

CONDITIONS OF CONTRACT

PART II

CONDITIONS OF PARTICULAR APPLICATION

TABLE OF CONTENTS

| <u>Clause</u> | | <u>Page</u> |
|---|---|-------------|
| DEFINITIONS AND INTERPRETATION | | |
| 1.1 | Definition | PC-1 |
| 1.5 | Units | PC-2 |
| ENGINEER AND ENGINEER'S REPRESENTATIVE | | |
| 2.1 | Duties & Power of the Engineer & Engineer's Representative | PC-2 |
| SUB-CONTRACTING | | |
| 4. | Sub-Contracting – Addition | PC-4 |
| CONTRACT DOCUMENTS | | |
| 5.1 | Language/s and Law – Addition | PC-4 |
| 5.2 | Documents Mutually Explanatory | PC-4 |
| WORKING DOCUMENTS | | |
| 7. | Further Drawings & Instructions..... | PC-5 |
| 7.2 | Working Documents..... | PC-5 |
| a. | Provisional & Temporary Works Designed by the Contractor | PC-5 |
| b. | Operation & Maintenance Instructions for Manufactured Items | PC-6 |
| c. | Operation and Maintenance Manuals | PC-6 |
| d. | As Built Drawings | PC-6 |

GENERAL OBLIGATIONS

PERFORMANCE BOND (FINAL LETTER OF GUARANTEE)

| | | |
|------|---|------|
| 10.1 | Performance Bond – Addition | PC-6 |
| 10.4 | Period of Validity of Performance Bond –Replacement | PC-6 |
| 14.1 | Programmes to be Submitted – Addition | PC-7 |
| a. | Programme of Works | PC-7 |
| b. | Detailed Programme | PC-7 |
| c. | Programme of Drawing Submission | PC-7 |
| d. | Mobilization Programme | PC-8 |
| 14.3 | Cash flow Estimate to be Submitted | PC-8 |
| 15. | Contractor’s Superintendence – Addition | PC-8 |
| 16. | Contractor’s Employees | PC-8 |
| 16.3 | – Addition | PC-8 |
| 18. | Boreholes and Exploratory Excavation | PC-8 |
| 18.2 | – Addition | PC-8 |
| 20.2 | Excepted Risks | PC-8 |
| 20.3 | – Addition | PC-8 |
| 25.2 | Production of Insurance – Addition | PC-9 |
| 29. | Interference with Traffic & Adjoining Properties – Addition | PC-9 |
| 29.2 | – Addition | PC-9 |
| 31. | Opportunities for other Contractors – Addition | PC-9 |
| 33 | Clearance of Site on Completion – Deletion and Replacement | PC-9 |

LABOUR

| | | |
|------|--|-------|
| 34.9 | Importation of Labour – Addition | PC-10 |
|------|--|-------|

COMMENCEMENT TIME AND DELAYS

| | | |
|------|---|-------|
| 41. | Commencement of Works – Addition | PC-10 |
| 43 | Time for Completion – Addition | PC-10 |
| 47.1 | Liquidated Damages for Delay – Addition | PC-10 |

| | | |
|------|--|-------|
| 48.2 | Certification of Completion by Stages – Deletion | PC-11 |
| 48.3 | – Deletion..... | PC-11 |
| 48.4 | – Deletion..... | PC-11 |

MAINTENANCE AND DEFECTS

| | | |
|------|---|-------|
| 49.1 | Definition of Period of Maintenance – Addition | PC-11 |
| 49.5 | Presence of Contractor’s Personnel during the Period of Maintenance – Addition | PC-11 |

CONSTRUCTIONAL PLANT, TEMPORARY WORKS & MATERIALS

| | | |
|-------|--|-------|
| 54.11 | Constructional Plant, etc., – Addition | PC-12 |
|-------|--|-------|

CERTIFICATES AND PAYMENTS

| | | |
|------|--|-------|
| 60.1 | Monthly Statement – Addition | PC-12 |
| 60.2 | Retention Money – Replacement | PC-14 |
| 60.4 | Advance Payment – Addition | PC-14 |
| 60.6 | Payment in Foreign and Local Currencies – Addition | PC-15 |
| 60.7 | Time for Payment – Addition | PC-15 |

SETTLEMENT OF DISPUTES

| | | |
|-----|---|-------|
| 67. | Settlement of Disputes – Arbitration – Addition | PC-15 |
|-----|---|-------|

NOTICES

| | | |
|------|---|-------|
| 68.1 | Service of Notices on Contractor – Addition | PC-16 |
| 68.2 | Service of Notices on Employer or Engineer – Addition | PC-17 |

DEFAULT OF EMPLOYER

| | | |
|-----|--------------------------------------|-------|
| 69. | Default of Employer – Deletion | PC-17 |
|-----|--------------------------------------|-------|

CHANGES IN COSTS AND LEGISLATION

| | | |
|------|---|-------|
| 70.1 | Increase or Decrease of Costs – Deletion | PC-17 |
| 70.2 | Subsequent Legislation – Deletion and Replacement | PC-17 |

CURRENCY AND RATES OF EXCHANGE

| | | |
|------|---|-------|
| 71. | Currency Restrictions – Deletion | PC-18 |
| 72.1 | Rates of Exchange – Deletion | PC-18 |
| 72.2 | The Works are to Currency Proportions – Deletion | PC-18 |
| 72.3 | Currencies of Payment for Provisional Sums – Deletion | PC-18 |

