders for the Works.

Provisional Sums

Use of Provisional Sums 36.1 A Provisional Sum shall only be used, in whole or in part in accordance with the Engineer's instructions.

The total sum paid to the Contractor shall include only such amounts in respect of work, supplies or services to which such Provisional Sums relate as the Engineer shall have instructed.

- Ordering Work against Provisional Sums** 36.2 In respect of every Provisional Sum the Engineer may after due consultation with the Employer and the Contractor order:
- (a) work to be executed, including goods, materials or services to be supplied by the Contractor. The value of such work executed, determined in accordance with Clause 31, shall be paid to the Contractor in accordance with Clause 33, and
 - (b) goods and materials to be purchased by the Contractor, for which payment will be made in accordance with Sub-Clause 36.4.
- Invoices and Receipts** 36.3 The Contractor shall, when required by the Engineer, produce quotations, invoices, vouchers and accounts or receipts in connection with expenditure in respect of Provisional Sums.
- Payment against Provisional Sums** 36.4 For all work executed or goods, materials or services supplied or purchased by the Contractor under Sub-Clause 36.2 (b), there shall be included in the sums paid to the Contractor:
- (a) the actual price paid or due to be paid by the Contractor, and
 - (b) in respect of all other charges and profit, a percentage of the actual price paid or due to be paid. Such percentage shall be as stated in the Preamble.

Risk and Responsibility

- Allocation of Risk and Responsibility** 37.1 The Risks of loss of or damage to physical property and of death and personal injury which arise in consequence of the performance of the Contract shall be allocated between the Employer and the Contractor as follows:
- (a) the Employer: the Employer's Risks as specified in Sub-Clause 37.2
 - (b) the Contractor: the Contractor's Risks as specified in Sub-Clause 37.3.
- Employer's Risks** 37.2 The Employer's Risks are:
- (a) war and hostilities (whether war be declared or not), invasion, act of foreign enemies;
 - (b) rebellion, revolution, insurrection, military or usurped power or civil war insofar as it relates to the country in which the Works are located or countries through which plant must be transported;
 - (c) ionising radiation or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosives or other hazardous properties of any explosive nuclear assembly or nuclear components thereof;
 - (d) pressure waves caused by aircraft travelling at sonic or supersonic speed;
 - (e) riot, commotion or disorder, unless solely restricted to the employees of the Contractor or of his Subcontractors;
 - (f) use or occupation of the Works or any part thereof by the Employer;
 - (g) fault, error, defect or omission in the design of any part of the Works by the Engineer, Employer or those for whom the Employer is responsible;
 - (h) the use or occupation of the Site by the Works or any part thereof, or for the purposes of the Contract; or interference, whether temporary or permanent with any right of way, light, air or water or with any easement, wayleaves or right of a similar nature which is the inevitable result of the construction of the Works in accordance with the Contract;
 - (i) the right of the Employer to construct the Works or any part thereof on, over, under, in or through any land;

(j) damage (other than that resulting from the Contractor's method of construction) which is the inevitable result of the construction of the Works in accordance with the Contract;

(k) the act, neglect or omission or breach of contract or of statutory duty of the Engineer, the Employer or other contractors engaged by the Employer or of their respective employees or agents;

and all risks which an experienced contractor could not have foreseen or, if foreseeable, against which measures to prevent loss, damage or injury from occurring could not reasonably have been taken by such contractor.

Contractor's Risks 37.3 The Contractor's Risks are all risks other than those identified as the Employer's Risks.

Care of the Works and Passing of Risk

Contractor's Responsibility for the Care of the Works 38.1 The Contractor shall be responsible for the care of the Works or any Section thereof from the Commencement Date until the Risk Transfer Date applicable thereto under Sub-Clause 38.2.

The Contractor shall also be responsible for the care of any part of the Works upon which any outstanding work is being performed by the Contractor during the Defects Liability Period until completion of such outstanding work.

