



GOVERNMENT OF THE REPUBLIC OF INDONESIA
MINISTRY OF PUBLIC WORKS
DIRECTORATE GENERAL OF HUMAN SETTLEMENTS

URBAN DRAINAGE PROJECT IN THE CITY OF JAKARTA
TENDER DOCUMENTS FOR

PACKAGE 2

CONTRACT NO. 1

TANJUNGAN DRAINAGE CHANNEL
PIK JUNCTION DRAINAGE CHANNEL

VOLUME II

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PART I : GENERAL CONDITIONS OF CONTRACT

PART II : SPECIAL CONDITIONS OF CONTRACT

DECEMBER 1997

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TENDER DOCUMENTS FOR CIVIL WORKS

PACKAGE - 2

CONTRACT NO. :

TANJUNGAN DRAINAGE CHANNEL
PIK JUNCTION DRAINAGE CHANNEL

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PART I - GENERAL CONDITIONS OF CONTRACT



PART I - GENERAL CONDITIONS OF CONTRACT

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PART I - GENERAL CONDITIONS OF CONTRACT

DEFINITIONS AND INTERPRETATION

Definitions

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

(a) (i) **"Government"** means the Government of the Republic of Indonesia.

(ii) **"Employer"** means the Government represented by the agency named in Part-II Special Conditions of Contract.

(iii) **"Engineer"** means the official, person or firm duly appointed from time to time by the Employer and notified in writing to the Contractor by the Employer, or as named in Part-II Special Conditions of Contract to act as Engineer.

(iv) **"Engineer's Representative"** means any official, person or firm duly appointed from time to time by the Employer or the Engineer to perform the duties set forth in Clause 2 (Duties and Powers of Engineer and Engineer's Representative) hereof, whose authority shall be notified in writing to the Contractor by the Engineer.

(b) (i) **"Tenderer"** means a prequalified Tenderer or bidder, being a firm, joint venture, joint operation, corporation or association submitting a Tender for the Works following an invitation by the Employer, and includes the Tenderer's legal personal representatives, successors and permitted assigns.

(ii) **"Successful Tenderer"** means the Tenderer whose Tender has been accepted by the Employer for the execution, completion and repair of the Works and includes the Successful Tenderer's legal personal representatives, successors and permitted assigns.

- (iii) **"Tender"** means the offer of a Tenderer to execute, complete and repair the Works, and **"Tender Documents"** means the documents submitted by the Tenderer for the purpose of tendering.
- (iv) **"Documents for Tendering"** means the documents issued by the Employer for the purpose of tendering.
- (c) (i) **"Contract"** means the agreement between the Employer and the Contractor including the Tender and all appendices thereto, Conditions of Contract, Specification, Drawings, Bill of Quantities, Performance Security, Addenda and other documents named in the Contract Agreement.
- (ii) **"Contractor"** means the Successful Tenderer who has already signed the Contract.
- (iii) **"Contract Price"** means the sum(s) named in the Letter of Acceptance subject to such additions thereto or deductions therefrom as may be made under the provisions of the Contract.
- (iv) **"Specification"** means the specification referred to in the Contract and any modification thereof or addition thereto as may from time to time be notified in writing to the Contractor by the Engineer subject to the provisions of Clause 2. (1) (Duties and Powers of the Engineer) hereof.
- (v) **"Drawings"** means the drawings referred to in the Specification and any modification(s) of such drawings approved by the Engineer and such other drawings as may from time to time be furnished or approved by the Engineer.
- (vi) **"Construction Plant and Equipment"** means all appliances or things of whatsoever nature required in or about the execution, completion or repair of the Works but

does not include materials or other things intended to form or forming part of the Permanent Works.

- (d) (i) **"Sub-contractor"** means any party or parties having a direct contract with the Contractor for the performance of any parts of the Works to be performed under the Contract.
- (ii) **"Other Contractor"** means any party or parties having a direct contract with the Employer for work outside the scope of the Contract.
- (e) (i) **"Works"** means the works to be executed, completed and repaired in accordance with the Contract and shall include both Permanent Works and Temporary Works.
- (ii) **"Permanent Works"** means the works to be executed, completed and repaired in accordance with the Contract.
- (iii) **"Temporary Works"** means all temporary works of every kind required in or about the execution, completion or repair of the Works.
- (iv) **"Site"** means the lands and other places on, under, in or through which the Works are to be executed and any other lands and places provided by the Employer for the purposes of the Contract together with such other places as may be specifically designated in the Contract as forming part of the Site.
- (f) (i) **"Commencement Date"** means the date upon which the Contractor receives the Notice to Proceed.
- (ii) **"Substantially completed Works"** means Works or any part thereof that have satisfactorily passed any final test that may be prescribed by the Contract, and can be put to use by the Employer for the purpose for which the Works were constructed and without interruption by the Contractor completing outstanding works.

- (iii) "Day" means calendar day of the Gregorian calendar.
- (g) (i) "Approved" or "Directed" means approved or directed in writing by the Engineer including subsequent written confirmation of previous Engineer's verbal approval, and "Approval" or "Direction" means approval or direction by the Engineer in writing including as aforesaid.
- (ii) "Writing" means any hand-written, type written or printed communication, including telex, cable, facsimile transmission and the like.
- (h) (i) "Lending Agency" means the international or foreign institution or agency having partly financed the performance of the Works under the terms of an agreement with the Government of Indonesia, named in Part II-Special Conditions of Contract.
- (ii) "Surety" means a state owned Bank or other Bank or other financial or insurance institution, approved by the Minister of Finance of the Republic of Indonesia, which is issuing the Performance or Advance Payment Security for the Contract, and for a foreign Contractor includes the Foreign Exchange Bank acceptable to Bank Indonesia which is issuing the Performance or Advance Payment Guarantee for the Contract.
- (iii) "Rupiah" means the Indonesian currency.

Singular and Plural 1. (2) Words importing the singular only also include the plural and vice versa where the context requires.

Headings or Notes 1. (3) The headings including chapter headings, marginal and other notes in the Conditions of Contract shall not be deemed to be part thereof nor be taken into consideration in the interpretation or construction thereof or of the Contract.

Cost

1. (4) The word "cost" shall be deemed to include overhead costs whether on or off the Site.

ENGINEER AND ENGINEER'S REPRESENTATIVE

Duties and Powers of the Engineer

2. (1) The Engineer will perform such duties and shall issue such certificates, decisions and orders as are specified in the Contract. The Engineer's approvals, decisions, instructions, directions or orders which involve the following matters shall not be valid except with the approval by the Employer which shall be notified to the Contractor by the Engineer in respect of :
 - (a) extension of time for completion,
 - (b) additional cost on the part of the Employer,
 - (c) variation orders causing additional obligations on the part of the Employer or the Contractor or which involve an increase or decrease above any limit in the Contract as specified in Part II - Special Conditions of Contract in Clause 60 (Contract Price) thereof, or which modify or cause modifications or additions to the Specifications,
 - (d) agreement regarding rates and prices as provided for in the following : Clauses 6.(2) (Documents Mutually Explanatory); 9.(3) (Delays of Drawings); 12.(2) (Adverse Physical Conditions and Artificial Obstructions); 13 (Work to be in Accordance with the Contract); 18 (Boreholes and Exploratory Excavation); 30.(2) (Special Loads); 31 (Opportunities for Other Contractors); 42.(1) (Possession of Site); 46 (Rate of Progress); 52.(1) (Valuation of Variations); 52.(5) (Claims) and 67 (Settlement of Disputes).

All matters relating to the Contract shall be disposed of between the Employer and the Contractor through the Engineer.

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. Any written approvals, decisions, instructions, directions or orders given by the Engineer to the Contractor within the terms of delegation of the Engineer as specified in this sub-clause, shall be carried out and bind the Contractor and the Employer as though it had been given by the Employer.

**Duties and
Powers of the
Engineer's
Representative**

2. (2) The Engineer's Representative shall be responsible to the Engineer and his duties are to watch and supervise the Works and to test and examine any materials to be used or workmanship employed in connection with the Works. He shall have no authority to relieve the Contractor of any of his duties or obligations under the Contract nor, except as expressly provided hereunder or elsewhere in the Contract, to order any work involving delay or any extra payment by the Employer, nor to make any variation of or in the Works.

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. Notwithstanding, the Engineer may delegate further powers and authorities as provided hereunder.

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

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

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

Emergency Power of the Engineer and the Engineer's Representative 2. (3) Provided that, if in the opinion of the Engineer's Representative an emergency occurs affecting the safety of life or of the Works or of adjoining property he may direct the Contractor to carry out all such work or to do all such things as may be necessary in the opinion of the Engineer's Representative to abate or reduce the risk. The Contractor shall forthwith comply without appeal with any such direction of the Engineer's Representative. Notwithstanding the provisions of Sub-clause 2. (1) hereof the Engineer after consultation with the Employer shall determine the amount, if any, of extra payment to which the Contractor may be entitled in accordance with the Contract in respect of work done pursuant to the provisions of this sub-clause.

ASSIGNMENT AND SUB-LETTING

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

Sub-letting 4. The Contractor shall not sub-let the whole of the Main Works, if any, named as Main Works or a certain percentage of Work stated in Part II - Special Conditions of Contract in Clause 4 (Sub-letting) thereof. Except as otherwise provided by the Contract, the Contractor shall not sub-let any part of the Work without the prior written approval of the Engineer, which shall not be unreasonably withheld, and such consent, if given shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults or neglects of any Sub-contractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen. Provided that the provision of labour on a piecework basis and purchase of materials shall not be deemed to be a

sub-letting under this Clause.

CONTRACT DOCUMENTS

Contract Agreement

5. The successful Tenderer and the Employer shall enter into and execute a formal Contract Agreement, within thirty (30) days from the receipt of the Letter of Acceptance. The successful Tenderer shall be responsible for the payment of stamp duty required by the Contract Agreement as provided by the Laws of the Republic of Indonesia. The Contract Documents shall be prepared in accordance with the Form of Contract and its attachment (s) as prescribed in Volume I of this Tender Document and to be printed by the successful Tenderer at his own cost, in two (2) originals and ten (10) signed copies and ten (10) conforming copies.

Language and Units of Measurement

6. (1) (a) The English language and/or Bahasa Indonesia will be used in Contract Documents and in all communications whether written or verbal. The ruling language shall be English, except as may otherwise be stated in the Part II - Special Conditions of Contract in Clause 6.(1)(a) (Language).
- (b) Metric units of measurement (mks - Metre Kilogram Second) will be used in the Contract unless otherwise specified in the Contract Documents or agreed upon with the Engineer.

Documents Mutually Explanatory

6. (2) The several documents forming the Contract are to be taken as mutually explanatory of one another, but in case of ambiguities or discrepancies the same shall be explained and adjusted by the Engineer who shall thereupon issue to the Contractor instructions. Provided that in the event of conflict the order of precedence of documents shall be as stated in the Contract Agreement. Provided that if, in the opinion of the Engineer, compliance with any such instructions shall involve the Contractor in any cost, which by reason of any such ambiguity or discrepancy could not reasonably have been foreseen by the Contractor, the Engineer shall certify and the Employer shall pay

such additional sum as may be reasonable to cover such costs, subject to the provisions of Clause 2.(1) (Duties and Powers of the Engineer) hereof.

- Specification and Drawings** 6. (3) Anything mentioned in the Specification and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specification, shall be of like effect as if shown or mentioned in both. In case of any difference between Drawings and the Specification, the Specification shall prevail.
- Performance Security** 7. (1) The successful Tenderer, within thirty (30) calendar days from the receipt of Letter of Acceptance, at his own expense, furnish the Employer with a Performance Security in the amount stated in Part II-Special Conditions of Contract in Clause 7. (1) (Performance Security) thereof from an insurance company or bank, the said insurance company or bank and the terms of the said security shall be such as approved by the Employer. 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.
- Failure to Provide Security** 7. (2) In the event that the successful Tenderer does not furnish the Security under Sub-clause 7. (1) of this Clause within the fixed date, the Employer shall have the right to cancel the award of the Contract without any liability to the successful Tenderer and to encash the Tender Security of the successful Tenderer and to take such actions as he may deem best.
- Additional, Other and Supplementary Security** 7. (3) The Contractor shall furnish such additional, other or supplementary security as the Employer may require if:
- (a) the Surety becomes unacceptable to the Employer, or
 - (b) if the Contract Price has been or appears to be substantially increased after the Security is furnished.

**Advance
Payment
Security**

7. (4) If the Contractor requests an Advance Payment and such Advance Payment is provided for in the Contract, the Contractor shall furnish an Advance Payment Security equal to the advance payment amount, and the Security may be changed from time to time equal to the remaining amount of the Advance Payment after a part has been recovered from progress payments. The Security shall be maintained in force until the Advance Payment has been fully recovered in accordance with Part II- Special Conditions of Contract in Clause 60.(3) (d) (Repayment of Advance Payment).

The Security shall be in terms and from an insurance company or bank, all to the approval of the Engineer and shall be executed in the forms of Advance Payment Security (Bank Guarantee and Bond) provided for that purpose in Volume I- Documents for Tendering.

**Custody of
Drawings**

8. (1) The Drawings shall remain in the sole custody of the Engineer, but two (2) copies thereof shall be furnished to the Contractor free of cost.

The Contractor shall provide and make at his own expense any further copies required by him for the Works. At the completion of the Contract, the Contractor shall if required by the Engineer return all drawings provided under the Contract.

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

**One Copy of
Drawings to be
Kept on Site**

8. (2) One copy of the Drawings and Specifications shall be kept by the Contractor on the Site and shall be available for inspection and use by the Engineer and by any other person authorized by the Engineer in writing.

**Further
Drawings and
Instructions**

9. (1) The Engineer will supply to the Contractor from time to time during the progress of the Works, such further drawings, except the Contractor's working drawings, and instructions as are

necessary for the proper and adequate execution, completion and repair of the Permanent Works, and the Contractor shall carry out and be bound by them.