MISCELLANEOUS CLAUSES

| | | |
|------|---|-------|
| 73.2 | Taxation Local – Addition | PC-18 |
| 73.4 | Duties on Equipment– Deletion and Replacement | PC-18 |
| 73.5 | Social Insurance & Stamp Duties – Addition | PC-19 |
| 73.6 | Employer’s Assistance – Addition | PC-19 |
| 73.7 | Letter(s) of Credit – Addition | PC-19 |
| 76. | Joint and Several Liability – Addition | PC-19 |
| 78. | Special Shipping Requirements – Addition | PC-20 |
| 79. | Training– Addition | PC-20 |
| 80. | Contract Coming into Force – Addition | PC-21 |
| 81. | Legal Revision by the Egyptian State Council – Addition | PC-21 |
| 82. | Duplicates of the Contract – Addition | PC-21 |
| 83. | Insurances – Addition | PC-21 |
| 84. | Limitations of Liability– Addition | PC-21 |
| 84.1 | Liability for Indirect or Consequential Damage – Addition | PC-21 |
| 84.2 | Maximum Liability – Addition | PC-22 |

CONDITIONS OF CONTRACT

PART II

CONDITIONS OF PARTICULAR APPLICATION

(Clauses in part II with the same number as part I are to be read in conjunction with the Clauses in part I. Other Clauses in part II are additional to those in part I).

1.1 DEFINITION

- a. "Employer" means "The Mechanical and Electrical Department on behalf of the North Sinai Development Organization of the Ministry of Water Resources and Irrigation", Taftesh El-Ray Street, Shoubra El-Mazallat, Cairo, Arab Republic of Egypt.
 - b. "Contractor" is given the same definition as in the Conditions of Contract Part I General Conditions, and it is the Joint Venture named "_____" (composed of _____, _____ and _____.)
 - c. "Engineer" means _____ whose registered office is at "_____(address)_____", (in association with "_____" whose office is at "_____(address)_____")
 - f. Definition of Part I is entirely deleted and substituted by the following:

"Contract" means these Conditions of Contract (Part I and II), the Instructions to Tenderisers, the Technical Specifications, the Technical Envelope, the Priced Bill of Quantities with the Daywork Schedules, the Drawings, the Appendices, the Addenda, the Forms, the Tender, the Minutes of Negotiations and of pre-award meetings (if any), the Letter of Acceptance, the signed Contract Agreement and its Appendix as well as the Joint Venture Agreement.
 - g. Definition of Part I is entirely deleted and substituted by the following:
 - g(1) "Initial Contract Price" means the sum named in the Letter of Acceptance.
 - g(2) "Contract Price" means the sum named in the Letter of Acceptance subject to such additions thereto and deduction therefrom as may be made under the provisions hereinafter contained.
- Add the following definitions to Clause 1.1 – Definitions of Part I:
- q. "Test on Completion" means such tests to be made by the Contractor before the Works are taken over by the Employer as are provided for in the Contract.

- r. “Certificate of Provisional Completion” or “Certificate of Completion” means the Certificate of Completion issued by the Engineer and approved by the Employer certifying that the Works or part of the Works have been substantially completed and have satisfactorily passed any final test prescribed by the Contract.
- s. Time is defined with reference to Gregorian Calendar, “day” and “month” mean calendar day and month according to the said calendar.
- t. “Writing” means any manuscript, type written, or printed statement. (including telex, cable, and facsimile transmission)
- u. “Letter of Acceptance” means the formal acceptance, made by the Employer, of the Tender.
- v. “Letter of Intent” means the letter to the Bidder to whom the Employer anticipates awarding the Contract indicating the steps to be taken until the formal acceptance, and pending such acceptance of the Employer to the total fulfilment of such steps. This letter does not represent formal acceptance from the Employer or deem to impose any liabilities and/or responsibilities either legally or financially or of any kind on the Employer.
- w. “Foreign currency” means the foreign currency to be used for the Contract, which is to be a recognized convertible currency, and which shall be chosen by the Contractor and clearly defined.
- x. “Local currency” means Egyptian Pound (L.E.)
- y. “Financing Agencies” or “Funding Agencies” means both the Kuwait Fund for Arab Economic Development for the financing of the foreign currency component of the Contract and the Investment Bank of Egypt (IBE) for the financing of the local currency component of the Contract.
- z. “Tender” or “Offer” means the Contractor’s priced offer to the Employer for the execution, completion and maintenance of the Works in accordance with the provisions of the Contract, as accepted by the Letter of Acceptance.
- aa. “Contract Agreement” means the contract agreement referred to in Clause 9.
- ab. “Tender date” or “Latest date for Submission of Tender” or “Date of Tender Opening” or “Date of Opening of Tender ”means the ____ (date)_____”

1.5 UNITS

All quantities given or measurements made in connection with the Contract shall be in accordance with the metric system.

