

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

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

- (a) any Section in respect of which a separate Time for Completion is provided in the Appendix to Tender,
- (b) any substantial part of the Permanent Works which has been both completed to the satisfaction of the Engineer and, otherwise than as provided for in the Contract, occupied or used by the Employer, or
- (c) any part of the Permanent Works which the Employer has elected to occupy or use prior to completion (where such prior occupation or use is not provided for in the Contract or has not been agreed by the Contractor as a temporary measure).

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

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

### **Defects Liability**

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

- (a) the date of completion of the Works certified by the Engineer in accordance with Clause 48, or
- (b) in the event of more than one certificate having been issued by the Engineer under Clause 48, the respective dates so certified,

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

- Completion of Outstanding Work and Remedying Defects** 49.2 To the intent that the Works shall, at or as soon as practicable after the expiration of the Defects Liability Period, be delivered to the Employer in the condition required by the Contract, fair wear and tear excepted, to the satisfaction of the Engineer, the Contractor shall:
- (a) complete the work, if any, outstanding on the date stated in the Taking-Over Certificate as soon as practicable after such date, and
  - (b) execute all such work of amendment, reconstruction, and remedying defects, shrinkages or other faults as the Engineer may, during the Defects Liability Period or within 14 days after its expiration, as a result of an inspection made by or on behalf of the Engineer prior to its expiration, instruct the Contractor to execute.
- Cost of Remedying Defects** 49.3 All work referred to in Sub-Clause 49.2 (b) shall be executed by the Contractor at his own cost if the necessity thereof is, in the opinion of the Engineer, due to:
- (a) the use of materials, Plant or workmanship not in accordance with the Contract,
  - (b) where the Contractor is responsible for the design of part of the Permanent Works, any fault in such design, or
  - (c) the neglect or failure on the part of the Contractor to comply with any obligation, expressed or implied, on the Contractor's part under the Contract.
- If, in the opinion of the Engineer, such necessity is due to any other cause, he shall determine an addition to the Contract Price in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the Employer.
- Contractor's Failure to Carry Out Instructions** 49.4 In case of default on the part of the Contractor in carrying out such instruction within a reasonable time, the Employer shall be entitled to employ and pay other persons to carry out the same and if such work is work which, in the opinion of the Engineer, the Contractor was liable to do at his own cost under the Contract, then all costs consequent thereon or incidental thereto shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.
- Contractor to Search** 50.1 If any defect, shrinkage or other fault in the Works appears at any time prior to the end of the Defects Liability Period, the Engineer may instruct the Contractor, with copy to the Employer, to search under the directions of the Engineer for the cause thereof. Unless such defect, shrinkage or other fault is one for which the Contractor is liable under the Contract, the Engineer shall, after due consultation with the Employer and the Contractor, determine the amount in respect of the costs of such search incurred by the Contractor, which shall be added to the Contract Price and shall notify the Contractor accordingly, with a copy to the Employer. If such defect, shrinkage or other fault is one for which the Contractor is liable, the cost of the work carried out in searching as aforesaid shall be borne by the Contractor and he shall in such case remedy such defect, shrinkage or other fault at his own cost in accordance with the provisions of Clause 49.

## Alterations, Additions and Omissions

- Variations** 51.1 The Engineer shall make any variation of the form, quality or quantity of the Works or any part thereof that may, in his opinion, be necessary and for that purpose, or if for any other reason it shall, in his opinion, be appropriate, he shall have the authority to instruct the Contractor to do and the Contractor shall do any of the following:
- (a) increase or decrease the quantity of any work included in the Contract,
  - (b) omit any such work (but not if the omitted work is to be carried out by the Employer or by another contractor),

- (c) change the character or quality or kind of any such work,
- (d) change the levels, lines, position and dimensions of any part of the Works,
- (e) execute additional work of any kind necessary for the completion of the Works, or
- (f) change any specified sequence or timing of construction of any part of the Works.

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

**Instructions for Variations 51.2**

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

**Valuation of Variations 52.1**

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

**Power of Engineer to Fix Rates 52.2**

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

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

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

**Variations Exceeding 15 per cent 52.3**

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

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

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

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

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

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

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

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

## Procedure for Claims

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

**Contemporary Records 53.2** Upon the happening of the event referred to in Sub-Clause 53.1, the Contractor shall keep such contemporary records as may reasonably be necessary to support any claim he may subsequently wish to make. Without necessarily admitting the Employer's liability, the Engineer shall, on receipt of a notice under Sub-Clause 53.1, inspect such contemporary records and may instruct the Contractor to keep

any further contemporary records as are reasonable and may be material to the claim of which notice has been given. The Contractor shall permit the Engineer to inspect all records kept pursuant to this Sub-Clause and shall supply him with copies thereof as and when the Engineer so instructs.

