

SPECIAL RISKS

Notwithstanding anything in the Contract contained:

65.1 NO LIABILITY FOR WAR, ETC., RISKS

The Contractor shall be under no liability whatsoever whether by way of indemnity or otherwise for or in respect of destruction of or damage to the Works, save to work condemned under the provisions of Clause 39 hereof prior to the occurrence of any special risk hereinafter mentioned, or to property whether of the Employer or third parties, or for or in respect of injury or loss of life which is the consequence of any special risk as hereinafter defined. The Employer shall indemnify and save harmless the Contractor against and from the same and against and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising thereout or in connection therewith.

65.2 SPECIAL RISKS

The special risks are war, hostilities (whether war be declared or not), invasion, act of foreign enemies, the nuclear risk described in Clause 20.2 hereof, or insofar as it relates to the country in which the Works are being or are to be executed or maintained, rebellion, revolution, insurrection, military or usurped power, civil war, or, unless solely restricted to the employees of the Contractor or of his Sub-Contractors, riot, commotion or disorder.

65.3 DAMAGE TO WORKS, ETC., BY SPECIAL RISKS

If the Works or any materials, or plant on or near or in transit to the Site, or any other property of the Contractor used or intended to be used for the purposes of the Works, shall sustain destruction or damage by reason of any of the said special risks the Contractor shall be entitled to payment for:

- a. any permanent work, plant and for any materials 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, on the basis of cost as shall be determined by the Engineer.

- b. replacing or making good any such destruction or damage to the Works,
- c. replacing or making good such materials or other property of the Contractor used or intended to be used for the purposes of the Works.

65.4 PROJECTILE, MISSILE, ETC.

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.

65.5 INCREASED COSTS ARISING FROM SPECIAL RISKS

The Employer shall repay to the Contractor any increased 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 hereof, prior to the occurrence of any special risk, which is howsoever attributable to or consequent on or the result of or in any way whatsoever connected with the said special risks, subject however to the provisions in this Clause hereinafter contained in regard to outbreak of war, but the Contractor shall as soon as any such increase of cost shall come to his knowledge forthwith notify the Engineer thereof in writing:

65.6 OUTBREAK OF WAR

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

65.7 REMOVAL OF CONTRACTOR'S PLANT ON TERMINATION

If the Contract shall be terminated under the provisions of the last preceding Sub-Clause, the Contractor shall subject to Sub-Clause 54.1, with all reasonable despatch, remove from the Site all Construction Plant and shall give similar facilities to his Sub-Contractors to do so.

65.8 PAYMENT IF CONTRACT TERMINATED

If the Contract shall be terminated as aforesaid, the Contractor shall be paid by the Employer, insofar as such amounts or items shall not have already been covered by payment 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, so far as the work or service comprised therein has been carried out or performed, and a proper proportion as certified by the Engineer of any such items, the work or service comprised in which has been partially carried out or performed.
- b. The cost of materials, Plant, or goods reasonably ordered for the Works which shall have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery, such materials or goods becoming the property of the Employer upon such payments being made by him.
- c. Any sum payable under the provisions of Sub-Clauses 1, 3 and 5 of this Clause insofar as such sum has not been covered by previous payments.

- d. Costs in respect of removal of Constructional Plant under Sub-Clause 7 of this Clause as may be reasonably determined by the Engineer taking into account the stage of execution of the Works.
- e. 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 always that against any payments due from the Employer under this Sub-Clause, the Employer shall be entitled to be credited with any outstanding balance due from the Contractor for advances in respect of Constructional Plant and materials and any other sums which at the date of termination were recoverable by the Employer from the Contractor under the terms of the Contract.

FRUSTRATION

66. PAYMENT IN EVENT OF FRUSTRATION

If a war, or other circumstances outside the control of both parties, arises after the Contract is made so that either party is prevented from fulfilling his 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 Work executed shall be the same as that which would have been payable under the provisions of Clause 65 hereof.

