

Clause 10

Delete Sub-Clause 10.1 and substitute:

Sub-Clause 10.1 Performance Bond or Guaranty

(a) Performance Bond

Within fifteen (15) days from the receipt of the Letter of Acceptance, the Contractor shall furnish a Performance Bond in an amount not less than twenty (20) per cent of the Contract Price and maintain it at the full amount until the expiration of the Defects Liability Period as defined in Clause 49 hereof or until the last of such periods if there be more than one certificate of completion having been issued pursuant to Clause 48, for the faithful execution of the Works including the maintenance thereof. The Performance Bond shall be made in the Form attached to the Tender Documents and executed with a bonding company or bank duly authorised to operate in Mauritius and accepted by the Employer. The Performance Bond shall be in the currency of Mauritius Rupees.

The Contractor shall cover two successive Bonds; the first one covering up to the date of the Taking-Over Certificate and the second from the said date to the expiration of the Defects Liability Period, where the amount of Bonds shall be same for the both. The second Bond shall be effected before two (2) weeks of the expiration of the first Bond. The second Bond can be referred as "Maintenance Bond" as the case may be.

(b) Advance Payment Bond

The Contractor shall furnish an Advance Payment Bond in the same amount and currency as the advance payment, the arrangement of which is set forth in Clause 60 hereof. The Advance Payment Bond shall be made in the Form attached to the Tender Documents and executed with a bonding company or bank dully authorised to operate in Mauritius and acceptable to the Employer.

(c) Cost of Bonds

The obtaining of such Bonds as provided in Sub-Clause (a) and (b) of this Clause

and the cost of Bonds to be so entered into shall be at the expense in all respects of the Contractor, and shall be included in the prices bid in the Bill of Quantities for other items of work.

Clause 11

Sub-Clause 11.1 Inspection of Site

Add after (d) of Sub-Clause 11.1 the following new Sub-Clauses (e) to (i) :

- (e) Existing conditions, nature of existing roads, bridges and other means of access to the Site.
- (f) Presence of artificial obstructions on ground or underground or in air, boulders, released water or the like.
- (g) People's rights and interests which may be interfered with or affected by the construction, completion and maintenance of the Works.
- (h) Stability of existing slopes in the Site.
- (i) Nature of the surface and sub-surface on or in which the Permanent Works on the Preparatory Works or Temporary Works are to be executed or in the immediate vicinity of the Works and the nature and extent of surface water or water contained in the subsoil to which the Works may be affected by rainfall.

Clause 13 Work to be in Accordance With Contract

Add after Sub-Clause 13.1 the following Sub-Clauses 13.2 to 13.4 :

Sub-Clause 13.2 Submission of Work Methods

The PMO/Engineer's Representative shall be provided by the Contractor with adequate details of the methods proposed by him for executing each Section of the Works with a sufficient period in advance of the time at which he proposes to

commence such operations for them to be adequately examined. In case of complicated Temporary Works, this period will not be less than four (4) weeks. The Contractor shall also supply detailed drawings and calculations of stability of such Temporary Works or methods of carrying out Permanent Works as the PMO/Engineer or his Representative either before or after commencement of such Works may direct. All such details, drawings and calculations shall be supplied at the Contractor's expense.

Sub-Clause 13.3 Works According to PMO/Engineer's Instructions

The Contractor shall proceed with the Works in accordance with the decisions, instructions and orders given by the PMO/Engineer in accordance with these Conditions, provided always that:

- (a) If the Contractor shall, without undue delay after being given any decision, instruction or order otherwise than in writing, require it to be confirmed in writing, such decision, instruction or order shall not be effective until written confirmation thereof has been received by the Contractor, and
- (b) If the Contractor shall, by written notice to the PMO/Engineer within twenty one (21) days after receiving any decision, instruction or order of the PMO/Engineer in writing or written confirmation thereof, dispute or question the decision, instruction or order, giving his reasons for so doing, the matter shall be referred to the PMO/Engineer who 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.

Sub-Clause 13.4 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.

Clause 14

Delete Sub-Clause 14.1 and substitute:

Sub-Clause 14.1 Programme to be Submitted

The time within which the programme shall be submitted shall be 60 days after the date of the Letter of Acceptance.