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

### **Contractor's Equipment, Temporary Works and Materials**

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

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

## Measurement

<b>Quantities</b>	<b>55.1</b>	The quantities set out in the Bill of Quantities are the estimated quantities for the Works, and they are not to be taken as the actual and correct quantities of the Works to be executed by the Contractor in fulfilment of his obligations under the Contract.
<b>Works to be Measured</b>	<b>56.1</b>	The Engineer shall, except as otherwise stated, ascertain and determine by measurement the value of the Works in accordance with the Contract and the Contractor shall be paid that value in accordance with Clause 60. The Engineer shall, when he requires any part of the Works to be measured, give reasonable notice to the Contractor's authorised agent, who shall: <ul style="list-style-type: none"> <li>(a) forthwith attend or send a qualified representative to assist the Engineer in making such measurement, and</li> <li>(b) supply all particulars required by the Engineer.</li> </ul>

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

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

## Provisional Sums

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

## Nominated Subcontractors

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

(b) that the nominated Subcontractor will save harmless and indemnify the Contractor from and against any negligence by the nominated Subcontractor, his agents, workmen and servants and from and against any misuse by him or them of any Temporary Works provided by the Contractor for the purposes of the Contract and from all claims as aforesaid.

**Design Requirements to be Expressly Stated**

**59.3** If in connection with any Provisional Sum the services to be provided include any matter of design or specification of any part of the Permanent Works or of any Plant to be incorporated therein, such requirement shall be expressly stated in the Contract and shall be included in any nominated Subcontract. The nominated Subcontract shall specify that the nominated Subcontractor providing such services will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities.

**Payments to Nominated Subcontractors**

**59.4** For all work executed or goods, materials, Plant or services supplied by any nominated Subcontractor, the Contractor shall be entitled to:

(a) the actual price paid or due to be paid by the Contractor, on the instructions of the Engineer, and in accordance with the subcontract;

(b) in respect of labour supplied by the Contractor, the sum, if any, entered in the Bill of Quantities or, if instructed by the Engineer pursuant to paragraph (a) of Sub-Clause 58.2, as may be determined in accordance with Clause 52; and

(c) in respect of all other charges and profit, a sum being a percentage rate of the actual price paid or due to be paid calculated, where provision has been made in the Bill of Quantities for a rate to be set against the relevant Provisional Sum, at the rate inserted by the Contractor against that item or, where no such provision has been made, at the rate inserted by the Contractor in the Appendix to Tender and repeated where provision for such is made in a special item provided in the Bill of Quantities for such purpose.

**Certification of Payments to Nominated Subcontractors**

**59.5** Before issuing, under Clause 60, any certificate, which includes any payment in respect of work done or goods, materials, Plant or services supplied by any nominated Subcontractor, the Engineer shall be entitled to demand from the Contractor reasonable proof that all payments, less retentions, included in previous certificates in respect of the work or goods, materials, Plant or services of such nominated Subcontractor have been paid or discharged by the Contractor. If the Contractor fails to supply such proof then, unless the Contractor:

(a) satisfies the Engineer in writing that he has reasonable cause for withholding or refusing to make such payments, and

(b) produces to the Engineer reasonable proof that he has so informed such nominated Subcontractor in writing,

the Employer shall be entitled to pay to such nominated Subcontractor direct, upon the certificate of the Engineer, all payments, less retentions, provided for in the nominated Subcontract, which the Contractor has failed to make to such nominated Subcontractor and to deduct by way of set-off the amount so paid by the Employer from any sums due or to become due from the Employer to the Contractor.

Provided that, where the Engineer has certified and the Employer has paid direct as aforesaid, the Engineer shall, in issuing any further certificate in favour of the Contractor, deduct from the amount thereof the amount so paid, direct as aforesaid, but shall not withhold or delay the issue of the certificate itself when due to be issued under the terms of the Contract.



## Certificates and Payment

### Monthly Statements 60.1

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

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

### Monthly Payments 60.2

The Engineer shall, within 28 days of receiving such statement, deliver to the Employer an Interim Payment Certificate stating the amount of payment to the Contractor which the Engineer considers due and payable in respect of such statement, subject:

- (a) firstly, to the retention of the amount calculated by applying the Percentage of Retention stated in the Appendix to Tender, to the amount to which the Contractor is entitled under paragraphs (a), (b), (c) and (e) of Sub-Clause 60.1 until the amount so retained reaches the Limit of Retention Money stated in the Appendix to Tender, and
- (b) secondly, to the deduction, other than pursuant to Clause 47, of any sums which may have become due and payable by the Contractor to the Employer.