**Disruption
of Progress**

9. (2) The Contractor shall give written notice to the Engineer whenever planning or progress of the Works is likely to be delayed or disrupted unless any further drawing or order, including a direction, instruction or approval, is issued by the Engineer within a reasonable time.

The notice shall include details of the drawing or order required and of why and by when it is required and of any delay or disruption likely to be suffered if it is late.

**Delays of
Drawings**

9. (3) If, by reason of any failure of the Engineer to issue within a time reasonable in all the circumstances any drawing or order in accordance with sub-clause (2) of this Clause, the Contractor suffers delay then the Engineer shall take such delay into account in determining any extension of time to which the Contractor is entitled under Clause 44 (Extension of Time for Completion) hereof subject to the provisions of Clause 2.(1) (Duties and Powers of the Engineer) hereof.

GENERAL OBLIGATIONS AND RESPONSIBILITIES

**Contractor's
General
Responsibilities**

10. (1) The Contractor shall, subject to the provisions of the Contract, with due care and diligence, execute, complete and repair the Works and provide all labour including the supervision thereof, materials, Construction Plant and Equipment, transport to or from the Site, and in and about the Works and all other things, whether of a temporary or permanent nature, required for such execution, completion and repair as specified in or reasonably to be inferred from the Contract.

Safety

10. (2) The Contractor shall take full responsibility for the adequacy, stability, and safety of all site operations and methods of construction, provided that the Contractor shall not be responsible,

except as may be expressly provided in the Contract, for the design or specification of the Permanent Works, or for the design or specification of any Temporary Works prepared by the Employer or the Engineer.

**Inspection
of Site**

11. The Employer will have made available to the Contractor with the Documents for Tendering such data, if any, on hydrological and sub-surface conditions obtained by or on behalf of the Employer from previous investigations, but the Contractor shall be deemed to have inspected and examined the Site and its surroundings and information available in connection therewith. In dredging work, provision made in Clause 11.(Inspection of Site) stipulated in Part II - Special Conditions of Contract shall be referred.

For all other Works, the Contractor shall be deemed to have satisfied himself, so far as is practicable, before submitting his Tender, as to the form and nature thereof, including the sub-surface conditions, the hydrological and climatic conditions, the extent and nature of work and materials necessary for the completion of the Works, the means of access to the Site and the accommodation he may require and, in general, shall be deemed to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect his Tender.

**Sufficiency
of Tender**

12. (1) The Contractor shall be deemed to have satisfied himself before tendering as to the correctness and sufficiency of his Tender and of the prices stated in the Bill of Quantities, which prices shall, except in so far as it is otherwise provided in the Contract, cover all his obligations necessary for the proper execution, completion and repair of the Works.

**Adverse
Physical
Conditions and
Artificial
Obstructions**

12. (2) If, however, during the execution of the Works the Contractor shall encounter physical conditions, other than climatic conditions on the Site, or artificial obstructions, which conditions or obstructions would, in his opinion, not have been reasonably allowed for by an experienced Contractor, he shall within thirty (30) days of the day he encounters such physical conditions or artificial obstructions give written notice thereof to the Engineer. If the

Engineer concurs with the Contractor's notice, he will certify it, subject to the provisions of Clause 2.(1) (Duties and Powers of the Engineer) hereof, and the Employer will pay the additional reasonable cost which the Contractor incurred:

- (a) of complying with any instruction which the Engineer may issue to the Contractor in connection therewith, and
- (b) of any proper and reasonable measures approved by the Engineer which the Contractor may take in the absence of specific instructions from the Engineer,

as a result of such conditions or obstructions being encountered.

**Work to be
in Accordance
with the
Contract**

13. Except as legally or physically impossible, the Contractor shall execute, complete and repair the Works in strict accordance with the Contract and accepted by the Engineer subject to the provisions of Clause 62 (Certificate of Satisfaction) hereof, and shall comply and adhere strictly to the Engineer's instructions and directions on any matter concerning the Works whether mentioned in the Contract or not.

Subject to the provisions of Clause 2.(1) (Duties and Powers of the Engineer) hereof, the Contractor shall take instructions and directions only from the Engineer or, subject to the limitations referred to in Clause 2.(2) (Duties and Powers of Engineer's Representative) hereof, from the Engineer's Representative.

**Programme
to be
Furnished**

14. (1) Within sixty (60) days after receipt of the Letter of Acceptance, the Contractor shall submit to the Engineer for his approval a programme by CPM (Critical Path Method) or in another approved form, showing the method in which he proposes to carry out the Works, and shall, whenever required by the Engineer, furnish for his information particulars in writing of the Contractor's arrangements for executing the Works and of the Construction Plant and Equipment and Temporary Works which the Contractor intends to supply, use or construct, as the case may be.

The submission to and approval by the Engineer of such programmes or the furnishing of such particulars, shall not relieve the Contractor of any of his duties or responsibilities under the Contract.

**Revised
Programme**

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

**Records
Relating to
the Works**

14. (3) The Contractor shall at all times keep complete and accurate records in accordance with sound engineering practice and to the satisfaction of the Engineer. All records relating to the Works shall be available to the Employer and the Engineer at all times.

**Contractor's
Superintendence**

15. (1) The Contractor shall give or provide all necessary superintendence during the execution, completion and repair of the Works and as long thereafter as the Engineer may consider necessary for the proper fulfilling of the Contractor's obligations under the Contract.

The Contractor, or a competent and authorized representative approved by the Engineer, which approval may at any time be withdrawn, is to be constantly on the Works and shall give his whole time to the superintendence of the Works.

If approval of such representative shall be withdrawn by the Engineer, the Contractor shall, as soon as is practicable, after receiving written notice of such withdrawal, remove such representative from the Works and shall not thereafter employ him again on the Works in any capacity and shall replace him by another representative approved by the Engineer.

Such authorized representative shall receive, on behalf of the Contractor, directions and instructions from the Engineer.

- | | | |
|-------------------------------------|---------|--|
| Contractor's Staff | 15. (2) | An adequate number of the Contractor's staff at all levels of responsibility shall communicate both in English and Bahasa Indonesia fluently. |
| Local Professional Staff | 15. (3) | The Contractor shall employ professional staff from Indonesia to the maximum extent that suitably qualified, experienced and capable staff are obtainable and available for employment on the Works. |
| Approval of Expatriate Staff | 15. (4) | Details of the full professional and technical qualifications and experience of each expatriate professional or skilled technical member of the Contractor's staff to be employed on the Works shall be submitted by the Contractor through the Engineer to the Employer, in such form as may be required, for registration and approval by the appropriate Authorities for employment on the Works. |
| Contractor's Employees | 16. (1) | The Contractor shall provide and employ on the Site in connection with the execution, completion and repair of the Works : <ul style="list-style-type: none">(a) only such technical assistants as are skilled and experienced in their respective callings and such supervisors, foremen and leading hands as are competent to give proper supervision to the work they are required to supervise,(b) such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution, completion and repair of the Works, and(c) such training staff as are necessary and approved by the Engineer to provide for transfer of technology to Indonesian personnel of the Contractor, if applicable. |

**Removal of
Contractor's
Employees**

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

Setting-out

17. The Contractor shall be responsible for the true and proper setting-out of the Works in relation to original points, lines, and levels of reference given by the Engineer in writing and for the correctness, subject as above mentioned, of the position, levels, dimensions and alignment of all parts of the Works and for the provision of all necessary instruments, appliances, and labour in connection therewith and shall cooperate and provide all facilities required by the Engineer to enable him to check the setting-out performed by the Contractor.

If, at any time during the progress of the Works, any error shall appear or arise in the position, levels, dimensions, or alignment of any part of the Works, the Contractor, on being required to do so by the Engineer shall, at his own cost rectify such error in accordance with the Contract and/or acceptable to the Engineer, but if such error is based on incorrect data supplied in writing by the Engineer, the expense of rectifying the same shall be borne by the Employer. The checking of any setting-out or of any line or level by the Engineer shall not in any way relieve the Contractor of his responsibility for the correctness thereof and the Contractor shall carefully protect and preserve all bench-marks, sight-rails, pegs and other things used in setting out the Works.

**Boreholes
and
Exploratory
Excavation**

18. If, at any time during the execution of the Works, the Engineer shall require the Contractor to make boreholes or to carry out exploratory excavation, subject to the provisions of Clause 2. (1) (Duties and Powers of the Engineer) hereof, such requirement shall be ordered in writing and shall be deemed to be an addition ordered under provisions

of Clause 51.(1) (Variations) hereof, unless an item or a provisional sum in respect of such anticipated work shall have been included in the Bill of Quantities.

**Safety,
Security and
Protection
of the
Environment**

19. (1) The Contractor shall, throughout the execution and completion of the Works and the remedying of any defects therein :
- (a) have full regard for the safety of all persons entitled to be upon the Site and keep the Site (so far as the same is under his control) and the Works (so far as the same are not completed or occupied by the Employer) in an orderly state appropriate to the avoidance of danger to such persons, and
 - (b) provide and maintain at his own cost all lights, guards, fencing, warning signs and watching, when and where necessary or required by the Engineer or by any duly constituted authority, for the protection of the Works or for the safety and convenience of the public or others, and
 - (c) take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of his methods of operation.

**Employer's
Responsibilities**

19. (2) If under Clause 31, the Employer shall carry out work on the Site with his own workmen he shall, in respect of such work :
- (a) have full regard to the safety of all persons entitled to be upon the Site, and
 - (b) keep the Site in an orderly state appropriate to the avoidance of danger to such persons.

If under Clause 31, the Employer shall employ other contractors on the Site, he shall require them to have the same regard for safety and avoidance of danger.

Care of Works

20. (1) From the commencement of the Works until the date stated in the Certificate of Completion for the whole of the Works pursuant to Clause 48.(1) (Certification of Completion of Works) hereof, the Contractor shall take full responsibility for the care thereof and of all Temporary Works.

In the event that any damage, loss or injury should happen to the Works or to any part thereof or to any Temporary Works from any cause whatsoever, except the excepted risks as defined in Sub-clause 20. (2) of this Clause, the Contractor shall at his own cost, repair and make good the same so that at completion, the Works shall be in good order and condition and in conformity in every respect with the requirements of the Contract and the Engineer's instructions.

In the event of any such damage, loss or injury happening from any of the excepted risks, the Contractor shall, to the extent required by the Engineer after consultation with the Employer, and subject always to the provisions of Clause 65 (Special Risks) hereof, repair and make good the same as aforesaid at the cost of the Employer. The Contractor shall also be liable for any damage to the Works occasioned by him in the course of any operations carried out by him for the purpose of complying with obligations under Clauses 49 and/ or 50 (Defects and Repair) hereof, and during suspension of work or while remedying any defects.

Excepted Risks

20. (2) The term "excepted risks" is hereby deemed to be the collective and comprehensive term for uninsurable risks as follows:

- (a) war, hostilities (whether war be declared or not);
- (b) invasion, act of foreign enemies;
- (c) riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his Sub-contractors and arising from the conduct of the Works;
- (d) insurrection, rebellion, revolution;

- (e) military or usurped power, civil war;
- (f) 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 explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (g) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (h) risks arising solely due to faulty design of the Works by the Employer;
- (i) actual use and/or occupation by the Employer of any portion of the Works for which a Certificate of Completion has been issued, excluding responsibilities of the Contractor in the Defects Liability Period; and
- (j) damage by forces of nature that an experienced Contractor having reasonable foresight and ability could not foresee or reasonably make provision for or insure against.

Insurance of Works, etc.

21. Without limiting his obligations and responsibilities under Clause 20. (1) (Care of Works) hereof, the Contractor shall insure in the joint names of the Employer and the Contractor against all loss or damage from whatever cause arising, other than the excepted risks, for which he is responsible under the terms of the Contract and in such manner that the Employer and the Contractor are covered for the period stipulated in Clause 20.(1) (Care of Works) hereof and are also covered during the Defects Liability Period for loss or damage arising from a cause, occurring prior to the commencement of the Defects Liability Period and for any loss or damage occasioned by the Contractor in the course of any operations carried out by him for the purpose of complying with his obligations under Clauses 49 and 50 (Defects and Repair) hereof ;

- (a) The Works for the time being executed to the estimated current

contract value thereof or such sum subject to additional sums as may be specified in Part II - Special Conditions of Contract in Clause 21 (Insurance of Works, etc.) thereof, together with the materials for incorporation in the Works at their replacement value.

- (b) The materials, Construction Plant and Equipment and other things brought on to the Site by the Contractor to the replacement value of such materials, Construction Plant and Equipment and other things.

Such insurance shall be effected with an insurer and in terms approved by the Employer, which approval shall not be unreasonably withheld, and the Contractor shall, whenever required, produce to the Engineer the policy or policies of insurance and the receipts for payment of the current premiums.

**Damage to
Persons and
Property**

- 22. (1) The Contractor shall, except as the Contract provides otherwise, indemnify the Employer against all losses and claims in respect :
 - (a) death of or injury to any person, or
 - (b) loss or damage to any property (other than the Works or surface or other damage to land or crops on the Site suffered by tenants or occupiers),

which may arise out of or in consequence of the execution and completion of the Works and the remedying of any defects therein, and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, subject to the exceptions defined in Sub-clause 22. (2) hereof.

Provided that for the purposes of this Clause, the expression "the Site" shall be deemed to be limited to the area defined in the Specification or shown on the Drawings in which land and crops will be disturbed or damaged as a consequence of the execution of the Works.

Exceptions 22. (2) The "exceptions" referred to in sub-clause (1) hereof, are:

- (a) the permanent use or occupation of land by the Works, or any part thereof,
- (b) the right of the Employer to execute the Works, or any part thereof, on, over, under, in or through any land,
- (c) damage to property which is the unavoidable result of the execution and completion of the Works, or the remedying of any defects therein, in accordance with the Contract,
- (d) death of or injury to persons or loss of or damage to property resulting from any act or neglect of the Employer, his agents, servants or other contractors, not being employed by the Contractor, or in respect of any claims, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto or, where the injury or damage was contributed to by the Contractor, his servants or agents, such part of the said injury or damages as may be just and equitable having regard to the extent of the responsibility of the Employer, his servants or agents or other contractors for the injury or damage.