Risk Transfer Date 38.2 The Risk Transfer Date in relation to the Works or a Section thereof is the earliest of either:

(a) the date of issue of the Taking-Over Certificate, or

(b) the date when the Engineer is deemed to have issued the Taking-Over Certificate or the Works are deemed to have been taken over in accordance with Clause 29, or

(c) the date of expiry of the notice of termination when the Contract is terminated by the Employer or the Contractor in accordance with these Conditions.

Passing of Risk of Loss of or Damage to the Works 39.1 The risk of loss of or damage to the Works or any Section thereof shall pass from the Contractor to the Employer on the Risk Transfer Date applicable thereto.

Loss or Damage Before Risk Transfer Date 39.2 Loss of or damage to the Works or any Section thereof occurring before the Risk Transfer Date shall:

(a) to the extent caused by any of the Contractor's Risks, be made good forthwith by the Contractor at his own cost, and

(b) to the extent caused by any of the Employer's Risks, be made good by the Contractor at the Employer's expense if so required by the Engineer within 28 days after the occurrence of the loss or damage. The price for making good such loss and damage shall be in all circumstances reasonable and shall be agreed by the Employer and the Contractor, or in the absence of agreement, shall be fixed by arbitration under Clause 50.

Loss or Damage After Risk Transfer Date 39.3 After the Risk Transfer Date, the Contractor's liability in respect of loss of or damage to any part of the Works shall, except in the case of Gross Misconduct, be limited:

(a) to the fulfillment of the Contractor's obligations under Clause 30 in respect of defects therein, and

(b) to making good forthwith loss or damage caused by the Contractor during the Defects Liability Period.

Damage to Property and Injury to Persons

- Contractor's Liability** 40.1 Except as provided under Sub-Clause 41.1, the Contractor shall be liable for and shall indemnify the Employer against all losses, expenses and claims in respect of any loss of or damage to physical property (other than the Works), death or personal injury occurring before the issue of the last Defects Liability Certificate to the extent caused by:
- (a) defective design, material or workmanship of the Contractor, or
 - (b) negligence or breach of statutory duty of the Contractor, his Subcontractors or their respective employees and agents.
- Employer's Liability** 40.2 The Employer shall be liable for and shall indemnify the Contractor against all losses, expenses or claims in respect of loss of or damage to any physical property or of death or personal injury whenever occurring, to the extent caused by any of the Employer's Risks.
- Accidents** 41.1 The Contractor shall be liable for and shall indemnify the Employer against all losses, expenses or claims arising in connection with the death of or injury to any person employed by the Contractor or his Subcontractors for the purposes of the Works, unless caused by any acts or defaults of the Engineer, the Employer or other contractors engaged by the Employer or by their respective employees or agents. In the latter cases the Employer shall be liable for and shall indemnify the Contractor against all losses, expenses and claims arising in connection therewith.

Limitations of Liability

- Liability for Indirect or Consequential Damage** 42.1 Neither party shall be liable to the other for any loss of profit, loss of use, loss of production, loss of contracts or for any other indirect or consequential damage that may be suffered by the other, except:
- (a) as expressly provided in Clause 27, and
 - (b) those provisions of these Conditions whereby the Contractor is expressly entitled to receive profit.
- Maximum Liability** 42.2 The liability of the Contractor to the Employer under these Conditions shall in no case exceed the sum stated in the Preamble or, if no such sum is stated, the Contract Price.
- Liability after Expiration of Defects Liability Period** 42.3 The Contractor shall have no liability to the Employer for any loss of or damage to the Employer's physical property which occurs after the expiration of the Defects Liability Period unless caused by Gross Misconduct of the Contractor.
- Exclusive Remedies** 42.4 The Employer and the Contractor intend that their respective rights, obligations and liabilities as provided for in these Conditions shall alone govern their rights under the Contract and in relation to the Works.
- Accordingly, the remedies provided under the contract in respect of or in consequence of:
- (a) any breach of contract, or
 - (b) any negligent act or omission, or
 - (c) death or personal injury, or
 - (d) loss or damage to any property
- are, save in the case of Gross Misconduct, to be to the exclusion of any other remedy that either may have against the other under the law governing the Contract or otherwise.