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

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

### Payment of Retention Money 60.3

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

(b) Upon the expiration of the Defects Liability Period for the Works the other half of the Retention Money shall be certified by the Engineer for payment to the Contractor. Provided that, in the event of different Defects Liability Periods having become applicable to different Sections or parts of the Permanent Works pursuant to Clause 48, the expression "expiration of the Defects Liability Period" shall, for the purposes of this Sub-Clause, be deemed to mean the expiration of the latest of such periods. Provided also that if at such time there shall remain to be executed by the Contractor any work instructed, pursuant to Clauses 49 and 50, in respect of the Works, the Engineer shall be entitled to withhold certification until completion of such work of so much of the balance of the Retention Money as shall, in the opinion of the Engineer, represent the cost of the work remaining to be executed.

### Correction of Certificates 60.4

The Engineer may by any Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificate which shall have been issued by him and shall have authority, if any work is not being carried out to his satisfaction, to omit or reduce the value of such work in any Interim Payment Certificate.

**Statement at Completion** 60.5 Not later than 84 days after the issue of the Taking-Over Certificate in respect of the whole of the Works, the Contractor shall submit to the Engineer six copies of a Statement at Completion with supporting documents showing in detail, in the form approved by the Engineer:

- (a) the final value of all work done in accordance with the Contract up to the date stated in such Taking-Over Certificate,
- (b) any further sums which the Contractor considers to be due, and
- (c) an estimate of amounts which the Contractor considers will become due to him under the Contract.

The estimated amounts shall be shown separately in such Statement at Completion. The Engineer shall certify payment in accordance with Sub-Clause 60.2.

**Final Statement** 60.6 Not later than 56 days after the issue of the Defects Liability Certificate pursuant to Sub-Clause 62.1, the Contractor shall submit to the Engineer for consideration six copies of a draft final statement with supporting documents showing in detail, in the form approved by the Engineer:

- (a) the value of all work done in accordance with the Contract, and
- (b) any further sums which the Contractor considers to be due to him under the Contract or otherwise.

If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Engineer the final statement as agreed (for the purposes of these Conditions referred to as the "Final Statement").

If, following discussions between the Engineer and the Contractor and any changes to the draft final statement which may be agreed between them, it becomes evident that a dispute exists, the Engineer shall deliver to the Employer an Interim Payment Certificate for those parts of the draft final statement, if any, which are not in dispute. The dispute may then be settled in accordance with Clause 67.

**Discharge** 60.7 Upon submission of the Final Statement, the Contractor shall give to the Employer, with a copy to the Engineer, a written discharge confirming that the total of the Final Statement represents full and final settlement of all monies due to the Contractor arising out of or in respect of the Contract. Provided that such discharge shall become effective only after payment due under the Final Payment Certificate issued pursuant to Sub-Clause 60.8 has been made and the performance security referred to in Sub-Clause 10.1, if any, has been returned to the Contractor.

**Final Payment Certificate** 60.8 Within 28 days after receipt of the Final Statement, and the written discharge, the Engineer shall issue to the Employer (with a copy to the Contractor) a Final Payment Certificate stating:

- (a) the amount which, in the opinion of the Engineer, is finally due under the Contract or otherwise, and
- (b) after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled other than under Clause 47, the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer as the case may be.

**Cessation of Employer's Liability** 60.9 The Employer shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or execution of the Works, unless the Contractor shall have included a claim in respect thereof in his Final Statement and (except in respect of matters or things arising after the issue of the Taking-Over Certificate in respect of the whole of the Works) in the Statement at Completion referred to in Sub-Clause 60.5.

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

## Remedies

- Default of Contractor 63.1** If the Contractor is deemed by law unable to pay his debts as they fall due, or enters into voluntary or involuntary bankruptcy, liquidation or dissolution (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or becomes insolvent, or makes an arrangement with, or assignment in favour of, his creditors, or agrees to carry out the Contract under a committee of inspection of his creditors, or if a receiver, administrator, trustee or liquidator is appointed over any substantial part of his assets, or if, under any law or regulation relating to reorganization, arrangement or readjustment of debts, proceedings are commenced against the Contractor or resolutions passed in connection with dissolution or liquidation or if any steps are taken to enforce any security interest over a substantial part of the assets of the Contractor, or if any act is done or event occurs with respect to the Contractor or his assets which, under any applicable law has a substantially similar effect to any of the foregoing acts or events, or if the Contractor has contravened Sub-Clause 3.1, or has an execution levied on his goods, or if the Engineer certifies to the Employer, with a copy to the Contractor, that, in his opinion, the Contractor:
- (a) has repudiated the Contract,
  - (b) without reasonable excuse has failed
    - (i) to commence the Works in accordance with Sub-Clause 41.1, or
    - (ii) to proceed with the Works, or any Section thereof, within 28 days after receiving notice pursuant to Sub-Clause 46.1,

