

PART II : SPECIAL CONDITIONS OF CONTRACT

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PART II - SPECIAL CONDITIONS OF CONTRACT

DEFINITION AND INTERPRETATION

- Definitions**
1. (1)
- (a) (ii) "Employer" means the Government represented by the Directorate General of Human Settlements, Ministry of Public Works.
- (iii) "Engineer" means the Project Manager of the Urban Drainage Project Executing Agency, Local Public Works, DPU DKI Jakarta, Indonesia or any authorized officer duly appointed from time to time by the Employer and notified in writing to the Contractor to act as Engineer for the purpose of the Contract in place of the Engineer so designated.
- (e) (i) "Main Works" mean excavation, fill, embankment and concrete works.
- (h) (i) "Lending Agency" means "the International Financing Agency (to be named)....." hereinafter called the Fund.

ENGINEER AND ENGINEER'S REPRESENTATIVE

- Duties and Powers of the Engineer**
2. (1) Delete the following sentence of the third paragraph of Clause 2. (1) : "Additions to or limits on any duties of the Engineer shall be set out in Part II - Special Conditions of Contract in Clause 2. (1) (Duties and Powers of Engineer) thereof."
- Duties and Powers of the Engineer's Representative**
2. (2) Delete the following sentence of the second paragraph of Clause 2. (2) : "Where any of the powers of the Engineer described in the Contract are to be executed by the Engineer's Representative, they shall be set out in Part II- Special Conditions of Contract in Clause 2. (2) thereof."

ASSIGNMENT AND SUB-LETTING

- Sub-letting** 4. The percentage of the Main Works not allowed to be sub-let shall be more than ninety (90%) percent of the Contract Price. When the Amendment of the Contract will be approved, the sub-letting work of the Amendment of the Contract shall be clearly notified to the Engineer with a ratio of less than five (5%) percent of the Amendment amount of the Contract Price.

CONTRACT DOCUMENTS

- Language and Units of Measurement** 6. (1) (a) The sentence of the Sub-clause 6. (1) (a) shall be replaced with the following sentence :

"The English language shall be used in the Contract Documents and in the written communication. Both the languages, i.e., English and Bahasa Indonesia will be used in the verbal communication. The ruling language shall be English".

- Performance Security** 7. (1) The sentence of the third and fifth lines of Clause 7.(1), "stated in Part II-Special Conditions of Contract in Clause 7. (1) (Performance Security)" shall be replaced with the sentence "of not less than ten (10 %) percent of the Total Contract Price in Rupiah and foreign currency(ies) based on the T/T selling exchange rate of Bank Indonesia at thirty (30) calendar days prior to the Opening of Tender".

Delete the last sentence of the Sub-clause 7. (1), "The Security shall be maintained in full force and effect by the Contractor from the date of signing of the Contract up to the issue of the Certificate of Satisfaction for the whole of the Works or as provided for in Part II - Special Conditions of Contract in Clause 7. (1) (Performance Security) thereof.", and the following sentence shall be inserted:

"The Security shall be maintained in full force and effect by the Contractor from the date of signing of the Contract up to the

issue of the Certificate of Satisfaction for the whole of the Works."

**Failure to
Provide
Security**

7. (2) Add the following sentence to the Sub-clause 7.(2).

"Furthermore, the Employer shall have the right to make a new award to another Tenderer or to cancel the Tendering. In both cases, the Employer will be entitled to cash the Tender Security of the Successful Tenderer and to take such actions as the Employer may deem in his best interest".

GENERAL OBLIGATIONS AND RESPONSIBILITIES

**Inspection
of Site**

11. Delete the last sentence of the first paragraph, "In dredging works, provision made in Clause 11. (Inspection of Site) stipulated in Part II - Special Conditions of Contract shall be referred" and the following sentence shall be inserted :

"In the dredging work, the said data shall be considered as only information to the Tenderer and the Employer shall bear no responsibility thereon even if interpretation is made on the said data when the same were made available to the Tenderer. The Tenderer shall also be deemed to have inspected and examined the Site and its surroundings and all other information in connection therewith and to have satisfied himself, so far as is practicable, before submitting his Tender, as to the form and nature thereof, but he shall not normally be called upon to satisfy himself as to the quantities of materials to be dredged more accurately than he can deduce from the Tender Documents and inspection of the Site only".

**Adverse
Physical
Conditions
and Artificial
Obstructions**

12. (2) In dredging work, the words "other than climatic condition on on the Site" in Sub-clause (2) of Clause 12 shall be deleted.

Program to be Furnished 14. (1) Following provisions shall be added to Sub-clause 14.(1) :
"In preparing such programme, the Contractor shall take due allowances for possible delays which may be caused by floods, inclement weather, all types of holiday periods, local working conditions, problems relating to maintaining equipment and to obtaining materials, and similar items. Under no circumstances shall the programme show a completion in excess of the "Period of Completion from Notice to Proceed" stated in Attachment 1 to the Tender (Summary of Specific Provisions). The Contractor shall give careful consideration in preparing the programme since he will be required to maintain the rates of progress thus proposed, unless modified with approval of the Engineer. Upon acceptance by the Employer of the Contractor's programme, it shall be referred to as the "Approved Construction Programme" and shall form part of the Contract".

Boreholes and Exploratory Excavation 18. "Exploratory excavation "shall be deemed to include dredging work.

Safety, Security and Protection of the Environment 19. (1) In dredging work, following sub-clauses shall be added after Sub-clause 19. (1) (c) :
"(d) plan and execute the dredging work so that the danger to the fishing areas are kept to a minimum, and
(e) plan and execute the dredging work taking into due consideration the results of Water Quality Analysis presented at Tables 11 to 12 of Vol. III, Part I - General Specifications".