- Mitigation of Loss or Damage** 42.5 In all cases the party claiming a breach of Contract or a right to be indemnified in accordance with the Contract shall be obliged to take all reasonable measures to mitigate the loss or damage which has occurred or may occur.
- Foreseen Damages** 42.6 Where either the Employer or the Contractor is liable in damages to the other these shall not exceed the damage which the party in default could reasonably have foreseen at the date of the Contract.

Insurance

- The Works** 43.1 The Contractor shall insure the Works in the joint names of the Contractor and the Employer to their full replacement value with deductible limits not exceeding those stated in the Preamble.
- (a) from the Commencement Date until the Risk Transfer Date against any loss or damage caused by any of the Contractor's Risks and any other risks specified in the Preamble, and
- (b) during the Defects Liability period against any loss or damage which is caused either:
- (i) by the Contractor in completing any outstanding work or complying with his obligations under Clause 30, or
- (ii) by any of the Contractor's Risks which occurred prior to the Risk Transfer Date.
- Contractor's Equipment** 43.2 The Contractor shall insure Contractor's Equipment for its full replacement value whilst in transit to the Site, from commencement of loading until completion of unloading at the Site and while on the Site against all loss or damage caused by any of the Contractor's Risks.
- Third Party Liability** 43.3 The Contractor shall insure against liability to third parties for any death or personal injury and loss of or damage to any physical property arising out of the performance of the Contract and occurring before the issue of the last Defects Liability Certificate.
- Such insurance shall be effected before the Contractor begins any work on the Site. The insurance shall be for not less than the amount specified in the Preamble.
- Employees** 43.4 The contractor shall insure and maintain insurance against his liability under Sub-Clause 41.1.
- General Requirements of Insurance Policies** 43.5 The Contractor shall:
- (a) whenever required by the Employer produce the policies or certificates of any insurance which he is required to effect under the Contract together with receipts for the premiums,
- (b) effect all insurances for which he is responsible with an insurer and in terms approved by the Employer, and
- (c) make no material alterations to the terms of any insurance without the Employer's approval. If an insurer makes any material alteration to the terms the Contractor shall forthwith notify the Employer, and
- (d) in all respects comply with any conditions stipulated in the insurance policies which he is required to place under the Contract.

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|---|-------------|---|
| Permitted Exclusions from Insurance Policies | 43.6 | The insurance cover effected by the Contractor may exclude any of the following: <ul style="list-style-type: none"> (a) the cost of making good any part of the Works which is defective or otherwise does not comply with the Contract provided that it does not exclude the cost of making good any loss or damage to any other part of the Works attributable to such defect or non-compliance, (b) indirect or consequential loss or damage including any reductions in the Contract Price for delay, (c) wear and tear, shortages and theft, (d) risks relating to vehicles for which third party or other insurance is required by law. |
| Remedies on the Contractor's Failure to Insure | 43.7 | If the Contractor fails to produce evidence of insurance cover as stated in Sub-Clause 43.5. (a) then the Employer may effect and keep in force such insurance. Premiums paid by the Employer for this purpose shall be deducted from the Contract Price. |
| Amounts not Recovered | 43.8 | Any amounts not recovered from the insurers shall be borne by the Employer or Contractor in accordance with their responsibilities under Clause 37. |

Force Majeure

- | | | |
|---|-------------|---|
| Definition of Force Majeure | 44.1 | Force Majeure means any circumstances beyond the control of the parties, including but not limited to: <ul style="list-style-type: none"> (a) war and other hostilities, (whether war be declared or not), invasion, act of foreign enemies, mobilisation, requisition or embargo; (b) ionising radiation or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosives, or other hazardous properties of any explosive nuclear assembly or nuclear components thereof; (c) rebellion, revolution, insurrection, military or usurped power and civil war; (d) riot, commotion or disorder, except where solely restricted to employees of the Contractor. |
| Effect of Force Majeure | 44.2 | Neither party shall be considered to be in default or in breach of his obligations under the Contract to the extent that performance of such obligations is prevented by any circumstances of Force Majeure which arise after the date of the Letter of Acceptance or the date when the Contract becomes effective, whichever is the earlier. |
| Notice of Occurrence | 44.3 | If either party considers that any circumstances of Force Majeure have occurred which may affect performance of his obligations he shall promptly notify the other party and the Engineer thereof. |
| Performance to Continue | 44.4 | Upon the occurrence of any circumstances of Force Majeure the Contractor shall endeavour to continue to perform his obligations under the Contract so far as reasonably practicable. The Contractor shall notify the Engineer of the steps he proposes to take including any reasonable alternative means for performance which is not prevented by Force Majeure. The Contractor shall not take any such steps unless directed so to do by the Engineer. |
| Additional Costs caused by Force Majeure | 44.5 | If the Contractor incurs additional costs in complying with the Engineer's directions under Sub-Clause 44.4, the amount thereof shall be certified by the Engineer and added to the Contract Price. |