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

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

(e) has contravened Sub-Clause 4.1,

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

**Valuation at Date of Termination**

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

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

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

**Payment after Termination**

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

**Assignment of Benefit of Agreement**

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

**Urgent Remedial Work**

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

## Special Risks

- No Liability for Special Risks** 65.1 The Contractor shall be under no liability whatsoever in consequence of any of the special risks referred to in Sub-Clause 65.2, whether by way of indemnity or otherwise, for or in respect of:
- (a) destruction of or damage to the Works, save to work condemned under the provisions of Clause 39 prior to the occurrence of any of the said special risks,
  - (b) destruction of or damage to property, whether of the Employer or third parties, or
  - (c) injury or loss of life.
- Special Risks** 65.2 The special risks are:
- (a) the risks defined under paragraphs (a), (c), (d) and (e) of Sub-Clause 20.4, and
  - (b) the risks defined under paragraph (b) of Sub-Clause 20.4 insofar as these relate to the country in which the Works are to be executed.
- Damage to Works by Special Risks** 65.3 If the Works or any materials or Plant on or near or in transit to the Site, or any of the Contractor's Equipment, sustain destruction or damage by reason of any of the said special risks, the Contractor shall be entitled to payment in accordance with the Contract for any Permanent Works duly executed and for any materials or Plant so destroyed or damaged and, so far as may be required by the Engineer or as may be necessary for the completion of the Works, to payment for:
- (a) rectifying any such destruction or damage to the Works, and
  - (b) replacing or rectifying such materials or Contractor's Equipment,
- and the Engineer shall determine an addition to the Contract Price in accordance with Clause 52 (which shall in the case of the cost of replacement of Contractor's Equipment include the fair market value thereof as determined by the Engineer) and shall notify the Contractor accordingly, with a copy to the Employer.
- Projectile, Missile** 65.4 Destruction, damage, injury or loss of life caused by the explosion or impact, whenever and wherever occurring, of any mine, bomb, shell, grenade, or other projectile, missile, munition, or explosive of war, shall be deemed to be a consequence of the said special risks.
- Increased Costs arising from Special Risks** 65.5 Save to the extent that the Contractor is entitled to payment under any other provision of the Contract, the Employer shall repay to the Contractor any costs of the execution of the Works (other than such as may be attributable to the cost of reconstructing work condemned under the provisions of Clause 39 prior to the occurrence of any special risk) which are howsoever attributable to or consequent on or the result of or in any way whatsoever connected with the said special risks, subject however to the provisions in this Clause hereinafter contained in regard to outbreak of war, but the Contractor shall, as soon as any such cost comes to his knowledge, forthwith notify the Engineer thereof. The Engineer shall, after due consultation with the Employer and the Contractor, determine the amount of the Contractor's costs in respect thereof which shall be added to the Contract Price and shall notify the Contractor accordingly, with a copy to the Employer.
- Outbreak of War** 65.6 If, during the currency of the Contract, there is an outbreak of war, whether war is declared or not, in any part of the world which, whether financially or otherwise, materially affects the execution of the Works, the Contractor shall, unless and until the Contract is terminated under the provisions of this Clause, continue to use his best endeavours to complete the execution of the Works. Provided that the Employer shall be entitled, at any time after such outbreak of war, to terminate the Contract by giving notice to the Contractor and, upon such notice being given, the Contract shall, except as to the rights of the parties under this Clause and Clause 67, terminate, but without prejudice to the rights of either party in respect of any antecedent breach thereof.

**Removal of Contractor's Equipment on Termination**

65.7 If the Contract is terminated under the provisions of Sub-Clause 65.6, the Contractor shall, with all reasonable dispatch, remove from the Site all Contractor's Equipment and shall give similar facilities to his Subcontractors to do so.

**Payment if Contract Terminated**

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

(a) the amounts payable in respect of any preliminary items referred to in the Bill of Quantities, so far as the work or service comprised therein has been carried out or performed, and a proper proportion of any such items which have been partially carried out or performed;

(b) the cost of materials, Plant or goods reasonably ordered for the Works which have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery, such materials, Plant or goods becoming the property of the Employer upon such payments being made by him;

(c) a sum being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works insofar as such expenditure has not been covered by any other payments referred to in this Sub-Clause;

(d) any additional sum payable under the provisions of Sub-Clauses 65.3 and 65.5;

(e) such proportion of the cost as may be reasonable, taking into account payments made or to be made for work executed, of removal of Contractor's Equipment under Sub-Clause 65.7 and, if required by the Contractor, return thereof to the Contractor's main plant yard in his country of registration or to other destination, at no greater cost; and

(f) the reasonable cost of repatriation of all the Contractor's staff and workmen employed on or in connection with the Works at the time of such termination.

