

shall within a further period of twenty one (21) days by notice in writing, with reasons therefor, confirm, reverse or vary such decision to the Contractor.

(4) Approval by PMO/Engineer

No approval given or implied by the PMO/Engineer or his Representative shall relieve the Contractor of his responsibilities under the Contract.

14. Program to be Furnished

(1) CPM Network and Bar-chart Schedule

Within sixty (60) days after receiving the Letter of Acceptance, the Contractor shall submit to the Engineer for his approval a detailed program based on the key dates stated in the Tender Documents or other dates which may be given in the Letter of Acceptance in the form of a Critical Path Method Network (CPM Network) showing the order of procedure and a description showing the construction methods and arrangement by which he proposes to carry out the Works, and construct his temporary facilities including design, manufacture, delivery to the Site, transport, storage, survey, test, erection and maintenance. The Contractor shall provide, whenever requested by the PMO/Engineer or the PMO/Engineer's representative, for his information particulars in writing of the Contractor's arrangement within ten (10) calendar days of such request or other days stated in his request. This program shall be prepared in a form of CPM Network, showing clearly all activities and their durations, dates of the issue of the Drawings by the PMO/Engineer which the Contractor desires, the first and last dates of the submission of the Contractor's drawings, each date of shop inspection by the PMO/Engineer for the Section or Portion of the Works; and shall meet the provisions of the Contract in all respects.

The program so prepared shall be rearranged in a form of a Time Bar-chart Schedule of which size shall be 841 mm by 594 mm. This Time Bar-chart Schedule shall be submitted to the PMO/Engineer together with CPM Network.

(2) Information in Programs

The CPM Network shall be prepared in accordance with commonly accepted practices and shall show graphically the chain of activities/sub-activities and their sequential relationship with each other from the start of construction to the completion of the Contract. The Time Bar-chart Schedule shown in months shall list all main activity and its applicable sub-activities.

(3) Considerations in Programs

In preparing the CPM Network and the Time Bar-chart Schedule, the Contractor shall make due allowances for possible delays. During adverse atmospheric conditions, such as cyclone, strong rain, etc., the Contractor shall interrupt all works whose safety or quality could be negatively affected, or shall take the necessary measures as approved by the PMO/Engineer, allowing the works to be carried out with no diminishing of their quality or additional dangers. Under no circumstances shall the CPM Network or the Time Bar-chart Schedule show a completion in excess of the "Time for Completion" stated in the Appendix to the Tender.

In preparing the CPM Network and the Time Bar-chart Schedule, it is also important that the Contractor shall take into consideration that a temporary access to the tunnel work site is required to be provided at the earliest to commence the tunnel works as scheduled.

(4) Contractual Construction Program

The program once approved by the PMO/Engineer shall thereafter be the Contractual Construction Program. The PMO/Engineer's approval of such program shall not relieve the Contractor of any of his duties or responsibilities under the Contract.

The Contractual Construction Program approved shall supersede all other programs and shall be deemed to be the program on which the Contractor has based his Contract Price and in accordance with which he will undertake to execute the Works.

Based on the Contractual Construction Program, the PMO/Engineer will establish a General Contractual Construction Program which shall bind the Contract. The Contractor shall be responsible for attaining the Program.

(5) Revision of Contractual Construction Program

If the Contractor has fallen behind the approval Contractual Construction Program or could foresee delay(s) therein, he shall, immediately after such default or event occurred or be foreseen or at the request of the PMO/Engineer, submit a revision of the Contractual Construction Program showing the reasons of such delay and the proposed measures to recover such delay or to complete the Works on time, for approval of the PMO/Engineer.

(6) Failure to Submit Program

The Employer will have a right to withhold the payment any time if the Contractor fails to submit the construction program due to his failure, negligence and omission.

15. Contractor's Superintendence

The Contractor shall give or provide all necessary superintendence during the execution of the Works and as long thereafter as the PMO/Engineer may consider necessary for the proper fulfilling of the Contractor's obligations under the Contract. The Contractor, or a competent and authorized agent or representative approved of in writing by the PMO/Engineer, which approval may at any time be withdrawn, is to be constantly on the Works and shall give his whole time to the superintendence of the same. If such approval shall be withdrawn by the PMO/Engineer, the Contractor shall, as soon as is practicable, having regard to the requirement of replacing him as hereinafter mentioned, after receiving written notice of such withdrawal, remove the agent from the Works and shall not thereafter employ him again on the Works in any capacity and shall replace him by another agent approved by the PMO/Engineer. Such authorized agent or representative shall receive, on behalf of the Contractor, directions and instructions from the PMO/Engineer or, subject to the limitations of Clause 2 hereof, the PMO/Engineer's Representative. The Contractor shall not be entitled to claim any additional payment nor extension of Time for Construction with reason of such removals.

The Contractor's Superintendent shall be proficient in English language, both written and spoken, so that he will be able to receive instructions without difficulty and will be able to understand and be understood by the PMO/Engineer.

16. Contractor's Employees

(1) Contractor's Employee

The Contractor shall provide and employ on the Site in connection with the execution and maintenance of the Works.

- (a) only such technical assistants as are skilled and experienced in their respective callings and such sub-agents, foremen and leading hands as are competent to give proper supervision to the work they re required to supervise, and

(b) such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution and maintenance of the Works.

(2) Removal of Contractor's Employee

The PMO/Engineer shall be at liberty to object to and require the Contractor to remove forthwith from the Works any person employed by the Contractor in or about the execution or maintenance of the Works who, in the opinion of the PMO/Engineer, misconducts himself, or is incompetent or negligent in the proper performance of his duties, or whose employment is otherwise considered by the PMO/Engineer to be undesirable and such person shall not be again employed upon the Works without the written permission of the PMO/Engineer. Any person so removed from the Works shall be replaced as soon as possible by a competent substitute approved by the PMO/Engineer. The Contractor shall not be entitled to claim any additional payment nor extension of Time for Completion with reason of such removals.

(3) Nationality of Employee

The Contractor shall submit a list of non-Mauritian personnel required for the Works and shall process with the corresponding Mauritian Authorities permits for legal entry into and residence in Mauritius for non-Mauritian personnel he wishes to assign to the Works. The Contractor shall pay all expenses in connection with departure from Mauritian territory of employees who are non-Mauritian nationals and were hired outside Mauritius for work on the Contract when such employee's services are no longer required for work on the Contract or if and when demanded by proper authority of Mauritius and/or official representation of the country of which the employee is a citizen. All of the Contractor's and the Sub-Contractor's foreign personnel are strictly forbidden from participating in political activities in Mauritius.

(4) Proficiency of Language

All supervisory staff down to and including foremen level provided and employed by the Contractor shall have a reasonable understanding of the English language.

(5) Safety Officer

The Contractor shall assign a full time Site-based Safety Officer who shall be responsible for overseeing all safety matters. Qualification of the person assigned as the Safety Officer shall be subject to approval of the PMO/Engineer.

17. Setting-out

The Contractor shall be responsible for the true and proper setting-out of the Works in relation to original points, lines and levels of reference given by the PMO/Engineer in writing and for the correctness, subject as above mentioned, of the position, levels, dimensions and alignment of all parts of the Works and for the provision of all necessary instruments, appliances and labour in connection therewith. If, at any time during the progress of the Works, any error shall appear or arise in the position, levels, dimensions or alignment of any part of the Works, the Contractor, or being required so to do by the PMO/Engineer or the PMO/Engineer's Representative shall, at his own cost, rectify such error to the satisfaction of the PMO/Engineer at the PMO/Engineer's Representative. The checking of any setting-out or of any line or level by the PMO/Engineer or the PMO/Engineer's Representative not in any way relieve the Contractor of his responsibility for the correctness thereof and the Contractor shall carefully protect and preserve all bench-marks, sight-rails, pegs and other things used in setting-out the Works.

18. Boreholes and Exploratory Excavation

If, at any time during the execution of the Works, the PMO/Engineer shall require the Contractor to make boreholes or to carry out exploratory excavation, such requirement shall be ordered in writing and shall be deemed to be an addition ordered under the provisions of Clause 51 hereof, unless a provisional sum in respect of such anticipated work shall have been included in the Bill of Quantities.

19. Watching and Lighting

The Contractor shall be responsible for the proper fencing, lighting, guarding and watching of all the Works on the Site until taken over and for the proper provision during a like period of temporary roadways, footways, guards and fences as far as the same may be rendered necessary by reason of the Works for the accommodation and protection of the owners and occupiers of adjacent property, the public and others. No naked light shall be used by the Contractor on the Site otherwise than in the open air without specific permission in writing from the PMO/Engineer.

20. Care of Works and Excepted Risks

(1) Care of Works

From the commencement of the Works until the date stated in the Certificate of Completion for the whole of the Works pursuant to Clause 48 hereof the Contractor shall take full responsibility for the care thereof. Provided that if the PMO/Engineer shall issue a Certificate of Completion in respect of any part of the Permanent Works the Contractor shall cease to be liable for the care of that part of the Permanent Works from the date stated in the Certificate of Completion in respect of that part and the responsibility for the care of that part shall pass to the Employer. Provided further that the Contractor shall take full responsibility for the care of any outstanding work which he shall have undertaken to finish during the Period of Maintenance until such outstanding work is completed. In case any damage, loss or injury shall happen to the Works, or to any part thereof, from any cause whatsoever, save and except the excepted risks as defined in sub-clause (2) of this Clause, while the Contractor shall be responsible for the care thereof the Contractor shall, at his own cost, repair and makes good the same, so that at completion the Permanent Works shall be in good order and condition and in conformity in every respect with the requirements of the Contract and the PMO/Engineer's instructions. In the event of any such damage, loss or injury happening from any of the excepted risks, the Contractor shall, if and to the extent required by the PMO/Engineer and subject always to the provision of Clause 65 hereof, repair and make good the same as aforesaid at the cost of the Employer. The Contractor shall also be liable for any damage to the Works occasioned by him in the course of any operations carried out by him for the purpose of completing any outstanding work or complying with his obligations under Clauses 49 or 50 hereof.

(2) Excepted Risks

The "excepted risks" are war, hostilities (whether war be declared or not), invasion, act of foreign enemies, rebellion, revolution, insurrection or military or usurped power, civil war, or unless solely restricted to employees of the Contractor or of his sub-contractors and arising from the conduct of the Works, riot, commotion or disorder, or use or occupation by the Employer of any part of the Permanent Works, or a cause solely due to the PMO/Engineer's design of the Works, or ionizing radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive, nuclear assembly or nuclear component thereof, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds, or any such operation of the forces of

nature as an experienced contractor could not foresee, or reasonably make provision for or insure against all of which are herein collectively referred to as "the excepted risks".

21. Insurance of Works

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

- (a) The Works for the time being executed to the estimated current contract value thereof, to a maximum value as specified in the Appendix to Tender, together with the materials for incorporation in the Works at their replacement value.
- (b) The Constructional Plant and other things brought on the Site by the Contractor to the replacement value of such Constructional Plant and other things.

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

22. Damage to Persons and Property

(1) Indemnity by Contractor

The Contractor shall, except if and so far as the Contract provides otherwise, indemnify the Employer against all losses and claims in respect of injuries or damage to any person or material or physical damage to any property whatsoever which may arise out of or in consequence of the execution and maintenance of the Works and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect of or in relation thereto except any compensation or damages for or with respect to:

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

(2) Indemnity by Employer

The Employer shall indemnify the Contractor against all claims, proceedings, damages, costs, charges and expenses in respect of the matters referred to in the proviso to sub-clause (1) of this Clause.

23. Third Party Insurance

(1) Third Party Insurance

Before commencing the execution of the Works the Contractor, but without limiting his obligations and responsibilities under Clause 22 hereof, shall insure against his liability for any material or physical damage, loss or injury which may occur to any property, including that of the Employer, or to any person, including any employee of the Employer, by or arising out of the execution of the Works or in the carrying out of the Contract, otherwise than due to the matters referred to in the proviso to Clause 22 (1) hereof.

(2) Minimum Amount of Third Party Insurance

Such insurance shall be effected with an insurer and in terms approved by the Employer, which approval shall not be unreasonably withheld, and for at least the amount stated in the Appendix to the Tender. The Contractor shall, whenever required, produce to the

PMO/Engineer or the PMO/Engineer's Representative the policy or policies of insurance and the receipts for payment of the current premiums.

(3) Provision to Indemnify Employer

The terms shall include a provision whereby, in the event of any claim in respect of which the Contractor would be entitled to receive indemnity under the policy being brought or made against the Employer, the insurer will indemnify the Employer against such claims and any costs, charges and expenses in respect thereof.

24. Workmen Compensation Insurance

(1) Accident or Injury to Workmen

The Employer shall not be liable for or in respect of any damages or compensation payable at law in respect or in consequence of any accident or injury to any workman or other person in the employment of the Contractor or any sub-contractor, save and except an accident or injury resulting from any act or default of the Employer, his agents, or servants. The Contractor shall indemnify and keep indemnified the Employer against all such damages and compensation, save and except as aforesaid, and against all claims, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

(2) Insurance Against Accident, etc., to Workmen

The Contractor shall insure against such liability with an insurer approved by the Employer, which approval shall not be unreasonably withheld, and shall continue such insurance during the whole of the time that any persons are employed by him on the Works and shall, when required, produce to the PMO/Engineer or the PMO/Engineer's Representative such policy of insurance and the receipt for payment of the current premium. Provided always that, in respect of any persons employed by any sub-contractor, the Contractor's obligation to insure as aforesaid under this sub-clause shall be satisfied if the sub-contractor shall have insured against the liability in respect of such persons in such manner that the Employer is indemnified under the policy, but the Contractor shall require such sub-contractor to produce to the PMO/Engineer or the PMO/Engineer's Representative, when required, such policy of insurance and the receipt for the payment of the current premium.

25. Remedy on Contractor's Failure to Insure

If the Contractor shall fail to effect and keep in the insurances referred to in Clauses 21, 23 and 24 hereof, or any other insurance which he may be required to effect under the terms of the Contract, then and in any such case the Employer may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the Employer as aforesaid from any monies due or which may become due to the Contractor, or recover the same as a debt due from the Contractor.

26. Compliance with Statutes and Regulations

(1) Giving of Notices and Payment of Fees

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

(2) Compliance with Statutes, Regulations, etc.