Care of Works 20. (1) The following provision shall be added to Sub-clause 20. (1) :
"In dredging work, where arrangements are made for sections of the Works to be taken over as they are completed, the Contractor's responsibility for any such section as defined in

Sub-clause 20.(1) shall cease forthwith upon its acceptance".

**Insurance of
Works, etc.**

21. (a) The sentence of the Sub-clause 21.(a) shall be replaced with the following sentence:

"The Contractor shall effect his insurance with an Indonesian Insurer according to KEPPRES 65/69 and S.K. Men. Keuangan N 678/MK/III/1969. The Works for the time being executed to the estimated current contract value thereof, together with the materials for incorporation in the Works at their replacement value."

Following provisions shall be added to Clause 21:

"In dredging work, the Contractor's obligation to insure under Clause 21 shall be limited, unless otherwise specifically agreed, to the insurance against normal water risks of all Construction Plant and Equipment (including ships) supplied by the Contractor for use on the Works whether owned or taken on hire by the Contractor. Such insurance shall be effected with an insurer and in term approved by the Employer (which approval shall not be unnecessarily held)".

**Minimum
Amount of
Third Party
Insurance**

23. (2) Delete the sentence of second and fourth lines of Sub-clause 23.(2) "for at least the amount stated in Part II - Special Conditions of Contract in Sub-clause 23. (2) (Minimum Amount of Third Party Insurance)" and insert the following in its place : "minimum amount of third party insurance for any one accident shall be as given below :

(a). Body injury (including death)

Rp.(two) 2.0 million/person and Maximum of Rp.(ten) 10.0 million

(b). Property Damage

Rp.(fifty) 50.0 million/accident (number of accidents shall be unlimited)"

**Contractor's
Insurances**

25. (1). Delete the last paragraph of the Clause 25.(1) :

"Provided that, should the Employer or the agreement between Financing Agency and the Government so require, any special conditions regarding insurers, reinsurance obligations, if any, or other matters related to the Contractor's insurance obligations shall be as specified in Part II - Special Conditions of Contract in Clause 25.(1) thereof."

**Patent Rights
and Royalties**

28. In dredging work, following provision shall be added at the end of second paragraph :

"The Contractor shall also be liable for all payments or compensation, if any, levied in relation to dumping of part or all of any such materials arising out of dredging/dumping operations."

Special Loads

30. (2) Delete the last sentence of Sub-clause 30.(2) :

"Provided that, the cost and expenses thereof shall be paid by the Contractor unless otherwise specified in Part II - Special Conditions of Contract in Clause 30.(2) thereof.";

and insert the following sentence in its place :

"Provided that, the cost and expenses thereof shall be paid by the Contractor".

CONTRACTOR'S EMPLOYEES

**Engagement
of
Employees**

34. (1) Add the following sentences to Sub-clause 34.(1) :

(c) The Contractor shall, as far as practicable, employ local labour for the various functions out of the affected region and nationals of the Republic of Indonesia on the basis of competence, efficiency and skill in their respective callings.

(d) The Contractor shall not employ any workmen who are

suffering from an infectious disease or are known to be carriers of an infectious disease and shall, if so required, have all the workmen engaged on the construction of waterworks certified by the medical officer acceptable to the Engineer, as a non-carrier of any water borne disease.

- (e) The Contractor shall, when required, furnish to the Ministry of Manpower/Transmigration such detailed information and evidence as the Ministry may deem necessary in order to satisfy them that the provisions under this Clause and under the laws of Indonesia have been duly complied with.

**Safety and
Accident
Prevention**

34. (4) Add the following sentence to the Sub-clause 34.(4):

"The Contractor shall have on his staff at the Site an officer dealing only with questions regarding the safety and protection against accidents of all staff and labour. This officer shall be qualified for this work and shall have the authority to issue instructions and shall take protective measures to prevent accidents."

Health

34. (5) Add the following sentences to the Sub-clause 34.(5) :

"Due precautions shall be taken by the Contractor, and at his own cost, to ensure the safety of his staff and labour and, in collaboration with and to the requirements of the local health authorities, to ensure that first aid equipment and suitable ambulance service are available at the camps, housing and on the Site at all times throughout the period of the Contract and that suitable arrangements are made for the prevention of epidemics and for all necessary welfare and hygiene requirements.

In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by the Government, or the local medical or sanitary authorities, for the purpose of

dealing with and overcoming the same."

MATERIALS AND WORKMANSHIP

- Suspension of Work** 40. (1) In dredging work, following provision shall be added in Sub-clause 40.(1) :
- (i) In the event of suspension of work by either the Engineer or the Employer as stipulated in Sub-clause 40.(1), the extra cost to be borne by the Employer shall, in case of the Construction Plant and Equipment chartered by the Contractor, include the bare boat charter hire of such plant in lieu of its depreciation.
 - (ii) The words in item (b) of Sub-clause 40.(1), "or by reason of weather conditions affecting the safety or quality of the Works" shall be deleted.

COMMENCEMENT TIME AND DELAYS

- Commencement of Works** 41. (1) The word / sentence of the second and third lines of Clause 41.(1), "named in Part II - Special Conditions of Contract in Clause 41.(1) (Commencement of Works) thereof" shall be replaced with the word/sentence "thirty (30) calendar days".
- Time for Completion** 43. Delete the sentence of second and sixth lines of Clause 43: "the whole of the Works shall be completed within the time stated in the Contract, calculated from the receipt of the Notice to Proceed (Commencement Date) named in Part II - Special Conditions of Contract in Clause 43 thereof"; and insert the following sentence in its place: "the whole of the Works covered under the Contract shall be completed in all respects within one thousand and ninety six (1,096) days from the date of Notice to Proceed is received by the Contractor,"
- No Night or Sunday Work** 45. In dredging work, following provision shall be added at the end of Clause 45 :

"Subject to any provisions to the contrary contained in the Contract, the Contractor shall have the option to work continuously by day and by night and on holidays or days of rest".