Indemnity by Employer 22. (3) The Employer shall indemnify the Contractor against all claims, proceedings, damages, costs, charges and expenses in respect of the matters referred to in the exceptions defined in sub-clause (2) hereof.

Third Party Insurance 23. (1) Before commencing the execution of the Works the Contractor, but without limiting his obligations and responsibilities under Clause 22.(1) (Damage to Persons and Property) hereof, shall insure against his liability for any material or physical damage, loss or injury which may occur to any property, including that of the Employer, or to any person, including that of the Employer, by or arising out of the execution, completion or repair of the Works.

- Minimum Amount of Third Party Insurance** 23. (2) Such insurance shall be effected with an insurer and in terms approved by the Employer, and for at least the amount stated in Part II-Special Conditions of Contract in Sub-clause 23. (2) (Minimum Amount of Third Party Insurance). The Contractor shall, whenever required, produce to the Engineer the policy or policies of insurance and the receipt for payment of the current premiums.
- Provision to Indemnify Employer** 23. (3) The terms shall include a provision whereby in the event of any claim in respect of which the Contractor would be entitled to receive indemnity under the policy being brought or made against the Employer, the insurer will indemnify the Employer against such claims and any costs, charges and expenses in respect thereof.
- Accident or Injury to Workmen** 24. (1) The Employer shall not be liable for or in respect of any damages or compensation payable at law in respect or in consequence of any accident or injury to any workman or other person in the employment of the Contractor or any Sub-contractor, except an accident or injury resulting from any act or default of the Employer, his agents or servants. The Contractor shall indemnify and keep indemnified the Employer against all such damages and compensation, except as aforesaid, and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- Insurance against Accident, etc. to Workmen** 24. (2) The Contractor shall insure against accident to workmen with an insurer approved by the Employer, and shall continue such insurance during the entire time that any persons are employed by him on the Works and shall, when required, produce to the Engineer such policy of insurance and the receipt for payment of current premium. Provided that, for persons employed by any Sub-contractor, the Contractor's obligation to insure as aforesaid under this sub-clause shall be satisfied if the Sub-contractor shall have insured against the liability in respect of such persons so that the Employer is indemnified under the policy, but the Contractor shall require such Sub-contractor to produce to the Engineer, when required, such policy of insurance and the receipt for payment of the current premium.

The insurance described above shall in all respects satisfy the provisions of Decree No.07/Men/1984 of the Ministry of Manpower and Decree No. 30/KPTS/1984 of the Ministry of Public Works for the implementation of Indonesian Government Regulation No. 33 (1977) concerning labour social insurances (ASTEK).

**Contractor's
Insurances**

25. (1) (a) The Contractor shall use an Indonesian insurance which may cooperate with the foreign insurance market for any and all insurance policies to be provided and maintained by the Contractor.
- (b) The Contractor shall provide evidence to the Employer prior to the start of the Work at the Site that the insurances required under the Contract have been effected and shall, within ninety (90) days of the Commencement Date, provide the insurance policies to the Employer. When providing such evidence and such policies to the Employer, the Contractor shall notify the Engineer of so doing. Such insurance policies shall be consistent with the general terms agreed prior to the issue of the Letter of Acceptance. The Contractor shall effect all insurances for which he is responsible with insurers and in terms approved by the Employer.

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.

**Approval by
Employer**

25. (2) The form and limits of insurance, together with the under writer thereof, must in each case be acceptable to the Employer, but regardless of such acceptance it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage

shall not relieve him of any contractual responsibility or obligation. Satisfactory certificates, or copies of the policies of insurance shall be filed with the Engineer, or if directed, the Engineer's Representative, prior to starting any activity or work under the Contract. The certificates shall state that sixty (60) days advance written notice will be given to the Employer with a copy to the Engineer before any policy covered thereby is changed, canceled or expires.

**Consequences
on Contractor's
Failure to Insure**

25. (3) If the Contractor shall fail to effect and keep in force the insurances referred to in Clause 21 (Insurance of Works, etc.), Clause 23.(1) (Third Party Insurance), and Clause 24 (Accident or Injury to Workmen; Insurance against Accident, etc. to Workmen) hereof, or any other insurance which he may be required to effect under the terms of the Contract, the Employer may withhold the payment of any monies due or which may become due to the Contractor, until the Contractor pays such premium or premiums as may be necessary for that purpose.

**Giving of
Notices and
Payment of
Fees**

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

Provided that the Employer will repay or allow to the Contractor all such sums as the Engineer shall certify to have been properly payable and paid by the Contractor in respect of such fees.

**Compliance
with Statutes,
Regulations,
etc.**

26. (2) The Contractor shall conform with the provisions of any such Statute, Ordinance, etc. or Law and the Regulations or bye-law of any local or other duly constituted authority which may be applicable to the Works and with such rules and regulations of public bodies and companies as aforesaid and shall keep the Employer indemnified against all penalties and liabilities of every kind for breach of any such provisions.

Fossils, etc.

27. (1) All fossils, coins, articles of value of antiquity and archaeological structures and other remains or things of geological or archaeological interest discovered on the Site shall as between the Employer and the Contractor be deemed to be the absolute property of the Employer. The Contractor shall take such reasonable precautions to prevent his workmen or any other persons from removing or damaging any such article or thing and shall immediately upon discovery thereof, and before removal, acquaint the Engineer of such discovery who will after consultation with the Employer direct the Contractor as to the disposal of the same, and if such removal shall incur additional cost to the Contractor the same shall be at the expense of the Employer.

Valuable Minerals

27. (2) All valuable minerals found upon the Site or discovered by reason of the execution of the Works shall be and shall remain the property of the Employer. The Contractor or his employees shall deliver all such valuable minerals to the Engineer.

Patent Rights and Royalties

28. The Contractor shall save harmless and indemnify the Employer from and against all claims and proceedings for or on account of infringement of any patent rights, design trademark or name or other protected rights of any techniques, Construction Plant and Equipment, machine, work, or material used for or in connection with the Works or any part thereof and from and against all claims, demands, proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.

Except where otherwise specified, the Contractor shall pay all tonnage and other royalties, rent and other payments or compensation, if any, for getting stone, sand, gravel, clay or other materials required for the Works. The Employer on his part warrants that any design or instructions furnished or given by him will not cause the Contractor to infringe any letters patent, registered design, trade mark, or copyright in the performance of the Contract.

**Interference
with Traffic
and Adjoining
Properties**

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

**Extraordinary
Traffic**

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

Special Loads

30. (2) Should it be found necessary for the Contractor to move any Construction Plant and Equipment, machinery or preconstructed units or parts of units of work and such moving is likely to damage any highway or bridge unless special protection or strengthening is undertaken, then the Contractor shall before such load is moved give notice to the Engineer in writing advising the weight and other particulars thereof and his proposals for protecting or strengthening such highway or bridge and such strengthening or movement of Construction Plant and Equipment may not be executed until approved by the Engineer.

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.

**Settlement of
Extraordinary
Traffic Claims**

30. (3) If during the execution of the Works or at any time thereafter the Contractor shall receive any claim arising out of the execution, completion or repair of the Works in respect of damage or injury to highways or bridges, he shall immediately report the same to the Engineer. If any such claim or part thereof shall in the opinion of the Engineer be due to any failure on the part of the Contractor to observe and perform his obligations under sub-clauses (1) and (2) of this Clause, then the Contractor shall be required to repair immediately at his own cost such damage or injury in accordance with the Engineer's instruction. Provided that if such damage or injury is due to the failure of the Employer, his agent or servant the cost will be borne by the Employer and thereafter the Employer shall negotiate the settlement of and pay all sums due in respect of such claim and shall indemnify the Contractor in respect thereof and in respect of all claims, proceedings, damages, costs, charges and expenses in relation thereto.

**Waterborne
Traffic**

30. (4) Where the nature of the Works requires the use by the Contractor of waterborne transport the foregoing provisions of this Clause shall be construed as though "highway" included a lock, dock, sea wall, or other structure related to a waterway and "vehicle" included craft, and shall have effect accordingly. Nothing herein before contained shall exempt the Contractor or any of his Sub-contractors from complying with state laws regulating traffic on highways, bridges or waterways.

**Opportunities
for Other
Contractors**

31. The Contractor shall, in accordance with the requirements of the Engineer, afford reasonable opportunities for carrying out their work to any other contractors employed by the Employer and their workmen and to the workmen of the Employer and of any other duly constituted authorities who may be employed in the execution on or near the Site any work under any contract which the Employer may enter into in connection with or ancillary to the Works. If, however, the Contractor shall on the written request of the Engineer after consultation with the Employer, make available to any such other contractor, or to the Employer or any such authority, any roads or ways for the maintenance of which the Contractor is responsible, or permit the use by any such of the Contractor's scaffolding or other plant on the Site, or provide any

other service of whatsoever nature, the Employer shall pay to the Contractor in respect of such use or service such sum or sums as shall, in the opinion of the Engineer, be reasonable. Any differences or conflicts which may arise between the Contractor and others in regard to the respective work, will be referred to the Engineer who will use his best endeavors to resolve the situation and instruct the Contractor accordingly, subject to the provisions of Clause 2.(1) (Duties and Powers of the Engineer) hereof. Should the Engineer be unable to resolve the differences or conflict or lack the powers to enforce a solution upon the others concerned, he will refer the matter to the Employer who will take such actions as he deems appropriate and advise the Engineer to instruct the Contractor accordingly.

**Contractor to
Keep the Site
Clear**

32. The Contractor shall during the execution, completion and repair of the Works keep the Site free from obstruction and shall, at any time if directed by the Engineer, store or dispose of any Construction Plant and Equipment and surplus materials and clear away and remove from the Site any wreckage or rubbish or the Temporary Works no longer required.

**Clearance of
Site on
Completion**

33. On the completion of the Works, the Contractor shall, except as otherwise specifically provided, clear away and remove from the Site all Construction Plant and Equipment, the Temporary Works, surplus materials, wreckage and rubbish of every kind and shall reinstate and leave the whole of the Site and the Works clear and in a workmanlike condition to the satisfaction of the Engineer.

CONTRACTOR'S EMPLOYEES

**Engagement
of Employees**

34. (1) (a) The Contractor shall make his own arrangements for the engagement of all labour and supervisory staff, local or otherwise, in accordance with all laws, regulations, notices and decrees issued by the Government of Indonesia and, except insofar as the Contract otherwise provides, for the transport, housing, feeding and payment thereof. The Contractor shall not recruit or attempt to recruit persons in

the service of the Employer or the Engineer.

- (b) The Contractor is encouraged to the extent practicable to use indigenous labour. The Contractor shall only import foreign technicians for the Works with the recommendation of the Engineer in writing which shall be granted by the Engineer only if in his opinion such importation is necessary and in accordance with the relevant laws and regulations of Indonesia. The Contractor shall be required to obtain the necessary working permits and visas for non-Indonesian employees employed by him or his Sub-contractors to work in Indonesia for the execution, completion and repair of the Works, in accordance with the relevant laws and regulations of Indonesia. The Employer will extend all possible assistance to the Contractor in obtaining the necessary working permits and visas.

**Repatriation
of Employees**

34. (2) The Contractor shall be responsible for the return to the place where they were recruited or to their normal place of residence of all such employees as he recruited and employed for the purposes of or in connection with the Contract and shall maintain such persons as are to be so returned in a suitable manner until they shall have left Indonesia or the Site, as the case may be.

**Living
Quarters of
Employees**

34. (3) (a) Except as may be otherwise specifically stated, the Contractor shall provide and maintain such housing accommodation and amenities, as he may consider necessary for all his employees employed for the purposes of or in connection with the Contract, including all fencing, water (both for drinking and other purposes), electricity, sanitations, cook-houses, fire prevention and fire-fighting equipment and other requirements in connection with such accommodation or amenities.

- (b) The Contractor shall supply clean potable water for the workers at each work site. For this purpose, water shall be analyzed by the Contractor for potability whenever requested by the Engineer. The Contractor shall provide on

the Site, after consultation with the Engineer, fixed or portable toilets for the use of the Contractor's staff and work people.

- (c) After the Works are completed, the Contractor shall dismantle the housing accommodation and related appurtenances located at the Site and restore the Site to its original state in so far as it is reasonably possible, unless the Contract provides that such housing will not necessarily be dismantled but will be the property of the Employer.

**Safety and
Accident
Prevention**

34. (4) The Contractor shall in regard to safety provisions, furnish and cause to be used such additional safeguards, safety devices and protective equipment as the Engineer or any competent authority may determine to be reasonably necessary to protect the life and health of employees of the Contractor or his Sub-contractors. Nothing in this Clause shall be construed to relieve the Contractor from compliance with applicable local safety, health and sanitation laws or ordinances.

Health

34. (5) The Contractor shall, in collaboration with and to the requirements of any duly constituted medical or sanitary authority, ensure that suitable arrangements are made on the Site for the maintenance of health, the prevention and overcoming of epidemics and for adequate first aid, welfare and hygiene services. Such first aid services shall be provided to the Employer and the Engineer, at no cost, for their employees at the Site.

**Festivals and
Religious
Customs**

34. (6) The Contractor shall, in all dealings with persons in his employment have due regard to all recognized festivals, days of rest and religious or other customs in accordance with the calendar issued by the Government of or observed in the Republic of Indonesia. He shall make special arrangements with the approval of the Engineer, whenever the exigencies of the construction programme demand that work shall proceed during such festivals and days of rest.

**Alcoholic
Liquor or
Drugs**

34. (7) The Contractor shall not, in accordance with the Statutes, Ordinances and Regulations or Orders import, sell, give, barter or otherwise dispose of any alcoholic liquor, or drugs, or permit or suffer any such importation, sale, gift, barter or disposal by his Sub-contractors, agents or employees. The Contractor's personnel are also prohibited from drinking or using such things during working hours.