The programme shall be in the form of a Critical Path Method Network(CPM Network) showing the order of procedure and a description and the construction methods and arrangement by which the Contractor proposed to carry out the works, and constructs his temporary facilities including design, manufacture, delivery to the Site, transport, storage, survey, election, maintenance and test. This programme 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 programme 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.

Read Sub-Clauses 14.2, 14.3, and 14.4 as 14.3, 14.4 and 14.5, respectively, and add after Sub-Clause 14.1 the following new Sub-Clause 14.2.

Sub-Clause 14.2 Information in Programmes

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.

Sub-Clause 14.3 Revised Programme

Sub-Clause 14.4 Cash Flow Estimate to be Submitted

Add the following provision after the last provision:

The time within which the detailed cash flow estimate shall be submitted, shall be 60 days after the date of the Letter of Acceptance.

Sub-Clause 14.5 Contractor not Relieved of Duties or Responsibilities

Add following provision after the last provision:

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

Clause 15

Sub-Clause 15.1 Contractor's Superintendence

Add the following after last provision in Sub-Clause 15.1 :

Such authorised 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.

Add the new Sub-Clause 15.2 after Sub-Clause 15.1 :

Sub-Clause 15.2 Language Ability of Contractor's Representative

The Contractor's Superintendent shall be 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.

Clause 16 Contractor's Employee

Add the following provisions after final sentence in Sub-Clause 16.2 :

Sub-Clause 16.2 Engineer at Liberty to Object

All of the Contractor's and the Sub-Contractor's foreign personnel are strictly forbidden from participating in political activities in Mauritius.

Add new Sub-Clauses 16.3, 16.4 and 16.5 after Sub-Clause 16.2 :

Sub-Clause 16.3 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.

Sub-Clause 16.4 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.

Sub-Clause 16.5 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.

Clause 34 Labour

Add after Sub-Clause 34.1 the following new Sub-Clauses 34.2 to 34.21

Sub-Clause 34.2 Employment of Persons in the Service of Others

The Contractor shall not recruit or attempt to recruit his staff and labour from amongst persons in the service of the Employer or the PMO/Engineer.

Sub-Clause 34.3 Trade Union

The Contractor shall recognise the freedom of his workpeople to be members of trade union.

Sub-Clause 34.4 Repatriation of Labour

The Contractor shall be responsible for the return to the place where they were recruited or to their domicile of all such persons as he recruited and employed for the purposes of or in connection with the Contract and shall maintain such persons as are to be so returned in a suitable manner until they shall have left the Site or, in the case of persons who are not nationals of and have been recruited outside Mauritius shall have left Mauritius.

Sub-Clause 34.5 Accident Prevention Officer; Accidents

The Contractor shall have on his staff at the Site an officer dealing only with questions regarding the safety and protection against accidents of all staff and labour. This officer shall be qualified for this work and shall have the authority to issue instructions and shall take protective measures to prevent accidents.

Sub-Clause 34.6 Health and Safety

Due precautions shall be taken by the Contractor, and at his own cost, to ensure the safety of his staff and labour and, in collaboration with and to the requirements of the local health authorities, to ensure that medical staff, first aid equipment and stores, sick bay and suitable ambulance service are available at the camps, housing and on the Site at all times throughout the period of the Contract and that suitable arrangements are made for the prevention of epidemics and for all necessary welfare and hygiene requirements.

Sub-Clause 34.7 Measures against Insect and Pest Nuisance

The Contractor shall at all times take the necessary precautions to protect all staff and labour employed on the site from insect nuisance, rats and other pests and reduce the dangers to health and the general nuisance occasioned by the same. The Contractor shall provide his staff and labour with suitable prophylactics for the prevention of malaria and take steps to prevent the formation of stagnant pools of water. He shall comply with all the regulations of the local health authorities in these respects and shall in particular arrange to spray thoroughly with approved insecticide all buildings erected on the Site. Such treatment shall be carried out at least once a year or as instructed by the PMO/Engineer. The Contractor shall warn his staff and labour of the dangers of bilharzia and wild animals.

Sub-Clause 34.8 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.