Rate of Progress

46. The following paragraph shall be added under Clause 46 :

"If in the opinion of the Engineer the rate of progress of the work is not such as to ensure its completion within the completion time, or the Contractor is not proceeding with the work diligently or expeditiously, or is not performing all or any part of the work according to the progress schedule approved by the Engineer, the Engineer shall have the right to order the Contractor to do any one or more or all of the following : to increase his working force ; to increase his plant, machinery and equipment ; to work with additional shifts ; to perform overtime work ; and to take whatever other steps which may be necessary to ensure proper performance in accordance with the Approved Construction Programme as well as to ensure completion of the entire work within the Contract time, and the Contractor shall forthwith comply with such orders at his own expenses."

Liquidated Damages for Delay

47. (1) (a) The sentence of the third and fifth lines of Sub-clause 47.(1) (a), "stated in Part II - Special Conditions of Contract in Clause 47.(1) (a) (Liquidated Damages for Delay) thereof" shall be replaced with the sentence "of zero point one (0.1%) percent per day of delay".

Maximum Amount of Liquidated Damages

47. (1) (b) The sentence of the third and fifth lines of Sub-clause 47. (1) (b), "in Part II-Special Conditions of Contract in Clause 47.(1) (b) (Maximum Amount of Liquidated Damages) thereof" shall be replaced with the sentence "of ten (10%) percent of the Contract Price".

Certification of Completion of Works

48. (1) Delete the following sentence of the first and fourth lines of the Sub - clause 48. (1), "Except as otherwise provided for in Part II - Special Conditions of Contract in Clause 48.(1) thereof, when the whole of the Works have been substantially completed and have satisfactorily passed any final test that may be prescribed by the Contract", and in its place insert the

following sentence :

"When the whole of the Works have been substantially completed within allowable tolerance of dimension of all works and have satisfactorily passed any final test that may be prescribed by the Contract including final field running test,"

**Certification
of Completion
by Stages** 48. (2)

Delete the following sentence of the first and third lines of the Sub - clause 48. (2), "Except as otherwise provided for in Part II - Special Conditions of Contract in Clause 48.(2) thereof, similarly, in accordance with the procedure set out in Sub-clause (1) of this Clause", and in its place insert the following sentence: "In accordance with the similar procedure set out in the Sub-clause 48.(1)".

**Substantial
Completion of
Parts** 48. (3)

Delete the following sentence of the first and third lines of the Sub - clause 48.(3), "Except as otherwise provided for in Part II - Special Conditions of Contract in Clause 48.(3) thereof, if any part of the Permanent Works shall have been substantially completed", and in its place insert the following sentence:

"If any part of the Permanent Works shall have been substantially completed within allowable tolerance of dimension of the works".

**As-built
Drawings** 48. (4)

Delete the following sentence of the sixth and seventh lines of Sub-clause 48. (4), "except as otherwise specified in Part II - Special Conditions of contract in Clause 48.(4) (As-built Drawings) thereof".

DEFECTS AND REPAIR

**Definition of
"Defects
Liability
Period"** 49. (1)

The sentence of the second and third lines of Sub - clause 49. (1), "named in Part II - Special Conditions of Contract in Clause 49. (1) (Defect Liability Period) thereof" shall be replaced with the sentence "of one hundred and eighty (180)

calendar days".

**Contractor to 50.
Search**

In dredging work, following provision shall be added :

"Notwithstanding Clause 50 of the General Conditions of Contract, the Contractor shall have no responsibility to bear the cost of searching for any defect, shrinkage or other fault in respect of dredging work after the date stated in the Final Completion Certificate".

ALTERATIONS, ADDITIONS AND OMISSIONS

Variations 51. (1) In dredging work, following provision shall be added at the end of Clause 51.(1) of General Conditions of Contract :

"Provided also that the Contractor shall be under no obligation to execute any variation of dredging work which can not be executed by the Contractor's equipment being used on the work".

**Valuation of 52. (1)
Variations** Delete the following sentence at the end of the Sub-clause 52.(1) : "Such provisional rate to enable on-account payments to the Contractor will be specified in Part II-Special Conditions of Contract in Clause 52.(1)" and insert the following sentence in its place :

"Provisional rate for on-account payment shall be seventy (70%) percent of payment certificate of sub-clause 60.(6)."

**Power of the 52. (2)
Engineer
to fix Rates** Add the following sentence at the end of final sentence (b) of Sub-clause 52.(2):

"The agreement of fixing of any rates or prices as aforesaid shall include any foreign currency and the proportion hereof. Provided further that no change in the rate or price for any item contained in the Contract shall be considered unless such items account for an amount more than two (2%) percent

of the Contract Price, and the actual quantity of work executed under the item exceeds or falls short of the quantity set out in the Bill of Quantities by more than twenty five (25%) percent."

**Variations
Exceeding
Ten Percent**

52. (3)

Delete the whole of Sub-clause 52. (3) of the General Conditions of Contract.