**Arms and
Ammunition**

34. (8) The Contractor shall not, in accordance with the Statutes, Ordinances and other official regulations or orders, give, use, barter or otherwise dispose of to any person or persons, any arms or ammunition of any kind or permit or suffer the same as aforesaid.

**Disorderly
Conduct, etc.**

34. (9) The Contractor shall, at all times, take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst his employees and for the preservation of peace and protection of persons and property in the neighbourhood of the Works. The Contractor shall establish contact and cooperation with local law and order Authorities.

**Observance
by Sub-
contractors**

34. (10) The Contractor shall be responsible for the observance by his Sub-contractors of the foregoing provisions, which shall apply to all persons employed by his Sub-contractors, in connection with the Contract.

**Payrolls,
Wages and
Fees**

34. (11) (a) The time books, payroll records or records of similar nature of the Contractor and all Sub-contractors shall be open to the inspection of the Engineer at all times.
- (b) The wages of Indonesian labour shall be paid in Rupiah in cash.
- (c) No fee of any kind shall be asked or accepted by the Contractor or any of his agents from any person as a condition of employment on the Works.
- (d) Every employee on the Works shall be permitted to lodge,

board and trade where and with whom he elects and neither the Contractor nor his agents, nor his employees shall directly or indirectly require, as a condition of employment, that an employee shall board, lodge or trade at a particular place or with a particular person, except insofar as the nature of an employee's duties may necessitate his residence in accommodation to be provided by the Employer at a particular location on or adjacent to the Site.

- (e) No charge shall be made to any person employed on the Works for any transportation furnished by the Contractor or his agents.
- (f) No money earned by any employee of the Contractor shall be retained or withheld even with the consent of the employee, except as required by the laws of the Republic of Indonesia.
- (g) Before payment of any amount to the Contractor, the Contractor shall furnish to the Employer a statement that employees employed on the Works by the Contractor or by his Sub-contractors have been paid all wages due to them. The Employer has the right to request the Contractor to show evidence of such payments, and the Employer may withhold payment of any amount due or to become due to the Contractor if the Contractor or his Sub-contractors, without any reasonable cause, fails to pay or withholds any payment to his employees until such evidence has been supplied to the satisfaction of the Employer.

**Cost of
Facilities**

34. (12) Payment will not be made for the cost and maintenance of any of the facilities specified in this Clause, unless specifically included in the Bill of Quantities, but the cost thereof shall be deemed to be included in the various unit prices or items of the Contract.

- Reports on Employees and Construction Plant** 35. The Contractor shall, if required by the Engineer, deliver to the Engineer a report in detail and in such form and at such intervals as the Engineer may prescribe, showing the supervisory staff and the several classes of workmen in Indonesia from time to time employed by the Contractor in the performance of the Contract and such information respecting Construction Plant and Equipment as the Engineer may require.

MATERIALS AND WORKMANSHIP

- Quality of Materials and Workmanship and Tests** 36. (1) All materials and workmanship shall be of respective kinds described and specified in the Contract and in accordance with the Engineer's instructions and shall be subjected from time to time to such tests as the Engineer may direct at the place of manufacture or fabrication, or on the Site or at all or any of such places.

The Contractor shall provide such assistance, instruments, machines, labour and materials as are normally required for examining, measuring and testing any work and the quality, weight or quantity of any material used and shall supply, on his own initiative, samples of materials as may be selected and required by the Engineer for testing before incorporation in the Works.

- Cost of Samples** 36. (2) All samples shall be supplied by the Contractor at his own cost if the supply thereof is clearly intended by the Contract, but if not, then at the cost of the Employer.

- Cost of Tests** 36. (3) The cost of making any test shall be borne by the Contractor if such test is clearly intended by or provided for in the Contract and, in the case only of a test under load or of a test to ascertain whether the design of any finished or partially finished work is appropriate for the purposes which it was intended to fulfill, which is particularized in the Contract in sufficient detail to enable the Contractor to have priced or allowed for the same in his Tender.

**Cost of Tests
not Provided
for, etc.**

36. (4) If any test is ordered by the Engineer which is either:
- (a) not so intended by or provided for in the Contract, or
 - (b) is not so particularized, or
 - (c) though so intended or provided for is ordered by the Engineer to be carried out by an independent person at any place, other than the Site or the place of manufacture or fabrication of the materials tested,

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

**Access to
Site**

37. The Engineer and any person authorised by him shall at all times have access to the Works and to the Site and to all workshops and places where work is being prepared or materials manufactured, or articles or machinery are being obtained for the Works.

The Contractor shall afford every facility for and every assistance in obtaining the right to such access.

**Examination
of Work
before
Covering up**

38. (1) No work shall be covered up or put out of view without the approval of the Engineer. The Contractor shall afford full opportunity for the Engineer to examine and measure any work which is about to be covered up or put out of view and to examine foundations before Permanent Work is placed thereon.

The Contractor shall give due notice to the Engineer whenever any such work or foundations is or are ready or about to be ready for examination and the Engineer shall without unreasonable delay, unless he considers it unnecessary and advises the Contractor accordingly, attend for the purpose of examining such foundations.

If, however, the Contractor should cover up any work without

complying with the above, the Engineer may, at his option, require the work to be opened up for examination and the Contractor shall have no recourse for compensation.

**Uncovering
and Making
Openings**

38. (2) The Contractor shall uncover any part or parts of the Works or make opening in or through the same as the Engineer may from time to time direct and shall reinstate and make good such part or parts in accordance with the Contract and/or accepted by the Engineer. If any such part or parts have been covered up or put out of view after compliance with the requirements of sub-clause (1) of this Clause and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating and making good the same shall be borne by the Employer. In case that the work is found not to be executed in accordance with the Contract all such expenses shall be borne by the Contractor.

**Removal of
Improper
Work and
Materials**

39. (1) The Engineer shall during the progress of the Works have power to order in writing from time to time:
- (a) the removal from the Site, within such time or times as may be specified in the order, of any materials which in the opinion of the Engineer are not in accordance with the Contract,
 - (b) the substitution of proper and suitable materials, and
 - (c) the removal and proper re-execution, notwithstanding any previous test thereof, or interim payment thereof, of any work or portion thereof which in respect of materials or workmanship is not, in the opinion of the Engineer, in accordance with Contract.

If any final tests prove or indicate the existence of any fault or defect in the Work or any part thereof the Engineer shall give the Contractor notice stating particulars of such fault or defect and the Contractor shall at his own expense forthwith re-execute or replace the defective or faulty work or alter the same to make it

comply with the requirements of the Contract.

**Default of
Contractor in
Compliance**

39. (2) In case of default on the part of the Contractor in carrying out such order, the Employer shall be entitled to employ other persons to carry out the same. All expenses consequent thereon or incidental thereto shall be recoverable from the Contractor and the Employer may withhold the payment of any monies due or which may become due to the Contractor, if the Contractor should fail to incur such expenses.

**Suspension
of Work**

40. (1) The Contractor shall on the written order of the Engineer, hereinafter referred to as a "Suspension Order", suspend the progress of the Works or any part thereof for such time or times and in such manner as the Engineer may consider necessary and shall during such suspension properly protect and secure the work, so far as is necessary in the opinion of the Engineer.

The extra cost including all wages to be paid on the Site, salaries, depreciation and maintenance of the Construction Plant and Equipment, on-site costs and general overhead costs of the Contract incurred by the Contractor in giving effect to the Engineer's instructions under this Clause shall be borne and paid by the Employer unless such suspension is:

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

Provided that the Contractor shall not be entitled to recover any such extra cost unless he gives notice in writing of his intention to claim to the Engineer within thirty (30) days of the Suspension Order.

The Engineer shall settle and determine such extra payment and/or

extension of time under Clause 44 (Extension of Time for Completion) hereof and subject to the provisions of Clause 2.(1) (Duties and Powers of the Engineer) hereof, to be made to the Contractor in respect of such claim as shall, in the opinion of the Engineer, be fair and reasonable.

**Suspension
Lasting
more than
90 days**

40. (2) If on any Suspension Order, the progress of the Works or any part thereof shall be suspended for a period of more than ninety (90) days, or if the Engineer having previously issued a Suspension Order for a period which has lasted less than ninety (90) days, shall within less than ninety (90) days from the expiration of that period of suspension, issue a further Suspension Order, so that the periods of suspension amount in all to more than ninety (90) days, then, unless such suspension is within paragraph (a), (b), or (c) of sub-clause (1) of this Clause, the Contractor may serve a written notice on the Engineer requiring permission within twenty eight (28) days from the receipt thereof, to proceed with the Works or that part thereof, in regard to which progress is suspended. If such permission is not granted within that time, the Contractor by a further written notice may elect to treat the suspension where it affects only part of the Works as an omission under the Clause 51.(1) (Variations) hereof, or where it affects the whole Works as an abandonment of the Contract by the Employer pursuant to Clause 69 (Default of Employer) hereof.

COMMENCEMENT TIME AND DELAYS

**Commence-
ment of
Works**

41. (1) The Contractor shall commence the Works on Site within the period named in Part II-Special Conditions of Contract in Clause 41. (1) (Commencement of Works) thereof after the receipt by him of Notice to Proceed in writing from the Engineer, which will be issued only after the Contract Agreement has been signed and become effective. The Contractor shall acknowledge its receipt by signing and returning the attached receipt. This receipt will be part of the Contract. The Contractor shall proceed without delay, except as may be expressly sanctioned or ordered by the Engineer or be wholly beyond the Contractor's control.

Notice to Proceed not Issued

41. (2) In the event that the Notice to Proceed is not issued to the Contractor within sixty (60) days after signing of the Contract, or ninety (90) days after receipt by the Contractor of the Letter of Acceptance, or within any other period mutually agreed upon by the Employer and the Contractor, the Contract may become null and void at the discretion of the Contractor, and the Contractor shall be entitled to reimbursement by the Employer of reasonable actual expenses incurred by him in the preparation only of the Contract Documents including the provision of the Performance Security and work programme as specified in Clause 14.(1) (Programme to be Furnished) hereof, from the date of issue of the Letter of Acceptance to the date the Contract becomes null and void.

Contractor's Site Office

41. (3) Within two (2) months from the date of the Engineer's Notice to Proceed, the Contractor shall establish at or in an approved location adjacent to the Site an office duly equipped to accommodate his managerial personnel. The Site office shall be the legal address of the Contractor for the purpose of Clause 15.(1) (Contractor's Superintendence) hereof.

As soon as possible the Contractor shall report to the relevant authorities on the establishment of the office. The Contractor shall maintain this office throughout the execution and completion of the whole of the Works and for such portion of the Defects Liability Period as the Engineer shall approve.

All correspondence sent to this office shall be deemed to have been sent to the Contractor's Head Office, but without prejudice to Clause 68.(1) (Service of Notices on Contractor) hereof. The location of this office will be deemed to be part of the Site as provided for in Clause 1. (1) (e) (iv) (Definitions) hereof.

Possession of Site

42. (1) The Employer will, with the Engineer's written Notice to Proceed, give to the Contractor possession of so much of the Site as may be required to enable the Contractor to commence and proceed with the execution of the Works in accordance with the programme

referred to in Clause 14.(1)(Programme to be Furnished) hereof, and otherwise in accordance with such reasonable proposals of the Contractor, as he shall give by notice in writing to the Engineer.

The Employer will from time to time as the Works proceed, give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to proceed with the execution of the Works with due despatch in accordance with the said programme or proposals. Possession of the Site will be given subject to the provisions of Clause 31. (Opportunities for Other Contractors) hereof and such other provisions, if any, as may be specified in the Contract.

As soon as possible after the granting to the Contractor of possession of the Site or of any part thereof, the Contractor and the Engineer shall conduct a mutual check to ascertain that the Site and the features thereof are in agreement with the details provided in the Specification and on the Drawings. Such mutual check shall wherever practicable be combined with the surveys of existing ground levels and features referred to in Clause 56.(3) (Surveys) hereof.

If the Contractor suffers delay from failure on the part of the Employer to give possession in accordance with the terms of this Clause, the Employer shall grant an extension of time for the completion of the Works subject to the provisions of Clause 2.(1) (Duties and Powers of the Engineer) hereof.

Wayleaves,
etc.

42. (2) The Contractor shall bear all costs for any special or temporary wayleaves, rights of way and licenses, required by him in connection with access to the Site, in addition to those which are specifically mentioned in the Contract or shown on the Drawings. The Contractor shall also provide at his own cost any additional accommodation outside the Site required by him for the purposes of the Works.

Time for
Completion

43. Subject to any requirement in the Contract as to completion of any portion or portions of the Works before completion of the whole, 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, or such extended time as may be allowed under Clause 44 (Extension of Time for Completion) hereof.

**Extension
of Time for
Completion**

44. Should the amount of extra additional works of any kind, or any cause of delay referred to in these Conditions, or exceptional adverse climatic conditions, or other special circumstances of any kind whatsoever, other than through a default of the Contractor, be such as fairly to entitle the Contractor to an extension of time for the completion of the Works, the Engineer will notify the Employer and the Employer shall determine the amount of such extension and notify the Contractor accordingly.

Provided that the Employer shall not take into account any extra or additional work or other special circumstances unless the Contractor has within twenty eight (28) days after such work has been commenced, or such circumstances have arisen, or as soon thereafter as is practicable, submitted to the Engineer full and detailed particulars of any extension of time to which he may consider himself entitled in order that such submission may be investigated at the time.

**No Night or
Sunday Work**

45. Subject to any provision to the contrary contained in the Contract, none of the Permanent Works shall, except as hereinafter provided, be carried on during the night or on Sundays or official holidays, without the permission in writing of the Engineer except when the work is unavoidable or absolutely necessary for the saving of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer. Provided that this Clause shall not be applicable to work which is customarily carried out by rotary or double shifts.