Damage Caused by Force Majeure 44.6 If in consequence of Force Majeure the Works shall suffer loss or damage the Contractor shall be entitled to have the value of the work done, without regard to the loss or damage that has occurred, included in a Certificate of Payment.

Termination in Consequence of Force Majeure 44.7 If circumstances of Force Majeure have occurred and shall continue for a period of 182 days then, notwithstanding that the Contractor may by reason thereof have been granted an extension of Time for Completion of the Works, either party shall be entitled to serve upon the other 28 days' notice to terminate the Contract. If at the expiry of the period of 28 days Force Majeure shall still continue the Contract shall terminate.

Payment on Termination for Force Majeure 44.8 If the Contract is terminated under Sub-Clause 44.7 the contractor shall be paid the value of the work done.

The Contractor shall also be entitled to receive:

(a) the amounts payable in respect of any preliminary items so far as the work or service comprised therein has been carried out and a proper proportion of any such item in which the work or service comprised has only been partially carried out,

(b) the cost of materials or goods ordered for the Works or for use in connection with the Works which have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery. Such materials or goods shall become the property of and be at the risk of the Employer when paid for by the Employer and the Contract shall place the same at the Employer's disposal,

(c) the amount of any other expenditure which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the whole of the Works,

(d) the reasonable cost of removal of Contractor's Equipment from the Site and the return thereof to the Contractor's works in his country or to any other destination at no greater cost, and

(e) the reasonable cost of repatriation of the Contractor's staff and workmen employed wholly in connection with the Works at the date of such termination.

Release from Performance 44.9 If circumstances of Force Majeure occur and in consequence thereof under the law governing the Contract the parties are released from further performance of the Contract, the sum payable by the Employer to the Contractor shall be the same as that which would have been payable under Sub-Clause 44.8 if the Contract had been terminated under Sub-Clause 44.7.

Force Majeure Affecting Engineer's Duties 44.10 The provisions of Clause 44 shall also apply in circumstances where the Engineer is prevented from performing any of his duties under the Contract by reason of Force Majeure.

Default

Notice of Default 45.1 If the Contractor is not executing the Works in accordance with the Contract or is neglecting to perform his obligations thereunder so as seriously to affect the carrying out of the Works, the Engineer may give notice to the Contractor requiring him to make good such failure or neglect.

Contractor's Default 45.2 If the Contractor:
(a) has failed to comply within a reasonable time with a notice under Sub-Clause 45.1, or
(b) assigns the Contract or subcontracts the whole of the Works without the Employer's written consent, or

(c) becomes bankrupt or insolvent, has a receiving order made against him or compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors or goes into liquidation,

the Employer may, after having given 7 days notice to the Contractor, terminate the Contract and expel the Contractor from the Site.

Any such expulsion and termination shall be without prejudice to any other rights or powers of the Employer, the Engineer or the Contractor under the Contract.

The Employer may upon such termination complete the Works himself or by any other contractor.