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

### **Release from Performance**

**Payment in Event of Release from Performance**

66.1 If any circumstance outside the control of both parties arises after the issue of the Letter of Acceptance which renders it impossible or unlawful for either or both parties to fulfil his or their contractual obligations, or under the law governing the Contract the parties are released from further performance, then the parties shall be discharged from the Contract, except as to their rights under this Clause and Clause 67 and without prejudice to the rights of either party in respect of any antecedent breach of the Contract, and the sum payable by the Employer to the Contractor in respect of the work executed shall be the same as that which would have been payable under Clause 65 if the Contract had been terminated under the provisions of Clause 65.

## Settlement of Disputes

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

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

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

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

**Amicable Settlement** 67.2 Where notice of intention to commence arbitration as to a dispute has been given in accordance with Sub-Clause 67.1, the parties shall attempt to settle such dispute amicably before the commencement of arbitration. Provided that, unless the parties otherwise agree, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of intention to commence arbitration of such dispute was given, even if no attempt at amicable settlement thereof has been made.

**Arbitration** 67.3 Any dispute in respect of which:

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

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

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

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

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

## Notices

- Notice to Contractor** 68.1 All certificates, notices or instructions to be given to the Contractor by the Employer or the Engineer under the terms of the Contract shall be sent by post, cable, telex or facsimile transmission to or left at the Contractor's principal place of business or such other address as the Contractor shall nominate for that purpose.
- Notice to Employer and Engineer** 68.2 Any notice to be given to the Employer or to the Engineer under the terms of the Contract shall be sent by post, cable, telex or facsimile transmission to or left at the respective addresses nominated for that purpose in Part II of these Conditions.
- Change of Address** 68.3 Either party may change a nominated address to another address in the country where the Works are being executed by prior notice to the other party, with a copy to the Engineer, and the Engineer may do so by prior notice to both parties.

## Default of Employer

- Default of Employer** 69.1 In the event of the Employer:
- (a) failing to pay to the Contractor the amount due under any certificate of the Engineer within 28 days after the expiry of the time stated in Sub-Clause 60.10 within which payment is to be made, subject to any deduction that the Employer is entitled to make under the Contract,
  - (b) interfering with or obstructing or refusing any required approval to the issue of any such certificate,
  - (c) becoming bankrupt or, being a company, going into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation, or
  - (d) giving notice to the Contractor that for unforeseen economic reasons it is impossible for him to continue to meet his contractual obligations,
- the Contractor shall be entitled to terminate his employment under the Contract by giving notice to the Employer, with a copy to the Engineer. Such termination shall take effect 14 days after the giving of the notice.
- Removal of Contractor's Equipment** 69.2 Upon the expiry of the 14 days' notice referred to in Sub-Clause 69.1, the Contractor shall, notwithstanding the provisions of Sub-Clause 54.1, with all reasonable despatch, remove from the Site all Contractor's Equipment brought by him thereon.
- Payment on Termination** 69.3 In the event of such termination the Employer shall be under the same obligations to the Contractor in regard to payment as if the Contract had been terminated under the provisions of Clause 65, but, in addition to the payments specified in Sub-Clause 65.8, the Employer shall pay to the Contractor the amount of any loss or damage to the Contractor arising out of or in connection with or by consequence of such termination.



- Contractor's Entitlement to Suspend Work** 69.4 Without prejudice to the Contractor's entitlement to interest under Sub-Clause 60.10 and to terminate under Sub-Clause 69.1, the Contractor may, if the Employer fails to pay the Contractor the amount due under any certificate of the Engineer within 28 days after the expiry of the time stated in Sub-Clause 60.10 within which payment is to be made, subject to any deduction that the Employer is entitled to make under the Contract, after giving 28 days' prior notice to the Employer, with a copy to the Engineer, suspend work or reduce the rate of work.
- If the Contractor suspends work or reduces the rate of work in accordance with the provisions of this Sub-Clause and thereby suffers delay or incurs costs the Engineer shall, after due consultation with the Employer and the Contractor, determine:
- (a) any extension of time to which the Contractor is entitled under Clause 44, and  
 (b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer.
- Resumption of Work** 69.5 Where the Contractor suspends work or reduces the rate of work, having given notice in accordance with Sub-Clause 69.4, and the Employer subsequently pays the amount due, including interest pursuant to Sub-Clause 60.10, the Contractor's entitlement under Sub-Clause 69.1 shall, if notice of termination has not been given, lapse and the Contractor shall resume normal working as soon as is reasonably possible.

