



# **CONDITIONS OF CONTRACT FOR WORKS OF CIVIL ENGINEERING CONSTRUCTION**

## **PART I GENERAL CONDITIONS (GC)**

May 20, 1999

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# DEFINITIONS AND INTERPRETATION

## Definitions

1.1 The following words, terms and expressions, whenever used in this Contract, as defined hereunder, shall have the meaning assigned to them, except where the context otherwise requires:

### (a) Persons

(i) **“Employer”** means Dubai Municipality, which is abbreviated as “DM”;

(ii) **“Contractor”** means a person who has been awarded the Contract and has current legal possession of the Site. The term “Contractor” includes the legal successors in title to such person; however, without DM’s consent, an assignee of the contractor is not included.

(iii) **“Original Contractor”** means the contractor, who signed a contract with the Employer for the execution of the Works and remedying any defects therein, but subsequently; either

1. under the Applicable Law with DM’s consent, transferred his title, rights, obligations and liabilities to another contractor, who thus became his legal successor; or

2. was expelled from the Site pursuant to the provisions of Clause 63, but his contract was not terminated. In this case, the Original Contractor continues to have liabilities under the terms and conditions of his contract, but the Employer may appoint a second Contractor under a new contract for the execution of the Works and remedying any defects therein. Consequently, the appointed second Contractor is not the legal successor of the Original Contractor;

(iv) **“Subcontractor”**, means any person named in the Contract as a Subcontractor for a Part or Section of the Works, or any person to whom a Part or Section of the Works has been subcontracted in accordance with Clause 4.1, and the legal successor in title to such person, but not an assignee of any such person without

DM's consent;

- (v) **“Joint Venture”** designates the combined effort of two or more contractors to execute the Works. Each Contractor of the Joint Venture is called a “Member”. When used in plural, the term “Members” means all the Contractors of the Joint Venture.
- (vi) **“Member in Charge”** or **“Leading Contractor”** is a term applied in the case of a Joint Venture to designate the Contractor, who is appointed by the Members and who represents all of them in negotiations with DM, receiving payments from and communicating with DM. The Member in Charge has the authority to commit all of the Members to perform additional work and to sign the Amendments of this Contract on behalf of all of them. The Authorized Representatives of the Joint Venture must be part of the organization of the Member in Charge;
- (vii) **“Authorized Representatives”** of the Contractor are defined in Clause 1.5 and listed in the Appendix to Tender;
- (viii) **“Engineer”** means the person nominated by the Consultants and approved by DM to act as Engineer for the purpose of this Contract and named as such in the Letter of Acceptance. It may also mean any other competent person nominated by the Consultants, approved by DM and notified to the Contractor to act in replacement of the Engineer named in the Letter of Acceptance, or in a subsequent notification to the Contractor by the Employer;
- (ix) **“Engineer's Representative”** means a person appointed from time to time by the Engineer under Clause 2.2;
- (x) **“Party”** means either the Employer, or the Contractor. When used in plural, “Parties” means both of them;
- (xi) **“Personnel”** means either persons hired by the Contractor or by any approved Subcontractor as employees (management, staff and labor), or persons seconded from another organization, assigned to the

execution of the Works and remedying any defects therein, or to any part of the Works or activities related thereto;

- (xii) **“Service Authorities”** means:
- **DEWA-ED** (Dubai Electricity and Water Authority - Electricity Department)
  - **DEWA-WD** (Dubai Electricity and Water Authority - Water Department)
  - **DPH** (Dubai Police Headquarters)
  - **ETISALAT** (Emirates Telecommunications Corporation)
  - **Dubai Municipality’s**  
Roads Department  
including the Road Lighting Section  
Drainage and Irrigation Department  
including the Irrigation Section  
Horticulture & Parks Department  
including the Horticulture Section  
Public Health Department  
Building Department  
Planning Department
  - **Civil Defense**
  - **Dubai Civil Aviation Authority**
  - **Ministry of Public Works and Housing**

The above list may be amended from time to time by DM regulations and it may be modified by the Applicable Law;