Sub-Clause 34.9 Burial of the Dead

The Contractor shall make all necessary arrangements for the transport, to any place as required for burial, of any of his expatriate employees or members of their families who may die in Mauritius. The Contractor shall also be responsible, to the extent required by the local regulations, for making any arrangements with regard to burial of any of his local employees who may die while engaged upon the Works.

Sub-Clause 34.10 Supply of Water

The Contractor shall, so far as is reasonably practicable, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of his staff and labour.

Sub-Clause 34.11 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 Subcontractors, agents, staff or labour.

Sub-Clause 34.12 Arms and Ammunition

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

Sub-Clause 34.13 Festivals and Religious Customs

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

Sub-Clause 34.14 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 authorised Police Force who shall have free and undisputed access at all times to any part of the Works in the execution of their duties.

Sub-Clause 34.15 Observance by Sub-Contractor

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

Sub-Clause 34.16 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.

Sub-Clause 34.17 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.

Sub-Clause 34.18 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 authorised by the PMO/Engineer or PMO/Engineer's Representative and shall furnish to the PMO/Engineer or his duly authorised 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 authorised representative may from time to time require.

Sub-Clause 34.19 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 authorisation in accordance with the laws and regulations being in force in Mauritius.

Sub-Clause 34.20 Work Permit

The Contractor shall be responsible for obtaining the necessary Work Permits from and in compliance with all instructions of the appropriate Authorities. The Contractor

shall comply with all lawful demands and instructions of the appropriate Authorities in regard to repatriation of any personnel employed by him.

Sub-Clause 34.21 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.

Clause 35 Return of Labour and Contractor's Equipment

Add after Sub-Clause 35.1 the following new Sub-Clauses 35.2 and 35.3 :

Sub-Clause 35.2 Records of Safety and Health

The Contractor shall maintain such records and make such reports concerning safety, health and welfare of persons and damage to property as the PMO/Engineer may from time to time prescribe.

Sub-Clause 35.3 Reporting of Accidents

The Contractor shall report to the PMO/Engineer details of any accident as soon as possible after its occurrence. In the case of any fatality or serious accident, the Contractor shall, in addition, notify the PMO/Engineer immediately by the quickest available means.

(The following Sub-Clauses shall be applied for the Works of the Mechanical and Electrical Equipment.)

Clause 36 Materials, Plant and Workmanship

Add after Sub-Clause 36.5 the following new Sub-Clauses 36.6 to 36.15:

Sub-Clause 36.6 Manner of Execution

All Plant to be supplied shall be manufactured and all work to be done shall be executed in the manner set out in the Contract.

Where the manner of manufacture and execution is not set out in the Contract, the work shall be executed in a proper and workmanlike manner in accordance with recognised good practice.

Sub-Clause 36.7 Covering up Work

The Contractor shall give the PMO/Engineer full opportunity to examine, measure and test any work on Site which is about to be covered up or put out of view.

The Contractor shall give due notice to the PMO/Engineer whenever such work is ready for examination, measurement or testing.

The PMO/Engineer shall then, unless he notifies the Contractor that he considers it unnecessary, without unreasonable delay carry out the examination, measurement or testing.

Sub-Clause 36.8 Uncovering Work

If so instructed by the PMO/Engineer, the Contractor shall expose any parts of the Works. The Contractor shall reinstate and make good such parts to the PMO/Engineer's satisfaction.

If any parts of the Works have been covered up or put out of view by the Contractor after complying with Sub-Clause 36.7 and are found to be in accordance with the Contract the cost incurred by the Contractor in complying with the Engineer's instructions including profit shall be certified by the Engineer and added to the Contract Price.

Sub-Clause 36.9 Independent Inspection

The PMO/Engineer may, if so provided in the Contract or with the Contractor or with the Contractor's consent, delegate inspection and testing of Plant to an

independent inspector. Any such delegation shall be effected in the manner required by Sub-Clause 2.3, and for this purpose such independent inspector shall be considered as an PMO/Engineer's Representative. Notice of such appointment (being not less than 14 days) shall be given by the PMO/Engineer to the Contractor.