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

27. Fossils, etc.

All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the site of the Works shall as between the Employer and the Contractor be deemed to be the absolute property of the Employer. The Contractor shall take reasonable precautions to prevent his workmen or any other persons from removing or damaging any such article or thing and shall immediately upon discovery thereof and, before removal, acquaint the PMO/Engineer's Representative of such discovery and carry out, at the expense of the Employer, the PMO/Engineer's Representative's orders as to the disposal of the same.

28. Patent Rights and Royalties

(1) Patent Rights and Royalties

The Contractor shall save harmless and indemnify the Employer from and against all claims and proceedings for or on account of infringement of any patent rights, design trademark or name or other protected rights in respect of any Constructional Plant, machine work, or material used for in connection with the Works or any of them and from and against all claims, proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto. Except where otherwise specified, the Contractor shall pay all tonnage and other royalties, rent and other payments or compensation, if any, for getting stone, sand, gravel, clay or other materials required for the Works or any of them.

(2) Contractor to Indemnify Employer

In the event of any claim being made or action brought against the Employer arising out of the matters referred to in this Clause, the Contractor shall be promptly notified thereof and may at his own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. The Employer shall not, unless and until the Contractor shall have failed to take over the conduct of the negotiations or litigation, make any admission which might be prejudicial thereto. The conduct by the Contractor of such negotiations or litigation shall be conditional upon the Contractor having first given to the Employer such reasonable security as shall from time to time be required by the Employer to cover the amount ascertained or agreed or estimated, as the case may be, of any compensation, damages, expenses and costs for which the Employer may become liable. The Employer shall, at the request of the Contractor, afford all available assistance for the purpose of contesting any such claim or action and shall be rapid all reasonable expenses incurred in so doing.

(3) Warranty by Employer

The Employer on his part warrants that any design or instructions furnished or given by him shall not be such as will cause the Contractor to infringe any letters patent, registered design, trade mark, copyright or industrial property right in the performance of the Contract.

29. Interference with Traffic and Adjoining Properties

All operations necessary for the execution of the Works shall, so far as compliance with the requirements of the Contract permits, be carried on so as not to interfere unnecessarily or improperly

with the convenience of the public, or the access to, use and occupation of public or private roads and footpaths to or of properties whether in the possession of the Employer or of any other person. The Contractor shall save harmless and indemnify the Employer in respect of all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of, or in relation to, any such matters in so far as the Contractor is responsible therefor.

30. Extraordinary Traffic

(1) Extraordinary Traffic

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

(2) Special Loads

Should it be found necessary for the Contractor to move one or more loads of Constructional Plant, machinery or pre-constructed units or parts of units of work over part of a highway or bridge, the moving whereof is likely to damage any highway or bridge unless special protection or strengthening is carried out, then the Contractor shall before moving the load on to such highway or bridge give notice to the PMO/Engineer or PMO/Engineer's Representative of the weight and other particulars of the load to be moved and his proposals for protecting or strengthening the said highway or bridge. After receipt of the PMO/Engineer's approval, the Contractor shall proceed with such protection or strengthening measures. The cost thereof shall be borne by the Contractor, unless otherwise approved by the PMO/Engineer.

(3) Settlement of Extraordinary Traffic Claims

If during the execution of the Works or at any time thereafter the Contractor shall receive any claim arising out of the execution of the Works in respect of damage or injury to highways or bridges he shall immediately report the same to the PMO/Engineer and thereafter the Employer shall negotiate the settlement of and pay all sums due in respect of such claim and shall indemnify the Contractor in respect thereof and in respect of all claims, proceedings, damages, costs, charges and expenses in relation thereto. Provided always

that if and so far as any such claims or part thereof shall in the opinion of the PMO/Engineer be due to any failure on the part of the Contractor to observe and perform his obligations under sub-clauses (1) and (2) of this Clause, then the amount certified by the PMO/Engineer to be due to such failure shall be paid by the Contractor to the Employer.

(4) Waterborne Traffic

Where the nature of the Works is such as to require the use by the Contractor of waterborne transport the foregoing provisions of this Clause shall be construed as though "highway" included a lock, dock, sea wall or other structure related to a waterway and "vehicle" included craft, and shall have effect accordingly.

31. Opportunities for Other Contractors

(1) Opportunities for Other Contractors

The Contractor shall, in accordance with the requirements of the PMO/Engineer, afford all reasonable opportunities for carrying out their work to any other contractors employed by the Employer and their workmen and to the workmen of the Employer and of any other duly constituted authorities who may be employed in the execution on or near the Site of any work not included in the Contract or of any contract which the Employer may enter into in connection with or ancillary to the Works.

(2) Coordination with Other Contractors

The Contractor shall coordinate the works with other contractors, Employer and PMO/Engineer to assure orderly and expeditious progress of the works. The Contractor shall select order of the works and establish the schedule of working hours for construction which shall be subject to approval of the PMO/Engineer.

(3) Water, Electricity and Telephone for Other Contractors

The Contractor for Lot I will make arrangement of water, electricity and telephone for the Contractor or Contractors for Lots II and III.

(4) Conflicts Between Contractors

Any difference or conflict, if arisen between the Contractor and the other contractor or between the Contractor and the employees of the Employer and the PMO/Engineer, shall be resolved and decided jointly by the Employer, the PMO/Engineer and the contractors.

32. Contractor to Keep Site Clear

- (1) During the progress of the Works the Contractor shall keep the Site reasonably free from all unnecessary obstruction and shall store or dispose of any Constructional Plant and surplus materials and clear away and remove from the Site and wreckage, rubbish or Temporary Works no longer required.
- (2) Dust nuisance originating from any construction activity at or near the Site shall be adequately controlled by the Contractor to the satisfaction of the PMO/Engineer.

33. Clearance of Site on Completion

On the completion of the Works the Contractor shall clear away and remove from the Site all Constructional Plant, surplus materials, rubbish and Temporary Works or every kind, and leave the whole of the Site and Works clean and in a workmanlike condition to the satisfaction of the PMO/Engineer.

The Contractor shall obtain prior approval of the Employer to remove or sell surplus materials, etc.

Temporary roads constructed by the Contractor for the purposes of the Works shall, as an alternative to their removal and at the discretion of the Employer, be put by the Contractor into a good state of repair to the satisfaction of the PMO/Engineer and handed over to the Employer without further payment. Failure by the Contractor to carry out any such instructions given shall be dealt with in accordance with sub-clause (4) of Clause 49 hereof.

LABOUR

34. Labour

(1) Engagement of Labour

The Contractor shall make his own arrangements for the engagement of all labour, local or otherwise, and, for the transport, housing, feeding and payment thereof.

(2) Supply of Water

The Contractor shall provide on the Site, to the satisfaction of the PMO/Engineer's Representative, an adequate supply of drinking and other water for the use of the Contractor's staff and work people.

(3) Alcoholic Liquor or Drugs

The Contractor shall not, otherwise than in accordance with the Statutes, Ordinances and Government Regulations or Orders for the time being in force, import, sell, give, barter or otherwise dispose of any alcoholic liquor, or drugs, or permit or suffer any such importation, sale, gift, barter or disposal by his sub-contractors, agents or employees.

The Contractor shall ensure that the personnel working under his supervision neither consume, nor work under the effects of alcoholic beverages or drugs on the work site.

(4) Arms and Ammunition

The Contractor shall not give, barter or otherwise dispose of to any person or persons, any arms of ammunition of any kind or permit or suffer the same as aforesaid.

(5) Festivals and Religious Customs

The Contractor shall in all dealings with labour in his employment have due regard to all recognized festivals, days of rest and religious or other customs.

(6) Epidemics

In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by the

Government, or the local medical or sanitary authorities for the purpose of dealing with and overcoming the same.

(7) Disorderly Conducts

The Contractor shall at all times take all reasonable precautions to prevent any unlawful riotous or disorderly conduct by or amongst his employees and for the presentation of peace and protection of persons and property in the neighborhood of the Works against the same. The Contractor shall not interfere with any members of any authorized Police Force who shall have free and undisputed access at all times to any part of the Works in the execution of their duties.

(8) Observance by Sub-Contractors

The Contractor shall be responsible for observance by his sub-contractors of the foregoing provisions.

(9) Observance of Regulations

The Contractor shall be responsible for keeping discipline on the Site and shall obey all police, health and municipal regulations and all other regulations which may from time to time require his observance and he shall instruct his agents, Sub-Contractors and other employees to obey such regulations.

(10) Labour Wages and Laws

The Contractor shall pay rates of wages and allowances according to the nature of the works engaged by and observe hours and conditions of his employees, workers and labours not less favorable to the employees, workers and labours than those generally prevailing in the region where the Works are to be carried out. At the same time, the Contractor shall observe all regulations prescribed by law of the Government and shall strictly comply with any agreement, custom, practice or award relating to the wages.

The Contractor and his Sub-Contractors are exclusively responsible for the consequences of any incompliance or infraction of the labour laws and provisions in force in Mauritius.

(11) Wage Books

The Contractor shall keep proper wages books and time sheets showing the wages paid to the time worked by all workmen employed by him in and for the performance of the

Contract and shall produce such wage books and time sheets on demand for inspection by any persons duly authorized by the PMO/Engineer or PMO/Engineer's Representative and shall furnish to the PMO/Engineer or his duly authorized representative such information relating to the wages and conditions of employment of such workmen as the PMO/Engineer or PMO/Engineer's Representative or his duly authorized representative may from time to time require.

(12) Use of Indigenous Labour

The Contractor shall use indigenous labour as far as it is available and suitable for the various functions. If the Contractor intends to employ in Mauritius foreign persons for the Works, he shall be entirely responsible for applying directly, in due time, for the necessary authorization in accordance with the laws and regulations being in force in Mauritius.

(13) Permission for Movement of Labours

The Contractor shall be responsible for making all arrangements for and shall bear all costs relating to the obtaining of all necessary visas, permits, documents or other official permissions for the movement of staff of labour from place to place and from one country to another as may be necessary in connection with the execution of the Works.

(14) Notification of Labour Conflicts

The Contractor is obliged to notify immediately to the Employer's office of any labour conflicts faced by him or his Sub-Contractors that could influence the progress of the Works.

The Contractor shall submit to the Employer's Office copies of any or all labour contracts signed by him or his sub-contractor.

35. Returns of Labour, etc.

The Contractor shall, if required by PMO/Engineer, deliver to the PMO/Engineer's Representative, or at his office, a return in detail in such form and at such intervals as the PMO/Engineer may prescribe showing the supervisory staff and the numbers of the several classes of labour from time to time employed by the Contractor on the Site and such information respecting Constructional Plant as the PMO/Engineer's Representative may require.

MATERIALS AND WORKMANSHIP

36. Materials and Workmanship

(1) Quality of Materials and Workmanship and Tests

All materials and workmanship shall be of the respective kinds described in the Contract and in accordance with the PMO/Engineer's instructions and shall be subjected from time to time to such tests as the PMO/Engineer may direct at the place of manufacture or fabrication, or on the Site or at such other place or places as may be specified in the Contract, or at all or any of such places. The Contractor shall provide such assistance, instruments, machines, labour and materials as are normally required for examining, measuring and testing any work and the quality, weight or quantity of any material used and shall supply samples of materials before incorporation in the Works for testing as may be selected and required by the PMO/Engineer.

(2) Cost of Samples

All samples shall be supplied by the Contractor at his own cost.

(3) Cost of Tests

The cost of making any test shall be borne by the Contractor if such test is clearly intended by or provided for in the Contract and, in the cases only of a test under load or of a test to ascertain whether the design of any finished or partially finished work is appropriate for the purposes which it was intended to fulfil, is particularized in the Contract in sufficient detail to enable the Contractor to price or allow for the same in his Tender.

(4) Cost of Tests not Provided for, etc.

If any test is ordered by the PMO/Engineer which is either

- (a) not so intended by or provided for, or
- (b) (in the cases above mentioned) is not so particularized, or
- (c) though so intended or provided for is ordered by the PMO/Engineer to be carried out by an independent person at any place other than the Site or the place of manufacture or fabrication of the materials tested,

then the cost of such test shall be borne by the Contractor, if the test shows the workmanship or materials not to be in accordance with the provisions of the Contract or the PMO/Engineer's instructions, but otherwise by the Employer. Notwithstanding, only additional cost incurred by the Contractor shall be approved for tests under (c) above. If such PMO/Engineer's order of tests was issued due to reason of any default and/or delay on the part of the Contractor, the cost shall be borne by the Contractor, regardless of the provisions under this sub-clause.

(The following provisions shall be applied to the Works for the Mechanical Equipment.)

(5) Manner of Execution

All Plant to be supplied and all work to be done under the Contract shall be manufactured and executed in the manner set out in the Specifications or, where not so set out, to the satisfaction of the PMO/Engineer, and all the Works on Site shall be carried out in accordance with such reasonable directions as the PMO/Engineer may give.

(6) Inspection and Testing during Manufacture

The PMO/Engineer shall be entitled during manufacture to inspect, examine and test on the Contractor's premises during working hours the materials and workmanship and check the progress of manufacture of all Plant to be supplied under the Contract, and if part of the said Plant is being manufactured on other premises and Contractor shall obtain for the PMO/Engineer permission to inspect, examine and test as if the said Plant were being manufactured on the Contractor's premises. Such inspection, examination or testing if made shall not release the Contractor from any obligation under the Contract.

(7) Dates for Inspection and Testing

The Contractor shall give the PMO/Engineer reasonable notice in writing of the date on and the place at which any Plant will be ready for testing as provided in the Contract and unless the PMO/Engineer shall attend at the place so named within fourteen (14) days of the date which the Contractor has stated in the notice the Contractor may proceed with the tests, which shall be deemed to have been made in the PMO/Engineer presence, and shall forthwith forward to the PMO/Engineer duly certified copies of the test readings. The PMO/Engineer shall give the Contractor twenty four (24) hours notice in writing of his intention to attend the tests. The above notices shall be given at first by the possible quickest measures and confirmed later in writing. If the PMO/Engineer waives its right to attend or is not present on the test site after having been informed of the test, the Contractor

may proceed with the execution of the test in the absence of the PMO/Engineer on the date indicated in his notice. As soon as possible thereafter, the Contractor must send the PMO/Engineer a complete report on the tests in question.

(8) Certificate of Testing

As and when Plant shall have passed the tests referred to in this Clause the PMO/Engineer shall furnish to the Contractor a certificate in writing to that effect.

(9) Rejection

If as a result of such inspection, examination or test of the Plant, other than a Test on Completion under Clause 82, the PMO/Engineer shall decide that such Plant is defective or not in accordance with the Contract, he shall notify the Contractor accordingly stating in writing his objection and reasons therefor. The Contractor shall with all speed make good the defect or ensure that the Plant complies with the Contract. Thereafter, if required by the PMO/Engineer, the tests shall be repeated under the same terms and conditions save that all reasonable expenses to which the Employer may be put by the repetition of the tests shall be deducted from the Contract Price.