2.1 DUTIES & POWER OF THE ENGINEER & ENGINEER’S REPRESENTATIVE

The Engineer is required to obtain specific approval of the Employer for the execution of his duties under the Clauses numbered below:

- 4. (Sub-Contracting)
- 5.2 (Documents Mutually Explanatory)
- 6.4 (Delays and Cost of Delay of Drawings)
- 12.2 (Adverse Physical Conditions & Artificial Obstructions)
- 12.4 (Adverse Physical Conditions & Artificial Obstructions)
- 31. (Opportunities for other Contractors)
- 36.4 (Cost of Tests not Provided for, etc.)
- 40.1 (Suspension of Work)
- 44. (Extension of Time for Completion of Works)
- 48.1 (Certification of Completion of Works)
- 51.1 (Variations)
- 51.2 (Orders for Variations to be in Writing)
- 52.1 (Valuation of Variations)
- 52.2 (Power of Engineer to Fix Rates)
- 52.3 (Variations Exceeding 25 per cent)
- 52.4 (Daywork)
- 58.1 (Definition of Provisional Sums)
- 58.2 (Use of Provisional Sums)
- 60.3 (Correction of Certificates)
- 60.5 (Final Account)
- 62.1 (Maintenance Certificate(Final Certificate of Completion))
- 63.3 (Payment after Forfeiture)
- 65.8 (Payment if Contract Terminated)
- 70.2 (Subsequent Legislation)

In general the Engineer should have the approval of the Employer for any omission, addition of Works or fixation of rates or prices or agreement on any sums or the approval of the sub-contractors, suppliers and manufacturers, extension of time, suspension of works.

The approval of the Employer on any payment to the Contractor or any issuance of Certificates is essential.

Any instructions/orders issued by the Engineer and served on the Contractor relative to the restricted power of the Engineer mentioned under this Sub-Clause are to be considered as specifically approved by the Employer only if they mention that the specific approval of the Employer has been obtained and a copy of such approval must be attached. In any other case the instructions/orders issued in writing by the Engineer under this Contract and served on the Contractor have to be considered as specifically approved by the Employer.

4. SUB-CONTRACTING

Add:

- a. The Contractor should give a clear identification for the role of each sub-contractor (who should be qualified for that role), this clarification will not relieve the Contractor from any liability or obligation under this Contract.
- b. All terms and conditions of any sub-contract or purchase contract shall as far as they are applicable comply or be deemed to comply with the terms and conditions of this Contract.

5.1 LANGUAGE/S AND LAW

Add:

All correspondence, text or drawings, operation and maintenance instructions, etc. shall be in the English language, which shall be the language of the Contract.

The Contract shall be deemed an Egyptian Contract and be governed by and construed according to the laws in Egypt.

5.2 DOCUMENTS MUTUALLY EXPLANATORY

Add at the end of Sub-Clause 5.2 of Clause 5 of Part I (General Conditions) the following:

The priority of the documents forming the Contract is as follows:

1. Contract Agreement, annexes and Appendices to Contract Agreement containing texts of agreed subjects arising from negotiations and Contract preparation meetings.
2. Letter of Acceptance
3. Conditions of Contract (Vol. I-2, Part II: Conditions of Particular Application)

4. Minutes of negotiation meetings and Contract preparation meetings
5. Instructions to Tenderers (Vol. I-1)
6. Conditions of Contract (Vol. I-2, Part I: General Conditions)
7. Technical Specifications (Vol. II, Part I)
8. Bills of Quantities (Vol. III)
9. Addenda to Tender Documents
10. Schedule of Technical Data (Vol. II, Part II)
11. Drawings (Vol. IV)
12. The Offer of the Contractor dated _____(date)_____.
13. The Joint Venture Agreement

All the aforementioned Contract documents are complementary and are taken as mutually explanatory to each other, but in case of ambiguities or discrepancies among them their precedence is made according to the ranking hereabove indicated (i.e. the first precedes the second etc..).

7. FURTHER DRAWINGS & INSTRUCTIONS

Clause 7 shall be read Sub-Clause 7.1

Add the following:

7.2 WORKING DOCUMENTS

- a. **Provisional & Temporary Works Designed by the Contractor**
The Contractor shall be responsible for issuing and submitting to the Engineer 2 copies of all documents and drawings necessary for the erection and execution of major provisional and temporary works and like, which the Contractor considers necessary for the construction and completion of the Works.

The Engineer shall check such documents and furnish the Contractor with his comments within 14 days in writing, otherwise they shall be considered accepted.

The procedure shall be repeated as before to the satisfaction of the Engineer but only 7 days shall be allowed for the checking of the modified documents before they are considered accepted. Two (2) copies shall be sent to the Employer after final approval.

- b. **Operation & Maintenance Instructions for Manufactured Items**
The Contractor shall provide the Engineer with Instruction manuals concerning the operation and maintenance of the manufactured items and as-built drawings sufficiently detailed for the Employer to be able to maintain, dismantle and reassemble all parts of the plant (equipment). Ten copies of these instructions and drawings shall be delivered to the Employer after being checked by the Engineer.
- c. **Operation and Maintenance Manuals**
The works cannot be considered to be completed for the purposes of completion in accordance with Clause 48 until such operation and maintenance manuals, together with drawings on completion have been submitted to and approved by the Engineer.
- d. **As-Built Drawings**
As Structures are completed and in any case before the Certificate of Completion is issued, the Contractor shall provide for each structure, five (5) copies of all As-Built Drawings including one (1) polyester reproducible and one (1) microfilm, to the Engineer for checking and then be submitted to the Employer in proper files.