SETTLEMENT OF DISPUTES

67. SETTLEMENT OF DISPUTES - ARBITRATION

If any dispute or difference of any kind whatsoever, excluding those relating to claims not notified under Clause 53 hereof, shall arise between the Employer and the Contractor or the Engineer and the Contractor in connection with, or arising out of 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, it shall, in the first place, be referred to and settled by the Engineer who shall, within a period of ninety days after being requested by either party to do so, give written notice of his decision to the Employer and the Contractor. Subject to arbitration, as hereinafter provided, such decision in respect of every matter so referred shall be final and binding upon the Employer and the Contractor and shall forthwith be given effect to by the Employer and by the Contractor, who shall proceed with the execution of the Works with all due diligence whether he or the Employer requires arbitration, as hereinafter provided, or not. If the Engineer has given written notice of his decision to the Employer and the Contractor and no claim to arbitration has been communicated to him by either the Employer or the Contractor within a period of ninety days from receipt of such notice, the said decision shall remain final and binding upon the Employer and the Contractor. If the Engineer shall fail to give notice of his decision, as aforesaid, within a period of ninety days after being requested as aforesaid, or if either the Employer or the Contractor be dissatisfied with any such decision, then and in any such case either the Employer or the Contractor

may within ninety days after receiving notice of such decision, or within ninety days after the expiration of the first-named period of ninety days, as the case may be, refer that matter or matters in dispute to arbitration as hereinafter provided. All disputes or differences in respect of which the decision, if any, of the Engineer has not become final and binding as aforesaid shall be finally settled in accordance with Part II of the Conditions of Contract. The said arbitrator/s shall have full power to open up, revise and review any decision, opinion, direction, certificate or valuation of the Engineer. 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. No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator/s on any matter whatsoever relevant to the dispute or difference referred to the arbitrator/s as aforesaid. The reference to arbitration may proceed notwithstanding that the Works shall not then be or be alleged to be complete, provided always 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.

NOTICES

68.1 SERVICE OF NOTICES ON CONTRACTOR

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 served by sending by post to or delivering the same to the Contractor's principal place of business, or such other address as the Contractor shall nominate for this purpose.

68.2 SERVICE OF NOTICES ON EMPLOYER OR ENGINEER

All notices to be given to the Employer or to the Engineer under the terms of the Contract shall be served by sending by post or delivering the same to the respective addresses nominated for that purpose in Part II of these Conditions.

68.3 CHANGE OF ADDRESS

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

DEFAULT OF EMPLOYER

69.1 DEFAULT OF EMPLOYER

In the event of the Employer:

- a. failing to pay to the Contractor the amount due under any certificate of the Engineer within sixty days after the same shall have become due under the

terms of the Contract, subject to any deduction that the Employer is entitled to make under the Contract, or

- b. being a company or corporation becoming bankrupt or going into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation, the Contractor shall be entitled to terminate his employment under the Contract after giving sixty days' prior written notice to the Employer, with a copy to the Engineer.

69.2 Upon the expiry of the sixty days' notice referred to in Sub-Clause (1) of this Clause, the Contractor shall, notwithstanding the provisions of Sub-Clause 54.1 hereof, with all reasonable despatch, remove from the Site all Constructional Plant brought by him thereon.

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 hereof, but, in addition to the payments specified in Sub-Clause 65.8 hereof, 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.

CHANGES IN COSTS AND LEGISLATION

70.1 INCREASE OR DECREASE OF COSTS

Adjustments to the Contract Price shall be made in respect of rise or fall in the costs of labour and/or materials or any other matters affecting the cost of execution of the Works, as set out in Part II Clause 70.

70.2 SUBSEQUENT LEGISLATION

If after the date thirty days prior to the latest date for submission of tenders for the Works there occur in the country in which the Works are being or are to be executed changes to any National, State or Local Legislation or sub-legislation, or the introduction of such legislation or sub-legislation which causes additional or reduced cost to the Contractor in the execution of the Works, such additional or reduced cost shall be examined and determined by the Engineer in consultation with the Employer, and shall be paid by or credited to the Employer.

Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited as aforesaid if the same shall already have been taken into account in the current rates for labour and materials referred to in Sub-Clause 1 of this Clause.

CURRENCY AND RATES OF EXCHANGE

71. CURRENCY RESTRICTIONS

If after the date 28 days prior to the latest date for submission of tenders for the Works the Government or authorized 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.

72.1 RATES OF EXCHANGE

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.

72.2 THE WORKS ARE TO CURRENCY PROPORTIONS

Where the Employer shall have required the Tender to be expressed solely in the currency of the Country in which the Works are to be executed but with payment to be 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 be those prevailing, as determined by 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 Works, as shall have been notified to the Contractor by the Employer prior to the submission of Tenders or as provided for in the Tender Documents:

72.3 CURRENCIES OF PAYMENT FOR PROVISIONAL SUMS

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 Sum items shall be determined in accordance with the principles set forth in Sub-Clauses (1) and (2) of this Clause as and when these sums are utilized in whole or in part in accordance with the provisions of Clauses 58 and 59 hereof.