(10) Delivery

No Plant shall be shipped or delivered to the Site until the PMO/Engineer shall have issued, in respect of such Plant, a certificate under sub-clause (8) of this Clause. For making effect the shipment or the delivery of the Plant certified and the Constructional Plant, the Contractor shall apply in writing to the PMO/Engineer at least fourteen (14) days before the same intended to be shipped and obtain in writing an authorization for so doing from the PMO/Engineer.

The Contractor shall be responsible for the reception on Site of all Plant and Constructional Plant delivered for the purposes of the Contract and shall, upon arrival at the Site, give a notice to the PMO/Engineer when and where it has arrived and/or been stored.

(11) Delayed Plant

For the purposes of this sub-clause only:

"delayed Plant" means either (a) Plant which by delay or failure on the part of the PMO/Engineer to give such authorization as is mentioned in sub-clause (10) of this Clause or from any cause for which the Employer or some other contractor employed by him is

responsible the Contractor is prevented from delivering to the Site at the time specified for the delivery thereof or, if no time is specified, at the time when it is reasonable for it to be delivered having regard to the date by which the Works ought to be completed; or (b) Plant which has been delivered to the Site but which by delay or failure on the part of the PMO/Engineer or from any cause for which the Contractor is not responsible the Contractor is for the time being prevented from erecting.

"The normal delivery date" means the time when but for such delay, failure or other cause as aforesaid delayed Plant would have been delivered to the site.

"Notice to proceed" means notice in writing from the PMO/Engineer to the Contractor that delayed Plant may forthwith be delivered to the Site or, as the case may be, erected.

(12) Notice of Readiness for Delivery

If delayed Plant is ready for delivery and has been suitably and sufficiently marked as appropriated to the Contract and the Contractor has given to the PMO/Engineer an opportunity of inspecting it or if delayed Plant has been delivered to the Site, the Contractor may give notice in writing to the Employer and the PMO/Engineer requiring that the provisions of sub-clause (13) of this Clause shall have effect with respect to such delayed Plant.

(13) Payment for Delayed Plant

Where notice has been given in accordance with sub-clause (12) of this Clause:

- (a) There shall be included in the Contract Value a sum, ascertained and approved by the PMO/Engineer in like manner to the valuation of variations under Clause 52 for storing and taking reasonable measures to protect and preserve the delayed Plant from and insuring it, to the extent that it can be insured, against loss, deterioration and damage however caused from the date of the said notice or the normal delivery date if this shall be later until the Contractor shall no longer be prevented from delivering the delayed Plant or, as the case may be, erecting it whichever shall first happen.
- (b) The Contractor shall be entitled to have the sum calculated in accordance with Paragraph (a) above, justified by the PMO/Engineer and included in an Interim Certificate.

(14) Notice to Proceed

After receipt of notice to proceed, the Contractor shall after due notice in writing to the PMO/Engineer and if required by the PMO/Engineer, in his presence, examine the delayed Plant and any Plant on the Site that has been erected but not taken over under Clause 48 by reason of delay in the delivery or erection of the delayed Plant, and make good any deterioration or defect therein that may have developed or loss thereof that may have occurred after the normal delivery date or, if later, the date when the Contractor was by such delay, failure or other cause as before-mentioned first prevented from erecting the delayed Plant.

37. Inspection of Operations

The PMO/Engineer and any person authorized in him shall at all times have access to the Works and to all workshops and places where work is being prepared or from where materials, manufactured articles or machinery are being obtained for the Works and the Contractor shall afford every facility for and every assistance in or in obtaining the right to such access.

38. Examination of Work

(1) Examination of Work before Covering up

No work shall be covered up or put out of view without the approval of the PMO/Engineer or the PMO/Engineer's Representative and the Contractor shall afford full opportunity for the PMO/Engineer or the PMO/Engineer's Representative to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon. The Contractor shall give due notice to the PMO/Engineer's Representative whenever any such work or foundations is or are ready or about to be ready for examination and the PMO/Engineer's Representative shall, without unreasonable delay, unless he considers it unnecessary and advises the Contractor accordingly, attend for the purpose of examining and measuring such work or of examining such foundations.

(2) Uncovering and Making Openings

The Contractor shall uncover any part or parts of the Works or make openings in or through the same as the PMO/Engineer may from time to time direct and shall reinstate and make good such part or parts to the satisfaction of the PMO/Engineer. If any such part or parts

have been covered up or put out of view after compliance with the requirement of sub-clause (1) of this Clause and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating and making good the same shall be borne by the Employer, but in any other case all costs shall be borne by the Contractor and shall be recoverable from him by the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor.

39. Removal of Improper Work and Materials

(1) Removal of Improper Work and Materials

The PMO/Engineer shall during the progress of the Works have power to order in writing from time to time

- (a) the removal from the Site, within such time or times as may be specified in the order, of any materials which, in the opinion of the PMO/Engineer, are not in accordance with the Contract
- (b) the substitution of proper and suitable materials and
- (c) the removal and proper re-execution, notwithstanding any previous test thereof or interim payment therefor, of any work which in respect of materials or workmanship is not, in the opinion of the PMO/Engineer, in accordance with the Contract.
- (d) A variation to the Works on defective materials or workmanship which have already been incorporated and can be retained, with approval of the PMO/Engineer, instead of being removed and re-executed. If such variation involves additional work for obviating the necessity for removal and re-execution, such additional work shall be executed at no cost to the Employer.

(2) Default of Contractor in Compliance

In case of default on the part of the Contractor in carrying out such order, the Employer shall be entitled to employ and pay other persons to carry out the same and all expenses consequent thereon or incidental thereto shall be recoverable from the Contractor by the Employer, or may be deducted by the Employer from any monies due or which may become due to the Contractor.

(3) Valuation of Retained Defective Works

Should a variation be permitted, in accordance with provision (d) of sub-clause (1) of this Clause, to enable the retention of defective materials or workmanship, such materials or workmanship whenever payment was done or not shall be valued by the PMO/Engineer and the Contract Price adjusted accordingly.

(The following provision shall be applied to specify a detailed condition applicable to the Works for the Permanent Mechanical Equipment.)

(4) Defects before Taking over

If, in respect of any Section or Portion of the Works not yet taken over, the PMO/Engineer shall at any time:

- (a) decide that any work done or Plant supplied or materials used by the Contractor or any Sub-Contractor is or are defective or not in accordance with the Contract, or that such Section or Portion of the Works is defective or does not fulfil the requirements of the Contract, all such matters being hereinafter in this Clause called "defects", and
- (b) as soon as reasonably practicable give to the Contractor notice in writing of the said decision specifying particulars of the defects alleged and of where the same are alleged to exist or to have occurred, and
- (c) so far as may be necessary place the Plant at the Contractor's disposal,

then the Contractor shall with all speed and at his own expense, make good the defects so specified. In case the Contractor shall fail so to do the Employer may, provided he does so without undue delay, take at the cost of the Contractor such steps as may in all the circumstances be reasonable to make good such defects. All Plant provided by the Employer to replace defective Plant shall comply with the Contract and shall be obtained at reasonable prices and where reasonably practicable under competitive conditions. The Contractor shall be entitled to remove and retain all Plant that the Employer may have replaced at the Contractor's cost. Nothing contained in this Clause shall affect any claim by the Employer under Clause 47.

40. Suspension of Work

(1) Suspension of Work

The Contractor shall, on the written order of the PMO/Engineer, suspend the progress of the Works or any part thereof for such time or times and in such manner as the PMO/Engineer may consider necessary and shall during such suspension properly protect and secure the work, so far as is necessary in the opinion of the PMO/Engineer. The extra cost incurred by the Contractor in giving effect to the PMO/Engineer's instructions under this Clause shall be borne and paid by the Employer unless such suspension is

- (a) otherwise provided for in the Contract, or
- (b) necessary by reason of some default on the part of the Contractor, or
- (c) necessary by reason of climatic conditions on the Site, or
- (d) necessary for the proper execution of the Works or for the safety of the Works or any part thereof insofar as such necessity does not arise from any act or default by the PMO/Engineer or the Employer or from any of the excepted risks defined in Clause 20 hereof.

Provided that the Contractor shall not be entitled to recover any such extra cost unless he gives written notice of his intention to claim to the PMO/Engineer within a period twenty-eight days from the date of the PMO/Engineer's order. The PMO/Engineer shall settle and determine such extra payment and/or extension of time under Clause 44 hereof to be made to the Contractor in respect of such claim as shall, in the opinion of the PMO/Engineer, be fair and reasonable.

(2) Suspension Lasting more than 90 days

If the progress of the Works or any part thereof is suspended on the written order of the PMO/Engineer and if permission to resume work is not given by the PMO/Engineer within a period of ninety (90) days from the date of suspension then, unless such suspension is within paragraph (a), (b), (c) or (d) of sub-clause (1) of this Clause, the Contractor may serve a written notice on the PMO/Engineer requiring permission within twenty-eight (28) days from the receipt thereof to proceed with the Works, or that part thereof in regard to which progress is suspended and, if such permission is not granted within that time, the Contractor by a further written notice so served may, but is not bound to, elect or treat the suspension where it affects part only of the Works as an omission of such part under Clause 51 hereof, or, where it affects the whole Works, as an abandonment of the Contract by the Employer.

(3) Discontinuance of Works

If at any time before completion of the Works under the Contract it shall be found by the Employer that reasons beyond the control of the parties render it impossible or against the interest of the Employer to complete the Works, the Employer at any time by written notice to the Contractor may discontinue the Works and terminate the Contract in whole or in part. Upon the receipt of such notice of termination, the Contractor shall discontinue to work in such manner, sequence and at such times as the PMO/Engineer may request, continuing and doing after said notice such work and only until such time or times as the PMO/Engineer may request. The Contractor shall have no claim for damages for such discontinuance or termination of the Contract, but the Contractor shall receive compensation for reasonable expenses incurred in good faith for the performance of the Contract and for reasonable expenses associated with termination of the Contract. The Employer will determine the reasonableness of such expenses. The Contractor shall have no claim for anticipated profits on the Works thus terminated, nor any other claim, except for the Works actually performed at the time of complete discontinuance, including any variations authorized to be done under the section dealing with variation, after the date of said order, and for any claims for variations accruing up to the date of said notice of termination.

In the event that the Works shall be so discontinued and the Contract terminated, the satisfactory completion of such Works as the PMO/Engineer may thereafter request in satisfactory compliance with the terms of said order shall be deemed the completion of the Works specified in this Contract, and the final statement shall be of the amount of Works completed to the time of such discontinuance and termination together with such other items as may be due the Contractor in accordance with the provisions of this Clause.

(The following provision shall be applied to Works for the Permanent Mechanical Equipment.)

(4) Payment for Plant when Progress Suspended

If work on the Plant or any Portion thereof is suspended as aforesaid by the PMO/Engineer before the Plant or such Portion thereof is delivered to the Site and the suspension exceeds three (3) months and the Contractor has suitably and sufficiently marked the Plant or such Portion thereof as the Employer's property and insurance has been effected in accordance with Clause 21, the provision of which shall thereafter until actual delivery to the Site apply as if the Plant or such Portion thereof was for the time being upon the Site, then without prejudice to the provisions of sub-clause (13) of Clause 36, the Contractor shall be entitled to have the Contract Value thereof as at the commencement of the suspension included in an interim certificate on the expiration of the said three (3) months or, if later, at the time

when, but for such suspension, the Plant or such Portion thereof would have been delivered; provided this sub-clause shall not apply if the suspension is within paragraphs (a), (b), (c), or (d) of sub-clause (1) of this clause; and further provided, that the Contract Value of any Plant that according to the decision of the PMO/Engineer is defective or not in accordance with the Contract shall not be included in such Certificate.

COMMENCEMENT TIME AND DELAYS

41. Commencement of Works

The Contractor shall commence the Works on Site within the period named in the Appendix to the Tender after the receipt by him of a written order to this effect from the PMO/Engineer and shall proceed with the same with due expedition and without delay, except as may be expressly sanctioned or ordered by the PMO/Engineer, or be wholly beyond the Contractor's control.

42. Possession of Site

(1) Possession of Site

Save insofar as the Contract may prescribe, the extent of portion of the Site of which the Contractor is to be given possession from time to time and the order in which such portions shall be made available to him and, subject to any requirement in the Contract as to the order in which the Works shall be executed, the Employer will, with the PMO/Engineer's written order to commence the Works, give to the Contractor possession of so much of the Site as may be required to enable the Contractor to commence and proceed with the execution of the Works in accordance with the program referred to in Clause 14 hereof, if any, and otherwise in accordance with such reasonable proposals of the Contractor as he shall, by written notice to the PMO/Engineer, make and will, from time to time as the Works proceed, give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to proceed with the execution of the Works with due despatch in accordance with the said program or proposals, as the case may be. If the Contractor suffers delay or incurs cost from failure on the part of the Employer to give possession in accordance with the terms of this Clause, the PMO/Engineer shall grant an equitable extension of time for the completion of the Works.

(2) Wayleaves, etc.

The Contractor shall bear all costs and charges for special or temporary wayleaves required by him in connection with access to the Site. The Contractor shall also provide at his own cost any additional accommodation outside the Site required by him for the purposes of the Works

(3) Authority for Entry on the Site

In the execution of the Works, no persons other than the Contractor, Sub-Contractors and his and their employees shall be allowed on the Site except by the written permission of the Employer or the PMO/Engineer.

(4) Possession of Site not Exclusive to Contractor

The possession of the Site including access thereto referred hereof shall not be exclusive to the Contractor but only such as shall enable him to execute the Works.

43. Time for Completion

Subject to any requirement in the Contract as to completion of any section of the Works before completion of the whole, the whole of the Works shall be completed, in accordance with the provisions of Clause 48 hereof, within the time stated in the Contract calculated from the last day of the period named in the Appendix to the Tender as that within which the Works are to be commenced, or such extended time as may be allowed under Clause 44 hereof.