- Valuation at Date of Termination** 45.3 The Engineer shall, as soon as possible after such termination, certify the value of the Works and all sums then due to the Contractor as at the date of termination in accordance with Clause 33.
- Payment after Termination** 45.4 The Employer shall not be liable to make any further payments to the Contractor until the Works have been completed. When the Works are so complete, the Employers shall be entitled to recover from the Contractor the extra costs, if any, of completing the Works after allowing for any sum due to the Contractor under Sub-Clause 45.3. If there is no such extra cost the Employer shall pay any balance due to the Contractor.
- Effect on Liability for Delay** 45.5 The Contractor's liability under Clause 27 shall immediately cease when the Employer expels him from the Site without prejudice to any liability thereunder that may have already occurred.
- Employer's Default** 46.1 The Contractor may, by giving 14 days notice to the Employer and the Engineer, terminate the Contract if the Employer:
- (a) fails to pay the Contractor the amount due under any certificate of the Engineer within 28 days after the amount became payable, or
 - (b) interferes with or obstructs the issue of any certificate of the Engineer, or
 - (c) becomes bankrupt or insolvent, has a receiving order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors or goes into liquidation, or
 - (d) consistently fails to meet his contractual obligations, or
 - (e) appoints a person to act with or in replacement of the Engineer without the Contractor's consent.
- Any such termination shall be without prejudice to any other rights of the Contractor under the Contract.
- Removal of Contractor's Equipment** 46.2 On such termination, the Contractor shall be entitled to remove immediately all Contractor's Equipment which is on the Site.
- Payment on Termination for Employer's Default** 46.3 In the event of such termination the Employer shall pay the Contractor an amount calculated in accordance with Sub-Clause 44.8.
- The Employer shall pay in addition the amount of any loss or damage, including loss of profit which the Contractor may have suffered in consequence of termination. The additional amount shall, however, not exceed the limit specified in the Preamble.

Changes in Cost and Legislation

- Labour, Materials and Transport** 47.1 Where the Contract Price is to be adjusted for changes in the cost of labour, materials, transport or other costs of execution of the Works, the method for calculating such adjustment shall be specified in the Preamble.

When calculating the adjustment no account shall be taken of any increased cost which results from the Contractor's default or negligence.

- Statutory and Other Regulations** 47.2 The Contract Price shall be adjusted to take account of any increase or decrease in cost resulting from changes in legislation of the country where the Site is located or in its generally accepted interpretation.

Legislation means any law, order, regulation or bye-law having the force of law, which affects the Contractor in the performance of his obligations under the Contract, made after the date 28 days prior to the latest date for submission of tenders for the Works.

The Engineer shall certify the amount of the resulting increase or decrease in cost, which shall be added to or deducted from the Contract Price.

Customs

- Customs and Import Duties** 48.1 Unless otherwise stated in Part II the Employer shall pay all customs, import duties and taxes in consequence of the importation of Plant. If the Contractor is required to pay such customs, import duties and taxes, the Employer shall reimburse the amount thereof.

- Clearance through Customs** 48.2 The Employer shall assist the Contractor in obtaining clearance through the customs of all Plant and Contractor's Equipment and in procuring any necessary government consent to the re-export of Contractor's Equipment when it is removed from the Site.

Notices

- Notices to Contractor** 49.1 All certificates, notices or written orders to be given to the Contractor by the Employer or the Engineer under these Conditions shall be sent by airmail post, cable, telex or facsimile transmission to or left at the Contractor's principal place of business or such other address as the Contractor shall nominate for that purpose, or may be handed over to the Contractor's representative.

- Notices to Employer and Engineer** 49.2 Any notice to be given to the Employer or to the Engineer under these Conditions shall be sent by airmail post, cable, telex or facsimile transmission to or left at the respective addresses nominated for that purpose in the Preamble, or handed over to the Engineer's or the Employer's representative authorised to receive it.

- Minutes of Meetings** 49.3 Instructions or notices to the Contractor and notices from the Contractor to the Engineer or the Employer recorded in a minute of protocol signed by the authorized representatives of the giver and recipient of such notice or instruction shall be valid notice or instruction for the purposes of the Contract.

Disputes and Arbitration

- Disputes concerning Engineer's Decisions** 50.1 If either party is dissatisfied with a decision or instruction of the Engineer as confirmed, reversed or varied in accordance with Clause 2 he may refer the matter to arbitration pursuant to Sub-Clause 50.2.

Unless the dissatisfied party has notified the other party and the Engineer within 56 days of such decision or instruction of his intention to refer the matter to arbitration, he shall be deemed to have accepted the decision as final.