### **Changes in Cost and Legislation**

- Increase or Decrease of Cost** 70.1 There shall be added to or deducted from the Contract Price such sums in respect of rise or fall in the cost of labour and/or materials or any other matters affecting the cost of the execution of the Works as may be determined in accordance with Part II of these Conditions.
- Subsequent Legislation** 70.2 If, after the date 28 days prior to the latest date for submission of tenders for the Contract there occur in the country in which the Works are being or are to be executed changes to any National or State Statute, Ordinance, Decree or other Law or any regulation or bye-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation or bye-law which causes additional or reduced cost to the Contractor, other than under Sub-Clause 70.1, in the execution of the Contract, such additional or reduced cost shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be added to or deducted from the Contract Price- and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

### **Currency and Rates of Exchange**

- Currency Restrictions** 71.1 If, after the date 28 days prior to the latest date for submission of tenders for the Contract, the Government or authorised agency of the Government of the country in which the Works are being or are to be executed imposes currency restrictions and/or transfer of currency restrictions in relation to the currency or currencies in which the Contract Price is to be paid, the Employer shall reimburse any loss or damage to the Contractor arising therefrom, without prejudice to the right of the Contractor to exercise any other rights or remedies to which he is entitled in such event.
- Rates of Exchange** 72.1 Where the Contract provides for payment in whole or in part to be made to the Contractor in foreign currency or currencies, such payment shall not be subject to variations in the rate or rates of exchange between such specified foreign currency or currencies and the currency of the country in which the Works are to be executed.

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

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

## **REFERENCE TO PART II**

As stated in the Foreword at the beginning of this document, the FIDIC Conditions comprise both Part I and Part II. Certain Clauses, namely Sub-Clauses 1.1 paragraph (a) (i) and (iv), 5.1 (part), 14.1, 14.3, 68.2 and 70.1 must include additional wording in Part II for the Conditions to be complete. Other Clauses may require additional wording to supplement Part I or to cover particular circumstances or the type of work (dredging is an example).

Part II Conditions of Particular Application with guidelines for the preparation of Part II are printed in a separately bound document.

# PART I – GENERAL CONDITIONS

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# TENDER

NAME OF CONTRACT: \* \_\_\_\_\_

\_\_\_\_\_

TO: \* \_\_\_\_\_

\_\_\_\_\_

Gentlemen,

1. Having examined the Conditions of Contract, Specification, Drawings, and Bill of Quantities and Addenda Nos \_\_\_\_\_ for the execution of the above-named Works, we, the undersigned, offer to execute and complete such Works and remedy any defects therein in conformity with the Conditions of Contract, Specification, Drawings, Bill of Quantities and Addenda for the sum of

\_\_\_\_\_

\_\_\_\_\_

( \_\_\_\_\_ )  
or such other sum as may be ascertained in accordance with the said Conditions.

2. We acknowledge that the Appendix forms part of our Tender.
3. We undertake, if our Tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Engineer's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Tender.
4. We agree to abide by this Tender for the period of \* \_\_\_\_\_ days from the date fixed for receiving the same and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
5. Unless and until a formal Agreement is prepared and executed this Tender, together with your written acceptance thereof, shall constitute a binding contract between us.
6. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

Signature \_\_\_\_\_ in the capacity of \_\_\_\_\_

duly authorised to sign tenders for and on behalf of \_\_\_\_\_

(IN BLOCK CAPITALS)

Address \_\_\_\_\_

\_\_\_\_\_

Witness \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Occupation \_\_\_\_\_

(Note: All details marked \* shall be inserted before issue of Tender documents.)

## Appendix

	Sub-Clause	
Amount of security (if any) _____	10.1	_____ per cent of the Contract Price
Minimum amount of third party insurance	23.2	_____ per occurrence, with the number of occurrences unlimited
Time for issue of notice to commence	41.1	_____ days
Time for Completion _____	43.1	_____ days
Amount of liquidated damages _____	47.1	_____ per day
Limit of liquidated damages _____	47.1	_____
Defects Liability Period _____	49.1	_____ days
Percentage for adjustment of Provisional Sums	59.4(c)	_____ percent
Percentage of invoice value of listed materials and Plant _____	60.1 (c)	_____ percent
Percentage of Retention _____	60.2	_____ percent
Limit of Retention Money _____	60.2	_____
Minimum Amount of Interim Payment Certificates _____	60.2	_____
Rate of interest upon unpaid sums _____	60.10	_____ per cent per annum
Initials of Signatory of Tender _____		

(Notes: All details in the list above, other than percentage figure against Sub-Clause 59.4, shall be inserted before issue of Tender documents. Where a number of days is to be inserted, it is desirable, for consistency with the Conditions, that the number should be a multiple of seven.