Daywork

52. (4)

Delete the whole of Sub-clause 52. (4) of the General Conditions of Contract and in its place substitute the following :

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

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

(b) In respect of all works executed on a Daywork basis, the Contractor shall, during the continuance of such work, deliver each day to the Engineer an exact list in duplicate of the names, occupation and time of all workmen employed on such work and a statement, also in duplicate, showing the description and quantity of all materials and Construction Plant and Equipment which is included in the percentage addition in accordance with such Daywork schedule. One copy of each list and statement will, if correct, or when agreed, be signed by the Engineer and returned to the Contractor.

(c) At the end of each month, the Contractor shall deliver to the Engineer a priced statement of the labour, materials and

Construction Plant and Equipment used as aforesaid, and the Contractor shall not be entitled to any payment unless such lists and statements have been fully and punctually rendered. Provided always that if the Engineer considers that for any reason the sending of such lists or statements by the Contractor, in accordance with the foregoing provision, was impracticable, he shall nevertheless be entitled to authorize payment for such work, either as Daywork, on being satisfied as to the time employed and the labour, materials and Construction Plant and Equipment used on such work, or at such value therefor as shall, in his opinion, be fair and reasonable."

PLANT, TEMPORARY WORKS AND MATERIALS

**Plant, etc.
Exclusive Use
for the Works** 53. (1) In dredging work, the following provisions shall be added at the end of Sub-clause 53.(1) :

"Among the Construction Plant, "Essential Hired Plant" means the Construction Plant and Equipment and the withdrawal of which in the event of a termination on default of the Contractor under Clause 63.(1) might, having regard to the method of dredging employed prior to the termination, endanger the safety or stability of or result in serious disturbance to the execution of any part of the Works and which is held by the Contractor under any agreement for hire hereof."

NOMINATED SUB - CONTRACTORS

**Payments to
Nominated
Sub-contractors** 59. (4) (c) The sentence of the seventh and eighth lines "specified in Part II - Special Conditions of Contract in Clause 59.(4) (c) thereof" shall be replaced with the following sentence: "of zero (0%) percent".

CERTIFICATES AND PAYMENT

- Currency** 60. (2) (b) The sentence, "part foreign currency(ies) and part Rupiahs, the foreign currency proportion being the percentage of the whole representing the maximum allowable foreign currency specified in Part II-Special Conditions of Contract in Clause 60.(2) (b) thereof" shall be replaced with the sentence : "forty (40%) percent in Local Currency, sixty (60%) percent in Foreign Currency".
- Advance Payment** 60. (3) Replace the whole of Sub-clause 60. (3) of the General Conditions of Contract with the following :
- "(a) For the purpose of assisting the Contractor to mobilize the construction equipment and labour, to provide the site facilities and camp and to arrange import of materials and equipment required under the Contract, the Employer may make upon request of the Contractor an Advance Payment. The Contractor's request for Advance Payment shall be accompanied by the Advance Payment Security in term and form approved by the Engineer to the full value of the Advance Payment, that may be changed from time to time, equal to the remaining amount after it has been recovered from bi-monthly payments and will be maintained in full force until the said Advance Payment has been fully recovered. The arrangement of which is set forth of Advance Payment, is the same prescribed in the Sub-clauses 60.(4) (Certification by the Engineer) to 60.(6) (Monthly Payment) of General Conditions of Contract.
- (b) Contractor shall, if he desires to receive such Advance Payment, inform the Employer of his intention within thirty (30) days from the receipt of the Notice to Proceed. If the Contractor fails to apply for in the manner aforesaid, the Contractor shall be deemed to have abandoned his right to receive the Advance Payment.
- (c) Advance Payment will be equal to or less than twenty (20%)

percent of the Contract Price.

- (d) Advance Payment shall be considered as an interest-free credit granted to the Contractor, against matching Bank Guarantee, which shall be repaid to the Employer. Repayment of the Advance Payment to the Employer shall be made by the Contractor in the following manner :

Repayment of advance shall be made in equal installments in the percentages defined hereof in the following manner until the whole of the Advance Payment is repaid :

- at the rate of twenty (20%) percent of the certified amount of every progress payment for the Local Currency, and
- at the rate of twenty five (25%) percent of the certified amount of every progress payment for the Foreign Currency.

Provided that the payment of advance shall be fully paid-off by the Contractor by the time :

- the item of work achieved is one hundred (100%) percent for the Local Currency, and
- the item of work achieved is eighty (80%) percent for the Foreign Currency.

- (e) Any balance remaining shall not be allowed at the time of issuance of the Final Certificate or in the event of termination of the Contract shall be recovered on the final payment. The validity of the Advance Payment Security shall cover the period until the Advance Payment shall have been fully repaid by the Contractor to the Employer."

**Monthly
Statement
of Account**

60. (5) The words "month" and "monthly" relating to total amount and payment due to the Contractor under Sub-clause 60. (5) shall be replaced with "bi-month" and "bi-monthly" with the consent of

the Contractor.

Retention Money 60. (5) (b) (ii) Substitute all the sentence of the Sub-clause 60. (5) (b) (ii) with the following paragraph :

"retention money of the by-monthly total amount due to the Contractor shall be five (5) percent of the respective total amount of the bi-monthly progress payment".

Monthly Payment 60. (6) The word "monthly" relating to statement of account and payment in this Sub-clause shall be replaced with the word "bi-monthly".

The sentence of the second paragraph, "the time specified in Part II-Special Conditions of Contract in Clause 60.(6) thereof" shall be replaced with the sentence, "thirty (30) calendar days".

Balance of Completion Statement 60. (8) The word "monthly" relating to statement of account and payment in this Sub-clause shall be replaced with the word "bi-monthly".