Reference to arbitration shall not relieve the Contractor of his obligation to proceed with the Works in accordance with the Engineer's decision or instruction, nor relieve the Employer of any of his obligations under the Contract.

The Contractor shall in any such arbitration be at liberty to rely on reasons additional to the reasons stated in the notice given under Sub-Clause 2.7.

Arbitration 50.2 If at any time any question, dispute or difference shall arise between the Employer and the Contractor in connection with or arising out of the Contract or the carrying out of the Works either party shall be entitled to refer the matter to be finally settled by arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with those Rules, or by arbitration in accordance with such other rules as are specified in Part II.

The Arbitrator(s) shall have full power to open up, review and revise:

(a) any decision or instruction of the Engineer referred to arbitration pursuant to Sub-Clause 50.1, and

(b) any certificate of the Engineer related to the dispute.

Works to Continue 50.3 Performance of the Contract shall continue during arbitration proceedings unless the Employer shall order suspension. If any such suspension is ordered the reasonable costs incurred by the Contractor and occasioned thereby shall be added to the Contract Price.

No payments due or payable by the Employer shall be withheld on account of pending reference to arbitration.

Time Limit for Arbitration 50.4 Formal notice of arbitration must be given to the other party, and where required to the appropriate arbitration body, no later than 84 days after the issue of the Final Certificate of Payment.

Law and Procedure

Applicable Law 51.1 The law which is to apply to the Contract and under which the Contract is to be construed is stated in the Preamble.

Procedural Law 51.2 The law governing the procedure and administration of any arbitration instituted pursuant to Clause 50 is stated in the Preamble.

Language 51.3 The language and place of the arbitration are stated in the Preamble.

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**PART II: SPECIAL CONDITIONS
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PART II SPECIAL CONDITIONS

(The Clauses referred to in Part II -- Section A are those where the provision in the General Conditions (Part I) refer to an alternative solution to be stated in Part II. The provisions in the General Conditions will apply unless an alternative solution is given in Part II -- Section A. The clauses in this section need therefore not be completed, but must be completed if alternative solutions to the relevant Part I provisions are necessary.)

Section A

**Conditions
Precedent to
Commencement**

Sub-Clause 1.1.1.

The following financial and administrative requirements are conditions precedent to commencement:

**Defects Liability
Period**

Sub-Clause 1.1.11.

The Defects Liability Period is _____ days.

Engineer's Duties

Sub-Clause 2.1.

The Engineer requires the consent of the Employer before exercising the following duties:

**Operation and
Maintenance
Manuals**

Sub-Clause 6.6.

Operation and Maintenance Manuals shall be in the _____ language.

**Manufacturing
Drawings**

Sub-Clause 6.9.

The Contractor is required to disclose to the Engineer or the Employer confidential information as follows:

General Obligations

Sub-Clause 8.1.

The following facilities will be provided by the Employer:

The facilities will be provided at the following rates:

**Performance
Security**

Sub-Clause 10.1.

The Contractor shall obtain a Performance Security of an amount of _____.

**Contractor's
Equipment**

Sub-Clause 14.1.

The following items of Contractor's Equipment will be provided free of charge by the Employer for the Contractor's use:

**Extention of Defects
Liability Period**

Sub-Clause 30.4.

In the event of suspension the Defects Liability Period shall not last more than ___ days after the date the Plant would have been delivered but for the suspension.

**Method of
Application**

Sub-Clause 33.2.

Application for payment shall be made as follows:

Payment

Sub-Clause 33.5.

The period for payment shall be:

The place for payment shall be:

Delayed Payment

Sub-Clause 33.6.

The interest rate for delayed payment is _____ %.

**Payment by
Measurement**

Sub-Clause 33.8.

The provisions for measurement are:

**Customs and
Import Duties**

Sub-Clause 48.1.

The Contractor shall pay and be reimbursed by the Employer for the following customs, import duties and taxes in consequence of the importation of the Plant:

Arbitration

Sub-Clause 50.2.

The rules of arbitration shall be those of:

Add further Special Conditions as may be required for the particular project.

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