**Rate of
Progress**

46. If for any reason, which does not entitle the Contractor to an extension of time, the rate of progress of the Works or any section is at any time in the opinion of the Engineer, too slow to ensure completion by the prescribed time or extended time for completion, subject to the provisions of Clause 2.(1) (Duties and Powers of the Engineer) hereof,

the Engineer shall so notify the Contractor in writing.

The Contractor shall thereupon take such steps as are necessary and the Engineer may approve to expedite progress so as to complete the Works or such section by the prescribed time or extended time. The Contractor shall not be entitled to any additional payment for taking such steps.

If, as a result of any notice given by the Engineer under this Clause, the Contractor shall seek the Engineer's permission to do any work at night or on Sundays, or official holidays, such permission shall not be unreasonably refused. Provided that, if the Engineer gives his permission for the Contractor to do any work at night or on Sunday or official holiday, the Contractor shall be liable for all extra costs in staffing for supervision of the Works incurred by the Engineer at a mutually agreed rate.

**Liquidated
Damages for
Delay**

47. (1) (a) If the Contractor shall fail to complete the Works within the time prescribed in the Contract, or extended time, then the Contractor shall pay to the Employer the sum stated in Part II-Special Conditions of Contract in Clause 47. (1) (a) (Liquidated Damages for Delay) thereof as liquidated damages for such default, and not as a penalty, for every day or part of a day which shall elapse between the time prescribed in the Contract or extended time as the case may be, and the date of completion of the Works.

The Employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies in his hands due or which may become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the Contract.

(b) If the total calculated amount of liquidated damages relating to the actual delays in completing the Works exceeds the specified maximum liquidated damages in Part II-Special Conditions of Contract in Clause 47.(1)(b) (Maximum

Amount of Liquidated Damages) thereof and the Engineer considers that despite previous warnings the Works cannot be completed by the Contractor within a reasonable time, the Employer may invoke Clause 63.(1) (Termination on Default of Contractor).

If however, the Employer allows the Contractor to complete the Works, then no other liquidated damages will be paid in addition to the maximum liquidated damages already paid by the Contractor.

**Reduction of
Liquidated
Damages**

47. (2) (a) If, before the completion of the whole of the Works any part or section of the Works has been certified by the Engineer as completed pursuant to Clause 48.(2) (Certification of Completion by Stages) hereof, and a Certificate of Completion issued to cover such portion of the Works, the liquidated damages for delay shall, for any period of delay after such certification, be reduced in the proportion which the value of the part so certified bears to the value of the whole of the Works.
- (b) If the Works have been substantially completed as described in Clause 48.(1) (Certification of Completion of Works) hereof and if after such certification any outstanding works are completed beyond the date ascertained from the Time for Completion or extended time, then the liquidated damages for delay of such outstanding works shall, for any period of delay, be reduced in the proportion which the value of the outstanding works bears to the value of the whole of the Works.

**Certification
of Completion
of Works**

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, the Contractor may give a notice to that effect to the Engineer accompanied by an undertaking to finish any outstanding work. Such notice and undertaking shall be in writing and shall be

deemed to be a request by the Contractor for the Engineer to issue a Certificate of Completion in respect of the Works. The Engineer shall, within twenty-one (21) days of the date of delivery of such notice either:

- (a) issue to the Contractor, with a copy to the Employer, a Certificate of Completion stating the date on which, in his opinion, the Works were substantially completed in accordance with the Contract, or
- (b) give instructions in writing to the Contractor specifying all the work which, in the Engineer's opinion, is required to be done by the Contractor before the issue of such Certificate.

The Engineer shall also notify the Contractor of any defects in the Works affecting substantial completion that may appear after such instructions and before completion of the works specified therein.

The Contractor shall be entitled to receive such Certificate of Completion, within twenty-one (21) days of completion, subject to acceptance by the Engineer, of the works so specified and remedying any defect so notified.

The Works or any part thereof shall not be deemed substantially completed until in the opinion of the Engineer they can be put to use by the Employer for the purpose for which they were constructed and without interruption by the Contractor completing outstanding works.

**Certification
of Completion
by Stages**

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, the Contractor may request and the Engineer shall issue a Certificate of Completion for :

- (a) any section of the Permanent Works in respect of which a separate time for completion is provided in the Contract,

and

- (b) any substantial part of the Permanent Works which has been both completed and accepted by the Engineer whether occupied or used, or not by the Employer.

**Substantial
Completion of
Parts**

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 shall have satisfactorily passed any final test that may be prescribed by the Contract, the Engineer may issue a Certificate of Completion accompanied by a defects list for that part of the Permanent Works before completion of the whole of the Works. Upon the issue of such Certificate, the Contractor shall be deemed to have undertaken to complete any outstanding work and to remedy any defect in that part of the Works during the Defects Liability Period. Provided that a Certificate of Completion given for any section or part of the Permanent Works before completion of the whole of the Works, shall not be deemed to certify completion of any ground or surfaces requiring reinstatement, unless such Certificate shall expressly so state.

**As-built
Drawings**

48. (4) A Certificate of Completion will not be issued for any part or section of the Permanent Works until the Contractor has supplied, in accordance with the Specification, "as-built" drawings of those parts of the Works to which the Certificate relates and those drawings have been approved by the Engineer, 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 expression "Defects Liability Period" shall mean the defects liability period named in Part II- Special Conditions of Contract in Clause 49.(1) (Defects Liability Period) thereof calculated from the date of completion of the Works, certified by the Engineer in accordance with Clause 48.(1) (Certification of

Completion of Works) hereof, or, in the event of more than one certificate having been issued by the Engineer under the said Clause, from the respective dates so certified.

Execution of Work of Repair, etc. 49. (2) After the expiration of the Defects Liability Period the Works shall be delivered up to the Employer in the condition required by the Contract, fair wear and tear excepted, to the satisfaction of the Engineer. The Contractor shall execute all such work of repair, amendment, reconstruction, rectification and making good of defects, imperfections, shrinkages or other faults as may be required in writing by the Engineer during the Defects Liability Period or within fourteen (14) days after its expiration or such extended time as approved by the Engineer, as a result of an inspection made by or on behalf of the Engineer prior to its expiration.

Cost of Execution of Work of Repair, etc. 49. (3) All such work shall be carried out by the Contractor at his own expense if the necessity thereof shall, in the opinion of the Engineer, be due to the use of materials or workmanship not in accordance with the Contract, or to neglect or failure on the part of the Contractor to comply with any obligation, expressed or implied, under the Contract. If in the opinion of the Engineer, such necessity shall be due to any other cause, the value of such work shall be ascertained and paid for as if it were additional work.

Remedy on Contractor's Failure to Perform Work Required 49. (4) If the Contractor shall fail to perform any work required by the Engineer under sub-clause (2) of this Clause, the Employer shall be entitled to employ other persons to carry out such work. All expenses consequent thereon or incidental thereto shall be born by the Contractor, the Employer may withhold the payment of any monies due or which may be due to the Contractor, until the Contractor fulfills his obligation to pay such expenses.

Contractor to Search 50. The Contractor shall, if required by the Engineer in writing, search for the cause or existence of any defect, imperfection or fault under the directions of the Engineer. Unless such defect, imperfection or fault shall be the Contractor's liability under the Contract, the cost of the work

carried out by the Contractor in searching shall be borne by the Employer. If such defect, imperfection or fault shall be the Contractor's liability, the cost of the work carried out in searching as aforesaid shall be borne by the Contractor and he shall in such case repair, rectify and make good such defect, imperfection or fault at his own expense in accordance with the provisions of Clause 49.(1) (Definition of Defects Liability Period) hereof.

ALTERATIONS, ADDITIONS AND OMISSIONS

Variations 51. (1) Within the limitations imposed by Clause 2 (Engineer and Engineer's Representative), the Engineer will make any variation of the form, quality or quantity of the Permanent Works or any part thereof that may, in his opinion, be necessary or desirable, and shall have power to order the Contractor to do and the Contractor shall do any of the following:

- (a) increase or decrease the quantity of any work included in the Contract,
- (b) omit any such work (but not if the omitted work is to be carried out by the Employer or by another contractor),
- (c) change the character or quality or kind of any such work,
- (d) change the levels, lines, positions and dimensions of any part of the Works,
- (e) execute additional work of any kind necessary for the completion of the Works, and
- (f) change any specified sequence or timing of construction of any part of the Works.

No such variation shall in any way vitiate or invalidate the Contract but the value, if any, of all such variations shall be taken into account in ascertaining the amount of the Contract Price. Provided that where the issue of an instruction to vary the Works

is necessitated by some default of or breach of Contract by the Contractor or for which he is responsible, any additional cost attributable to such default shall be borne by the Contractor.

**Orders for
Variations
to be
in Writing**

51. (2) No variations shall be made by the Contractor without an order in writing from the Engineer. Provided that no order in writing shall be required for increase or decrease in the quantity of any work which is not the result of an order given under this Clause, but is the result of the quantities exceeding or being less than those stated in the Bill of Quantities.

Provided also that if for any reason the Engineer shall consider it desirable to give any such order verbally, otherwise than in accordance with Clause 2.(3) (Emergency Power of the Engineer and the Engineer's Representative) hereof, with a statement in it that the Employer has given approval pursuant to Clause 2.(1) (Duties and Powers of the Engineer) hereof, the Contractor shall comply with such order in writing within the meaning of this Clause.

Provided further that if the Contractor shall within seven (7) calendar days confirm in writing to the Engineer and such confirmation shall not be contradicted in writing within fourteen (14) calendar days by the Engineer, it shall be deemed to be an order in writing by the Engineer.

**Valuation of
Variations**

52. (1) The Engineer shall determine the amount, if any, which in his opinion should be added to or deducted from the sum named in the Contract for any extra or additional work done or work omitted by his order subject to the provisions of Clause 2.(1) (Duties and Powers of the Engineer) hereof. All such work shall be valued at the rates set out in the Contract if in the opinion of the Engineer they are applicable. If the Contract shall not contain any rates applicable to the extra or additional work, then suitable prices shall be agreed upon between the Engineer and the Contractor, subject to the provisions of Clause 2.(1) (Duties and Powers of the Engineer) hereof. In the event of a disagreement, the Employer shall fix such prices as are in his opinion, reasonable and proper.

Until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on-account payments to be included in certificates issued in accordance with Clause 60. 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).

Power of the Engineer to fix Rates

52. (2) If in the opinion of the Engineer, the rate or price contained in the Contract for any item of the Works is rendered unreasonable or inapplicable because of any extra or additional work done or work omitted, then a suitable rate or price shall be agreed upon between the Engineer and the Contractor. No increase or decrease of the Contract Price under sub-clause (1) of this Clause or variation of rates or prices under sub-clause (2) of this Clause shall be made unless, as soon after the date of the order as is practicable and, in the case of extra or additional work, before the commencement of the Works or as soon thereafter as practicable, notice shall have been given in writing:

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

Variations Exceeding Ten percent

52. (3) If, on certified completion of the whole of the Works it shall be found that a reduction or increase greater than ten (10) percent of the sum named in the Letter of Acceptance, excluding all fixed sums, Provisional Sums, allowance for dayworks, the aggregate effect of all Variation Orders for which applicable rates or prices were not contained in the Contract, if any, results from:

- (a) the aggregate effect of all Variation Orders for which applicable rates or prices are contained in the Contract, and
- (b) all adjustments upon measurement of the estimated quantities set out in the Bill of Quantities, excluding all Provisional Sums, allowance for dayworks and adjustments

of price made under Clause 70. (1) (Increase or Decrease of Cost) hereof,

but not from any other cause, the amount of the Contract Price shall be adjusted by such sum as specified in Part II - Special Conditions of Contract in Clause 52.(3) thereof.

Daywork 52. (4) The Engineer may, if, in his opinion it is necessary or desirable, order in writing that any additional or substituted work shall be executed on a daywork basis. The maximum allowable value for daywork, together with the method of measurement and payment will be specified in Part II - Special Conditions of Contract in Clause 52.(4) (Daywork) thereof.

Claims 52. (5) The Contractor shall send to the Engineer once in every month, an account giving as full and detailed particulars as possible of all claims for any additional expense and of all extra or additional work ordered by the Engineer, which he has executed during the preceeding month and except as provided below no claim for any such work will be considered which has not been included in such particulars. If the Engineer shall agree with such claims, and after consultation with the Employer if so required under Clause 2.(1) (Duties and Powers of Engineer) hereof, he shall certify payment to be made for such expense or work.

Notwithstanding the Contractor's failure to comply with the above condition, if the Contractor has, within thirty (30) calendar days of commencement of the work, notified the Engineer in writing that he intends to make a claim for such expense and has submitted the entire claim in writing to the Engineer within ninety (90) calendar days of submission of notification of intent to claim, the Engineer shall consider such a claim and if he agrees shall authorize payment after consultation with the Employer as set out above.

Such claims shall be discussed between the Engineer and the Contractor in the subsequent monthly Site meetings.

Failure of the Contractor to submit the entire claim or the

notification of intent to claim in writing to the Engineer within the specified period shall constitute a waiver by the Contractor of the claim, provided that extended time for such submission shall be granted to the Contractor upon submission of a properly supported request therefor by the Contractor, unless the Engineer gives good reason why such extended time for submission should not be granted.

PLANT, TEMPORARY WORKS AND MATERIALS

**Plant, etc.
Exclusive
Use for
the Works**

53. (1) All Construction Plant and Equipment, Temporary Works and materials provided by the Contractor shall when brought on to the Site, be deemed to be exclusively intended for the construction and completion of the Works. The Contractor shall not remove the same or any part thereof, except to move it from one part of the Site to another, or return hired plant or equipment to its legal owner in case of failure to meet rental obligations, without the consent, in writing, of the Engineer, which shall not be unreasonably withheld.

The Contractor shall enter into formal written agreement with the Sub-contractors, Nominated Sub-contractors, or any persons from whom the Contractor may hire plant or equipment to ensure that all provisions of this Clause shall apply to all such plant or equipment regardless of ownership.