Delete whole of paragraph (iii) of the Sub-clause 60.(8), and insert the following paragraph :

"(iii) less half of total retention money as specified in Sub-clause 60.(5) (b) (ii) above. But, if the Contractor submits a security for defect liability at the amount, the half of total value of retention money is not to be deducted from the Balance of Completion Statement."

Payment of Balance of Completion Statement 60. (9) The word "monthly" relating to statement of account and payment shall be replaced with the word "bi-monthly".

Payment of the Final Half of the Retention Money 60. (10) The word "monthly" relating to statement of account and payment shall be replaced with the word "bi-monthly".

**Payment of
Adjustment of
Balance of
Completion
Statement**

60. (12) The word "monthly" relating to statement of account and payment shall be replaced with the word "bi-monthly".

**Approval
only by
Certificate
of Satisfaction**

61. For the dredging work, "Certificate of Satisfaction" in Clause 61 shall be read by substituting with "Final Completion Certificate".

**Certificate of
Satisfaction**

62. For the dredging work, the provisions of Clause 62 shall be read by substituting "Certificate of Satisfaction" by "Final Completion Certificate". The Final Completion Certificate shall be issued within thirty (30) days of completion of dredging works.

DEFAULT OF CONTRACTOR, REMEDIES AND POWERS

**Termination
on Default of
Contractor**

63. (1) (h) (vii) Substitute all the sentence of the Sub-Clause 63.(1) (h) (vii) with the following sentence :

" has failed to satisfy the provisions, if any".

In dredging work, the following provisions shall be added at the end of Clause 63.(1) of General Conditions of Contract :

"In the case of "Essential Hired Plant" as defined under Clause 53.(1) in Part - II Special Conditions of Contract hereof, the Employer shall not be entitled to remove from Site such Plant.

With the view to security, in the event of the Employer invoking the provisions of Clause 63 hereof, the continued availability for the purpose of executing the Works of any Essential Hired Plant, the Contractor shall not bring on the Site any Essential Hired Plant unless agreement for hire thereof is made which will allow the Employer to, on request

in writing made by the Employer within seven (7) days after the date on which any such termination on default of the Contractor has become effective and on the Employer's undertaking to pay all hire charges in respect thereof from such date, hire such Essential Hired Plant to the Employer on the same terms in all respects as the same was hired to the Contractor save that the Employer shall be entitled to permit the use thereof by any other contractor employed by him for the purpose of completing the Works under the terms of the said Clause 63.

The Contractor shall, upon written requirements made by the Engineer at any time in relation to any item of Essential Hired Plant, submit to the Engineer a certificate, officially certified by notary public to the satisfaction of the Engineer stating that the agreement for the hire thereof contains a provision in accordance with the requirements of Sub-clause 63.(1).

In the event of the Employer entering into any agreement for hire of Essential Hired Plant pursuant to the provisions of Sub-clause 63.(1) hereof, all sums properly paid by the Employer under the provisions of any such agreement and all expenses incurred by him (including stamp duty) in entering into such agreement shall be deemed for the purpose of Clause 63 hereof to be part of the cost of completing the Works."

Employer's Act after Contract Terminated	63. (3)	Delete the second paragraph of the Sub-clause 63.(3) "Other sanctions, if any, will be specified in Part - II Special Conditions of Contract in Clause 63.(3) (Employer's Act after Contract Terminated) thereof."
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SETTLEMENT OF DISPUTES

Settlement of Disputes	67. (a)	Substitute all the sentence of the Sub-clause 67. (a) with the following sentence:
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"the arbitration shall be governed by the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules".

MISCELLANEOUS

Increase or
Decrease
of Cost

70. (1)

Substitute all the sentence of Clause 70. (1) with the following sentences :

The Contract Price to be paid by the Employer to the Contractor upon the Interim Certificate issued by the Engineer pursuant to Clause 60 shall be adjusted in respect of increase or decrease in the cost of labour and materials except depreciation of equipment during the execution of the Works.

(a) Provided that the adjustment shall be start from the date of signing of the Contract and shall be made every six (6) months after the signing of the Contract in accordance with the average of the indices for "Cost-of-Living Index" and "Construction Material Index" within the period.

The amount of the price adjustment will be added or deducted from the Contract Price subject to the following provisions :

The "Cost-of-Living Index" is the monthly "Price Index of Nine (9) Essential Commodities" in the city of Jakarta shown in INDIKATOR EKONOMI (Monthly Statistical Bulletin), published by the Biro Pusat Statistik, Jakarta (Central Bureau of Statistics).

The "Construction Material Index" is the monthly "Wholesale Price Index" shown in INDIKATOR EKONOMI (Monthly Statistical Bulletin), published by the Biro Pusat Statistik for;

Cement Construction Materials, Indonesia
 Steel Construction Materials, Indonesia
 Fuel Manufacturing Sector
 Other materialsConstruction materials by type of
 Construction, Indonesia.

- (b) The Contract Price will be adjusted in the event that the increase or decrease of the amount which is calculated based on the price adjustment formula given in this provision is equal to or more than five percent (5%) of originally certified amount during each corresponding six (6) months.

The difference between the calculated amount and the original amount will be added to, in case of increase in the original amount or deducted from, in case of decrease in the original amount.

- (c) The Contract Price revision provided above, shall be calculated by the following formula :

$$P_n = P_o \left(N + L \frac{L_n}{L_o} + C \frac{C_n}{C_o} + S \frac{S_n}{S_o} + F \frac{F_n}{F_o} + M \frac{M_n}{M_o} \right)$$

Where,

P_n = adjusted amount calculated for each corresponding six (6) months

P_o = original amount certified by the Engineer in each corresponding six (6) months from the date thirty (30) days prior to Opening of Tenders

N = representing factor of non-adjustable portion

L = representing factor of labour

C = representing factor of cement

S = representing factor of steel materials

F = representing factor of fuel

M = representing factor of construction materials other than cement, steel and fuel

L_o = "Cost-of-Living Index" as published by the Central Bureau of Statistics in Jakarta thirty

(30) days prior to the Tender Opening.