44. Extension of Time for Completion

Upon it becoming apparent that the Works are delayed the Contractor shall forthwith give written notice of the cause of delay to the PMO/Engineer and if in the opinion of the PMO/Engineer the completion of the Works is likely to be or has been delayed beyond the Date of Completion stated in the Appendix to the Tender or beyond any extended time previously fixed under this Clause:

- (1) by force majeure; or
- (2) by reason of any exceptionally inclement weather which reason shall not however constitute grounds for any variation under Clause 12 of these Conditions; or
- (3) by reason of directions given by the PMO/Engineer consequential upon dispute with neighboring owners; or

- (4) by reason of PMO/Engineer's instructions issued under Clause 51 of these Conditions; or
- (5) by reason of the Contractor not having received in due time necessary instructions or drawings from the PMO/Engineer for which he shall have applied in writing on a date which having regard to the Time for Completion stated in the Tender or to any extension of time then fixed under this Clause was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same; or
- (6) by reason of civil commotion, local combination of workmen, strike, or lockout affecting any of the trades employed upon the Works; or
- (7) by delay on the part of artisans, tradesmen or others engaged by the Employer in executing work not forming part of this Contract; or
- (8) Employer's instructions beyond those specified in this Contract; or
- (9) the failure of the Employer to fulfil any of his obligations under the Contract; or
- (10) any suspension of the Works under Clause 40 except for such suspension due to default on the part of the Contractor; or
- (11) any cause, except as may otherwise be provided in the Contract, beyond the reasonable control of the Contractor; or
- (12) by delay on the part of nominated Sub-contractors and nominated Suppliers of their works and such delay shall be caused by the same reasons affecting their work as stated above in sub-clauses (1) to (11) inclusive,

then the PMO/Engineer shall as soon as he is able to estimate the length of the delay beyond the date or time aforesaid make in writing a fair and reasonable extension of time for the completion of the Works. Provided always that the Contractor shall use constantly his best endeavours to prevent delay and shall do all that may reasonably be required to the satisfaction of the PMO/Engineer to proceed with the Works.

Provided that the PMO/Engineer is not bound to take into account any extra or additional work or other special circumstances unless the Contractor has within twenty eight (28) days after such work has been commenced, or such circumstances have arisen, or as soon thereafter as is practicable, delivered to the PMO/Engineer's Representative full and detailed particulars of any claim to extension of time to which he may consider himself entitled in order that such claim may be investigated at the time. After this period, the Contractor will lose any right to a time extension or to compensation for damages. If the cause of the claim continues, it will be sufficient to present a single claim.

45. No Night or Sunday Work

Subject to any provision to the contrary contained in the Contract, none of the Permanent Works shall, save as hereinafter provided, be carried on during the night or on Sundays, if locally recognized as days of rest, or their locally recognized equivalent without the permission in writing of the PMO/Engineer's Representative, except when the work is unavoidable or absolutely necessary for the saving of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the PMO/Engineer's Representative. Provided always that the provisions of this Clause shall not be applicable in the case of any work which it is customary to carry out by rotary or double shifts.

The Contractor shall be responsible to acquire all necessary permissions relevant to this Clause in advance from the relevant authorities.

46. Rate of Progress

(1) Rate of Progress

If for any reason, which does not entitle the Contractor to an extension of time, the rate of progress of the Works or any section is at any time, in the opinion of the PMO/Engineer, too slow to ensure completion by the prescribed time or extended time for completion, the PMO/Engineer shall so notify the Contractor in writing and the Contractor shall thereupon take such steps as are necessary and the PMO/Engineer may approve to expedite progress so as to complete the Works or such section by the prescribed time or extended time. The Contractor shall not be entitled to any additional payment for taking such steps. If, as a result of any notice given by the PMO/Engineer under this Clause, the Contractor shall seek the PMO/Engineer's permission to do any work at night or on Sundays, if locally recognized as days of rest or their locally recognized equivalent, such permission shall not be unreasonably refused.

(2) Recovery of Progress

The PMO/Engineer shall reserve the right to order the Contractor to do any one or more or all of the following: to increase his working forces, to increase his Constructional Plant and equipment, to work additional shifts, to perform overtime work and to take whatever other steps which may be necessary to assure performance in accordance with the Approved Contractual Construction Programme as well as to assure completion of the entire Works within the Contractual time, and the Contractor shall forthwith comply with such orders at his own expense.

47. Liquidated Damages for Delay

(1) Liquidated Damage

It is paramountly important to complete the Works within the time prescribed by Clause 43 hereof, since the delay of the Works will seriously effect on other contract (Lot-II).

If the Contractor shall fail to achieve completion of the Works within the time prescribed by Clause 43 hereof, then the Contractor shall pay to the Employer the sum stated in the Contract as liquidated damages for such default and not as a penalty for every day or part of a day which shall elapse between the time prescribed by Clause 43 hereof and the date of certified completion of the Works. The Employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies in his hands, due or which may become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the works, or from any other of his obligations and liabilities under the Contract.

(2) Reduction of Liquidated Damages

If, before the completion of the whole of the Works any part or section of the Works has been completed, pursuant to Clause 48 hereof, and occupied or used by the Employer, the liquidated damages for delay shall, for any period of delay after such certificate and in the absence of alternative provisions in the Contract be reduced in the proportion which the value of the part or section so certified bears to the value of the whole of the Works.

(3) Deduction from Interim Certificates

The PMO/Engineer will certify the number of days of delay and amount of liquidated damages payable to the Employer from the Contractor in accordance with sub-clause (1) or (2) of this Clause or the provisions specified elsewhere in the Contract, which shall thereupon become a debt due from the Contractor to the Employer. Unless otherwise specifically stated in the PMO/Engineer's certificates on liquidated damages, such liquidated damages shall be included in the next Interim Certificate issued in accordance with Clause 60 hereof.

(4) Maximum Amount of Liquidated Damage

The aggregate maximum amount of liquidated damages payable to the Employer under the Contract shall not in any case exceed ten (10) per cent of the total Contract Price payable to the Contractor under the provisions of the Contract.

48. Certification of Completion of Works

(1) Certificate of Completion

When the whole of the Works have been substantially completed and have satisfactorily passed any final test that may be prescribed by the Contract, the Contractor may give a notice to that effect to the PMO/Engineer or to the PMO/Engineer's Representative accompanied by an undertaking to finish any outstanding work during the Period of Maintenance. Such notice and undertaking shall be in writing and shall be deemed to be a request by the Contractor for the PMO/Engineer to issue a Certificate of Completion in respect of the Works. The PMO/Engineer shall, within twenty-one (21) days of the date of delivery of such notice either issue to the Contractor, with a copy to the Employer, a Certificate of Completion stating the date on which, in his opinion, the Works were substantially completed in accordance with the Contract or give instructions in writing to the Contractor specifying all the work which, in the PMO/Engineer's opinion, requires to be done by the Contractor before the issue of such Certificate. The PMO/Engineer shall also notify the Contractor of any defects in the Works affecting substantial completion that may appear after such instructions and before completion of the works specified therein. The Contractor shall be entitled to receive such Certificate Construction within twenty-one (21) days of completion to the satisfaction of the PMO/Engineer of the works so specified and making good any defects so notified.

The issue of the Certification of Completion shall have prior approval by the Commission of the Employer.

A prior requirement for issuance of the Certificate of Completion is that the Works or the plant shall pass the test operation specified in Clause 82 hereof.

(2) Certification of Completion by Stages

Similarly, in accordance with the procedure set out in sub-clause (1) of this Clause, the Contractor may request and the PMO/Engineer shall issue a Certificate of Completion in respect of:

- (a) any section of the Permanent Works in respect of which a separate time for completion is provided in the Contract and
- (b) any substantial part of the Permanent Works which has been both completed to the satisfaction of the PMO/Engineer and occupied or used by the Employer.

If any part of the Permanent Works shall have been substantially completed and shall have satisfactorily passed any final test that may be prescribed by the Contract, the PMO/Engineer may issue a Certificate of Completion 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 any outstanding work in that part of the Works during the Period of Maintenance.

Provided always that a Certificate of Completion given in respect of any section or part of the Permanent Works before completion of the whole shall not be deemed to certify completion of any ground or surfaces requiring reinstatement, unless such Certificate shall expressly so state.

Provided however that such section and/or portion of the Works shall not be subject to or have passed the two (2) months test operation specified in Clause 82.

(3) Certificates with Reservations

The Works may be provisionally accepted even if there exist defects of minor importance, provided that these defects do not endanger or interfere in any way with the normal functioning of the Works or the Plant. The Contractor must make the corresponding repairs within the period instructed by the Engineer in the Certificate of Completion.

(The following provisions shall be applied to the Works for the Permanent Mechanical Equipment.)

(4) Use before Certificate of Completion

If, by reason of any default on the part of the Contractor, a Certificate of Completion has not been issued in respect of every Portion of the Works within one month after the Time of Completion the Employer shall be at liberty to use the Works or any Section or Portion thereof in respect of which a Certificate of Completion has not been issued if and so long as the Works or the Portion so used as aforesaid shall be reasonably capable of being used provided that the Contractor shall be afforded the earliest possible opportunity of taking such steps as may be necessary to permit the issue of the Certificate of Completion. The provisions of Clause 20 shall not apply to any Portion of the Works while being so used by the Employer.

(5) Interference with Test on Completion

If, by reason of any act or omission of the Employer or the PMO/Engineer, or of some other contractor employed by the Employer, the Contractor shall be prevented from carrying out the Tests on Completion then, unless in the meantime the Works shall have been proved not to be substantially in accordance with the Contract, the Employer shall be deemed to have taken over the Works and the PMO/Engineer shall issue a Provisional Certificate of Completion accordingly; nevertheless the Contractor shall make the said tests during the Period of Maintenance as and when required by the PMO/Engineer by fourteen (14) days' notice in writing and Clause 43 shall apply. Any additional expense to which the Contractor may be put in making the said tests during the Period of Maintenance pursuant to this sub-clause shall be included in the Contract Price, and such allowances shall be made from the performances required to be attained in the said tests as may be reasonable having regard to any use of the Works by the Employer prior to the tests.

MAINTENANCE AND DEFECTS

49. Maintenance and Defects

(1) Definition of Period of Maintenance

In these Conditions the expression "Period of Maintenance" shall mean the period of maintenance named in the Appendix to the Tender, calculated from the date of completion of the Works, certified by the PMO/Engineer in accordance with Clause 48 hereof, or, in the event of more than one certificate having been issued by the PMO/Engineer under the said Clause, from the respective dates so certified and in relation to the Period of Maintenance the expression "the Works" shall be construed accordingly.

(2) Execution of Work of Repair, etc.

To the intent that the Works shall at or as soon as practicable after the expiration of the Period of Maintenance be delivered to the Employer in the condition required by the Contract, fair wear and tear excepted, to the satisfaction of the PMO/Engineer, the Contractor shall finish the work, if any, outstanding at the date of completion, as certified under Clause 48 hereof, as soon as practicable after such date and shall execute all such work of repair, amendment, reconstruction, rectification and making good defects, imperfections, shrinkages or other faults as may be required of the Contractor in writing by the PMO/Engineer during the Period of Maintenance, or within fourteen (14) days after its

expiration, as a result of an inspection made by or on behalf of the PMO/Engineer prior to its expiration.

(3) Cost of Execution of Work of Repair, etc.

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

(4) Remedy on Contractor's Failure to carry out Work Required

If the Contractor shall fail to do any such work as aforesaid required by the PMO/Engineer, 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 PMO/Engineer, the Contractor was liable to do at his own expense under the Contract, then all expense consequent thereon or incidental thereto shall be recoverable from the Contractor by the Employer, or may be deducted by the Employer from any monies due or which may become due to the Contractor, or executing the *Performance Bond*.

(5) Extension of Maintenance Period

For each alteration, repair or replacement of defective works during a maintenance period, the Contractor shall at the request of the Employer extend the Period of Maintenance for an additional period of one (1) year counting from the end of maintenance period originally determined according to sub-clause (1) above or up until accepted by the Employer for any defective item of the Works which had to be altered, repaired and replaced by virtue of Clause 49 hereof, except for the minor extent as approved by the Employer.

(6) Right of Access

Until the final certificate of payment shall have been issued, the Contractor shall have the right of access, during normal working hours, at his own risk and expense, by himself or his duly authorized representatives, whose names shall have previously been communicated in writing to the PMO/Engineer, to all parts of the Works for the purpose of inspecting the working thereof and to records of the working and performance thereof for the purpose of inspecting the same and taking notes therefrom. Subject to the PMO/Engineer's approval,

which shall not be unreasonably withheld, the Contractor may at his own risk and expense make any test which he considers desirable.

(7) Notice of Defects

If any such defect shall appear or damage occur the Employer or the PMO/Engineer shall forthwith inform the Contractor thereof stating in writing the nature of the defect or damage. The provisions of this Clause shall apply to all replacements or renewals carried out by the Contractor to remedy defects and damage as if the said replacements and renewals had been taken over on the date they were completed to the satisfaction of the PMO/Engineer.

(The following provisions shall be applied to the Works of Permanent Mechanical Equipment.)

(8) Making Good Defects

The Contractor shall be responsible for making good with all possible speed at his expense any defect in or damage to any portion of the Works which may appear or occur during the Period of Maintenance and which arises either:

- (a) from any defective materials, workmanship or design, other than a design made, furnished or specified by the Employer and/or the PMO/Engineer and for which the Contractor has disclaimed responsibility in writing within a reasonable time after receipt of the Employer's instructions, or
- (b) from any act or omission of the Contractor done or omitted during the said period.

(9) Removal of Defective Work

The Contractor may with the consent of the PMO/Engineer remove from the Site and Portion of the Works which is defective or damaged if the nature of the defect or damage is such that repairs cannot be expeditiously carried out on the Site.

(10) Further Test on Completion

In the replacements or renewals are of such a character as may affect the efficiency of the Works or any Portion thereof, the Employer may within one month of such replacement or renewal give to the Contractor notice in writing requiring that Tests on Completion be made, in which case such tests shall be carried out as provided in Clause 81.

50. Contractor to Search

The Contractor shall, if required by the PMO/Engineer in writing, search under the directions of the Engineer for the cause of any defect, imperfection or fault appearing during the progress of the Works or in the Period of Maintenance. Unless such defect, imperfection or fault shall be one for which the Contractor is liable under the Contract, the cost of the work carried out by the Contractor in searching as aforesaid shall be borne by the Employer. If such defect, imperfection or fault shall be one for which the Contractor is liable as aforesaid, the cost of the work carried out in searching as aforesaid shall be borne by the Contractor and he shall in such case repair, rectify and make good such defect, imperfection or fault at his own expense in accordance with the provisions of Clause 49 hereof.