**Removal of
Plant, etc.**

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

**Employer not
Liable for
Damage to
Plant, etc.**

53. (3) The Employer shall not at any time be liable for the loss or damage to any of the Construction Plant and Equipment, Temporary Works or materials except as mentioned in Clause 20.(2) (Excepted Risks) and Clause 65.(1) (No Liability for Special Risks) hereof.

- Landing Charges** 53. (4) The Contractor shall bear all expenses in connection with the shipment and landing of any plant, materials or other things brought into or despatched from the Republic of Indonesia by him for the purpose of the Contract. The Employer will assist the Contractor, where required, in obtaining clearance through Customs of Construction Plant and Equipment, materials and other things required for the Works.
- Transfer of Goods, Equipments, etc.** 53. (5) The Contractor shall not, without the written permission of the Employer, sell, let or transfer any goods, equipment or other property designated for the Works.
- Re-export of Construction Plant and Equipment** 53. (6) In respect of any Construction Plant and Equipment which the Contractor shall have imported for the purpose of the Works, the Employer will assist the Contractor, where required, in processing any necessary Government consent to the re-export of such Construction Plant and Equipment by the Contractor upon the removal thereof as aforesaid.
- Approval of Materials, etc. not Implied** 54. The operation of Clause 53. (1) (Plant, etc. Exclusive Use for the Works) hereof shall not be deemed to imply any approval by the Engineer of the materials or other matters referred to therein nor shall it prevent the rejection of any such materials at any time by the Engineer.

MEASUREMENT

- Quantities** 55. The quantities set out in the Bill of Quantities are the estimated quantities of the works, but they are not to be taken as the actual and correct quantities of the works to be executed by the Contractor in fulfillment of his obligations under the Contract.
- Work to be Measured** 56. (1) The Engineer shall with the assistance of the Contractor ascertain and determine by measurement the value in terms of the Contract of work done in accordance with the Contract.
- Method of Measurement** 56. (2) For the purpose of ascertaining the amount of work done, the work shall be measured in accordance with the method of measurement set out or specified in the Contract, or, if for any part

of the Works no applicable method of measurement is set out in the Contract, such work shall be measured as directed by the Engineer.

- Surveys** 56. (3) Where necessary for the measurement of any part of the Works, the Contractor shall survey and the Engineer shall check any existing ground levels or features on the site of such work prior to execution of the work and shall make further surveys and checks as and when necessary during the course of the Works and on completion thereof.
- Measurement by Records** 56. (4) For the purpose of measuring such Permanent Works as is to be measured by records and drawings, the Contractor shall prepare records and drawings month by month of such work and shall submit the same to the Engineer, who shall examine such records within seven (7) calendar days and if he agrees shall sign the same as correct.
- Remeasurement** 56. (5) Notwithstanding the measurement of any work or any part thereof for the purpose of inclusion of such measurement in a monthly statement of account, the Engineer may direct that such work or part thereof be remeasured or the measurement recalculated at any time prior to the submission of the completion statement referred to in Clause 60.(7) (Completion Statement) hereof.
- Works to be Measured Net** 57. (1) Except as provided otherwise in the Contract, the Works shall be measured net to the lines and dimensions shown on the Drawings, including any instructions as to their interpretation or application or any further drawings issued in accordance with Clause 9.(1) (Further Drawings and Instructions) hereof or any drawings or instructions issued in connection with any variation ordered under Clause 51 (Variations) hereof.

Unless items are specifically provided in the Bill of Quantities, the Temporary Works and work beyond the limits shown on the Drawings shall not be measured. Incomplete works shall be measured to the extent executed from time to time for the purpose

of monthly statements of account. If work of lesser dimensions than described in the Specification or shown on the Drawings is acceptable to the Engineer, such variation shall be accepted as if so ordered under Clause 51 (Variations) hereof.

- Procedures for Measurement** 57. (2) The methods, procedures and equipment employed for measuring the Works shall be approved by the Engineer.
- Personnel, etc. for Measurement** 57. (3) The Contractor shall furnish all personnel, equipment and material required to make such surveys and measurements as are necessary to determine the quantities of work performed or in place.
- Check by the Engineer** 57. (4) All such surveys and measurements shall be subject to check and verification by the Engineer. The Contractor shall notify the Engineer in writing not less than twenty-four (24) hours beforehand of the approximate time he proposes to make such measurements, and viceversa for the purpose of Clause 56.(1) (Work to be Measured) hereof.
- Field Notes and Other Records** 57. (5) All original field notes and other records taken and computations made by the Contractor for the purpose of surveys and quantity surveys for monthly statements of account shall be furnished to the Engineer as provided for in Clause 60.(5) (Monthly Statement of Account) and shall become the property of the Employer and shall be used to the extent necessary in determining payments due to the Contractor under the Contract.
- Units of Measurement** 57. (6) Except as otherwise provided for in the method of measurement set out in the Contract or described in the Bill of Quantities, the units of measurement shall be as provided for in Clause 6.(1) (Language and Units of Measurement) hereof.
- Cost of Measurement** 57. (7) The cost of measurement and the provision of all personnel, equipment and materials therefor shall be deemed to be included in the Contractor's prices for the Works, except where otherwise specifically described in the Contract.

**Progress
Records**

57. (8) If the Contract so specifies, the Contractor shall submit progress photos and movies and other records of the progress of the Works to the Engineer in the manner and at the frequency specified under Clause G4.4 Vol. III, Specifications, Part I - General Specifications. Unless an item is included in the Bill of Quantities to cover the cost of such photographs, movies and records, the cost thereof shall be deemed to be included in the Contractor's prices and no separate payment shall be made therefor.

PROVISIONAL SUMS

**Definition of
"Provisional
Sum"**

58. (1) "Provisional Sum" means a sum included in the Contract and so designated in the Bill of Quantities for the execution of a certain work or the supply of goods, materials, or services, which sum may be used, in whole or in part, or not at all, at the direction of the Engineer after consultation with the Employer.

The Contract Price shall include only such amounts in respect of the work, supply or services to which such Provisional Sums relate as the Engineer shall approve or determine in accordance with this Clause.

**Use of
Provisional
Sums**

58. (2) In respect of every Provisional Sum the Engineer shall have power to order:
- (a) work to be executed, including goods, materials or services to be supplied by the Contractor or his Sub-contractors. The Contract Price shall include the value of such work executed or such goods, materials or services supplied determined in accordance with Clause 52.(1) (Valuation of Variations) hereof;
 - (b) work to be executed or goods, materials or services to be supplied by a Nominated Sub-contractor as hereinafter defined. The sum to be paid to the Contractor therefor shall be paid in accordance with Clause 59.(4) (Payments to Nominated Sub-contractors) hereof.

**Production
of
Vouchers, etc.**

58. (3) The Contractor shall, when required by the Engineer, produce all quotations, invoices, vouchers and accounts or receipts in connection with expenditure for the Provisional Sum items.

NOMINATED SUB-CONTRACTORS

**Nominated
Sub-contractors**

59. (1) All specialists, merchants, tradesmen and others executing any work or supplying any goods, materials or services for which Provisional Sums are included in the Contract, who are nominated or selected by the Employer or the Contractor with prior approval by the Employer, and all persons to whom the Contractor is required to sublet any work or enter into a contract for the supply of goods or materials or services, shall be deemed to be Sub-contractors employed by the Contractor for such purpose and are hereinafter referred to as "Nominated Sub-contractors".

**Employment
of Nominated
Sub-contractors**

59. (2) The Contractor shall not be required by the Employer or the Engineer, or be deemed to be under any obligation to employ any Nominated Sub-contractor, against whom the Contractor may raise reasonable objection or who shall decline to enter into a sub-contract with the Contractor containing provisions :

- (a) that in respect of the work, goods, materials or services which are the subject of the sub-contract, the Nominated Sub-contractor will undertake towards the Contractor the same obligations and liabilities as are imposed upon the Contractor towards the Employer by the terms of the Contract and will save harmless and indemnify the Contractor from and against the same and from all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection therewith or arising out of or in connection with any failure to perform such obligations or to fulfill such liabilities, and
- (b) that the Nominated Sub-contractor will save harmless and indemnify the Contractor from and against any negligence by the Nominated Sub-contractor, his agents, workmen and

servants, and from and against any misuse by him or them of any Construction Plant and Equipment or Temporary Works provided by the Contractor for the purposes of the Contract, and from all claims as aforesaid.

**Design
Requirement
to be
Expressly
Stated**

59. (3) If in connection with any Provisional Sum the services to be provided include any matter or design or specification of any part of the Permanent Works or of any equipment or plant to be incorporated therein, such requirement shall be expressly stated in the Contract and shall be included in any Nominated Sub-contract. The Nominated Sub-contract shall specify that the Nominated Sub-contractor providing such services will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with any failure to perform such obligations and/or to fulfill such liabilities.

**Payments
to Nominated
Sub-contractors**

59. (4) For all work executed or goods, materials or services supplied by any Nominated Sub-contractor there shall be included in the Contract Price :
- (a) the actual price paid or due to be paid by the Contractor, on the direction of the Engineer, and in accordance with the Sub-contract,
 - (b) the sum, if any, entered in the Bill of Quantities for labour supplied by the Contractor in connection therewith, or if ordered by the Engineer pursuant to Clause 59.(2)(b) hereof, as may be determined in accordance with Clause 53 (Plant, Temporary Works and Materials) hereof,
 - (c) in respect of all other charges and profit, a sum being a percentage rate of the actual price paid or due to be paid calculated, where provision has been made in the Bill of Quantities for a rate to be set against the relevant Provisional Sum, at the rate inserted by the Contractor against that item or, where no such provision has been made, at the rate specified in Part II-Special Conditions of

Contract in Clause 59.(4) (c) thereof and repeated where provision for such is made in a special item provided in the Bill of Quantities for such purpose.

Certification of Payments to Nominated Sub-contractors

59. (5) Before issuing, under Clause 60 (Certificates and Payment) hereof, any certificate which includes any payment for work done or goods, materials or services supplied by any Nominated Sub-contractor, the Engineer shall be entitled to demand from the Contractor reasonable proof that all payments included in previous certificates for the work or goods, materials or services have been paid or discharged by the Contractor, in default whereof unless the Contractor shall:

- (a) inform the Engineer in writing that he has reasonable cause for withholding or refusing to make such payment, and
- (b) produce to the Engineer reasonable proof that he has so informed such Nominated Sub-contractor in writing,

the Employer shall be entitled to withhold any sums due to the Contractor in respect of such payments until the Contractor has paid all payments which the Contractor has failed to make to the Nominated Sub-contractor.

Assignment of Nominated Sub-contractor's Obligations

59. (6) If a Nominated Sub-contractor has undertaken for the Contractor any continuing obligation extending for a period exceeding that of the Defects Liability Period under the Contract, the Contractor shall at any time, after the expiration of the Defects Liability Period assign to the Employer, at the Employer's request and cost, the benefit of such obligation for the unexpired duration thereof.

CERTIFICATES AND PAYMENT

Contract Price 60. (1) The Contract Price shall be the sum named in the Letter of Acceptance subject to such additions thereto or deductions therefrom as may be made under the provisions of the Contract.

Currency

60. (2) Unless provided otherwise in the Contract the following provisions regarding currency will apply:

- (a) The currency(ies) in which payment will be made shall be the currency(ies) named in the Tender. Payments shall be made in foreign currency(ies) and/or in Rupiahs so named in the respective items in the Bill of Quantities or under any variation order issued under Clause 51.(Variations) hereof in respect of which payment is certified. If not otherwise specified payment in respect of Dayworks and Provisional Sums shall be in Rupiahs;
- (b) The currency(ies) for payment from Sureties under Security may be 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;
- (c) The currency for payment of liquidated damages shall be Rupiahs;
- (d) The benefits from policies for the Insurance of the Works as mentioned in Clause 21 (Insurance of Works, etc.) hereof, shall be payable as for payments from Sureties under Security, but from all other insurances shall be payable in Rupiahs.

**Advance
Payment**

60. (3) If an Advance Payment is payable by the Employer to the Contractor under the Contract, provisions for the making of such Advance Payment and for the repayment thereof shall be as set out in Part II-Special Conditions of Contract in Clause 60.(3)(Advance Payment) thereof and the maximum amount shall be as specified in Part II-Special Conditions of Contract in Clause 60.(3) (Advance Payment) thereof.

**Certification
by the
Engineer**

60. (4) All payments under the Contract shall be made against the invoices and statements of the Contractor duly certified, corrected (if necessary), and approved by the Engineer. Payment in respect of work done and services provided under the Contract during the execution of the Works and on completion thereof shall be made on the basis of the measurement and valuation of the work done under the Contract as determined under Clause 56 (Works to be Measured) hereof.

**Monthly
Statement of
Account**

60. (5) The Contractor shall submit once for every month unless otherwise specified in the Contract, to the Engineer, in such form and number of copies as the Engineer may prescribe, a statement of account of the Works, excluding Daywork, executed during the preceding month.

(a) The statement shall include:

- (i) the quantities of works and the amount thereof computed by unit prices as itemized in the Bill of Quantities or in any variation orders issued under Clause 51 (Variations) hereof carried out during the month, checked and approved by the Engineer as being in compliance with the Contract,
- (ii) amounts on account of the progress of lump-sum items, calculated as described in the Contract,
- (iii) evidence of any payment properly made by the Contractor to Nominated Sub-contractors,

The sum of amounts as stated in paragraphs (i) and (ii) above, if any, shall be the monthly total amount due to the Contractor.

(b) The monthly total amount due to the Contractor under paragraph (a) of this sub-clause, will be subject to the following deductions by the Employer:

- (i) repayment of the Advance Payment (if any), in the amount, time and manner as provided for in sub-clause (3) (Advance Payment) of this Clause,
- (ii) retention at the percentage of the monthly total amount due to the Contractor as stated in Part II - Special Conditions of Contract in Clause 60.(5) (b) (ii) thereof, hereinafter called the "retention money",
- (iii) other deductions as required by the Contract, if any,
- (iv) liquidated damages for delay of completion as stipulated in Clause 47.(1) (Liquidated Damages for Delay) hereof, if any.