PERFORMANCE BOND (FINAL LETTER OF GUARANTEE)

10.1 PERFORMANCE BOND

Add the following:

As a guarantee for the due performance of the Contract, the Contractor shall furnish a Performance Bond (Final Letter of Guarantee) in the form attached, issued by a First Class Bank and endorsed by an Egyptian Bank, acceptable to the Employer, amounting to 10% (ten percent) of the Initial Contract Price, this amount to serve as a surety for the fulfilment of the Contract.

10.4 PERIOD OF VALIDITY OF PERFORMANCE BOND

Replace by the following:

The Performance Bond shall remain valid until the Final Account has been signed by the Employer and the Contractor as per Sub-Clause 60.5 hereof and the said shall be returned to the issuer thereof upon issuance of the Final Account.

The Social Insurance Clearance Certificate, clearance from tax authorities evidencing the payment of all taxes due under the Contract according to the laws of A.R.E., release of lien and customs regularization of all imported shipments, must be submitted before the release of the Performance Bond by the Employer.

The release of liens must be signed by the Contractor and all sub-contractors performing work at the Site.

14.1 PROGRAMMES TO BE SUBMITTED

Add the Following

a. Programme of Works

The Contractor shall, within 21 days from the receipt of the Letter of Acceptance, submit a Programme of Works to be agreed upon by the Engineer within 14 days from its submission.

Such programme shall cover the whole construction period and clearly show conformity with the Tender and related Appendices and further be compatible with the Memorandum attached to the Tender and such amendments and adjustments thereto as have been agreed upon.

The programme shall define in sufficient detail the time period required, the order of priority and the inter-dependence of the various individual operations to be performed, and the main Constructional Plant required.

b. Detailed Programme

The Contractor shall within one month of the approval of the Programme of Works submit to the Engineer for his review and consent within 14 days a Detailed Programme of both Temporary and Permanent Works covering at least one year's work. Every three months after the first submission of the Detailed Programme and until the works are completed, the Contractor shall submit to the Engineer for his review an extended and revised Detailed Programme.

The Detailed Programme shall contain information in greater detail than the previous programme about the order of priority and procedure in which the Contractor proposes to carry out the works together with full particulars of the methods of construction.

The programme shall indicate the staff, the skilled and unskilled labour, the Constructional Plant, the materials and Temporary Works which he intends to supply, use or construct as the case may be. The programme shall also show the dates when the various works are expected to be commenced, constructed and completed, and key dates for delivery of materials, Constructional Plant and Plant.

The Critical Path Method (CPM) shall be used in the planning to as great an extent as feasible. The Contractor shall further whenever required by the Engineer furnish for his information particulars in writing of the Contractor's planned arrangements for carrying out the works.

c. Programme of Drawings Submission

Once the Programme of Works under (a) is submitted the Engineer and the Contractor shall accordingly agree upon and prepare a programme of submission of shop drawings by the Contractor showing the number of

drawings, to allow for timely approval of the drawings by the Engineer according to the provisions of the Contract.

d. **Mobilization Programme**

Within a period of 30 days after receipt of the Order to Commence, the Contractor shall submit a program to the Engineer giving full details of his intended mobilization procedure. This shall be such as will ensure completion of mobilization within a period of 90 days after receipt of the Notice to Proceed.

14.3 CASH FLOW ESTIMATE TO BE SUBMITTED

The time within which the detailed cash flow estimate shall be submitted, by the Contractor, shall be one month after the issue date of the Letter of Acceptance.

15. CONTRACTOR'S SUPERINTENDENCE

Add:

The Contractor's agent or representative shall be fluent in English language.

16. CONTRACTOR'S EMPLOYEES

Add:

16.3 A sufficient number of the Contractor's technical assistants, sub-agents, engineers, foremen and leading hands shall have a good working knowledge of the English language.

18. BOREHOLES AND EXPLORATORY EXCAVATION

Clause 18 shall read Sub-Clause 18.1 and add the following:

18.2 Should the Contractor require any boreholes for soil samples or water samples for whatever reason, this work shall be carried out by the Contractor under the supervision of the Engineer. The Contractor shall in any case be deemed to have satisfied himself on all the site conditions before concluding the present Contract. All the costs of such works shall be borne by the Contractor.

20.2 EXCEPTED RISKS

Add the following Sub-Clause 20.3:

20.3 In the event of any such damage, loss, or injury happening from any of the excepted risks, mentioned in Sub-Clauses 20.1 and 20.2, no reimbursement will be done and no extension of time will be granted by the Employer to the Contractor for the due repairs to the extent to which these damages, loss or injuries are caused, or increased by acts or negligence of the Contractor or his sub-contractors, agents, assistants and employees.

25.2 PRODUCTION OF INSURANCE

Add:

All the aforementioned insurances shall cover any effect of mines.

29. INTERFERENCE WITH TRAFFIC AND ADJOINING PROPERTIES

Clause 29 shall read Sub-Clause 29.1 and add the following:

The Contractor shall at his own expense and where necessary provide and maintain all the requisite temporary bridging, gangways, ladders, stagings, roads and footpaths to and about the site of the Works, as may be necessary for the construction of the Works or transport of labour, Constructional Plant and materials. All the above mentioned works which may be constructed and used generally for the works shall be available for the normal use of the Employer, the Engineer and other contractors without charge and the Contractor shall carry out the instructions of the Engineer in this regard.

- 29.2** The Contractor is bound by the regulations and restrictions of any concerned Egyptian Authority.