## **(b) Documents**

- (i) **“Contract”** means the legally binding agreement, consisting of a complete set of Contract Documents as defined under Clause 5.3 or its amendment, between the Employer and the Contractor for the execution and completion of the Works and remedying of any defects therein by the Contractor;
- (ii) **“Initial Contract”** means a complete set of Contract Documents at the moment of the signature of the Agreement;
- (iii) **“Contract Agreement”, or “Agreement”** is one of the Contract Documents, referred to in Clauses 5.3 and 9.1, which contains the signature page of the Contract among other items;

- (iv) If executed pursuant to the provisions of Clause 5.4, the **“Amendment”** means one of the Contract Documents with a rank defined in Clause 5.3. The “Amendment” modifies the terms and conditions of the Contract, in particular, it may increase or reduce the Works, or change the cost or time elements or any other conditions of the Contract by an agreement between the Parties;
- (v) **“Specification(s)”** means the specifications of the Works included in the Contract and any modification thereof or addition thereto made under Clauses 5.4 and 51, or submitted by the Contractor and approved by the Engineer. The “Specifications” is one of the Contract Documents;
- (vi) **“Drawing(s)”** means all drawings, calculations and technical documents of a like nature provided by the Engineer to the Contractor under the Contract and all drawings, calculations, samples, patterns, models, operation and maintenance manuals and other technical documents of a like nature submitted by the Contractor and approved by the Engineer. Drawings are part of the Contract Documents;
- (vii) **“Bill of Quantities”** means the priced and completed Bill of Quantities, abbreviated as BOQ, submitted along with the Contractor’s Tender to the Employer. The priced BOQ is one of the Contract Documents;
- (viii) **“Tender”** means the Contractor’s priced offer to the Employer for the execution and completion of the Works and the remedying of any defects therein in accordance with the provisions of the Contract, as accepted by the Letter of Acceptance. Depending upon the context, “Tender” may designate:
- either one of the tender documents, the executed and signed Form of Tender, which becomes one of the Contract Documents, called “The Tender”, or
  - the Contractor’s detailed offer in a complete set of tender documents as defined in the Tender;

- (ix) **“Appendix to Tender”** means the executed Form of Appendix to Tender completed by the Employer and the Contractor and attached to the Tender by the Contractor;
- (x) **“Letter of Acceptance”** means the formal acceptance of the Tender by the Employer. The Letter of Acceptance is one of the Contract Documents, which states the Contract Price;

**(c) Dates, Times and Periods**

- (i) **“Commencement Date”** or **“Date of Commencement of the Contract”** means the day following the date of effectiveness of the Contract, as defined further in Clause 41.1;
- (ii) **“Commencement of the Works”** means the date specified in the Engineer’s Notice of Approval to the Contractor to start the execution of the Works pursuant to the provisions of Clause 41.1;
- (iii) **“Completion Date”** is the date of substantial completion of the Works, or any Section or Part thereof as certified in the Taking-Over Certificate by the Engineer pursuant to the provisions of Clause 48, as the case may be. In particular, the **“Date of Substantial Completion of the Works”** means the date certified under this expression in the Taking-Over Certificate for the whole of the Works pursuant to the provisions of Clause 48.1;
- (iv) **“Time for Completion”** means the contractual time for completing the execution of, and passing the Tests on Completion, if any, of: either the Works (the whole), or any Section or Part thereof, stated in the Contract pursuant to Clause 43, or as extended under Clause 44, calculated from the Commencement Date. The Time for Completion of the whole of the Works is the Contract Period;
- (v) **“Construction Period”** means the contractual time period calculated from the Commencement Date up to the contractual date for completing

all of the Works. The Construction Period includes the contractual mobilization and execution of the works to completion, but not the Defects Liability Period;