If so provided for in the Bill of Quantities the net payment due under paragraphs (a) and (b) (i) to (iii) of this sub-clause shall be enhanced by the amount of Value Added Tax chargeable thereon.

- (c) Within twenty-eight (28) calendar days after receiving each statement of account, the Engineer will examine the statement and forward it to the Employer if approved, or return it to the Contractor for any adjustment or correction, if not approved. Any correction or adjustment made in the statement by the Contractor shall be resubmitted as necessary until it is approved by the Engineer.

**Monthly
Payment**

- 60. (6) The Engineer shall promptly issue a payment certificate in Rupiahs and foreign currency (ies), based on the examined and approved monthly statement described in sub-clause (5) of this Clause. Any payment certificate for Daywork as prescribed under Clauses 52.(4) and (5) (Daywork and Claims) hereof may be issued separately.

Payment shall be made after certification and approval by the Engineer within the time specified in Part II-Special Conditions of Contract in Clause 60. (6) thereof.

Provided that the Engineer shall not be bound to certify any payment under this Sub-clause if the net amount thereof, after all retentions and deductions, would be less than the Minimum Amount of Interim Certificates stated in Attachment-1 to the Contract Agreement-Summary of Specific Provisions.

**Completion
Statement**

60. (7) The completion statement shall be prepared by the Contractor in such form and number of copies as the Engineer may prescribe, and submitted to the Engineer within sixty (60) calendar days after the date of issue of the Certificate of Completion of the whole of the Works in accordance with Clause 48.(1) (Certification of Completion of Works) hereof.

The completion statement includes:

- (a) the Contract Price entered in the Contract,
- (b) a statement setting out the final valuation of the Works as measured in accordance with Clauses 56 and 57(Works to be Measured and Method of Measurement) hereof .

Such statement shall set out the final quantities and the value thereof in their respective currencies for each item in the Bill of Quantities, and all additions or amendments covered by variation orders issued under Clause 51. (1) (Variations) hereof and valued under Clause 52.(1) and (2) (Valuation of Variations) hereof and Daywork certified under Clause 52.(4) (Daywork) hereof, including expended Provisional Sums (or parts thereof);

- (c) a statement setting out the net algebraic effect of adjustments to the total in paragraph (b) above arising from:
 - (i) deductions for the total valuation of liquidated damages, if any, payable under Clause 47 (Liquidated Damages for Delay) hereof;

- (ii) additions or deductions arising from increase or decrease of cost under Clause 70.(1) (Increase or Decrease of Cost) hereof and addition or deduction due to Clause 52.(3) (Variations Exceeding ten percent) hereof, if applicable;
- (iii) additional payments or deductions certified by the Engineer arising from claims agreed or payments due under the Contract and not accounted for elsewhere under paragraphs (b) and (c) (i) and (ii) hereof.
- (d) any subsequent adjustment arising from payments agreed in respect of claims outstanding at the time of preparation of the completion statement or arising prior to the issue of the Certificate of Satisfaction.

The total of the final valuation as in (b) above and the net effect of adjustments as in (c) and (d) above after enhancement for Value Added Tax shall be the final Contract Price.

**Balance of
Completion
Statement**

60. (8) The balance of the Completion Statement shall be:
- (i) the final Contract Price as specified in Sub-clause 60. (7) above,
 - (ii) less all Advances paid under Sub-clause 60. (3) above,
 - (iii) less half of total retention money as specified in sub-clause (5) (b) (ii) above, unless otherwise provided for in Part-II Special Conditions of Contract in Clause 60.(8) (iii) thereof,
 - (iv) less the net total of payments, including Value Added Tax, made under monthly statements of account valued and certified under Sub-clauses 60. (5) and 60. (6) hereof. The statement shall be accompanied by a table listing each monthly payment showing separately the sums due and deductions therefrom under the respective heads set out in

paragraphs (a) and (b) of Sub-clause 60. (5) hereof,

(v) less payments for Daywork made under Clause 52.(4) hereof,

(vi) less all other payments, if any, made by the Employer to the Contractor.

**Payment of
Balance of
Completion
Statement**

60. (9) The balance of the completion statement due to the Contractor subject to any subsequent adjustment under Sub-clause 60. (12) hereof shall be examined and approved and payment shall be made in the same manner and within the same time limits as prescribed for the monthly statement of account if the Completion Statement is certified as correct by the Engineer in writing, subject to his satisfaction regarding execution of any works outstanding at the time of issue of the Certificate of Completion for the whole of the Works.

**Payment of
the Final Half
of the Retention
Money**

60. (10) The final half of the retention money shall be paid to the Contractor within the same time limit as prescribed for the monthly statement of account after the expiration of the Defects Liability Period, or if different Defects Liability Periods shall become applicable to different parts of the Works, the expiration of the latest such period. Provided that if at such time, there remain to be executed by the Contractor any works ordered during such period pursuant to Clauses 49 and 50 (Defects and Repair) hereof, the Engineer shall be entitled to notify the Employer to withhold payment, until the completion of such works, of that part of the final half of the retention money, representing the cost of works remaining to be executed. Provided further that outstanding deductions by the Employer, if any, shall be deducted from the final half of the retention money. Should the final half of retention money be insufficient to be deducted by the Employer, he shall have power to recover the deficiency by any means which he deems appropriate.

Correction and Withholding of Certificates 60. (11) The Engineer may, by any subsequent certificate, make any correction or modification of any previous certificate which shall have been issued by him, and shall have the power to withhold any certificate if the Works or any part thereof are not being carried out in accordance with the Contract. Notwithstanding anything in the Contract, the Engineer may notify the Employer to withhold the whole or any part of any amount due to the Contractor to protect the Employer from loss.

Payment of Adjustment of Balance of Completion Statement 60. (12) In the event of payments becoming due under Sub-clause 60. (7) hereof, the Contractor, at the expiration of the Defects Liability Period, shall submit to the Engineer an adjusted completion statement to include the amounts due under Sub-clause 60. (7) (d) hereof which shall be examined and approved by the Engineer and upon his certification thereof payment shall be made in the same manner and within the same time limits as prescribed for the monthly statement of account.

Approval only by Certificate of Satisfaction 61. No certificate, other than Certificate of Satisfaction referred to in Clause 62. (1) (Certificate of Satisfaction) hereof, shall be deemed to constitute approval of any work or other matter for which it is issued, or shall be taken as an admission of the due performance of the Contract or any part thereof, or of the accuracy of any claim or demand made by the Contractor, or of additional or varied work having been ordered by the Engineer, nor shall any other certificate supersede or prejudice any of the powers of the Engineer.

Certificate of Satisfaction 62. (1) The Contract shall not be considered as completed until a Certificate of Satisfaction is signed by the Engineer after consultation with the Employer and delivered to the Contractor with a copy to the Employer stating that the Works have been completed and repaired in accordance with the Contract. The Certificate of Satisfaction shall be given by the Engineer within twenty-eight (28) days after the expiration of the Defects Liability Period or if different Defects Liability Periods become applicable to different parts of the Works, the expiration of the latest such period, or as soon thereafter as any works ordered during such period, pursuant to Clauses 49 and 50 (Defects and Repair)

hereof, have been completed and accepted by the Engineer. Full effect shall be given to this Clause, notwithstanding any previous entry on the Works or the taking possession, working or using thereof or any part thereof by the Employer. Provided that the issuance of the Certificate of Satisfaction shall not be a condition precedent to payment to the Contractor of the final half of the retention money.

**Cessation of
Employer's
Liability**

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

**Unfulfilled
Obligations**

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

DEFAULT OF CONTRACTOR, REMEDIES AND POWERS

**Termination
on Default of
Contractor**

63. (1) If the Contractor:

- (a) shall become bankrupt, or have a receiving order made against him, or shall present his petition in bankruptcy, or
- (b) shall make an arrangement with or assignment in favour of his creditors, or
- (c) shall agree to carry out the Contract under a committee of inspection of his creditors, or
- (d) being a corporation, shall go into liquidation, other than a voluntary liquidation for the purposes of amalgamation or

reconstruction, or

- (e) without the consent in writing of the Employer shall assign the Contract, or
- (f) being a partnership, association, joint operation or joint venture shall change the membership thereof, or
- (g) shall have an execution levied on his goods, or
- (h) if the Engineer shall certify in writing to the Employer, that in his opinion the Contractor:
 - (i) has abandoned the Contract, or
 - (ii) without reasonable excuse has failed to commence the Works or has suspended the progress of the Works for thirty (30) days after receiving the Engineer's written Notice to Proceed, or
 - (iii) has failed to remove materials from the Site or to pull down and replace work for thirty (30) days after receiving the Engineer's written notice that the materials or work had been condemned and rejected by the Engineer under these conditions, or
 - (iv) despite previous warnings by the Engineer in writing is not executing the Works in accordance with the Contract or is persistently or flagrantly neglecting to carry out his obligations under the Contract, or
 - (v) despite previous warnings the Works can not be completed by the Contractor within a reasonable time, pursuant to Sub-clause 47. (1)(b) (Liquidated Damages for Delay), or
 - (vi) has to the detriment of good workmanship, or in defiance of the Engineer's instructions, sub-let any

part of the Contract, or

- (vii) has failed to satisfy the provisions as specified in Sub-clause 63. (1) (h) (vii) in Part II - Special Conditions of Contract, if any,

then the Employer may, irrespective of Clause 1266 of the Indonesian Civil Law (Kitab Undang-undang Hukum Perdata), terminate the Contract after giving fourteen (14) days notice in writing to the Contractor. Fourteen (14) days after such notice has been given, the Contract shall terminate and the Contractor shall with all reasonable despatch, remove from the Site:

- all Construction Plant and Equipment,
- unused or surplus materials and goods, including all materials and goods already disapproved by the Engineer; which should have been removed from the Site,
- all employees, staff and labour,

except as otherwise directed by the Employer in writing to the Contractor.

These stipulations shall also be applied to Sub-contractor's Construction Plant and Equipment, materials and goods, staff, employees and labour which are on the Site at the time of termination.

**Valuation at
Date of
Termination**

63. (2) The Engineer shall, as soon as practicable after such termination by the Employer, fix and determine "ex parte", or after reference to the parties, or after investigation or enquiries,
- (a) the value of all works executed and approved by the Engineer before the date of termination,

(b) the value of any works valued in Sub-clause 63. (2) (a), which have to be removed or rebuilt or reconstructed, whether directly or indirectly attributable to or consequent upon or the result of or in any way whatsoever connected with the termination of the Contract as invoked under Sub-clause 63. (1) of this Clause.

**Employer's
Act after
Contract
Terminated**

63. (3) If the Contract is terminated on the default of the Contractor as specified in this Clause, the Employer shall have the right to encash the Performance Security and the Advance Payment Security as specified in Clause 7.(4) (Advance Payment Security) hereof, to recover the whole or the remaining Advance Payment.

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.

**Failure to
Remove
Construction
Plant, etc,
from Site**

63. (4) If the Contractor shall fail or refuse or neglect to remove from the Site all Construction Plant and Equipment or part thereof, unused or surplus materials or goods, except that which will be used by the Employer and informed in writing by the Engineer to the Contractor as stipulated in sub-clause (1) hereof, the Employer shall be entitled to employ and pay a third party to carry out the same. All expenses consequent thereon or incidental thereto shall be deducted by the Employer from any monies due to the Contractor.

**Payment after
Contract
Terminated**

63. (5) If the Contract is terminated under this Clause, the Employer shall not be liable to pay to the Contractor any money on account of the Contract until all matters and/or obligations mentioned in the previous Sub-clauses in this Clause have been settled or fulfilled and the method of continuing or reconstructing the Works has been settled and a new Contract has been signed, then the Employer shall pay to the Contractor :

(a) all payments already certified and due to the Contractor,

- (b) the total retention money retained by the Employer,
- (c) all works valued in accordance with Sub-clause 63. (2) (a) reduced by the value of works valued in accordance with Sub-clause 63. (2) (b) of this Clause, and
- (d) additional payments relating to the escalation of prices, if any.

This payment shall be reduced by:

- (i) the total valuation of liquidated damages, if any, payable under Clause 47.(1) (Liquidated Damages for Delay) hereof, or the remaining liquidated damages under Clause 47.(2) (Reduction of Liquidated Damage), provided that if the termination occurs:
 - before the expiration of the Time for Completion of the Works or a part or section thereof, no liquidated damages shall be deducted.
 - before the expiration of the time specified for the maximum liquidated damages, the liquidated damages shall be calculated proportionally.
 - after the expiration of the time specified for the maximum liquidated damages, the liquidated damages shall be the maximum amount of liquidated damages.
- (ii) all expenses incurred by the Employer arising from the failure of the Contractor to fulfill his obligation under Sub-clause 63. (4) of this Clause.
- (iii) the negative escalation of prices, if any.
- (iv) other debt of the Contractor under the Contract.

**Prior Notice
before
Encashing
Security**

64. (1) The Employer shall not encash any Security furnished by the Contractor without having first given at least twenty eight (28) days written notice of his intention to the Contractor.

**Urgent
Repair**

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

SPECIAL RISKS

**No Liability
for Special
Risks**

65. (1) The Contractor shall be under no liability whatsoever in consequence of any of the special risks referred to in Sub-clause 65. (2) of this Clause, whether by way of indemnity or otherwise, for or in respect of:

- (a) destruction of or damage to the Works, except to work condemned under the provisions of Clause 39.(1) (Removal of Improper Work and Materials) prior to the occurrence of any of the said special risks, or
- (b) destruction of or damage to property, whether of the Employer or third parties, or
- (c) injury or loss of life.

Special Risks 65. (2) The special risks are:

- (a) (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
 - (ii) ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof,
 - (iii) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
 - (iv) riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his Sub-contractors and arising from the conduct of the Works,
- (b) rebellion, revolution, insurrection, or military or usurped power, or civil war, insofar as these relate to the Republic of Indonesia.