31. OPPORTUNITIES FOR OTHER CONTRACTORS

Add the following:

The provision of any services covered by Clause 31 shall be without charge to the Employer and the Engineer.

33. CLEARANCE OF SITE ON COMPLETION

Deleted and replaced by the following:

On completion of the Works and before the issue of the Certificate of Provisional Completion, the Contractor shall clear the Works in a workmanlike condition to the satisfaction of the Engineer.

Upon the issue of the Certificate of Provisional Completion of the Works the Contractor shall clear away and remove from the Site all Constructional Plant, surplus materials, rubbish and Temporary Works of every kind and leave the Site and Works clean and in a workmanlike condition to the satisfaction of the Engineer, while the Contractor can only retain on Site, on the location designated by the Engineer, such Constructional Plant, materials and Temporary Works to the extent reasonable in the Engineer's opinion that could be required by the Contractor for the purpose of fulfilling his obligations during the Maintenance Period.

The Contractor shall segregate the wood and scrap metal from the trash.

The Contractor shall also leave on Site, such parts of the Temporary Works as well as the Employer's and Engineer's Facilities (as stated in the Technical Specifications) that the Employer shall take over, free of charge. The vehicles provided shall be excluded from this arrangement.

34.9 IMPORTATION OF LABOUR

The importation of labour and personnel shall be subject to the statutes, ordinances, laws, regulations and by-laws in force in the A.R.E. from time to time and no labour or personnel shall be imported by the Contractor without first obtaining the necessary permits from the appropriate authorities.

The Employer shall when requested by the Contractor use his best endeavour to ensure that the necessary entry and work permits, visas and similar documents are obtained when required, provided always that the Contractor shall make his requests in reasonable time.

41. COMMENCEMENT OF WORKS

Add the following:

Commencement of Works will not be later than thirty (30) days from the date of the Order to Commence which will be issued within sixty (60) days after the signing of the Contract Agreement.

43. TIME FOR COMPLETION

Add the following:

Time for completion of the Works shall be forty-eight (48) months calculated from the last day of the period within which the Works are to be commenced according to Clause 41 hereabove.

47.1 LIQUIDATED DAMAGES FOR DELAY

Add the following:

The Contractor should complete the works under this Contract in the relevant time specified under Clause 43 to comply with the date of completion of the Works. If by his failure in this respect a delay is caused beyond the specified date for completion of the whole works under this Contract, then the Employer may allow the Contractor to complete the execution of works, and this does not prevent the Employer from imposing liquidated damages for delays on the Contractor as stipulated hereinbelow for the period between stipulated time for completion and the actual date so certified.

The liquidated damages shall be applied on the basis of one percent (1%) for every week or any part thereof such that the total levy shall not exceed ten percent (10%).

The periods of stopping the works which are covered by granted extensions of time from the Employer as per the provision of the Contract are not included in the aforementioned delay.

The liquidated damages for delay shall be calculated as percent of the final Contract Price if the Employer sees that the delayed part of the Work shall prevent making use in the stipulated time of the already executed part of the Work. In case the Employer sees that the delayed part of the Work shall not prevent making use of the completed part of the Works, then the liquidated damages percentage shall be applied only to the value of the delayed part and at the rate and rules specified above.

The liquidated damages for delay should be promptly imposed on the Contractor as delay happens although no damages occur and without notice or warning. The Employer will deduct the delay liquidated damages from any payments which are due or may become due to the Contractor.

Moreover, should the delay of the Contractor cause additional costs, charges or expenses to be paid by the Employer to the Engineer, then such costs, charges or expenses will be deducted from the payments which are due or may become due to the Contractor.

48.2 CERTIFICATION OF COMPLETION BY STAGES

Deleted in its entirety.

48.3 Deleted in its entirety.

48.4 Deleted in its entirety.

49.1 DEFINITION OF PERIOD OF MAINTENANCE

The Period of Maintenance of the whole Works shall be 24 months from the date of completion of the Works.

For any part of the work or equipment repaired or replaced, which is considered major/substantial, in the Engineer's opinion, a new maintenance period of 24 months shall start from the date of acceptance of this repaired or replaced Part.

However, in no case shall the Maintenance Period extend beyond thirty (30) months from the date of the Certificate of Provisional Completion of the Works.

Add:

49.5 PRESENCE OF CONTRACTOR'S PERSONNEL DURING THE PERIOD OF MAINTENANCE

Civil Works

It is expected to carry out a joint inspection by the Employer and/or Engineer every six months (during the Maintenance Period). Accordingly, the Contractor is required to provide the specialist staff from his side for such inspection, without prejudice to the Contractor's responsibilities under the provisions of the Contract.

Mechanical, Electrical Works and Pipeline

The Contractor shall provide on site, on a continuous basis qualified, capable representatives responsible for the whole system and they shall be involved in the regular operation and maintenance of which.

The number of these representatives is as follows:

- 8 man-months for expatriate Mechanical & Electrical technicians (i.e. 4 man-months per year)
- 48 man-months for the whole Maintenance Period, Egyptian Engineers (i.e. 2 men per month)

Added to his responsibility for the on-the-job training of the Employer's personnel on operation and maintenance.

All the aforementioned, without prejudice to the Contractor's responsibilities under the provisions of the Contract.

54.11 CONSTRUCTIONAL PLANT, ETC..

Add:

Whenever the quality and the cost of Constructional Plant and materials of Egyptian and foreign products are equal the Contractor shall give preference to the Egyptian products.