Ln = the same "Cost-of-Living Index" which will be obtained as an arithmetical mean of the "Index" during each corresponding six (6) months from the signing of the Contract.

Co = "Construction Material Index" for cement as published by the Central Bureau of Statistics in Jakarta thirty (30) days prior to the Tender Opening.

Cn = the same "Construction Material Index" for cement which will be obtained as an arithmetical mean of the "Index" during each corresponding six (6) months from the signing of the Contract.

So = "Construction Material Index" for iron and steel basic industries by the Central Bureau of Statistics in Jakarta thirty (30) days prior to the Tender Opening.

Sn = the same "Construction Material Index" above which will be obtained as an arithmetical mean of the "Index" during each corresponding six (6) months from the signing of the Contract.

Fo = "Fuel Oil Index" for petroleum refineries as published by the Central Bureau of Statistics in Jakarta thirty (30) days prior to the Tender Opening.

Fn = the same "Fuel Oil Index" which will be obtained as an arithmetical mean of the "Index" during each corresponding six (6) months from the signing of the Contract.

Mo = "Construction Index" for the materials other than cement, iron and steel, and fuel and lubricants derived from "Other Constructions" as published by the Central Bureau of Statistics in Jakarta thirty (30) days prior to the Tender Opening.

Mn = the same "Construction Index" for the

materials other than cement, iron and steel, and fuel and lubricants which will be obtained as an arithmetical mean of the "Index" during each corresponding six (6) months from the signing of the Contract.

- (d) The factors N,L,C,S,F and M to be applied have been assigned for principal items of the Works and are tabulated below :

Price Adjustment Factors

S. NO.	Application Item	Factor (%)					
		N	L	C	S	F	M
1	Earth Work	76.08	3.88	0.00	0.00	10.91	9.13
2	Concrete Work	27.04	6.78	16.56	21.19	2.99	25.44
3	Wet Masonry	17.22	20.09	51.19	0.00	0.20	11.30
4	Piling Work	24.25	2.09	1.27	58.92	0.84	12.63
5	Gabion	20.17	8.69	0.00	62.86	0.00	8.28
6	Gate and Other Metal Work	40.24	16.15	0.00	41.22	1.23	1.16
7	Road Work	21.06	0.67	0.00	0.00	0.88	77.39
8	Demolishing Work	84.82	6.04	0.00	0.00	8.40	0.74
9	Sand filling	26.29	10.08	0.00	0.00	0.99	62.64
10	Miscellaneous Work	16.70	23.78	0.00	0.00	0.00	59.52

- (e) No adjustment of the Contract Price will be made for any of the General Items and any other Lump Sum Items of Work.

- (f) The Contractor is allowed to receive escalation payment partly in Rupiah and partly in foreign currency. For escalation of foreign currency portion, following procedure shall be applied :

- Foreign currency portion will be converted into Indonesian Rupiah by using fixed conversion rate based upon the T/T selling rate of Bank Indonesia on the thirty (30) days prior to the Opening of Tenders.

- The escalated Rupiah amount of foreign currency portion calculated in accordance with the Price Adjustment Formula mentioned in Sub-clause 70.(1) (c) above shall be converted into foreign currency by using the prevailing exchange rate established by Bank Indonesia.

(g) All works valued at the rates or prices for variation under Clauses 51 (Variations) and 52 (Valuation of Variations) of the General Conditions of Contract shall not be adjusted unless such rates or prices agreed upon or determined in accordance with the Contract are originally listed in the Bill of Quantities.

(h) For the work done in the period of liquidated damages, the adjustment rate calculated from the formula will not exceed the corresponding rate of adjustment in the preceding period.

(i) If there is any delay in the rate of progress from the construction schedule approved by the Engineer due to the Contractor's fault, then the rate of adjustment for the escalation for such delayed portion shall be those for the period in which such delayed portion would have been executed according to the construction schedule and those rates shall remain constant. No escalation is considered for the progress between the rate of progress from the Approved Construction Schedule and that for actually executed within a period of first twelve (12) months after the Contract signing.

(j) Items in the Bill of Quantities applicable for Price Adjustment shall be as per list enclosed.

Subsequent
Legislation

70. (2)

Delete the words of the seventh and eighth lines of Clause 70.(2), "other than under Sub-clause 70.(1) of this Clause,"

**Duties and
Taxes**

71. (2)

In connection with the Sub -clause 71.(1), the Employer will mention some of the existing regulations with regard to duties and taxes in the following:

- (a) Surat Keputusan Menteri Keuangan R.I Nomor KEP-264/MK/IV/5/1970 tentang : Pemberian fasilitas atas pemasukan barang-barang impor dalam rangka project-aid yang sifatnya memberikan fasilitas berupa pembebasan pajak pada barang-barang yang diimpor dalam rangka Proyek aid. (Subject; Materials and equipment imported for projects with foreign aid free of tax).
- (b) Sk.Dirjen Bea dan Cukai No. Kep/ DDBT/PB/INC/6/757/1971; tanggal 14 Juni 1971 "Ketentuan-ketentuan Pelaksanaan Mengenai Keputusan Pembebasan Bea Masuk atas Impor Barang-barang Dalam Rangka Proyek-AID". (Subject; Regulation for executing free of tax materials and equipment imported for projects with foreign aid).
- (c) SK. Menteri Keuangan No. Kep. 298/MK/III/5/1971: tanggal 4 Mei 1971 "Pemberian Fasilitas Atas Pemasukan Barang-barang Dalam Rangka Proyek-AID". (Subject; Facilities for equipment imported for the projects with foreign aid).
- (d) Surat Mentri Keuangan No.B-329/MK/II/4/1972; tanggal 12April 1972 pada Menteri Luar Negeri RI "Pemungutan Pajak atas para Kontraktor dan Konsultan yang berkedudukan di luar negeri serta para pegawainya sehubungan dengan pelaksanaan Proyek-proyek yang dibiayai dengan bantuan resmi (Official AID)". (Subject; Tax collection from foreign Contractor and Consultant and also their personnel).
- (e) Perpanjangan-perpanjangan :

B-884/MK/II/12/1972 tanggal 5 December 1972.

B-1972/MK/II/3/1974 tanggal 20 Maret 1974.

B-07/MK/II/1/1975 tanggal 6 Januari 1975.

B-187/MK/II/3/1976 tanggal 31 Maret 1976.

B-331/MK/1977 tanggal 9 Juni 1977.

(Subject; Extension of Letters).

- (f) Surat Menteri Keuangan kepada Menteri Luar Negeri tanggal 20 April 1978 No.S-270/MK.04/1978 perihal : Fasilitas Perpajakan atas para Kontraktor dan Konsultan yang berkedudukan di Luar Negeri serta pegawai mereka sehubungan dengan pelaksanaan proyek-proyek yang dibayai dengan bantuan resmi (official-aid) dan fasilitas kredit ekspor/kredit komersial. (Subject; Tax facilities on foreign Contractor, Consultant and their personnel in executing the projects with foreign aid, and export credit facilities/commercial credit).
- (g) Surat Direktur Pajak Langsung pada :
 - (i) Direktur TU Anggaran Dit. Jen. Anggaran;
 - (ii) Kepala Kantor Wilayah Dit. Jen. Anggaran Daerah Khusus Jakarta Raya "Perpajakan Atas Para Kontraktor dan Konsultan yang berkedudukan di Luar Negeri serta para pegawainya sehubungan dengan pelaksanaan Proyek-proyek yang dibiayai dengan bantuan resmi (Official-AID) dan fasilitas kredit ekspor/kredit komersial sebagai pelengkapanya juga dengan dana rupiah yang disediakan oleh Pihak Indonesia". (Subject; Tax facilities for foreign Contractor, Consultant and their personnel in executing the project financed by governmental budget (Rupiah portion)).
- (h) Surat Direktur Pabean : pada Sub. Dit. pembinaan Industri Konstruksi Dit. Jen. Bina Marga Deft. PUTL No. S-3455/BC.2/78 tanggal 28 Juni 1978 "Permohonan Pembebasan Bea Masuk, PPN dan MPO Import Atas Pemasukan Barang-barang Kontraktor Takenaka Komatsu, Takenaka Doboku, Nippon Habo Co. Ltd". (Subject; Request for free of import charge PPN and MPO for importing some

equipment by Takenaka, Komatsu, Takenaka Doboku, Nippon Habo Co, Ltd.).

- (i) Surat Direktur Pabean pada : Direktur Pembangunan Jalan, Dit. Jen. Bina Marga, No. S-7348/BC.23/1978 tanggal 21 December 1978; "Pemasukan spare parts/suku cadang oleh Kontraktor dalam Rangka Project - AID.(Subjec; Spare parts imported by Contractor for Project with foreign aid).
- (j) Surat Menteri Keuangan pada : Menteri Luar Negeri No.S-333/MK/04/79; tanggal 28 April 1979. "Fasilitas Perpajakan atas para Kontraktor dan Konsultan yang berkedudukan di Luar Negeri serta para pegawai mereka sehubungan dengan pelaksanaan proyek-proyek yang dibiayai dengan bantuan resmi (Official-AID) dan fasilitas kredit ekspor/kredit komersial sebagai pelengkap. (Subject; Tax on Facilities for foreign company, Consultant and their personnel in executing by official AID, and export credit facilities/commercial credit)
- (k) Surat Menteri Keuangan pada : Menteri Luar Negeri No.S-769/MK.04/1979 tanggal 18 September 1979. "Fasilitas Perpajakan atas para Kontraktor dan Konsultan yang berkedudukan di Luar Negeri serta para pegawai mereka sehubungan dengan pelaksanaan proyek-proyek yang dibiayai dengan bantuan resmi (Official AID) dan fasilitas kredit ekspor/kredit komersial sebagai pelengkap (pelaksanaan masa peralihan dari Surat Menteri Keuangan tanggal 28 April 1979, No.S-333/MK.004/1979). (Subject; Same as item (j)).
- (l) Surat Menteri Keuangan kepada Menteri Luar Negeri tanggal 9 Juni 1977 No. S-331/MK/1977 pokok : "Fasilitas Perpajakan atas para Kontraktor dan Konsultan yang berkedudukan di Luar Negeri serta para pegawai mereka sehubungan dengan pelaksanaan proyek-proyek yang dibiayai dengan bantuan resmi (Official-AID) dan fasilitas kredit ekspor/kredit komersial. (Subject; Same as item (j)).