ALTERATIONS, ADDITIONS AND OMISSION

51. Variations

(1) PMO/Engineer's Power to Vary

The PMO/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 desirable, he shall have power to order the Contractor to do and the Contractor shall do any of the following:

- (a) increase or decrease the quantity of any work included in the Contract,
- (b) omit any such work,
- (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, and
- (e) execute additional work of any kind necessary for the completion of the Works

and no such variation shall in any way vitiate or invalidate the Contract, but the value, if any, of all such variations shall be taken into account in ascertaining the amount of the Contract Price.

(2) Orders for Variations to be in Writing

No such variations shall be made by the Contractor without an order in writing of the PMO/Engineer. Provided that no order in writing shall be required for increase or decrease

in the quality of any work where such increase or decrease is not the result of an order given under this Clause, but is the result of the quantities exceeding or being less than those stated in the Bill of Quantities. Provided also that if for any reason the PMO/Engineer shall consider it desirable to give any such order verbally, the Contractor shall comply with such order and any confirmation in writing of such verbal order given by the PMO/Engineer, whether before or after the carrying out of the order, shall be deemed to be an order in writing within the meaning of this Clause. Provided further that if the Contractor shall within seven days confirm in writing to the PMO/Engineer and such confirmation shall not be contradicted in writing within fourteen (14) days by the PMO/Engineer, it shall be deemed to be an order in writing by the PMO/Engineer. Any variation order must be approved by the Employer.

(The following provisions shall be applied to the Works for the Permanent Mechanical Equipment.)

(3) Notice and Confirmation of Variation

If the PMO/Engineer shall make any variation in the Work, such reasonable time in writing shall be given to the Contractor as will enable him to make his arrangements accordingly. In cases where Plant is already manufactured or in the course of manufacture, or any work done or Drawings or patterns made require to be altered, a reasonable sum in respect thereof shall be allowed by the PMO/Engineer. If, in the opinion of the Contractor, any variation is likely to prevent or prejudice the Contractor from or in fulfilling any of his obligations under the Contract, he shall notify the PMO/Engineer thereof in writing and the PMO/Engineer shall decide forthwith, whether or not the same shall be carried out. If the PMO/Engineer confirms his instructions in writing the said obligations shall be modified to such an extent as may be justified. Until the PMO/Engineer so confirms his instructions they shall be deemed not to have been given.

52. Valuation of Variations

(1) Rates and Prices for Variations

All extra or additional work done or work omitted by order of the PMO/Engineer shall be valued at the rates and prices set out in the Contract if, in the opinion of the PMO/Engineer, the same shall be applicable. If the Contract does not contain any rates or prices applicable to the extra or additional work, then suitable rates or prices shall be agreed upon between the PMO/Engineer and the Contractor. In the event of disagreement the PMO/Engineer shall fix such rates or prices as shall, in his opinion, be reasonable and proper.

(2) Power of PMO/Engineer to Fix Rates

Provided that if the nature or amount of any omission or addition relative to the nature or amount of the whole of the Works or to any part thereof shall be such that, in the opinion of the PMO/Engineer, the rate or price contained in the Contract for any item of the Works is, by reason of such omission or addition, rendered unreasonable or inapplicable, then a suitable rate or price shall be agreed upon between the PMO/Engineer and the Contractor. In the event of disagreement the PMO/Engineer shall fix such other rate or price as shall, in his opinion, be reasonable and proper having regard to the circumstances.

Provided also that no increase or decrease under sub-clause (1) of this Clause or variation of rate or price under sub-clause (2) of this Clause shall be made unless, as soon after the date of the order as is practicable and, in the case of extra or additional work, before the commencement of the work or as soon thereafter as is practicable, notice shall have been given in writing:

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

Even if there arise disagreement in valuation, the Contractor shall immediately commence the works in accordance with the plan and schedule ordered by the PMO/Engineer, with the understanding that an agreement will be reached at a later date. If the Contractor refuses to execute or is late in executing such works, he will be held responsible for the consequences resulting from such refusal or lateness, damages and delays, including delays caused to other works.

(3) Variations Exceeding 15 per cent

If, on certified completion of the whole of the Works it shall be found that a reduction or increase greater than fifteen (15) per cent of the sum named in the Letter of Acceptance, excluding all fixed sums, provisional sums and allowance for dayworks, if any, results from:

- (a) the aggregate effect of all Variation Orders, and
- (b) All adjustments upon measurement of the estimated quantities set out in the Bill of Quantities, excluding all provisional sums, dayworks and adjustments of price made under Clause 70 (1) hereof,

but not from any other cause, the amount of the Contract Price shall be adjusted by such sum as may be agreed between the Contractor and the Engineer or, failing agreement, fixed by the Engineer having regard to all material and relevant factors, including the Contractor's Site and general overhead costs of the Contract.

(4) **Daywork**

The PMO/Engineer may, if in his opinion it is necessary or desirable, order in writing that any additional or substituted work shall be executed on a Daywork basis. The work so ordered shall immediately become part of the Works to be executed under the Contract. The Contractor shall, as soon as practicable after receiving the Daywork Order from the PMO/Engineer, undertake all the necessary steps for due expedition of such work. Prior to commencement of any work to be done on a Daywork basis, the Contractor shall give an advance notice to the PMO/Engineer stating the exact time of such commencement. The Contractor shall be paid for such work under the conditions set out in the Schedule of Daywork included in the Contract and at the rates and prices affixed thereto by him in his Tender.

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

In respect of all work executed on a daywork basis, the Contractor shall, during the continuance of such work, deliver each day to the PMO/Engineer's Representative 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 plant used thereon or therefor (other than plant which is included in the percentage addition in accordance with the Schedule hereinbefore referred to). One copy of each list and statement will, if correct, or when agreed, be signed by the PMO/Engineer's Representative and returned to the Contractor.

At the end of each month the Contractor shall deliver to the PMO/Engineer's Representative a priced statement of the labour, material and plant, 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 PMO/Engineer shall consider that for any reason the sending of such lists or statements by the Contractor, in accordance with the foregoing provision, was impracticable he shall nevertheless be entitled to authorize payment for such work, either as daywork, on being satisfied as to the time employed and

plant and materials used on such work, or at such value therefor as shall, in his opinion, be fair and reasonable.

Where the rates and/or prices inserted in the Schedule hereinabove referred to do not apply in part or in whole of work carried out on a Daywork basis, suitable rates and/or prices shall be calculated by the PMO/Engineer for the purposes of payment.

(5) Claims

The Contractor shall send to the PMO/Engineer's Representative once in every month an account giving particulars, as full and detailed as possible, of all claims for any additional payment to which the Contractor may consider himself entitled and of all extra or additional work ordered by the PMO/Engineer which he has executed during the preceding month.

No final or interim claim for payment for any such work or expense will be considered which has not been included in such particulars. Provided always that where it is not practicable for the Contractor to give particulars of any such claim, then notwithstanding the Contractor's failure to comply with this condition, such claim for payment will be considered if the Contractor has, within twenty-eight (28) days of the event giving rise to such claim or as soon thereafter as is practicable, notified in writing the Engineer that he intends to make a claim and without any delay thereafter sent to the PMO/Engineer an account giving particular of such claim.

PLANT, TEMPORARY WORKS AND MATERIALS

53. Plant, Temporary Works and Materials

(1) Plant, etc., Exclusive Use for the Works

All Constructional Plant, 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, in writing, of PMO/Engineer, which shall not be unreasonably withheld.

(2) Removal of Plant, etc.

Upon completion of the Works the Contractor shall remove from the Site all the Temporary Works remaining thereon and any unused materials provided by the Contractor, except those that have been paid by the Employer.

(3) Employer not Liable for Damage to Plant, etc.

The Employer shall not at any time be liable for the loss of or damage to any of the said, Temporary Works or materials save as mentioned in Clauses 20 and 65 hereof.

(4) Re-export of Plant

In respect of any Constructional Plant other than those included in the preparatory Works which the Contractor shall have imported for the purposes of the Works, the Employer will assist the Contractor, where required, in procuring any necessary Government consent to the re-export of such Constructional Plant by the Contractor upon the removal thereof as aforesaid.

(5) Customs Clearance

The Employer will assist the Contractor, where required, in obtaining clearance through the Customs of Constructional Plant, materials and other things required for the Works.

(6) Import and disposal of Constructional Plant and Material

The Contractor and his Sub-Contractors shall be allowed to import into Mauritius all materials, supplies, Constructional Plant and other items needed to execute the Works without the payment of any important taxes and duties in accordance with the provisions stipulated in Clause 73.

After all the Works required under this Contract are completed, the Employer will have the first option to buy the Constructional Plant other than those included in the preparatory Works, special equipment and tools imported by the Contractor for the execution of the work in question. If the said Constructional Plant, special equipment and tools are sold to the third parties, the Contractor shall first of all pay all the taxes from which the taxes were exempted in accordance with the stipulations of Clause 73.

(7) Prohibition of Import by Laws

The Contractor shall not import any items which are prohibited by the laws of Mauritius.

(8) Ownership of Constructional Plant

If the Employer or the PMO/Engineer considers it to be necessary, the Contractor shall present satisfactory evidence of ownership or right to use of the Constructional Plant, Temporary Works, materials, etc. placed on the work site.

(9) Lease Agreement with Option to Buy

In case any price of Constructional Plant, Temporary Works or materials are leased with *option to buy and in case they are in the event of seizure, the Contractor must ensure that any lease agreement or lease agreement with option to buy for the aforementioned Constructional Plant, Temporary Works or materials, shall contain a clause allowing the Contractor to transfer, all right and obligations, excluding the Contractor's previous obligations contracted under the agreement, and consequently allowing the Employer, at a written request of the Employer made within the seven (7) days following the date on which such a seizure is made, and on the basis of the Employer pledging to pay all costs or sums for leasing or leasing with option to buy originating from that agreement, starting on that date, to lease or provide to the Employer under a lease agreement with option to buy the Constructional Plant, Temporary Works and materials previously mentioned under the same conditions, in all respects, in which they were leased or supplied to the Contractor, with the difference that the Employer will have the right to allow them to be used by any contractor employed by the Employer for the purpose of completing the Works.*

(The following provisions shall be applied to the Works for the Permanent Mechanical Equipment.)

(10) Ownership of Plant

Plant supplied or to be supplied pursuant to the Contract shall become the property of the Employer at whichever is the earlier of the following times:

- (a) when Plant is appropriated to the Contract;
- (b) when by virtue of Clause 36 or Clause 40, the Contractor becomes entitled to require that the Contract Price of Plant be included in an interim certificate; or
- (c) when Plant is delivered pursuant to the Contract.

(11) Marking of Plant

Where the property in Plant passes to the Employer prior to the delivery of such Plant the Contractor shall so far as is practicable and to the reasonable satisfaction of the PMO/Engineer set the Plant aside and mark the Plant as the property of the Employer. In the event of the Contractor failing so to set aside and mark the Plant as aforesaid the PMO/Engineer shall be entitled to withhold any Interim Certificate to which the Contractor may otherwise be entitled.

Such Plant shall be in the case and possession of the Contractor solely for the purposes of the Contract and shall not be within the ownership or disposition of the Contractor and any Interim Certificate issued by the PMO/Engineer shall be without prejudice to the exercise of any power of the PMO/Engineer contained in the Contract to reject Plant which is not in accordance with the Contract and upon any such rejection the property in the rejected Plant shall immediately revert to the Contractor.

54. Approval of Materials, etc., not implied

The operation of Clause 53 hereof shall not be deemed to imply any approval by the PMO/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 PMO/Engineer.

MEASUREMENT

55. Quantities

The quantities set out in the Bill of Quantities are the estimated quantities of the work, but they are not to be taken as the actual and correct quantities of the Works to be executed by the Contractor in fulfillment of his obligations under the Contract, except certain cases concerning supplies and installations of the Permanent Mechanical Equipment.

56. Works to be Measured

The Contractor shall prepare and submit to the PMO/Engineer all necessary field notes and other records taken and computations made for the purpose of quantity measurement, of which the forms shall be approved by the PMO/Engineer, for the monthly progress payment as prescribed in

Clause 60. The measurement of work quantities made by the Contractor shall be verified and certified by the PMO/Engineer based on the such documents as mentioned above.

The Contractor shall furnish all personnel, equipment and materials as required to make such surveys and computations as necessary to determine the quantities of work performed. Unless otherwise prescribed in the Specifications or the Drawings, all measurement for payment shall be made by the dimensions, lines and grades as shown on the Drawings or by direct survey of which the methods shall be approved by the PMO/Engineer.

The documents submitted for measurement of payment shall become the property of the Employer and shall be used to the extent necessary to determine the monthly progress payment to be made to the Contractor under the Contract. Direct survey if done shall be subject to check and verification by the PMO/Engineer and all errors in the said survey work and relating computations as found in such checking shall be immediately corrected by the Contractor.

57. Method of Measurement

The works shall be measured net, notwithstanding any general or local custom, except where otherwise specifically described or prescribed in the Contract.

PROVISIONAL SUMS

58. Provisional Sum

(1) Definition of "Provisional Sums"

"Provisional Sum" means a sum included in the Contract and so designated in the Bill of Quantities for the execution of work or the supply of goods, materials, or services, or for contingencies, which sum may be used, in whole or in part, or not at all, at the direction and discretion of the PMO/Engineer. The Contract Price shall include only such amounts in respect of the work, supply or services to which such Provisional Sums relate as the PMO/Engineer shall approve or determine in accordance with this Clause.

(2) **Use of Provisional Sums**

In respect of every Provisional Sum the PMO/Engineer shall have power to order:

- (a) work to be executed, including goods, materials or services to be supplied by the Contractor. The Contract Price shall include the value of such work executed or such goods, materials or services supplied determined in accordance with Clause 52 hereof.
- (b) Work to be executed or goods, materials or services to be supplied by a nominated Sub-Contractor as hereinafter defined. The sum to be paid to the Contractor therefor shall be determined and paid in accordance with Clause 59 (4) hereof.
- (c) Goods and materials to be purchased by the Contractor. The sum to be paid to the Contractor therefor shall be determined and paid in accordance with Clause 59 (4) hereof.

(3) **Production of Vouchers, etc.**

The Contractor shall, when required by the PMO/Engineer, produce all quotations invoices, vouchers and accounts or receipts in connection with expenditure in respect of Provisional Sums.

NOMINATED SUB-CONTRACTORS

59. Nominated Sub-Contractors

(1) **Definition of "Nominated Sub-Contractors"**

All specialists, merchants, tradesmen and others executing any work or supplying any goods, materials or services for which Provisional Sums are included in the Contract, who may have been or be nominated or selected or approved by the Employer or the PMO/Engineer, and all persons to whom by virtue of the provisions of the Contract the Contractor is required to sub-let any work shall, in the execution of such work or the supply of such goods, materials or services, be deemed to be sub-contractors employed by the Contractor and are referred to in this Contract as "nominated Sub-Contractors".