Sub-Clause 36.10 Inspection and Testing During Manufacture

The PMO/Engineer shall be entitled during manufacture to inspect, examine and test the materials and workmanship and check the progress of manufacture of all Plant to be supplied under the Contract. This shall take place on the Contractor's premises during working hours. If Plant is being manufactured on other premises, the Contractor shall obtain permission for the PMO/Engineer to carry out such inspection, examination and testing on those premises.

No such inspection, examination or testing shall release the Contractor from any obligation under the Contract.

Sub-Clause 36.11 Dates for Inspection and Testing

The Contractor shall agree with the PMO/Engineer the time and place for the testing of any Plant as provided in the Contract. The PMO/Engineer shall give the Contractor 24 hours notice of his intention to attend the tests.

If the PMO/Engineer does not attend on the date agreed, the Contractor may, unless the Engineer instructs the Contractor not to do so, proceed with the tests, which shall be deemed to have been made in the PMO/Engineer's presence.

The Contractor shall forthwith forward to the PMO/Engineer duly certified copies of the test results. If the PMO/Engineer has not attended the test, he shall accept the validity of the test readings.

Sub-Clause 36.12 Facilities for Testing

Where the Contract provides for tests on the premises of the Contractor or of any Sub-contractor, the Contractor shall provide such assistance, labour, materials, electricity, fuel, stores, apparatus and instruments as may be necessary to carry out the tests efficiently.

Sub-Clause 36.13 Certificate of Testing

When Plant has passed the tests referred to in this Clause, the PMO/Engineer shall furnish to the Contractor a certificate or endorse the Contractor's test certificate to that effect.

Sub-Clause 36.14 Rejection

If, as a result of the inspection, examination or testing referred to in Sub-Clause 36.9 to 36.13, the PMO/Engineer decides that any Plant is defective or otherwise not in accordance with the Contract, he may reject such Plant and shall notify the Contractor thereof immediately. The notice shall state the PMO/Engineer's objections with reasons. The PMO/Engineer shall not reject any Plant for minor defects which do not affect the commercial operation of such Plant.

The Contractor shall then with all speed make good the defect or ensure that any rejected Plant complies with the Contract.

If the PMO/Engineer requires such Plant to be retested, the tests shall be repeated under the same terms and conditions. All costs incurred by the Employer by the repetition of the tests shall be deducted from the Contract Price.

Sub-Clause 36.15 Permission to Deliver

The Contractor shall apply in writing to the PMO/Engineer for permission to deliver any Plant or Contractor's Equipment to the Site. No Plant or Contractor's Equipment may be delivered to the Site without the PMO/Engineer's written permission.

The Contractor shall be responsible for the reception on Site of the Plant and Contractor's Equipment.

Clause 39 Removal of Improper Work and Materials

Add after Sub-Clause 39.1 (c) the following new Sub-Clause (d) :

- (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.

Clause 40 Suspension

Add after Sub-Clause 40.3 the following new Sub-Clause 40.4

Sub-Clause 40.4 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 authorised 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.

Clause 42 Possession of Site

Add after Sub-Clause 42.3 the following new Sub-Clauses 42.4 and 42.5 :

Sub-Clause 42.4 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.

Sub-Clause 42.5 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.

Clause 45 Restriction on Working Hours

Add the following provisions after the last provision in Sub-Clause 45.1:

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

Clause 46 Rate of Progress

Add after Sub-Clause 46.1 the following new Sub-Clause 46.2 :

Sub-Clause 46.2 Engineer's Order

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.

Clause 47 Liquidated Damages for Delay

Add after Sub-Clause 47.2 the following Sub-Clauses 47.3 and 47.4 :

Sub-Clause 47.3 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 47.1 or 47.2 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.

Sub-Clause 47.4 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.

Clause 48 Taking-Over Certificate

Add after Sub-Clause 48.4 the following Sub-Clauses 48.5 to 48.7 :

Sub-Clause 48.5 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 Taking-Over Certificate.

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

Sub-Clause 48.6 Use before Taking Over

The Employer shall not use any part of the Works unless a Taking- Over Certificate has been issued in respect thereof.