Damage to Works, etc., by Special Risks

65. (3) If the Works or any materials or other things intended to form or forming part of the Permanent Works, on or near or in transit to the Site, or any of the Construction Plant and Equipment used or intended to be used for the purposes of the Works, sustain destruction or damage by reason of any of the said special risks, the Contractor shall be entitled to payment in accordance with the Contract for any Permanent Works duly executed and for any materials or other things intended to form or forming part of the Permanent Works, so destroyed or damaged and, so far as may be required by the Engineer or as may be necessary for the completion of the Works, to payment for:

- (a) rectifying any such destruction or damage to the Works, and

(b) replacing or rectifying such materials or Construction Plant and Equipment

and the Engineer shall determine an addition to the Contract Price in accordance with Clause 52.(2) (Power of the Engineer to fix Rates) (which shall in the case of the cost of replacement of Construction Plant and Equipment include the fair market value thereof as determined by the Engineer) and shall notify the Contractor accordingly, with a copy to the Employer.

**Projectile,
Missile, etc.**

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

**Increased
Costs Arising
from
Special Risks**

65. (5) Except to the extent that the Contractor is entitled to payment under any other provision of the Contract, the Employer shall repay to the Contractor any cost of the execution of the Works, other than such as may be attributable to the cost of reconstructing work condemned under the provisions of Clause 39.(1) (Removal of Improper Work and Materials) prior to the occurrence of any special risk, which is howsoever attributable to or consequent on or the result of or in any way whatsoever connected with the said special risks, subject however to the provisions in this Clause hereinafter contained in regard to outbreak of war, but the Contractor shall, as soon as any such cost comes to his knowledge, forthwith notify the Engineer thereof. The Engineer shall, after due consultation with the Employer and the Contractor, determine the amount of the Contractor's costs in respect thereof which shall be added to the Contract Price and shall notify the Contractor accordingly, with a copy to the Employer.

**Outbreak of
War**

65. (6) If, during the currency of the Contract, there is an outbreak of war, whether war is declared or not, in any part of the world which, whether financially or otherwise, materially affects the execution of the Works, the Contractor shall, unless and until the Contract is terminated under the provisions of this Clause, continue to use his

best endeavors to complete the execution of the Works.

Provided that the Employer shall be entitled, at any time after such outbreak of war, to terminate the Contract by giving notice to the Contractor and, upon such notice being given, the Contract shall, except as to the rights of the parties under this Clause and to the operation of Clause 67 (Settlement of Disputes), terminate, but without prejudice to the rights of either party in respect of any antecedent breach thereof.

**Removal of
Construction
Plant and
Equipment
on Termination**

65. (7) If the Contract is terminated under the provisions of Sub-clause 65. (6) of this Clause, the Contractor shall, with all reasonable dispatch, remove from the Site all Construction Plant and Equipment and shall give similar facilities to his Sub-contractors to do so.

**Payment if
Contract
Terminated**

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

- (a) The amounts payable in respect of any preliminary items referred to in the Bill of Quantities, so far as the work or service comprised therein has been carried out or performed, and a proper proportion of any such items which have been partially carried out or performed.
- (b) The cost of materials, other things intended to form or forming part of the Permanent Works or goods reasonably ordered for the Works which have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery, such materials, other things intended to form or forming part of the Permanent Works or goods becoming the property of the Employer upon such payments being made by him.

- (c) A sum being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works insofar as such expenditure has not been covered by any other payments referred to in this sub-clause.
- (d) Any additional sum payable under the provisions of Sub-clauses (3) and (5) of this Clause.
- (e) Such proportion of the cost as may be reasonable, taking into account payments made or to be made for work executed, of removal of Construction Plant and Equipment under Sub-clause 65. (7) of this Clause and, if required by the Contractor, return thereof to the Contractor's main plant yard in his country of registration or to other destination, at no greater cost.
- (f) The reasonable cost of repatriation of all the Contractor's staff and workmen employed on or in connection with the Works at the time of such termination.

Provided that against any payment due from the Employer under this Sub-clause, the Employer shall be entitled to be credited with any outstanding balances due from the Contractor for advances in respect of the Construction Plant and Equipment, materials and other things intended to form or forming part of the Permanent Works and any other sums which, at the date of termination, were recoverable by the Employer from the Contractor under the terms of the Contract. Any sums payable under this sub-clause shall, after due consultation with the Employer and the Contractor, be determined by the Engineer who shall notify the Contractor accordingly, with a copy to the Employer.

RELEASE FROM PERFORMANCE

Payment in Event of Release from Performance

66. If any circumstance outside the control of both parties arises after the signing of the Contract which renders it impossible or unlawful for either party to fulfill further contractual obligations, or under the law governing the Contract the parties are released from further performance, then the sum payable by the Employer to the Contractor in respect of the works executed shall be the same as that which would have been payable under Clause 65 (Special Risks) if the Contract had been terminated under the provisions of Clause 65 hereof.

SETTLEMENT OF DISPUTES

Settlement of Disputes

67. Any dispute or difference of any kind between the Employer or the Engineer and the Contractor, arising out of or relating to the Contract or the execution of the Works (whether during the progress of the Works or after their completion and whether before or after the termination, abandonment or breach of the Contract), shall be settled by negotiation and mutual agreement.

If the Employer or the Engineer and the Contractor fail to reach agreement regarding the dispute or difference, or if the Employer does not approve an agreement between the Engineer and the Contractor relating to a matter for which approval of the Employer is required under the Contract, the dispute or difference shall be settled by the Engineer, subject to the provisions of Clause 2.(1) (Duties and Powers of the Engineer), or the Employer, who shall give written notice to the Contractor of his decision, within thirty (30) calendar days of the termination of the aforementioned negotiations between the parties. Such termination shall be deemed to have occurred upon receipt by the Contractor or the Employer, as the case may be, of a written notice to that effect from the other.

If the Engineer or the Employer, as the case may be, has given written notice of his decision to the Contractor and no claim to arbitration has been communicated to him by the Contractor within thirty (30) calendar

days from receipt of such notice, the said decision shall remain final and binding upon the Employer and Contractor and shall forthwith be given effect to by the Employer and by the Contractor who shall proceed with the Works with all due diligence whether or not he or the Employer requires arbitration as hereafter provided.

If the Engineer or the Employer, as the case may be, shall fail to give notice of his decision within the period of thirty (30) calendar days as aforesaid, or if the Contractor is dissatisfied with any such decision, then the Contractor may, within thirty (30) calendar days of receipt of such decision or (as the case may be) within ninety (90) calendar days of the termination of negotiations as aforesaid, if no decision has been notified, require that the matter or matters in dispute be referred to a board of arbitration, who will settle the dispute or difference under the following rules :

- (a) the arbitration, except as otherwise provided for in Part II - Special Conditions of Contract in Clause 67.(a), shall be governed by the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules ;
- (b) the place of arbitration, unless otherwise agreed, shall be Jakarta;
- (c) the language of the arbitration, unless otherwise agreed, shall be the language of the Contract;
- (d) the number of arbitrators shall be three (3).

The expenses for the arbitrator appointed by or for the Contractor will be for the account of the Contractor, and the expenses for the arbitrator appointed by or for the Employer will be for the account of the Employer. Expenses for the presiding arbitrator and other expenses incurred by the arbitration will be divided equally between the two (2) parties.

The decision of the board of arbitration shall be final and binding on the Employer and the Contractor. Provided that pending the final award of the arbitrators, the Contractor shall comply with the instructions of the

Engineer and proceed with due diligence in the manner directed by the Engineer.

Service of Notices on Contractor 68. (1) All certificates, notices or written orders to be given by the Employer or by the Engineer to the Contractor under the terms of the Contract shall be sent or delivered to the Contractor at the registered address of his Head Office as named in the Contract or such other address as the Contractor shall nominate for the purpose in Indonesia in accordance with Sub-clause 68. (3) hereof.

Service of Notices on Employer or Engineer 68. (2) All notices to be given to the Employer or the Engineer under the terms of the Contract, shall be sent or delivered to the respective addresses nominated for that purpose in the Contract Agreement.

Change of Address 68. (3) Either party may change a nominated address to another address in Indonesia by prior written notice to the other party.

DEFAULT OF EMPLOYER

Default of Employer 69. (1) If the Employer :

- (a) fails to pay to the Contractor the amount due under any certificate of the Engineer; or
- (b) interfering with or obstructing the issue of any such certificate without due reason;

the Contractor may give notice in writing to the Engineer of the default and if such default of the Employer is not remedied within a period of ninety (90) days after the giving of such notice the Contractor shall be entitled to seek the termination of Contract by reference to a board of arbitration as described in Clause 67 hereof.

Additional Payment for Loss and Damage 69. (2) In the event of an arbitration ruling in support of the Contractor's demand for the cancellation of the Contract, as a consequence of the Sub-clause 69. (1) herein, the Employer shall be under the same obligations to the Contractor in regard to payment as if the

Contract had been terminated under the provisions of Clause 65. (8) hereof, the Employer shall pay to the Contractor an amount of any loss or damage to the Contractor arising out of or in connection with or by consequence of such termination as may have been awarded by such arbitration.

**Removal of
Plant on
Termination**

69. (3) If the Contract shall be terminated under the provisions of Sub-clause 69. (1) herein, the Contractor shall, with all reasonable despatch, remove from the Site and the Works all of his Construction Plant and Equipment and shall give similar facilities for his Sub-contractors to do the same.

**Contractor's
Rights**

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

MISCELLANEOUS

**Increase or
Decrease of
Cost**

70. (1) Adjustment of the Contract Price on account of fluctuation in cost, if applicable, shall be made in accordance with the conditions set out in Part II- Special Conditions of Contract in Clause 70.(1) thereof.

**Subsequent
Legislation**

70. (2) If, after the date thirty (30) calendar days prior to the latest date for submission of tenders for the Works there occur changes to any Indonesian Statute, Ordinance, Decree or other Law or any regulation or bye-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation or bye-law which causes additional or reduced cost to the Contractor, other than under sub-clause (1) of this Clause, in the execution of the Works, such additional or reduced cost shall be certified by the Engineer after consultation with the Employer and shall be paid by or credited to the Employer and the Contract Price adjusted according to the Government regulation dealing with this matter.

**Law and
Regulations**

71. (1) The Contractor shall familiarize himself with the rules and regulations of the Republic of Indonesia with regard to customs, immigration, duties, taxes, clearing of goods, import and export of goods and commodities, manpower requirements for non-Indonesian personnel, importation, storage and use of explosives, detonators, fuses and any and all ancillary devices, and the like, and the Contractor shall follow the required procedures. The Employer will provide prompt and effective assistance wherever possible.

**Duties and
Taxes**

71. (2) Notwithstanding the above provisions, if the Employer refers to or summarizes any existing regulations with regard to duties and taxes in Part II - Special Conditions of Contract in Clause 71.(2) thereof, or elsewhere in the Contract or in any supplementary information issued with the Documents for Tendering such references or summaries shall be deemed to have been provided for information only without warranty on the part of the Employer.

The Contractor will be deemed to be aware of and to have provided for compliance with all existing Government regulations which are necessary to be considered or included for 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. Subject to such adjustment no reimbursement shall be due to the Contractor for any payment made by him for corporation or income tax on his company or personnel, or any other personal taxes or charges, or for customs duties, port charges, wharfage, bonded warehouse charges or the like on the importation or re-export of Construction Plant and Equipment, goods and materials, or for taxes on vehicles, goods or services, and the like, or for any other duties and taxes except as otherwise specifically stated in the Contract.

Visas

71. (3) The Employer will, upon request from the Contractor and recommendation of the Engineer, issue necessary statements

required by the Contractor to apply for entrance visas for approved non-Indonesian employees to be assigned by the Contractor for the Works on the Project.

Bribes

72. If the Contractor or any of his Sub-contractors, agents or employees shall offer or agree to offer or give to the Engineer or any employee of the Employer or the Engineer or any other person, any bribe, gift, gratuity or commission as an inducement or reward for doing or for bearing to do any action in relation to the Contract or any other Contract with the Employer, or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the Employer, then the Employer may terminate the Contract and the provisions of Clause 63 (Default of Contractor, Remedies and Powers) hereof, shall apply as if such termination had been made pursuant to that Clause.

Secrecy

73. The Contractor, his employees, agents and Sub-contractors shall not give to unauthorised persons any information, verbal or otherwise, about the Project and shall not allow unauthorised persons to inspect the Works, Drawings and Contract Documents without the written consent of the Employer.

Governing Law

74. This Contract shall in all respects be read and be construed and shall operate as an Indonesian Contract in conformity with the Law of the Republic of Indonesia. The Contractor shall be considered to be familiar with all laws and regulations of the Republic of Indonesia that in any manner may affect or apply to the operations and activities of the Contractor under the Contract, or in any connection therewith.

All terms and conditions stated in the documents forming the Contract, as specified in the Contract Agreement are binding and valid as special law for both parties to the Contract in accordance with Article No. 1338 (1) of the Civil Law. In consequence, in the event that either party shall fail to perform under the terms and conditions stated in the Contract, the provisions of Article 1266 of the Civil Law shall not be applicable. Any foreign Contractor who participates in whatever manner in this Contract consents to be sued in any court or tribunal or competent jurisdiction within the Republic of Indonesia on any question or matter arising from

the documents, award, and implementation of the Contract. For this purpose any officer, agent or representative of the said foreign Contractor present in the territory of the Republic of Indonesia is authorized to receive and process summons on behalf of the foreign Contractor notwithstanding any restriction or limitation imposed by the said foreign Contractor upon its officers, agents or representatives.

**Clauses
in Special
Conditions**

75. The Conditions of Contract contained in Part II - Special Conditions of Contract hereof are deemed to be additional Clauses and Sub-clauses to the Clauses of Part I- General Conditions of Contract and shall take precedence in interpreting or construing the Clauses in Part I- General Conditions of Contract.