(2) Nominates Sub-Contractors; Objection to Nomination

The Contractor shall not be required by the Employer or the PMO/Engineer or be deemed to be under any obligation to employ any nominated Sub-Contractor against whom the Contractor may raise reasonable objection, or who shall decline to enter into a sub-contract with the Contractor containing provisions:

- (a) that in respect of the work, goods, materials or services the subject of the sub-contract, the nominated Sub-Contractor will undertake towards the Contractor the like obligations and liabilities as are imposed on the Contractor towards the Employer by the terms of the Contract and will save harmless and indemnify the Contractor from and against the same and from all claims, 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 Sub-Contractor will save harmless and indemnify the Contractor from and against any negligence by the nominated Sub-Contractor, his gents, workmen and servants and from and against any misuse by him or them of any Constructional Plant or Temporary Works provided by the Contractor for the purposes of the Contract and from all claims as aforesaid.

(3) Design Requirements to be Expressly Stated

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 equipment or plant to be incorporated therein, such requirement shall be expressly stated in the Contract and shall be included in any nominated Sub-Contract. The nominated Sub-Contract shall specify that the nominated Sub-Contractor providing such services will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities.

(4) Payments to Nominated Sub-Contractors

For all work executed or goods, materials, or services supplied by any nominated Sub-Contractor, there shall be included in the Contract Price:

- (a) the actual price paid or due to be paid by the Contractor, on the direction of the PMO/Engineer, and in accordance with the Sub-Contract;

- (b) the sum, if any entered in the Bill of Quantities for labour supplied by the Contractor in connection therewith, or if ordered by the PMO/Engineer pursuant to Clause 58 (2) (b) hereof, as may be determined in accordance with Clause 52 hereof;
- (c) in respect of all other charges and profit, a sum being a percentage rate of the actual price paid or due to be paid calculated, where provision has been made in the Bill of Quantities for a rate to be set against the relevant Provisional Sum, at the rate inserted by the Contractor against that item or, where no such provision has been made, at the rate inserted by the Contractor in the Appendix to the Tender and repeated where provision for such is made in a special item provided in the Bill of Quantities for such purpose.

(5) Certification of Payments to Nominated Sub-Contractors

Before issuing, under Clause 60 hereof, any certificate, which includes any payment in respect of work done or goods, materials or services supplied by any nominated Sub-Contractor, the PMO/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 or services of such nominated Sub-Contractor have been paid or discharged by the Contractor, in default whereof unless the Contractor shall

- (a) inform the PMO/Engineer in writing that he has reasonable cause for withholding or refusing to make such payments and
- (b) produce to the PMO/Engineer reasonable proof that he has so informed such nominated Sub-Contractor in writing,

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

Provided always that, where the PMO/Engineer has certified and the Employer has paid direct as aforesaid, the PMO/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.

(6) **Assignment of Nominated Sub-Contractors Obligations**

In the event of a nominated Sub-Contractor, as hereinbefore defined, having undertaken toward the Contractor in respect of the work executed, or the goods, materials or services supplied by such nominated Sub-Contractor, any continuing obligation extending for a period exceeding that of the Period of Maintenance under the Contract, the Contractor shall at any time, after the expiration of the Period of Maintenance, assign to the Employer, at the Employer's request and cost, the benefit of such obligation for the unexpired duration thereof.

CERTIFICATES AND PAYMENT

60. Certificates and Payment

(1) Payment by Employer

All payments to the Contractor shall be made either in Japanese Yen or U.S. Dollars for the foreign currency component and in Mauritian Rupees for the local currency component. The Employer will execute the payment either by a cheque or by deposits in the bank accounts of the Contractor; one in foreign currency opened in a bank designated by the Contractor, which shall be a foreign exchange bank authorized to operate in Japan in accordance with relevant laws and regulations of Japan, and the other in Mauritian Rupees opened in the _____ Bank in Mauritius.

Payment of foreign currency from the _____'s loan will be made in either of the following procedures which shall be agreed between the Employer and the Contractor.

- (a) by means of irrevocable Letter of Credit (hereinafter referred to as L/C), to be opened in favour of the Contractor by the _____ at the request of the _____ Bank in Mauritius.
- (b) by direct payment from _____ through the _____, on issue of the Employer's request for disbursement. In this case, the opening of L/C will not be required.

The payment from the _____ Loan will be subject to _____'s approval according to the Loan Agreement concluded between _____ and the Employer.

Payment of Mauritian Rupees will be made directly to the Contractor's account in Mauritius.

(2) Advance Payment

The Employer may make an Advance Payment in respect of the Contract to the Contractor in the following manners:

- (a) An Advance Payment amounting to ten (10) per cent of the foreign currency portion (either Japanese Yen or U.S. Dollar) of the Contract Price will be paid to the Contractor within sixty (60) days after establishment of an irrevocable Letter of Credit or after submission of the Contractor's payment request as the case may be, against submission to the Employer of an Advance Payment Bond referred to sub-clause (2) of Clause 10 hereof.
- (b) An Advance Payment amounting to ten (10) per cent of the local currency portion (Mauritian Rupees) of the Contract Price shall be paid within sixty (60) days after arrival of the first group of the Contractor's team for setting out of the works against submission of an Advance Payment Bond referred to sub-clause (2) of Clause 10 hereof.
- (c) The Advance Payment made under this Clause shall be considered as an interest-free credit granted to the Contractor which shall be repaid and shall be used for the mobilization of the works. In this sense, the Contractor shall in no case use the money for other purposes. should the Contractor make abuse of the Advance Payment, it shall become due and payable immediately to the Employer. No further Advance Payment will be made.

Repayment of the Advance Payment shall be made in such manner so that no deduction will be made for the first three (3) months counted from the day on which the Advance Payment was received by the Contractor and thereafter an amount equal to ten (10) per cent of the Advance Payment both for foreign and local currency portions will be deducted from the monthly progress payment referred to in sub-clause (3) hereunder.

(3) Monthly Progress Payment

The Contractor shall submit to the PMO/Engineer after the end of each month signed three (3) copies of a monthly progress payment statement in a form approved by the PMO/Engineer.

The statement shall show the following:

- (a) The estimated Contract Value of the Permanent Works done up to the end of the said month including any work or services for which Provisional Sums are provided in the priced Bill of Quantities.
- (b) Any amount due in respect of Temporary Works for which separate amounts are provided in the priced Bill of Quantities.
- (c) All approved amounts for the works done on Daywork basis.
- (d) Any amount due in respect of the extra or additional works ordered by the PMO/Engineer and done up to the end of the said month, and approved claim(s).
- (e) Any credit due to the Employer for repayment of Advance Payment.
- (f) Any amount withheld as Retention Money in accordance with sub-clause (4) hereunder.
- (f) Any amount of deduction of money which have become due and payable by the Contractor to the Employer under the terms of the Contract.

The statement shall also be accompanied by copies of all survey notes, records of measurements and calculations required by the PMO/Engineer to be prepared by the Contractor in support of the estimated value.

The Contractor shall incorporate all the work values done during the said month into his monthly progress statement as to enable to evaluate the price adjustment amount reasonably. If he failed to incorporate therein a part or parts of the works done during the said month, in the opinion of the PMO/Engineer, price adjustment for such a part or parts of the works pursuant to Clause 70 hereof may be done applying the price adjustment factor for the said month even though the amount for such a part or parts of the month was incorporated in his subsequent monthly progress statement.

The PMO/Engineer shall after examining such statements approve as he deems fit or direct the Contractor to amend if the PMO/Engineer considers necessary to do so and shall within thirty (30) days of receipt of the statement or the one so amended whichever is the later issue to the Employer and the Contractor a certificate (hereinafter referred to as an "Interim Certificate") certifying the amount due to the Contractor. Provided always that no Interim Certificate shall be issued for a sum less than one and a half (1.5) per cent of the Contract Price.

(4) Retention of Payment

The total amount indicated on the first and all subsequent Interim Certificates as the Contract Value of all work done to date by the Contractor shall be subject to a retention of ten (10) per cent (hereinafter referred to as "Retention Money") for guaranteeing due performance of the Contract. These retention will only be made until the amounts retained reach to a sum equivalent to five (5) per cent of the Contract Amount.

(5) Release of Retention Money

The Retention Money will be released to the Contractor without interest in the following manner:

- (a) Upon the issue of the Contractual Construction with respect to the Works all of the Retention Money minus Rs._____, or upon the issue of a Certificate of Completion with respect to a part of the Works only such proportion thereof as the PMO/Engineer shall determine having regard to the relative value of such part of the Works shall become due and payable to the Contractor.

The amount retained above, Rs._____ shall cover a part of the possible Employer's expenditure for the repair and investigatory work to be executed during the Period of Maintenance in accordance with sub-clause (4) of Clause 49.

- (b) Upon the expiration of the Period of Maintenance for the Works the remaining (Rs.____) with due deduction if any expenditure is caused by the Employer under provisions in Clause 49.
- (c) The Employer may consider to release each monthly the retention money upon the Contractor's submittal of a Bank Guarantee or Endorsement covering the corresponding amount prior to the payment of each Interim Certificate. These bank guarantees or endorsements, minus Rs._____ shall be released to the Contractor in the same manner as stated in (a) above.

(6) Payment upon Certificates

Payment upon each of the PMO/Engineer's certificates shall be made by the Employer within sixty (60) days after such certificates has been delivered to the Employer.

(7) Payment by Contractor

All payments to the Employer by the Contractor including payments made by way of deduction shall be made;

- (a) in the case of liquidated damages in the currency of the approved Performance Bond provided by the Contractor in accordance with sub-clause (1) of Clause 10 hereof.
- (b) in any other case in such currency as may be agreed or in default of agreement as the PMO/Engineer shall determine to be fair and reasonable.

(8) Works to be Employer's Property upon Payment

All materials and works in respect of which a progress payment has been made shall thereupon become the property of the Employer but this provision shall not be construed as relieving the Contractor from his sole responsibility for as provided for under this Contract for the care, protection and maintenance of materials and the Works upon which payments have been made, and for completion of the Works or the restoration of any damaged work or as a waiver on the right of the Employer to require the fulfillment of all the terms of the Contract.

(9) Correction of Certificates

The PMO/Engineer may be entitled to make any correction or modification in any previous certificate which shall have been issued by him and shall have the power to withhold any certificate if the Works or any part thereof are not being carried out to his satisfaction, on which no claim by the Contractor shall be founded.

(10) Payment not Conclusive

Payment of certificate shall not be regarded as binding or conclusive as to the Contractor's right to payment and no claim by the Contractor shall be founded thereon in case of overpayment or in case it shall at any time appear that the Works or any part of them have not been executed and completed in accordance with the Contract.

(11) Declaration before Final Interim Certificate

Once the Certificate of Completion of all the works is issued, the Contractor shall present his application for Final Interim Certificate. The payment will be effected after the Contractor has submitted to the Employer a declaration exonerating it from any claim against

the Employer that could arise under and in virtue of the Contract, except for those claims not yet settled, if any, that may be specifically expected by the Contractor, forming part of the declaration of exoneration, and for which a sum must be stipulated in the said declaration. Once these claims made by the Contractor are settled and the payment thereof approved by the Employer, a further declaration of exoneration may be required from the Contractor, if the Employer considers it to be necessary.

(12) Final Payment Certificate

Not later than ninety (90) calendar days after the date of the Maintenance Certificate, the Contractor shall submit to the Engineer a statement of final account with supporting documents showing in detail the value of the Works done in accordance with the Contract together with all further sums which the Contractor considers to be due to him under the Contract up to the date of the Maintenance Certificate. Within ninety six (96) calendar days after receipt of this final account and of all information reasonably required for its verification, upon receipt of the Employer's prior approval, the PMO/Engineer shall issue the Contractor a Final Certificate stating;

- (a) the amount which in his opinion is finally due under the Contract (after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled under the Contract), and
- (b) the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer as the case may be. Such balance shall, subject to Clause 47 hereof, be paid to or by the Contractor as the case may require within sixty (60) calendar days after the Final Certificate has been issued.

The Contractor agrees that once the final payment has been made, the Employer shall become exempt from any claim or responsibility for the Works which the Contractor has executed, in accordance with the Contract Documents.

61. Approval only by Maintenance Certificate

No certificate other than the Maintenance Certificate referred to in Clause 62 hereof shall be deemed to constitute approval of any Works or other matter in respect of which it is issued or shall be taken as an admission of the due performance of the Contract or any part thereof or of the accuracy of any claim or demand made by the Contractor or of additional or varied Works having been ordered by

the PMO/Engineer nor shall any other certificate conclude or prejudice any of the powers of the PMO/Engineer.

62. Maintenance Certificate

(1) Maintenance Certificate

The Contract shall not be considered as completed until a Maintenance Certificate shall have been signed by the PMO/Engineer and delivered to the Employer stating that the Works have been completed and maintained to his satisfaction. The Maintenance Certificate shall be given by the PMO/Engineer within twenty-eight (28) days after the expiration of the Period of Maintenance, or, if different periods of maintenance shall become applicable to different sections or parts of the Works, the expiration of the latest such period, or as soon thereafter as any works ordered during such period, pursuant to Clauses 49 and 50 hereof, shall have been completed to the satisfaction of the PMO/Engineer and full effect shall be given to this Clause, notwithstanding any previous entry on the Works or the taking possession, working or using thereof or any part thereof by the Employer.

(2) Cessation of Employer's Liability

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

(3) Unfulfilled Obligations

Notwithstanding the issue of the Maintenance Certificate the Contractor and, subject to sub-clause (2) of this Clause, the Employer shall remain liable for the fulfillment of any obligation incurred under the provisions of the Contract prior to the issue of the Maintenance Certificate which remains unperformed at the time such 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 hereto.