If nevertheless the Employer uses any part of the Works, that part which is used shall be deemed to have been taken over at the date of such use. The Engineer shall on request of the Contractor issue a Taking-Over Certificate accordingly. If the Employer uses any part of the Works before taking over the Contractor shall be given the earliest opportunity of taking such steps as may be necessary to carry out the Tests on Completion.

The provisions of Sub-Clause 20 shall not apply to any part of the Works while being so used by the Employer. Clause 49 shall apply as if the part had been taken over on the date it was taken into use.

Sub-Clause 48.7 Interference with Tests on Completion

If the Contractor is prevented from carrying out the Tests on Completion by a cause for which the Employer or the PMO/Engineer or other contractors employed by the Employer are responsible, the Employer shall be deemed to have taken over the Works on the date when the Tests on Completion would have been completed but for such prevention. The Engineer shall issue a Taking Over Certificate accordingly.

The Works shall not be deemed to have been taken over if they are not substantially in accordance with the Contract.

If the Works are taken over under this Clause the Contractor shall nevertheless carry out the Tests on Completion during the Defects Liability Period. The Engineer shall require the Tests on Completion to be carried out by 14 days notice and in accordance with the relevant provisions of Clause 43.

Any additional costs to which the Contractor may be put in making the Tests on Completion during the Defects Liability Period, shall be added to the Contract Price.

Clause 49 Defective Liability

Add after Sub-Clause 49.4 the following new Sub-Clauses 49.5 to 49.11 :

Sub-Clause 49.5 Extension of Defects Liability

The provisions of this Clause shall apply to all replacements or renewals of Plant carried out by the Contractor to remedy defects and damage as if the replacements and renewals had been taken over on the date they were completed. The Defects Liability Period for the Works shall be extended by a period equal to the period during which the Works cannot be used by reason of a defect or damage. If only part of the Works is affected the Defects Liability Period shall be extended only for that part. In neither case shall the Defects Liability Period extend beyond 2 years from the date of taking over.

When progress in respect of Plant has been suspended under Clause 40, the Contractor's obligations under this Clause shall not apply to any defects occurring more than 3 years after the Time for Completion established on the date of the Letter of Acceptance.

Sub-Clause 49.6 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 authorised 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.

Sub-Clause 49.7 Notice of Defects

If any such defect shall appear or damage occur the Employer or the PMO/Engineer shall forthwith notify 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 Sub-Clauses 49.8 to 49.12 shall be applied to the Works of Permanent Mechanical and Electrical Equipment.)

Sub-Clause 49.8 Defects in Employer's and Engineer's Designs

The Contractor shall not be liable for any defects resulting from designs furnished or specified by the Employer or the PMO/Engineer.

Sub-Clause 49.9 Making Good Defects

The Contractor shall, subject to Sub-Clause 49.8, be responsible for making good any defect in or damage to any part of the Works which may appear or occur during the Defects Liability Period and which arises from, either:

- (a) any defective materials, workmanship or design, or
- (b) any act or omission of the Contractor during the Defects Liability Period.

The Contractor shall make good the defect or damages as soon as practicable and at his own cost.

Sub-Clause 49.10 Failure to Remedy Defects

If the Contractor fails to remedy a defect or damage within reasonable time, the Employer may fix a final time for remedying the defect or damage.

If the Contractor fails to do so, the Employer may:

- (a) carry out the work himself or by others at the Contractor's risk and cost, provided that he does so in a reasonable manner. The costs properly incurred by the Employer in remedying the defect or damage shall be deducted from the Contract Price, but the Contractor shall have no responsibility for such work, or

- (b) require the Contractor to grant the Employer a reasonable reduction in the Contract Price to be agreed or fixed by arbitration under Clause 67, or
- (c) if the defect or damage is such that the Employer has been deprived of substantially the whole of the benefit of the Works or a part thereof, he may terminate the Contract in respect of such parts of the Works as cannot be put to the intended use. The Employer shall to the exclusion of any remedy under Clause 63 be entitled to recover all sums paid in respect of such parts of the Works together with the cost of dismantling the same, clearing the Site and returning Plant to the Contractor or otherwise disposing of it in accordance with the Contractor's instructions.