60.1 MONTHLY STATEMENT

Add the following:

- e. Modes of payment shall be as follows:
 - (1) For Civil Works
100% (one hundred per cent) of the value of the Permanent Works (excluding Plant) executed from the commencement of the Works up to the end of the relevant month calculated on the basis of the Contract rates and prices.
 - (2) For Materials
75% (seventy-five per cent) of the value of accepted materials on Site intended to be incorporated in the Permanent Works evaluated on the basis of the local market prices for local purchased materials or authenticated CIF invoices for imported materials, subject to the Engineer's approval.

- (3) For Permanent Electrical and Mechanical Equipment (Plant)
- 1 - 15% (fifteen percent) of the rate or price as advance payment to be made against unconditional Letter of Bank Guarantee in the form attached in the Tender Documents, valid until one month after the date of issuance of the Certificate of Completion.
 - 2 - 25% (twenty-five percent) of the rate or price of the item against presentation of the following shipping documents:
 - Bill of lading or Airway bill (two over three originals plus six copies to the Bank, one over three originals plus six copies to the clearing agent)
 - Commercial Invoice (one original and six copies)
 - Certificate of origin (one original and six copies)
 - Packing list (one original and six copies)
 - Inspection and/or Manufacturer's certificate (one original and six copies)
 - Freight Insurance certificate (one original and six copies)
 - 3 - 15% (fifteen percent) of the rate or price of the item on delivery and acceptance on site;
 - 4 - 15% (fifteen percent) of the rate or price of the item on completion of erection;
 - 5 - 20% (twenty per cent) of the rate or price of the item after the successful commissioning test and the issuance of the Certificate of Completion according to the provision of the Contract.
 - 6 - 10% (ten percent) of the rate or price of the item will be paid equally at the end of each year of maintenance period, subject to the performance of the maintenance staff.

(4) For Locally Made Equipment (Plant)

- 1 - 20% (twenty percent) of the rate or price as advance payment to be paid within one month from the date the Employer receives the Letter of Guarantee for the same amount and currency, the value of which shall be diminished proportionally with the value of the actual deliveries of the equipment to the site of the work and ready for erection.
- 2 - 50% (fifty percent) of the rate or price of the item as soon as all the parts comprised in such equipment shall have been delivered on the site of the works ready for erection.
- 3 - 20% (twenty percent) of the rate or price of the item as soon as all the parts comprised in such equipment shall have been completely erected and grouted.
- 4 - 10% (ten percent) of the rate or price of the item will be paid as soon as the whole installation shall have been provisionally completed and accepted under Clause 48.

- (5) A 5% (five percent) Retention Money in accordance to Sub-Clause 60.2 shall be deducted pro-rata from the above payments.

60.2 RETENSION MONEY

- b. the following sentence at the top of the paragraph shall be deleted:**

The Retention Money shall be released at the Certificate of Provisional Completion

and replaced by the following sentence:

The Retention Money shall be released within 30 days of the issue date of the Certificate of Provisional Completion

60.4 ADVANCE PAYMENT

- a. the following sentence shall be deleted:**

"The Employer will make an interest-free advance payment to the Contractor for the costs of mobilization in respect of the Contract Works in a lump sum amount equivalent to ten (10) percent of the sum named in the Letter of Acceptance, payable in the proportionate amounts of foreign and local currencies as provided for in the Contract."

"The Employer will make an interest-free advance payment to the Contractor for the costs of mobilization and preparation in respect of the Contract Works in lump sum amounts in three separate payments, Fifteen percent (15%) of the sum for the foreign procured Permanent Electrical and Mechanical Equipment (Plant), Twenty percent (20%) of the sum for the locally procured Permanent Electrical and Mechanical Equipment and Ten percent (10%) of the remainder of the Total Initial Contract Sum, payable in the proportionate amounts of foreign and local currencies as provided for in the Contract. These sums are named in the Letter of Acceptance."

Add the following at the bottom of paragraph a.:

The advance payments shall be made to the Contractor against unconditional Letters of Bank Guarantee in the relevant sums and currencies, such letters should be issued by a First Class Bank and endorsed by an Egyptian Bank acceptable to the Employer.

Payments of the Advance Payments will be made by the Employer to the Contractor within three weeks from the date of receipt by the Employer from the Contractor of the relevant Advance Payment Guarantees.

The Advance Payment Guarantees shall be valid until 30 (thirty) days after the date of issue of the Certificate of Provisional Completion of the Works.

The Advance Payments shall be repaid to the Employer in the same currencies by making monthly pro-rata deductions from each following certificate.

Upon the Contractor's request the Employer may reduce the amount mentioned in the Letters of Guarantee of Advance Payment, in the same amount and currencies deducted in the monthly certificates, at intervals of not less than 3 (three) months for each Advance Payment.

60.6 PAYMENT IN FOREIGN AND LOCAL CURRENCIES

Add the following:

- (a) Payment in foreign currency
Payments to be made to the Contractor (JV) in Foreign Currency under the Contract shall be made into a single Bank account opened in the name of the Contractor and nominated by the Contractor (JV) in the country of his choice.

Payments in Foreign Currency shall be made by direct settlement by the Kuwait Fund for Arab Economic Development into the hereinabove stated bank account and country.