REMEDIES AND POWERS

63. Remedies and Powers

(1) Default of Contractor

If the Contractor shall become bankrupt or insolvent, or have a receiving order made against him, or shall present his petition in bankruptcy, or shall make an arrangement with or assignment in favour of his creditors, or shall agree to carry out the Contract under a committee of inspection of his creditors or, being a corporation, shall go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or if the Contractor shall assign the Contract, without the consent in writing of the Employer first obtained, or shall have an execution levied on his goods, or if the PMO/Engineer shall certify in writing to the Employer that in his opinion the Contractor:

- (a) has abandoned the Contract, or
- (b) without reasonable excuse has failed to commence the Works within the period stated in the Appendix to the Tender after receiving the PMO/Engineer's Order to Commence, or has suspended the progress of the Works for twenty-eight (28) calendar days after receiving from the PMO/Engineer written notice to proceed, or has failed to proceed with the Works with due diligence or dispatch or with regard to the programme approved under Clause 14 hereof or as subsequently amended, or
- (c) has failed to remove materials from the Site or to pull down and replace work for twenty-eight (28) days after receiving from the PMO/Engineer written notice that the said materials or work had been condemned and rejected by the PMO/Engineer under these conditions, or
- (d) despite previous warnings by the PMO/Engineer, in writing, is not executing the Works in accordance with the Contract, or is persistently or flagrantly neglecting to carry out his obligations under the Contract, or
- (e) has, to the detriment of good workmanship, or in defiance of the PMO/Engineer's instructions to the contrary, sub-let any part of the Contract
- (f) has violated the laws and regulations, or
- (g) is culpable of or has accepted bribery

then the Employer may, after giving fourteen (14) days' notice in writing to the Contractor, enter upon the Site and the Works and expel the Contractor therefrom without thereby

voiding the Contract, or releasing the Contractor from any of his obligations or liabilities under the Contract, or affecting the rights and powers conferred on the Employer or the PMO/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 Constructional Plant, Temporary Works and materials, which have been deemed to be reserved exclusively for the execution of the Works, under the provisions of the Contract, as he or they may think proper, and the Employer may, at any time, sell any of the said Constructional Plant, Temporary Works and unused materials and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to him from the Contractor under the Contract.

In any case, the Surety will be bound to the Employer for any excess in the costs and for damages caused therefrom in accordance with the Performance Bond.

(2) Valuation at Date of Forfeiture

The PMO/Engineer shall, as soon as may be practicable after any such entry and expulsion 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 what amount, if any, had at the time of such entry and expulsion been reasonably earned by or would reasonably accrue to the Contractor in respect of work then actually done by him under the Contract and the value of any of the said unused or partially used materials, any Constructional Plant and any Temporary Works.

(3) Payment after Forfeiture

If the Employer shall enter and expel the Contractor under this Clause, he shall not be liable to pay to the Contractor any money on account of the Contract until the expiration of the Period of Maintenance and thereafter until the costs of execution and maintenance, 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 PMO/Engineer. The Contractor shall then be entitled to receive only such sum or sums, if any, as the PMO/Engineer may certify would have been payable to him upon due completion by him after deducting the said amount. If such amount shall exceed 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.

64. Urgent Repairs

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 Period of Maintenance, any remedial or other work or repair shall, in the opinion of the PMO/Engineer of the PMO/Engineer's Representative, be urgently necessary for the safety of the Works and the Contractor is unable or unwilling at once to do such work or repair, the Employer may employ and pay other persons to carry out such work or repair as the PMO/Engineer or the PMO/Engineer's Representative may consider necessary: If the work or repair so done by the Employer is work which, in the opinion of the PMO/Engineer, the Contractor was liable to do at his own expense under the Contract, all expenses properly incurred by the Employer in so doing shall be recoverable from the Contractor by the Employer, or may be deducted by the Employer from any monies due or which may become due to the Contractor. Provided always that the PMO/Engineer or the PMO/Engineer's Representative, as the case may be, shall, as soon after the occurrence of any such emergency as may be reasonably practicable, notify the Contractor thereof in writing.

In any case, the Surety will be bound to the Employer for any excess in the costs and for damages caused therefrom in accordance with the Performance Bond.

SPECIAL RISKS

65. Special Risks

Notwithstanding anything in the Contract contained:

(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.

(2) Damage to Works, etc., by Special Risks

If the Works or any materials on or near or in transit to the Site, on 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 and for any materials so destroyed or damaged, and, so far as may be required by the PMO/Engineer, or as may be necessary for the completion of the Works, on the basis of cost plus such profit as the PMO/Engineer may certify to be reasonable;
- (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.

(3) 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.

(4) Increased Costs Arising from Special Risks

The Employer shall repay to the Contractor any increased cost of or incidental to 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 PMO/Engineer thereof in writing.

(5) Special Risks

The special risks are war, hostilities (whether war be declared or not), invasion, act of foreign enemies, the nuclear and pressurewaves 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-Contractor and arising from the conduct of the Works, riot, commotion or disorder.

(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.

(7) Removal of Plant on Termination

If the Contractor shall be terminated under the provisions of the last preceding sub-clause, the Contractor shall, with all reasonable despatch, remove from the Site all Constructional Plant other than those included in the Preparatory Works and shall give similar facilities to his Sub-Contractor to do so.

(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 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, so far as the work or service comprised therein has been carried out or performed, and a proper proportion as certified by the PMO/Engineer of any such items, the work or service comprised in which has been partially carried out or performed.
- (b) The cost of materials 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) A sum to be certified by the PMO/Engineer, 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 shall not have been covered by the payments in this sub-clause before mentioned.
- (d) Any additional sum payable under the provisions of sub-clauses (1), (2) and (4) of this Clause.
- (e) The reasonable cost of removal of Constructional Plant under sub-clause (7) of this Clause and, if required by the Contractor, return thereof to the Contractor's main plant yard in his country of registration or to other destination, as no greater cost.
- (f) The reasonable cost of repatriation of all the Contractor's staff and workmen employed on or in connection with the Works at the time of such termination.

Provided always that against any payments 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 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 Clause 65 hereof if the Contract had been terminated under the provisions of Clause 65 hereof.

SETTLEMENT OF DISPUTES

67. Settlement of Disputes

In case of controversy or dispute arising between the Contractor and the Employer in connection with or arising out of the Contract, any party of the Contract, in the first place, shall refer such controversy or dispute to the Engineer for decision. In such case, the Engineer shall give his decision within ninety (90) days from the date of receipt of the matter. The said decision shall be made in writing signed by the Engineer with copy furnished to both parties of the Contract without delay. The decision of the Engineer shall be final and conclusive unless, within thirty (30) calendar days from the date of receipt of the said decision, one party has requested other party to refer the controversy or dispute to arbitration.

Within the thirty (30) days following the notification of arbitration, the Employer and the Contractor will each name their own arbitrator. The two (2) arbitrators will jointly name a third arbitrator. If one of the parties fails to name its arbitrator within the established time, or if the two (2) arbitrators cannot reach an agreement on the choice of the third within a period of thirty (30) days, the arbitrator or arbitrators named may request in writing that the International Chamber of Commerce of Geneva, Switzerland, designates the arbitrator or arbitrators not designated by the parties. The International Chamber of Commerce will also specify the applicable norms.

The arbitration must be carried out in Mauritius and must be conducted in accordance with the laws in force in Mauritius at the time of the signing of the Contract.

The decision of the Arbitration Commission will be definitive and will be binding on both the Employer and the Contractor.

Payment of the arbitrator named by or for the Contractor will be covered by the Contractor and payment of the arbitrator named by or for the Employer will be paid by the Employer. Payment of the third arbitrator and other expenses incurred by the Arbitration Commission, will be covered in the same proportion by both parties.

The works under the Contract must be continued during the arbitration process, unless the Employer orders otherwise.

NOTICES

68. Notices

(1) Service of Notices on Contractor

All certificates, notices or written orders to be given by the Employer or by the PMO/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.

(2) Service of Notices on Employer, PMO 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 as given below.

Employer's address : Central Water Authority (CWA),
St. Paul, Phoenix, Mauritius

PMO's address : On project site at address determined later

Engineer's address :

(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 PMO/Engineer may do so by prior written notice to both parties.

DEFAULT OF EMPLOYER

69. Default of Employer

(1) Default of Employer

In the event of the Employer:

- (a) failing to pay to the Contractor the amount due under any certificate of PMO/Engineer within three (3) months 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) interfering with or obstructing or refusing any required approval to the issue of any such certificate, or
- (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 formal notice to the Contractor that for unforeseen reasons, due to economic dislocation, it is impossible for him to continue to meet his contractual obligations

the Contractor shall be entitled to terminate his employment under the Contract after giving twenty eight (28) days' prior written notice to the Employer, with a copy to the PMO/Engineer.

(2) Removal of Construction Plant

Upon the expiry of the twenty eight (28) days' notice referred to in sub-clause (1) of this Clause, the Contractor shall, notwithstanding the provisions of Clause 53 (1) hereof, with all reasonable despatch, remove from the Site all Construction Plant other than those included in the Preparatory Works brought by him thereon.

(3) Payment by Employer

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 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

70. Changes in Costs

The Contract Prices quoted for the local currency portion are considered as calculated on the basis of the level of the basic costs of labour, materials and equipment in force in Mauritius in the month of the Contract signing day.

During the validity of the Contract, the adjustment of the Contract Values in the local currency portion only (Mauritian Rupees) in the Bill of Quantities shall be made for this Lot I Contract, provided that the Employer shall not make price adjustment for the Contract Value in the foreign currency portion in the Bill of Quantities.

To represent the main basic costs involved in the calculation of the Contract Value, some representative and critical elementary basic costs (base indexes) have been selected and introduced in the price adjustment formulae.

Official sources of the main basic costs shall be all the Official Bulletins periodically issued by authoritative bodies, i.e., the Government or any subordinate branch or agency thereof, in Mauritius, showing their official quotations. For the adjustment to be satisfactory, only official wages and/or prices shall be applied. When consumable items and materials not subject to inspection are concerned, the prices shall be established requesting wholesale quotations, of three (3) suppliers recognized by the Employer, from which the cheapest shall be taken.

The Contract Value in the Bill of Quantities shall be adjusted, if such Contract Value increase or decrease five (5) per cent or more, due to the variation of the above mentioned main basic costs and the consequent application of the designated price adjustment formulae. Price adjustment formulae in the Appendix to this Conditions of Contract shall be applied for the price adjustment. No price adjustment shall be made for the General Item in the Bill of Quantities.

The price adjustment shall be made for the period of every three (3) months separately from the Statement of the Monthly Payment. Provided that the price adjustment shall not be made for the first twelve (12) months calculated from the month of the Contract signing day.

It remains specifically and formally agreed that the Employer under no circumstances shall consider price adjustment for payment of the Works or Section thereof which are executed with delay beyond the completion dates established in the Contractual Construction Time Schedule.

All calculations for applying the price adjustment including breakdown for the items concerned should be prepared by the Contractor and submitted for approval of the Employer through the PMO/Engineer. The Contract Value cannot undergo variations for any reason or cause except for the variations of the above-mentioned basic costs.

CURRENCY AND RATES OF EXCHANGE

71. Currency Restrictions

If, after the date thirty (30) days prior to the latest date for submission of tenders for the Works the Government or authorized agency of the Government of Mauritius 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. Rates of Exchange

Exchange rates for conversion of Japanese Yen and U.S. Dollar into Mauritian Rupees applied to the Performance Bond referred to sub-clause (1) of Clause 10 hereof shall be the selling rate of U.S. Dollar quoted by the Bank of Mauritius, and the selling rate of Japanese Yen against U.S. Dollar quoted by the Bank of Tokyo in Japan, respectively, on the date of the Letter of Acceptance, unless otherwise provided elsewhere in the Contract.

PARTICULAR ITEMS

73. Taxation

(1) Import Tax and Duties

The Contractor shall be exempted from the payment of any import taxes and duties which are levied or imposed upon the importation into Mauritius of the Constructional Plant, equipment and spare parts necessary for the execution of the Works, metal forms and tools, and other materials, as listed in the Schedule of Particulars in the Tender, that the Contractor has to import to fulfil the obligation contracted through the Contract. The Tenders must taken into account that the items to be purchased in the Mauritian territory have to be quoted at market prices.

(2) Income Tax, etc.

Moreover, the Contractor and his foreign employees who enter into Mauritius exclusively to carry out the Works of the Contract shall be exempted from the payment of any income tax, deductions, levies or taxes of any kind, established by national, departmental, municipal offices or others under the laws of Mauritius, with exceptions of highway tolls and the levies established by _____ as designated in Clause 81 hereof or any other exceptions specified in the Contract Documents.

(3) Exclusive Use of Imported Goods for Contract

The goods imported in exemption of the tax shall not be used for any purposes other than those specifically indicated in the Contract.

(4) Import of Motor Vehicles

The Contractor will be granted to receive exemption of customs duties and internal taxes on the motor vehicles, which are not of a luxury type, intended for the use of personnel assigned to the work, and spare parts for said vehicles. These shall be listed in the Schedule of Particulars in the Tender.

(5) Personnel Effects of Foreign Employee

Foreign employees of the Contractor shall also be exempted from customs duties and internal taxes on entering Mauritius in connection with their personal effects, including one

automobile which is not of a luxury type, during their residence in the country. Said exemption will cover all personal effects and household goods not purchased for resale purposes, subject to the customs limits and practices with respect to personal baggage.

(6) Taxes on Sub-contractors

Mauritian Sub-Contractor shall not be exempted from the taxes established by Law No. ____ on Income Tax. Mauritian Sub-Contractor shall be exempted from customs duties and/or taxes on all the Constructional Plant and equipment imported by the Sub-Contractor in accordance with the construction programme and to be used for execution of the Works.

Foreign Sub-Contractors and their foreign personnel shall be exempted from all customs duties and/or taxes of any type to the same extent and form as the Contractor and his foreign personnel.

(7) Disposition of Imported Goods

The machinery, equipments and other articles as well as personal effects including vehicles imported with exemption of taxes and duties, both those belonging to the Contractor and his foreign employees, shall be returned to their place of origin once the Contract is completed.

The Contractor shall not be able to sell, cede, transfer, nor relinquish possession in any way, within the boundaries of Mauritius, of the goods imported under the tax exemption, even though the Contract shall have been rescinded, resolved, lapsed or terminated, without previously paying all taxes exempted by virtue of this Clause.

In the event of the sale of the same to the third parties in Mauritius, customs duties and internal taxes applicable must be paid. The Employer shall have priority for the acquisition through purchase of the aforementioned effects.

(8) Evidence of Disposition

Within a period not exceeding three (3) months after the date of Certificate of Completion, the Contractor shall submit to the Employer the corresponding evidences that he has disposed or is disposing, in accordance with the requirements of this Clause, of the equipments, vehicles and any surplus equipment imported under the tax exemption.

The goods imported under exemption of the tax and which have not been consumed or destroyed, shall be able to be re-exported from Mauritius, also free of taxes, provided that

the said re-exportation takes place within the six (6) months following the date when, for any legal reason, the Contract be terminated. After this six (6) months period, the Contractor will have to pay the corresponding taxes applicable.