Sub-Clause 49.11 Removal of Defective Work

If the defect or damage is such that repairs cannot be expeditiously carried out on the Site, the Contractor may with the consent of the PMO/Engineer or the Employer remove from the Site for the purposes of repair any part of the Works which is defective or damaged.

Sub-Clause 49.12 Further Tests on Completion

If the replacements or renewals are such that they may affect the performance of the Works, the Employer may request that Tests on Completion be repeated to the extent necessary. The request shall be made by notice within 28 days after the replacement or renewal. The Tests shall be carried out in accordance with relevant clause on test on completions.

Clause 54 Contractor's Equipment, Temporary Works and Materials

Sub-Clauses 54.2 and 54.3 shall be renumbered as 54.3 and 54.4 and Sub-Clauses 54.4 to 54.8 shall be also renumbered as 54.6 to 54.10, and add additional Sub-Clauses as follows:

Sub-Clause 54.2 Vesting

All Contractor's Equipment, Temporary Works and materials owned by the Contractor, or by any company in which the Contractor has a controlling interest,

shall, when on the Site, be deemed to be the property of the Employer. Provided always that the vesting of such property in the Employer shall not prejudice the right of the Contractor to the sole use of the said Contractor's Equipment, Temporary Works and materials for the purpose of the Works nor shall it affect the Contractor's responsibility to operate and maintain the same under the provisions of the Contract.

Sub-Clause 54.5 Revesting and Removal

Upon the removal, with the consent of the PMO/Engineer under Sub-Clause 54.1, of any such Contractor's Equipment, Temporary Works or materials as have been deemed to have become the property of the Employer under Sub-Clause 54.2, the property therein shall be deemed to revest in the Contractor and, upon completion of the Works, the property in the remainder of such Contractor's Equipment, Temporary Works and materials shall, subject to Clause 63, be deemed to revest in the Contractor, who shall remove the same together with any Constructional Plant, Temporary Works, Hired Plant, and Hired Purchase Plant. If the Contractor shall fail to remove any Constructional Plant, Temporary Works, or Materials as aforesaid or any Hired Plant or Hire Purchase Plant within such reasonable time after completion of the works as may be allowed by the Engineer then the employer may:

- (a) Sell any such Constructional Plant, Temporary Works and Materials as aforesaid and after deducting from any proceeds of sale the costs charges and expenses of and in connection with such sale and of and in connection with return as aforesaid shall pay the balance (if any) to the Contractor but to the extent that the proceeds of any sale are insufficient to meet all such charges and expenses, the excess shall be a debt due from the Contractor to the Employer and shall be deductible or recoverable by the Employer accordingly as aforesaid;
- (b) Return at the Contractors expense to the person, firm or company from whom any Hired Plant or Hire Purchase Plant was held by the Contractor such Hired plant or Hire Purchase Plant.

Sub-Clause 54.11 Import and disposal of Constructional Plant and Material

The Contractor and his Sub-Contractors shall be allowed to import into Mauritius all materials, supplies, Construction 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.

Sub-Clause 54.12 Prohibition of Import by Laws

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

Sub-Clause 54.13 Contractor's Certificate as to Hiring Provision

The Contractor shall, upon request by the Engineer at any time in relation to any item of Hired Plant forthwith, notify to the PMO/Engineer in writing the name and address of the owner thereof and shall certify that the agreement for the hire thereof contains provision in accordance with the requirements of this Clause. The Contractor shall also upon request as aforesaid give a like notification (but without certificate) in regard to any Hire Purchase Plant. The Contractor shall also, upon request made by the Engineer, provide the Engineer with a true copy of such agreements.

Sub-Clause 54.14 Hire Purchase Payment by Employer

The Employer shall, in order to avoid seizure by the owner of any Hired Purchase Plant, be entitled to pay to such owner the amount of any overdue installment or other sum payable under any agreement relating to such Plant and in the event of his doing so any amount so paid by him shall be a debt due from the Contractor to the Employer and may be deducted by the Employer from any monies due or that may become due to the Contractor under the Contract or may be recovered by the Employer from the Contractor by the Law.