Additional entries are necessary where provision is included in the Contract for:

- (a) completion of Sections (Sub-Clauses 43.1 and 48.2(a))
- (b) liquidated damages for Sections (Sub-Clause 47.1)
- (c) a bonus (Sub-Clause 47.3 – Part II)
- (d) payment for materials on Site (Sub-Clause 60.1(c))
- (e) payment in foreign currencies (Clause 60 – Part II)
- (f) an advance payment (Clause 60 – Part II)
- (g) adjustments to the Contract Price on account of Specified Materials  
(Sub-Clause 70.1 – Part II)
- (h) rates of exchange (Sub-Clause 72.2 – Part II)

# Agreement

This Agreement made the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

Between \_\_\_\_\_

of \_\_\_\_\_

\_\_\_\_\_ (hereinafter called "the Employer") of the one part and

\_\_\_\_\_ of \_\_\_\_\_

(hereinafter called "the Contractor") of the other part

Whereas the Employer is desirous that certain Works should be executed by the Contractor, viz \_\_\_\_\_

and has accepted a Tender by the Contractor for the execution and completion of such Works and the remedying of any defects therein

Now this Agreement witnesseth as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz:
  - (a) The Letter of Acceptance;
  - (b) The said Tender;
  - (c) The Conditions of Contract (Parts I and II);
  - (d) The Specification;
  - (e) The Drawings; and
  - (f) The Bill of Quantities.
3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the works and the remedying of defects therein the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

**In Witness** whereof the parties hereto have caused this Agreement to be executed the day and year first before written in accordance with their respective laws.

The Common Seal of \_\_\_\_\_

\_\_\_\_\_ was hereunto affixed in the presence of:-

or

Signed Sealed and Delivered by the

said \_\_\_\_\_

in the presence of:

## EDITORIAL AMENDMENTS IN 1988

Following publication of the Fourth Edition in 1987 of the Conditions of Contract for Works of Civil Engineering Construction, a number of editorial amendments were agreed by FIDIC. The amendments were incorporated during a 1988 reprinting and the list below clarifies the differences between the 1988 reprint and the original document.

<b>Foreword</b>		The last sentence of the first paragraph previously read "The Conditions are equally suitable for use on domestic contracts."
<b>Page</b>	<b>6</b>	Sub-Clause 10.1. A comma has been inserted after the word "Contract" in the second line. The third sentence previously read "Such security shall be in such form as may be agreed between the Employer and the Contractor."
<b>Page</b>	<b>11</b>	Sub-Clause 22.1 (b) was previously one complete paragraph, ie there was no space between the words "... other than the Works), " and the remainder of the Sub-Clause.
<b>Page</b>	<b>15</b>	Sub-Clause 31.2 (c) was previously one complete paragraph, ie there was no space between the words "... nature for any such," and the remainder of the Sub-Clause.
<b>Page</b>	<b>20</b>	Sub-Clause 44.3. The penultimate sentence was previously, "In both such cases the Engineer shall notify the Contractor accordingly, with a copy to the Employer."
<b>Page</b>	<b>21</b>	Sub-Clause 49.1 (a). The word "substantial" has been deleted.
<b>Page</b>	<b>29</b>	Sub-Clause 60.3 (b) was previously two paragraphs, the second beginning with the words "Provided also that if at such time . . ."
<b>Page</b>	<b>30</b>	Sub-Clause 60.5. The word "The" has been inserted at the beginning of the final paragraph.
<b>Page</b>	<b>35</b>	Sub-Clause 67.1. In the eighth line of the third paragraph, a comma has been inserted after the word "provided". In the second line of the fourth paragraph, the word "notice" replaces the word "notification".
<b>Page</b>	<b>38</b>	Reference to Part II. In the third line, the words "and (iv)" have been inserted after paragraph (a) (i).
<b>Tender</b>		
<b>Item</b>	<b>3.</b>	The word "Works" has been capitalised.
<b>Agreement</b>		
<b>Line</b>	<b>4</b>	Inverted commas have been inserted following the words "the Employer."
<b>Line</b>	<b>6</b>	Inverted commas have been inserted before the word "the" instead of before the word "Contractor."
<b>Line</b>	<b>8</b>	The word "Contractor" has been capitalised.
<b>Line</b>	<b>9</b>	The words "Tender by the Contractor" were previously "Tender by Contractor."
<b>Line</b>	<b>11</b>	The word "Agreement" has been capitalised.
<b>Last lines</b>		The Agreement previously ended with the words "Binding Signature of Employer" and "Binding Signature of Contractor".

## FURTHER AMENDMENTS IN 1992

The following amendments have been made to the 1988 Reprint of the Fourth Edition of the Conditions of Contract for Works of Civil Engineering Construction. The amendments of the 1988 Reprint are shown on the previous page. In addition, some minor changes in the use of punctuation marks (commas, semicolons, colons and stops), as well as the use of the words "or" and "and" have been introduced to attain uniformity in the style of all Clauses. These minor changes which improve the style, but which have no effect on the meaning of Clauses, have not been listed below.