(9) Periodical Statement of Imported Goods

At intervals of six (6) months after signing the Contract, the Contractor shall submit to the Employer statements certified by the Engineer, listing all the Constructional Plant, equipment and materials imported in accordance with the tax exemption stipulated in this Clause and still available for use in Mauritius. Should the Contractor fail to submit these statements when due, the Employer may withhold monthly payments until this obligation is fulfilled. The final payment shall be withheld until the Contractor submits valid proof that the Constructional Plant, equipment and any excess materials have been disposed of in accordance with the requirements of this Clause.

74. Bribery

Any commission, advantage gift, gratuity, reward or bribe given, promised or offered by or on behalf of the Contractor or his agent or servant, or any other person on his or their behalf to any officer, servant, representative or agent of the Employer, or of the PMO/Engineer, or of the PMO/Engineer's Representative, or to any person on their behalf or on behalf of any of them in relation to the obtaining or to the execution of this or of any other contract with the Employer shall, in addition to any criminal liability which may be thereby incurred, subject the Contractor to the cancellation of this and all other contracts which he may have entered into with the Employer, and also to the payment of any loss or damage resulting from such cancellation. The Employer shall be entitled upon a certificate in writing of the PMO/Engineer to deduct the amounts so certified from any monies otherwise due to the Contractor under this or any other contract or to recover the said amounts as a debt due or partly the one and partly the other as the Employer shall deem advisable.

75. Explosives

The Contractor shall conform in all respects to the Laws and Security Regulations in force relating to the importation, handling, movement, storage and use of explosives. The Contractor shall at his own cost erect magazines at locations approved by the competent authority for that purpose and he shall conform in all respects to the Laws in force regarding the erection and maintenance of the magazines. The Contractor shall obtain all necessary licenses and pay all fees and charges in respect of the same as may be necessary for the purpose of moving explosives from place to place and

storing the same and do all things necessary to ensure compliance with the Laws for the time being in force relating to dangerous goods.

76. Materials and Equipment Provided by Employer or Other Contractors

- (1) Where the Specifications require the Contractor to receive from the Employer or other contractors any materials and equipment or other things for incorporation in or use by the Contractor in the Works, the Contractor shall immediately upon receiving the same be responsible thereof to the full extent specified in the Contract as if the same had been materials, equipment or other things provided by the Contractor himself for or in connection with the Works. Provided always that the Contractor shall not be liable in respect of any defects in materials or workmanship or otherwise attributable to the makers or suppliers of such materials and equipment or for any damage to the same that may have occurred prior to delivery to the Contractor by the Employer or other contractors.

All such materials and equipment or other things shall remain the property of the Employer and shall not be removed from the Site without the permission of the PMO/Engineer being first obtained.

- (2) *If the material and equipment supplied by the Employer are lost or missing whilst in the Contractor's custody, they shall be newly furnished by the Contractor or otherwise the value of the missing material and equipment may be deducted from any sum due to the Contractor, or in the absence of such sums, from the guarantee deposit.*

Any materials not used and in good condition upon completion of the Contract, must be returned to the Employer, together with a written note from the Contractor, provided that the Contractor has obtained written permission from the Employer to return such materials. The Contractor will not have the right to claim any compensation for any material supplied by the Employer that has not been used, or for any loss or damage to such materials or equipment.

- (3) Tools supplied with any equipment may be used for erection purposes when approved by the Employer and shall be returned to the Employer after erection in a condition acceptable to the Employer. If the Employer does not accept them, the Contractor shall replace the tool or tools at no extra cost to the Employer.

77. Damage to Services

The Contractor shall be held liable for all damage and interference to drains and pipes, to electric cables or lines of any kind either above or below ground caused by him or his Sub-Contractor in the execution of the Works. Should any damage be done to drains, pipes, wires, telegraph, or electric light services, etc., whether or not shown on the Drawings, the Contractor must make good the same without delay and do any further work considered necessary by the PMO/Engineer, all at his own cost. The Contractor will be deemed to have provided for these contingencies in fixing the rates and prices inserted in the Bill of Quantities.

78. Advertising

Any advertising stating the subject of this Contract by the Contractor in Mauritius or in other foreign countries shall be approved by the Employer prior to publication which approval will not be unreasonably withheld.

Publication of approved articles, photographs and other similar materials shall carry acknowledgement to the Employer.

79. Secrecy

The Contractor, his employees, agent(s) and Sub-Contractor(s) shall not give to unauthorized persons any information, verbal or otherwise, about the Project and shall not allow unauthorized persons to inspect the Works and Contract Documents without prior consent of the Employer.

80. Limited Expenditures

No expenditure exceeding the amount stated hereunder shall be allowed in the country other than the eligible source countries which names are given in the Appendix to Instructions to Tenderers. Financing of goods which contain materials originating from a non-eligible source country or countries may be made, provided that the imported portion is less than fifty (50) per cent of the price per unit of such goods according to the following formulae:

- (1) When Mauritian suppliers are awarded the relative contract, the ratio shall be the price CIF of the imported portion of the goods plus import duties levied on that portion over the price ex-factory of the goods being supplied.

$$\frac{\text{Imported CIF Price} + \text{Import Duty}}{\text{Supplier's Ex-Factory Price}} \times 100$$

- (2) When suppliers of eligible source countries other than the Mauritius are awarded the relative contract, the ratio shall be the price CIF of the imported portion of the goods plus import duties levied on that portion over the price FOB of the goods being supplied.

$$\frac{\text{Imported CIF Price} + \text{Import Duty}}{\text{Supplier's FOB Price}} \times 100$$

Certifications of source and origin and certifications of eligibility of the Tenderer shall be made by the Tenderer in the specified Form and shall be compiled in the Tender Documents.

81. Test on Completion

(1) Notice of Test

The Contractor shall give to the PMO/Engineer, with a copy to the Employer, twenty one (21) days' notice in writing of the date after which he will be ready to make the Tests on Completion. Unless otherwise agreed the tests shall take place within ten (10) days after the said date on such day or days as the PMO/Engineer shall notify the Contractor in writing.

The term of "Test on Completion" shall cover the following:

- (a) final inspection of civil works (Lot I)
- (b) final test on the mechanical and electrical engineering character provided and installed under Lot I
- (c) final test on Hydromechanical Equipment (Lot I)

The Contractor shall duly update all the technical information such as drawings, instruction manuals and test procedure instructions previously submitted, taking into account all the modifications made during the erection and installation.

(2) Time for Test

If the PMO/Engineer fails to appoint a time after having been asked so to do or to attend at any time or place duly appointed for making the said tests the Contractor shall refer the matter to the Employer so that he could take a corrective measure immediately.

(3) Delayed Tests

If in the opinion of the PMO/Engineer the tests are being unduly delayed he may, by notice in writing, call upon the Contractor to make such tests within twenty one (21) days from the receipt of the said notice, and the Contractor shall make the said tests on such days within the said twenty one (21) days as the Contractor may fix and of which he shall give notice to the PMO/Engineer. If the Contractor fails to make such tests within the time aforesaid the PMO/Engineer may himself proceed to make the tests.

(4) Cost of Tests

The Contractor shall bear all the expenses, except where otherwise specified, as may be requisite and as may be reasonable to carry out the tests efficiently.

(5) Repeat Tests

If any Portion of the Works fails to pass the tests, tests of the said Portion shall, after making necessary corrections on such portions, be repeated within a reasonable time upon the same terms and conditions, save that all reasonable expenses to which the Employer may be put by the repetition of the tests shall be deducted from the Contract Price.

(6) Consequences of Failure to Pass Tests

If the Works or any Section thereof shall fail to pass the tests on the repetition thereof under sub-clause (5) of this Clause the PMO/Engineer shall be entitled:

- (a) to order a further repetition of the tests under the conditions of sub-clause (5), or
- (b) to reject the Works or Section thereof in accordance with Clause 36, if the results of the tests show that the Works or the Section fail to meet the performance guarantees or the agreed tolerances specified in the Contract, or if there are no such guarantees or tolerances, the results show that the Works or the Section are not in accordance with the Contract, or
- (c) to issue a Provisional Certificate of Completion, if the Employer so wishes, subject to such reduction of the Contract Price as may be provided in the Contract.

(7) **"Provisional Certificate of Completion**

After the Tests on Completion have been successfully performed and final adjustment made as approved by the PMO/Engineer, the PMO/Engineer will issue the "Provisional" Certificate of Completion with receipt of consent from the Employer.

82. Test Operation for Two Months

(1) **Test Operation**

After the issuing of the Provisional Certificate of Completion, Test Operation will be carried out under the supervision and responsibility of the Contractor and at the expense and risk of the latter. The Employer will assign his operation and maintenance personnel to participate in the Test Operation.

The duration of the Test Operation will be sixty (60) days. The Contractor shall provide qualified personnel for continuous Test Operation.

During the Test Operation, the functioning, reliability, safety and economy of the Works and the Plant will be verified under forces of normal operation, and for this reason, adequate tests of operation shall be carried out.

The purpose of the Test Operation is to demonstrate that the Works are ready to begin functioning and that the guaranteed data established in the Contract Documents have been attained. should any defects are observed, the functioning tests will be carried out again after the defects have been eliminated. Minor repair works may be executed during the test without affecting its duration.

During Test Operation, the Contractor shall give instructions to the Employer's personnel so that at the end of the tests they will be familiar with all questions and facts related to the functioning and maintenance of the works. If after receiving these instructions the personnel is still not sufficiently familiarized with the above problems, new measures must be agreed on so as to ensure that the Plant are operated and made to function in a proper manner.

The Operation and Maintenance Manuals, duly translated into English, will be used as a basis for the instruction of the Employer's personnel and will be verified, revised and terminated during the Test Operation.

In the event that it is not possible to commence the Test Operation immediately after the Test on Completion, all the inspections and revisions necessary prior to the start of Test Operation shall be carried out in accordance with an agreement reached between the Contractor and the Employer.

Prior to completing the Test Operation, the Contractor must clean all the components of the Plant supplied in virtue of the Specifications so as to remove any external dirt such as dust, mortar, grease, pieces of insulation, etc.

Any piece provided by other contractor that is damaged or spoiled because of the work carried out in virtue of the Specifications shall be restored to its original condition at the expense of the Contractor responsible for the tests.

(2) Acceptance Tests

The Contractor must verify the behavior of the Plant and the data guaranteed in the Contract Documents, by carrying out acceptance tests, either during or after the Test Operation, as agreed to with the Employer and the PMO/Engineer and/or in accordance with the Specifications.

The tests will be executed during the normal work period and during normal operating conditions.

(3) Termination of Test Operation

After the successful termination of the Test Operation, the Contractor shall be entitled to request the issuance of the Certificate of Completion in accordance with Clause 48.

APPENDIX-A TO CONDITIONS OF CONTRACT

REVISIONS FROM FIDIC GENERAL CONDITIONS

Clause No.	Entire Substitution	Partial Deletion	Partial Revision	Addition
1	-	-	*	*
2	*	-	-	-
3	*	-	-	-
4	-	*	-	*
5	-	*	-	*
6	-	-	*	*
9	*	-	-	-
10	*	-	-	-
11	-	-	*	*
12	-	-	-	*
13	-	-	-	*
14	*	-	-	-
15	-	-	-	*
16	-	-	-	*
17	-	*	-	-
19	*	-	-	-
21	-	-	*	*
28	-	-	-	*
30	-	*	-	*
31	-	*	-	*
32	-	-	-	*
33	-	-	-	*
34	-	-	-	*
36	-	*	-	*
38	-	-	-	*
39	-	-	-	*
40	-	-	-	*
42	-	*	-	*
44	*	-	-	-
45	-	-	-	*
46	-	-	-	*
47	-	*	-	*
48	-	-	-	*
49	-	-	-	*

Clause No.	Entire Substitution	Partial Deletion	Partial Revision	Addition
51	-	-	-	*
52	-	*	*	*
53	-	*	-	*
55	-	-	-	*
56	*	-	-	-
60	*	-	-	-
61	*	-	-	-
62	-	*	-	-
63	-	*	-	*
67	*	-	-	-
68	-	*	-	*
69	-	-	*	-
70	*	-	-	-
71	-	-	*	-
72	*	-	-	-
73 - 82	-	-	-	*

Note : This Appendix has been prepared for Tenderers reference. No claim shall be raised with regard to correctness and appropriateness of the indications hereto.

APPENDIX-B TO CONDITIONS OF CONTRACT

PRICE ADJUSTMENT FORMULAE

The following price adjustment formulae shall apply to the local currency portion of the Contract Values:

Formula No. 1 For civil construction works of the access/haul roads:

$$P = P_o (0.20 + 0.32 H_t/H_o + 0.10 E_t/E_o + 0.30 C_t/C_o + 0.08 S_t/S_o)$$

Formula No. 2 For civil construction works of diversion tunnel:

$$P = P_o (0.24 + 0.32 H_t/H_o + 0.15 E_t/E_o + 0.10 C_t/C_o + 0.19 S_t/S_o)$$

Formula No. 3 For furnishing and installing the Permanent Mechanical Equipment:

$$P = P_o (0.15 + 0.85 LL/LL_o)$$

where,

P_o = Amount of the Contract Value under revision indicated in the Bill of Quantities

P = As " P_o " but adjusted

H_o = Sum of the official minimum wages of the following workers as established in Mauritius, in force in the month of the Contract signing day:

- One labourer
- One first grade carpenter
- One first grade bricklayer
- One second class assistant reinforcing steel bender
- One tractor operator up to 190 HP class,

which have been established by laws, decrees and regulations of a national or regional character, authorized by the Employer.

H_t = As " H_o " but officially brought up to date

The introduction of the index H_t/H_o in the price adjustment formula takes up the effect of all social benefits which workers can obtain as a consequence of negotiations which may be carried out with the Contractor for the execution of the Works.

- Eo = Official Value of one gallon of gasoline plus one gallon of gas-oil in Mauritius, in force in the month of the Contract signing day
- Et = As "Eo" but officially brought up to date
- Co = Official price of one metric ton of bulk cement in Mauritius, in force in the month of the Contract signing day
- Ct = As "Co" but officially brought up to date
- So = Official price of one metric ton of reinforcing steel in Mauritius, in force in the month of the Contract signing day
- St = As "So" but officially brought up to date
- LLo = Certified official basic wages for electro-mechanical workers in the Mauritius, in force in the month of the Contract signing day
- LL = As "LLo" but officially brought up to date