- (b) Payment in local currency
Payments to be made to the Contractor by the Employer in local currency under the Contract shall be made by cheque in favour of the Contractor drawn on the Employer's Bank handed over by the Employer to the Contractor.

60.7 TIME FOR PAYMENT

Add the following:

Time limit for payment to the Contractor of the amount due under any Interim Payment Certificate shall be 49 (forty-nine) days after the issuance of such Interim Payment Certificate by the Engineer as per Sub-Clause 60.1(b) i.e. not later than 77 (seventy-seven) days from the date of receipt from the Contractor of the relevant application for Interim Payment.

Date of Payment in foreign currency to the Contractor shall be considered to be the date of drawdown confirmed by the Kuwait Fund for Arab Economic Development to the Employer and copied to the Contractor, irrespective of the actual date of crediting the Contractor's account.

67. SETTLEMENT OF DISPUTES

Add the following:

The party requiring reference to Arbitration shall notify the other party of his decision and the name of its appointed Arbitrator, and the other party shall appoint his Arbitrator within 30 (thirty) days from the date of his notification of reference to Arbitration.

If the other party has not appointed his Arbitrator within 30 (thirty) days then such Arbitrator shall be appointed by the Chairman of the Cairo Regional Centre of Arbitration.

If the first and the second Arbitrators shall fail to agree within a period of 30 (thirty) days after appointment as to the selection of the third Arbitrator such Arbitrator shall be appointed by the Secretary General of the Permanent Court of Arbitration at the Hague. In all cases the appointing authority shall be neither from the Country of the Main Contractor or Members of the Joint Venture nor from A.R.E. and the nationality of the third Arbitrator should not be that of the Employer's or the Contractor's or the Joint Venture Members.

- As part of their scope of service the Arbitrators shall determine the costs and fees of Arbitration to be borne by each party.
- The Arbitrators' fees and the administrative expenses shall be determined by the Arbitrators in accordance with the figures and percentages annexed to the Rules of Arbitration of the International Chamber of Commerce.
- The place of arbitration shall be Cairo, A.R.E., and the language to be used shall be the English language.
- All controversies, claims or disputes arising in connection with this Contract or the interpretation, the performance, the breach or termination thereof shall be finally settled under the UNICITRAL Arbitration Rules as at present in force under the auspices of the Cairo Regional Centre of Arbitration.
- In considering the issue or issues submitted for Arbitration, the Arbitrators shall be bound to apply:
 - 1- The terms of this Contract.
 - 2- The law of the Arab Republic of Egypt.

68.1 SERVICE OF NOTICES ON CONTRACTOR

Add:

The Contractor shall establish and maintain for the entire duration of the Contract an office at the Site at which notices shall be validly served upon him. The Contractor shall notify the Employer and the Engineer in writing of the address of this office and of any change thereof, the Employer and the Engineer shall not be bound to take notice of any change of address until it has been so notified.

The said office shall be deemed to be the legal domicile in Egypt of the Contractor and shall be kept open at all customary hours to receive instructions, notices or other communications unless otherwise agreed from time to time in writing between the Employer or the Engineer and the Contractor.

All notices etc., which are left against signature at or sent by registered post to the said office shall be deemed to be validly served upon the Contractor. Every letter sent by registered post shall be deemed to have arrived in the due course of post until the contrary is proved.

68.2 SERVICE OF NOTICES ON EMPLOYER OR ENGINEER

Add:

Any notice to be given to the Employer or the Engineer under the terms of the Contract unless otherwise agreed from time to time in writing shall be served by sending the same by registered post to, or leaving the same against signature at the Employer's and the Engineer's offices respectively in Cairo or at the Site. The Engineer will notify the Contractor in writing of the above mentioned addresses and of any changes thereof.

69. DEFAULT OF EMPLOYER

Delete all the Sub-Clauses of Clause 69.

70.1 INCREASE OR DECREASE OF COSTS

Delete Sub-Clause 70.1

70.2 SUBSEQUENT LEGISLATION

Deleted and replaced by the following:

If after the date ____ (date) ____, which is thirty (30) days prior to the latest date for submission of tenders for the Works, and until the final completion of the Works (as specified under Clause 43 thereof), plus such extensions of time granted by the Employer under the Contract provisions, there occur changes in and/or issue of new laws, decrees, regulations made by any Egyptian Official Authority which can be shown to have caused an additional or reduced cost to the Contractor, in relation to the following items only:

- a) Rates of taxes, duties including those of customs (only for those items included in the Bill of Quantities which are not equivalently produced locally and hence are imported), social insurance rates, excluding any effect of the exchange rate.
- b) Official prices of the following materials and/or services:
 - Electricity
 - Oil products

Then such additional or reduced amount resulting from such difference of rates, or prices, as the case may be, shall be reimbursed to the Contractor, through separate invoicing, or deducted from the payments to the Contractor, as the case may be, after being checked by the Engineer and approved by the Employer within 60 (sixty) days from the submission of the proper acceptable documents.

The amount of any adjustment pursuant to this Sub-Clause 70.2 shall be determined monthly.

71. CURRENCY RESTRICTIONS

Deleted.

72.1 RATES OF EXCHANGE

Deleted.

72.2 THE WORKS ARE TO CURRENCY PROPORTIONS

Deleted.

72.3 CURRENCIES OF PAYMENT FOR PROVISIONAL SUMS

Deleted.