- (m) Surat Edaran Direktur Peraturan Perpajakan tanggal 14 Juni 1977. No.SP-59/PJ.62/1977 pokok : "Fasilitas Perpajakan atas para Kontraktor dan Konsultan yang berkedudukan di Luar Negeri serta para pegawai mereka sehubungan dengan pelaksanaan proyek-proyek yang dibiayai dengan bantuan resmi (Official-AID) dan fasilitas kredit ekspor/kredit komersial. (Subject; Same as item (j))
- (n) Surat Direktur Jenderal Bea dan Cukai No.KBC/DJBC PB/IMP.II/76/5550 tanggal 11 Juni 1976.(Letter from Director General of Customs).
- (o) Surat Menteri Keuangan No. B-313/MK/III/6/1976. (Letter from Ministry of Finance)
- (p) Surat Direktur Jenderal Pajak kepada Indukseco Jalan Abdul Muis Jakarta tanggal 7 Maret 1979 No. S-335/PJ.22/1979. (Letter from Ministry of Finance)
- (q) Surat Edaran atas nama Direktur Jenderal Pajak yang ditanda tangani oleh Sekretaris Direktorat Jendral Pajak tanggal 30 April 1979 No. SE-9/PJ. 652/1979. (Letter from Secretary Director General of Tax)
- (r) Surat Direktur Pajak Langsung tanggal 15 September 1979 NO. S-1650/PJ. 241.1979 kepada Kepala Inspeksi Pajak Badan dan Orang Asing Pembebasan Pajak dan Bea atas nama Kontraktor Shimizu. (Letter from Director General of Direct Tax)
- (s) Undang-undang No. 7 tahun 1983 tentang Pajak Penghasilan dan Undang-undang No. 6 tahun 1983 tentang Ketentuan Umum dan Tata Cara Perpajakan beserta Peraturan Pelaksananya serta Peraturan-peraturan Pemerintah dan Keputusan Presiden, dan peraturan-peraturan lainnya yang berhubungan dengan Undang-undang tersebut.
- (t) Undang-undang No. 8 tahun 1983 tentang Pajak

Pertambahan Nilai 1984 serta Peraturan-peraturan Pemerintah dan Keputusan Presiden, dan peraturan-peraturan lainnya yang berhubungan dengan Undang-undang tersebut.

- (u) Surat Edaran Bersama Dirjen Pajak dan Dirjen Anggaran No. SE-24/PJ-3/1985-SE : 147/A/1985 tanggal 25 maret 1985 tentang masalah Bendaharawan dan pelaksanaan Undang-undang Pajak Pertambahan Nilai 1984.
- (v) Peraturan Pemerintah RI. No.22 tahun 1985 tanggal 13 Maret 1985 : tentang Pelaksanaan Pajak Pertambahan Nilai 1984
- (w) Exchange of Notes, if any, between the Government of Japan and the Republic of Indonesia during negotiations for allotment of the Fund for Urban Drainage Project.

Such regulation as set out in the Special Conditions of Contract shall be regarded only as an information and the Contractor shall be aware of all existing Government regulations which are deemed necessary to be considered or included in the preparation and calculation of the unit or lump sum prices in the Bill of Quantities. Any change in taxes and duties following Tender Opening, will be subject to equitable adjustment.

No reimbursement shall be due to the Contractor in respect of any payment made by him for Indonesian customs, duties, taxes, except as otherwise specifically stated in the Contract.

LIST OF ITEMS APPLICABLE FOR PRICE ADJUSTMENT

S. No.	Item of Work	Item No. in BOQ
1.	Earth work in excavation, backfilling, dyke embankment and road embankment	2.1/01; 2.2/02 to /06; 2.3/02 & /03; 2.4/03 & /04; 2.5/03 & /04; 2.6/04 & /07; 3.1/04 & /05; 3.2/02 & /03; 4.5/03, /04 & /14
2.	Concrete work	2.3/09 to /13; 2.4/13 to /16; 2.5/13 to /16; 2.6/16 to /21; 3.1/21 to /27; 3.2/05 to /08, /10 & /11; 4.2/16 to /19; 4.3/10 to /14, 4.4/01 to /03; 4.5/06 to /13
3.	Wet cobble masonry	2.4/08; 2.5/08; 3.1/10; 4.5/05
4.	Piling work including pre-cast RC piles, steel sheet piles and timber piles	2.3/05 to /08; 2.4/12; 2.5/12; 2.6/12 to /15; 3.1/15 to /20; 4.2/01 to /15
5.	Gabion mattress	2.2/09; 2.3/04; 2.4/09 & /10; 2.5/09 & /10; 2.6/10 & /11; 3.1/11 & /12
6.	Gate, steel bridge and other steel work including bearings	2.6/26 to /30; 3.1/37 to /47
7.	Road work	2.2/10 to /12; 3.1/31 to /33; 4.3/27; 4.5/15 to /19
8.	Bridge work	4.3/01 to /09, /17 to /21
9.	Demolishing of existing masonry and concrete structures	2.1/02; 2.4/02; 2.5/02; 2.6/02 & 03; 3.1/02 & 03; 4.1/02 to /04; 4.5/01 & /02
10.	Sand filling, gravel filling, gravel bedding, rubble mound, gravel filter, boulder filling	2.4/06 & /07; 2.5/ 06 & /07; 2.6/05 & /08; 3.1/08 & /09; 3.2/04

S. No.	Item of Work	Item No. in BOQ
11.	Miscellaneous works such as sod facing, PVC water stop, Rubber joint filler, PVC pipe for weep holes, palm fibre, Rubber flexible joint	2.2/07 & /08; 2.3/14 to /17; 2.4/05, /11 & /17; 2.5/05, /11 & /17; 2.6/06, /09, /22 to /25; 3.1/06, /07, /13, /14, /28 to /30, /34 to /36; 3.2/09