Clause 60 Certificates and Payment

Sub-Clauses 60.1 to 60.3 shall be renumbered as 60.3 to 60.5 and Sub-Clauses 60.4 to 6.10 shall be renumbered as 60.6 to 60.12, respectively.

Add additional Sub-Clause 60.1, 60.2, and 60.13 to 60.16 as follows:

Sub-Clause 60.1 Payment to Contractor

All payments to the Contractor shall be made in U.S.Dollars (US\$) for the foreign currency component and in Mauritian Rupees (MRs) 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 authorised to operate in _____ in accordance with relevant laws and regulations of _____ and the other in Mauritian Rupees (MRs) opened in the _____ Bank in Mauritius.

Payment of foreign currency from the ADB'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 called 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 the ADB 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 ADB Loan will be subject to the ADB's approval according to the Loan Agreement concluded between ADB and the Employer.

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

Sub-Clause 60.2 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 (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 10.2 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 10.2 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) month 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 60.3 hereunder.

Delete Sub-Clause 60.3 and substitute:

Sub-Clause 60.3 Monthly Statement

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 other amount due in respect of Contractor's Equipment 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 60.5 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 called "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.

The following words shall be replaced in Sub-Clause 60.4:

Sub-Clause 60.4 Monthly Payments

First paragraph : "within 28 days of..." shall be replaced as "within 30 days of...".

Second paragraph (a) : "under paragraphs (a), (b), (c) and (e) of Sub-Clause 60.1" shall be replaced as "under paragraphs (a), (b), (c) and (e) of Sub-Clause 60.3".

Delete Sub-Clause 60.5 and substitute :

Sub-Clause 60.5 Payment of Retention Money

The Retention Money will be paid to the Contractor without interest in the following manner.

- (a) Upon the issue of the Taking-Over Certificate with respect to the Works all of the Retention Money minus MRs._____, or upon the issue of a Taking-Over Certificate 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, MRs._____ shall cover a part of the possible Employer's expenditure for the repair and investigatory work to be executed during the Defects Liability Period in accordance with Sub-Clause 49.4.

- (b) Upon the expiration of the Defects Liability Period for the Works the remaining (MRs.____) with due deduction if any expenditure is caused by the Employer under provisions in Clause 49.

- (c) The Employer may consider to pay 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 MRs._____ shall be paid to the Contractor in the same manner as stated in (a) above.

Delete Sub-Clause 60.12 and substitute :

Sub-Clause 60.12 Time for Payment

Payment upon each of the Engineer's Certificate as provided by Sub-Clause 60.4 shall be made within 60 days from the date the Certificate has been signed by the Engineer, or, in the case of the final Certificate referred to in Sub-Clause 60.10 within 60 days. In the event of failure by the Employer to comply with the provisions of this Sub-Clause, or to pay the retention money or any part thereof at the times prescribed by Sub-Clause 60.5 of this clause the Employer shall pay to the Contractor, interest at the bank in Mauritius rate per month or part thereof upon all payments overdue from the date of expiry of the period of payment specified in this clause.

Upon the expiry of the period of 60 days as the case may be, after certificate has been signed by the Engineer, the Contractor shall be entitled to serve notice on the Employer drawing attention to the delay in payment beyond the time specified and under the provisions of Clause 69.

Sub-Clause 60.13 Payment to Employer

All payments to the Employer by the Contractor including payments made by way of deduction or set-off 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 10.1 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.

Sub-Clause 60.14 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.

Sub-Clause 60.15 Currency of Amount and Rates of Exchange

The currency of account shall be the MRs and US\$ for the purpose of the Contract. Conversion between the currencies other than the MRs shall be made at rates of exchange determined by use of the relative rates of exchange between such currencies and the MRs.

Sub-Clause 60.16 Place of Payment

Payments to the Contractor by the Employer shall be made into a bank account nominated by the Contractor in the country of the currency of payment. Where payment is to be made in more than one currency separate bank accounts shall be nominated by the Contractor in the country of each currency and payments shall be made by the Employer accordingly.