MISCELLANEOUS CLAUSES

73.1 TAXATION AT ORIGIN

The prices bid by the Contractor shall include all taxes, duties and other charges imposed outside the Employer's Country under the laws and regulations of the country of origin on the production, manufacture, sale and transport of the equipment, materials, plant and supplies to be used or furnished under the Contract, and the services performed under the Contract.

73.2 TAXATION LOCAL

Subject to any exemptions granted to the Contractor from customs duties and import duties the prices and rates bid by the Contractor shall be deemed to include all customs duties, import duties, business taxes, income and other taxes or dues that may

be levied according to the laws and regulations in force at the time of bidding in the Employer's country on the equipment, materials, plant and supplies (both permanent, temporary and consumable) acquired for the purpose of the Contract and on the services performed under the Contract. Nothing in the Contract shall relieve the Contractor from his responsibility to pay tax on all profits made by him in respect of the Contract.

73.3 INCOME TAX STAFF

The Contractor's staff, personnel and labour will be liable to pay personal income taxes in the Employer's country in respect of such of their salaries and wages as are chargeable under the laws and regulations for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such laws and regulations.

73.4 DUTIES ON EQUIPMENT

Unless otherwise stated in Part II of these Conditions and notwithstanding the provisions of Sub-Clause 73.2, construction equipment, including essential spare parts therefor, imported by the Contractor for the sole purpose of executing the Contract shall be exempted from the payment of import duties and taxes upon initial importation, provided the Contractor shall post with the customs authorities at the port of entry an approved export bond or bank guarantee, valid until the time of completion of the Contract plus six months, in an amount equivalent to the full import duties and taxes which would be payable on the assessed imported value of such equipment and spare parts, and callable in the event of non-export from the Employer's country. A copy of the bond or bank guarantee endorsed by the customs authorities shall be provided by the Contractor to the Employer upon export of any individual item of equipment or spare parts and upon completion of the Contract, the Contractor shall make and agree with the customs authorities an assessment of the residual value of the equipment and spare parts to be exported. Import duties and taxes shall be due and payable to the customs authorities by the Contractor on (i) the difference between the initial imported value and the residual value of equipment and spare parts to be exported, and (ii) on the initial imported value of that equipment and spare parts remaining in the Employer's country after completion of the Contract. Upon payment of such dues by the Contractor within 30 days of being invoiced, the bond or bank guarantee shall be reduced or released accordingly otherwise the security shall be called in the full amount of the balance remaining.

74. BRIBERY AND COLLUSION

The Employer shall be entitled to terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination if the Contractor shall have offered or given to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, any action in relation to obtaining, or in the execution of the Contract, or any other contract with the Employer, or for showing favour to any person in relation to the Contract or any other contract with the Employer, or if any of the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without the knowledge of the Contractor), or if the Contractor shall have come to any agreement

with another contractor or number of contractors whereby an agreed quotation or estimate shall be tendered to the Employer by one or more contractors.

75. TERMINATION OF CONTRACT FOR EMPLOYER'S CONVENIENCE

75.1 The Employer shall be entitled to terminate this Contract at any time for the Employer's convenience after giving 60 days' prior notice to the Contractor, with a copy to the Engineer.

75.2 In the event of such termination the Contractor:

- a. shall proceed as provided in Sub-Clauses 65.7 of Part I of the General Conditions; and
- b. shall be paid by the Employer as provided in Sub-Clause 65.8 of Part I of the General Conditions.

76. JOINT AND SEVERAL LIABILITY

If the Contractor is a joint venture of two or more persons, all such persons shall be jointly and severally bound to the Employer for the fulfilment of the terms of the Contract and shall designate one of such persons to act as a leader with authority to bind the Joint Venture. The composition or the constitution of the Joint Venture shall not be altered without the prior consent of the Employer.

77. DETAILS TO BE CONFIDENTIAL

The Contractor shall treat the details of the Contract as private and confidential, save in so far as may be necessary for the purposes thereof, and the Contractor shall not publish or disclose the same or any particulars thereof in any trade or technical paper or elsewhere without the previous consent in writing of the Employer.

NOTE:

For Conditions of Particular Application, see Part II.