MISCELLANEOUS CLAUSES

73.2 TAXATION LOCAL

Add the following:

The Contractor shall also be responsible for deducting and paying to the competent Egyptian Authorities any taxes, duties or dues to be deducted at source according to Egyptian laws and regulations from payments made by him to his employees, sub-contractors and suppliers working under the Contract.

73.4 DUTIES ON EQUIPMENT

Deleted and replaced by:

The rates and prices bid by the Contractor shall be deemed to include all customs duties, customs clearance and whatever costs and expenses related to all imported items on a temporary basis including personal effects. While for plants (including spare parts) and necessities intended to be incorporated in the Permanent Works, customs duties (if not exempted), but no other dues, taxes

or expenses, will be reimbursed to the Contractor upon his submission and the approval by the Employer of the relevant customs invoices.

The Contractor shall obtain his own information with regard to the granting of import and export licences. The Contractor shall bear all expenses for obtaining all such import and export licences, stamp duties, etc., required for the fulfilment of his obligations under the Contract and shall be deemed to have satisfied himself with regard to all his liabilities under the laws and regulations governing the granting of import and export licences.

Add:

73.5 SOCIAL INSURANCE & STAMP DUTIES

The rates and prices bid by the Contractor shall be deemed to include social insurance, stamp duties or any other dues which are imposed and deductible by laws in A.R.E. from the payments due to the Contractor.

Add:

73.6 EMPLOYER'S ASSISTANCE

Whenever the Employer's assistance is requested according to the provisions of the Contract, the Employer will assist the Contractor during the Contract implementation by issuing appropriate letters to the concerned authorities. This shall not relieve the Contractor of any of his obligations under the Contract.

Add:

73.7 LETTER(S) OF CREDIT

Whenever a Letter(s) of Credit is requested for importation of Constructional Plant, equipment, plant including spare parts, materials, supplies, etc., on both permanent and temporary basis, for the purpose of execution of the Works under the Contract the Contractor shall bear the cost of providing such Letter(s) of Credit.

76. JOINT AND SEVERAL LIABILITY

Add:

The Works of this Contract will be carried out under a single Contract.

In the event that two or more companies act in Consortium or Joint Venture solely to complete the Works as the Contractor under the Contract, their liability towards the Employer shall be joint and several.

The lead party of the Joint Venture shall take full responsibility for the entire Works under the Contract vis-à-vis the Employer.

The members of the Consortium or Joint Venture shall provide at their cost the necessary documentation to demonstrate to the Employer that these requirements have been complied with including any bonds or guarantees required by the Employer over and above any other bonds or guarantees provided under the Contract.

The Consortium or Joint Venture, shall be formed from the prequalified companies only, and it shall remain for the duration of the Contract and no changes in its composition will be allowed without the prior consent of the Employer.

Failure of the lead party to take the leadership of the Consortium or Joint Venture will be considered a fundamental breach of the Contract.

Add:

78. SPECIAL SHIPPING REQUIREMENTS

The Contractor shall effect all shipments, in connection with the Works according to the regulations of MARTRANS (The Egyptian Company of Maritime Transport) on vessels approved by MARTRANS.

The Contractor shall submit to MARTRANS a provisional monthly shipment program three months in advance of actual shipment.

Thirty (30) days before shipment the Contractor shall contact MARTRANS providing the detailed program and the exact shipping dates and request identification and assignment of approved vessel, or if no vessel can be assigned, a waiver from MARTRANS thus authorizing shipment on an alternative vessel.

MARTRANS will issue a waiver authorizing shipment on an alternative vessel not less than fifteen days before the shipping date submitted by the Contractor. If no waiver is received from MARTRANS and no approved vessel is assigned to meet the Contractor's schedule, the Contractor may upon prior notification to the Employer, describing the circumstances, make his own arrangement for shipment on an alternative vessel.

The Address of MARTRANS is:

MARTRANS
7, Abdel Khalek Sarwat Street
Cairo – Egypt

Add:

79. TRAINING

The Contractor shall arrange for training of the Employer's technical staff both in the Contractor's country and in A.R.E. in accordance with the stipulations of the Technical Specifications.

Add:

80. CONTRACT COMING INTO FORCE

The Contract shall come into force upon signing of the Contract Agreement by the Employer and the Contractor.

Add:

81. LEGAL REVISION BY THE EGYPTIAN STATE COUNCIL

Without prejudice to Clause 80 hereof, this Contract will be submitted to the revision by the Egyptian State Council.

If the outcome of the Egyptian State Council's review comments reflects any additional cost to the Contractor, the Employer and the Contractor shall discuss such effects and agree upon the measures to be taken in this respect.

Add:

82. DUPLICATES OF THE CONTRACT

The Contract shall be signed in triplicates, the Contractor shall receive one copy.

Add:

83. INSURANCES

All insurances to be made by the Contractor under the provisions of the Contract shall be arranged through an Egyptian Insurance Company.

Add:

84. LIMITATIONS OF LIABILITY

84.1 LIABILITY FOR INDIRECT OR CONSEQUENTIAL DAMAGE

Neither party shall be liable to the other for any loss of profit , loss of use, loss of production, loss of contracts or for any other indirect or consequential damage that may be suffered by the other, except:

- as expressly provided in Clause 47.

84.2 MAXIMUM LIABILITY

The liability of the Contractor to the Employer under these Conditions shall in no case exceed the Contract Price.