Clause 67 Settlement of Disputes

In line 6, 7 and 8 delete the word "....finally settled, unless otherwise specified in the Contract, under the Rules of Conciliation and Arbitration of the International Chamber Commerce by one or more arbitrators appointed under the Rules." in Sub-Clause 67.3 and substitute the following:

"...referred to one or more arbitrators to be agreed upon between the parties or

failing agreement to be nominated by the President for the time being of the Council of Registered Professional Engineers of Mauritius and any such referees shall be deemed to be a submission to arbitration within the meaning of the Disputes Ordinance No.26 of 1965 or any statutory re-enactment or amendment thereof for the time being in force. The award of the arbitrator shall be final and binding on the parties."

Clause 68 Notice

Sub-Clause 68.2 Notice of Employer and Engineer

- (a) Employer's address : Central Water Authority(CWA),
St.Paul, Phoenix, Mauritius
- (b) PMO's address : On project site at address determined
later
- (c) Engineer's address :

Clause 69 Default of Employer

Sub-Clause 69.1 (a) and 69.4

- Delete 28 days and substitute 60 days
- Delete paragraph (c) and renumber paragraph (d) as (c).

Clause 70 Changes in Cost and Legislation

Delete Sub-Clause 70.1 and substitute:

Sub-Clause 70.1 Increase and Decrease of 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 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 indices) 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 recognised 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 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.

Sub-Clause 71.1 Currency Restrictions

-Delete the date 28 days and substitute the date 30 days.

Add after Clause 72, the following Clauses 73 to 82.

PARTICULAR ITEMS

Clause 73 Taxation

Sub-Clause 73.1 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 take into account that the items to be purchased in the Mauritian territory have to be quoted at market prices.

Sub-Clause 73.2 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 80 hereof or any other exceptions specified in the Contract Documents.

Sub-Clause 73.3 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.

Sub-Clause 73.4 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.

Sub-Clause 73.5 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.

Sub-Clause 73.6 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 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.

Sub-Clause 73.7 Disposition of Imported Goods

The machinery, equipment 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.

Sub-Clause 73.8 Evidence of Disposition

Within a period not exceeding three (3) months after the date of Taking-Over Certificate, 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 equipment, 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.

Sub-Clause 73.9 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 PMO/Engineer, listing all the Contractor's 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 Contractor's Equipment and any excess materials have been disposed of in accordance with the requirements of this Clause.

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.

Clause 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.

Clause 76 Materials and Equipment Provided by Employer or Other Contractors

Sub-Clause 76.1 Receipt of Materials and Equipment

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 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.

Sub-Clause 76.2 Return of Equipment and Unused Materials

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.

Sub-Clause 76.3 Tools

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.

Clause 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.

Clause 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.

Clause 79 Secrecy

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

Clause 80 Test on Completion

Sub-Clause 80.1 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
- (b) final test on the mechanical and electrical equipment installed

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.

Sub-Clause 80.2 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.

Sub-Clause 80.3 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.

Sub-Clause 80.4 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.

Sub-Clause 80.5 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.

Sub-Clause 80.6 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 80.5 the PMO/Engineer shall be entitled:

- (a) to order a further repetition of the tests under the conditions of Sub-Clause 80.5, 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 Taking-Over Certificate, if the Employer so wishes, subject to such reduction of the Contract Price as may be provided in the Contract.

Sub-Clause 80.7 Provisional Taking-Over Certificate

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" Taking-Over Certificate with receipt of consent from the Employer.

Clause 81 Test Operation for Two Months

Sub-Clause 81.1 Test Operation

After the issuing of the Provisional Taking-Over Certificate, 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 date 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 familiarised with the above problems, new measures must be agreed on so as to ensure that the Works are operated and made to function in a proper manner.

The Operation and Maintenance Manuals, duly prepared in 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 Contractor's Equipment 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.

Sub-Clause 81.2 Acceptance Tests

The Contractor must verify the behavior of the Contractor's Equipment 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.

Sub-Clause 81.3 Termination of Test Operation

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

APPENDIX-A TO CONDITIONS OF CONTRACT

PRICE ADJUSTMENT FORMULAE

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

Formulae No.1 For civil engineering works of water supply facilities

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

Formulae No.2 For installing the Permanent Mechanical and Electrical 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, authorised by the Employer.

Ht = As "Ho" but officially brought up to date

The introduction of the index Ht/Ho 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

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