### FOREWORD

The eighth paragraph previously referred to the anticipated publication of the "Guide to the Use of FIDIC Conditions of Contract for Works of Civil Engineering Construction".

- Page 2** Sub-Clause 1.1, sub-para (e). Definitions (iii) "Interim Payment Certificate" and (iv) "Final Payment Certificate" have been added.
- Page 6** Sub-Clause 8.1. Second paragraph has been added.
- Page 7** Sub-Clause 12.2. Marginal note. The word "Adverse" has been changed to read "Not Foreseeable" (also amended in the Contents and the Index).
- Page 8** Sub-Clause 13.1. Last sentence has been shortened by deleting the words "or, subject to the provisions of Clause 2, from the Engineer's Representative.", and adding the words "(or his delegate)".
- Sub-Clause 15.1, para 1. Last sentence has been shortened by placing a full stop after the word "Engineer", deleting the words "or subject to the provisions of Clause 2, the Engineer's Representative."
- Page 10** Sub-Clause 21.1, sub-para (a). The words "(the term "cost" in this context shall include profit)" have been added.
- Page 11** Sub-Clause 21.4, sub-para (a). The word "where" has been corrected to read "whether".
- Page 18** Sub-Clause 40.3. The word "written" has been deleted at the end of the first line.
- Page 19** Sub-Clause 42.3. The word "wayleaves" has been changed to read "rights of way" in the text and marginal note (also amended in the Contents and the Index).
- Page 29** Sub-Clause 60.1, sub-para (e). The words "or otherwise" have been added at the end
- Sub-Clause 60.2. The words "certify to the Employer" have been changed to read "deliver to the Employer an Interim Payment Certificate stating", the word "thereof" has been changed to read "of such statement" and the word "he" has been changed to read "the Engineer". Sub-para (b). The words "Interim Certificates" have been changed to read "Interim Payment Certificates".
- Sub-Clause 60.3, sub-para (b). In the eighth line, the word "ordered" has been changed to read "instructed".
- Sub-Clause 60.4. The words "interim certificate" in the first and fourth lines, and the word "certificate" in the second line, have been changed to read "Interim Payment Certificate".
- Page 30** Sub-Clause 60.5. In the second line, after the word "Engineer", the words "six copies of" have been added.
- Sub-Clause 60.6. In the second line, after the word "consideration", the words "six copies of" have been added. Sub-para (b). The words "or otherwise" have been added at the end. At the end of the sub-clause, the final paragraph has been added.
- Sub-Clause 60.7 and Sub-Clause 60.8 (text and marginal note). The words "Final Certificate" have been changed to read "Final Payment Certificate" (also amended in the Contents and the Index).
- Sub-Clause 60.8 (a). The words "or otherwise" have been added. Sub-Clause 60.8 (b). The words "under the Contract other than Clause 47" have been changed to read "other than under Clause 47".
- Sub-Clause 60.10. In the first and fourth lines, the words "interim certificate" have

- Page 31** been changed to read "Interim Payment Certificate". In the fifth and sixth lines, the words "Final Certificate" have been changed to read "Final Payment Certificate". The words "or otherwise" have been added at the end.
- Page 33** Sub-Clause 65.6. In the ninth line, the words "and to the operation of Clause 67" have been changed to read "and Clause 67".
- Page 34** Sub-Clause 66.1. In the second line the word "party" has been changed to read "or both parties", in the third line between the words "his" and "contractual" the words "or their" have been added. In the fourth line after the word "then", the words "the parties shall be discharged from the Contract, except as to their rights under this Clause and Clause 67 and without prejudice to the rights of either party in respect of any antecedent breach of the Contract, and " have been added.
- Page 35** Sub-Clause 67.2. The words "arbitration of such dispute shall not be commenced unless an attempt has first been made by the parties to settle such dispute amicably" have been changed to read " the parties shall attempt to settle such dispute amicably before the commencement of arbitration." The words "whether or not any attempt at amicable settlement thereof has been made" have been changed to read "even if no attempt at amicable settlement thereof has been made".
- Page 37** Sub-Clause 69.1, Sub-para (d). The words "unforeseen reasons, due to economic dislocation" have been changed to read "unforeseen economic reasons".  
Sub-Clause 69.4. In the second line of the second paragraph, the word "cost" has been changed to read "costs".
- Page 38** REFERENCE TO PART II. In the third line, the words "5.1 part" have been changed to read "5.1 (part)".
- TENDER** Paragraph 1. In the last line, the word "sums" has been changed to read "sum".
- Appendix** In the ninth line, the words "and Plant" have been added.  
In the twelfth line, the word "Payment" has been added.  
In the thirteenth line, the words "per annum" have been added.
- EDITORIAL AMENDMENTS** For page 35, after the words "Sub-Clause 67.1" the first sentence has been inserted.