- (vi) **“Current”**, when combined with another word, designates the definition of this word at the present time;
- (vii) **“Initial”**, when combined with another word, designates the definition of this word at the time of signature of the Agreement by both Parties;
- (viii) **“Effective Date” or “Date of Effectiveness”** means the date on which the Contract entered into full legal force and effect. The Effective Date is the day of signature of the Agreement by the Contractor, or any such other day following this date as may be specified in the Agreement;
- (ix) **“Date of Completion of the Contract”** means the date specified in the Defects Liability Certificate for the completion of the whole of the Works and remedying any defects therein pursuant to the provisions of Clause 62.1;
- (x) **“Effective Period of the Contract”** means the time period from the Effective Date to the contractual end of the Defects Liability Period. However, pursuant to the provisions of:
  - (a) Clause 5.3(F), a contractual relationship exists between the Parties before the start of the Effective Period of the Contract, and
  - (b) Clauses 8.3 and 62.2, the end of the Effective Period of the Contract does not imply the end of the contractual obligations and liabilities of the Parties, some of which will extend up to 10 years from the Date of Completion of the Contract;
- (xi) **“Defects Liability Period”** means the time period defined in the Appendix to Tender pursuant to the provisions of Clause 49.1, or as extended pursuant to the provisions of Clause 49.6;
- (xii) **“Day”** means calendar day;
- (xiii) **“Month”** means Gregorian calendar month;

- (xiv) **“Year”** means Gregorian calendar year of 365 or 366 days as the case may be;

**(d) Completion**

- (i) **“Tests on Completion”** or **“Final Acceptance Tests”** means the tests specified in the Contract, or otherwise agreed by the Engineer and the Contractor, which are to be made by the Contractor before the Works, or any Section or Part thereof, are taken over by the Employer;
- (ii) **“Performance Tests”** means the tests specified in the Contract and designated as such, which are to be carried out to verify that the Works fulfill the performance requirements, if any, of the Contract;
- (iii) **“Taking Over Certificate”** means a certificate issued pursuant to the provision of Clause 48 by the Engineer with the consent of the Employer in response to the Contractor’s notice requesting the issue of this certificate and following the inspection and acceptance of the Works, or any Section or Part thereof, as the case may be;
- (iv) **“Substantial Completion of the Works”** means the stage at which the Employer, or end user, is able to take beneficial occupancy of the Works;
- (v) **“Defects Liability Certificate”** means the certificate issued by the Engineer with the consent of the Employer pursuant to Clauses 49 and 62.1;

**(e) Money**

- (i) **“Currency”** means UAE Dirhams;
- (ii) **“Foreign Currency”** means a currency other than the UAE Dirhams;
- (iii) **“Contract Price”** means the sum stated in the Letter of Acceptance as payable to the Contractor for the execution and completion of the Works and remedying any defects therein in



accordance with the provisions of the Contract. If the Contract Price is adjusted according to the provisions of the Contract, then the “Initial Contract Price” refers to the sum stated in the Letter of Acceptance to distinguish it from the current “Contract Price”.

- (iv) **“Effective Contract Price”** means the Contract Price reduced by the Provisional Sums, as defined in Clause 58. The Initial Effective Contract Price is defined in Clause 52.3;
- (v) **“Contract Value”** means the Contract Price, subject to such additions thereto, or deductions therefrom as may be made under the provisions of the Contract;
- (vi) **“Cost”** means all the expenditure properly incurred or to be incurred, whether on or off the Site, including overhead and other charges and expenses properly allocable thereto, but does not include any allowance for profit, unless an exception to this rule is specifically stated to this effect;
- (vii) **“Retention Money”** means the aggregate of all monies retained by the Employer pursuant to Clause 60.5;
- (viii) **“Interim Payment Certificate”** means any monthly statement of sums payable to the Contractor processed, adjusted and certified pursuant to the provisions of Clauses 60.1 and 60.2, other than the Final Payment Certificate;
- (ix) **“Final Payment Certificate”** means the final statement of sums payable to the Contractor processed, adjusted and certified pursuant to the provisions of Clause 60.13;

**(f) Others**

- (i) **“Applicable Law”** means the laws and any other instrument having the force of law in the UAE and in Dubai, in this order of priority, as they may be issued from time to time and in force during the Effective Period of the Contract;
- (ii) **“Works”**, when written with a capital W, means all the works defined in the Contract to be

executed, carried out, prepared, excavated, filled, demolished, removed, constructed, assembled, installed, maintained, repaired and turned over to the Employer, as the case may be. It includes the Materials, Plant, Equipment and Services for the Works, which may consist of the Permanent and Temporary Works, or either of them as appropriate;

- (iii) **“Temporary Works”** means all temporary works of any kind, other than the Contractor’s Equipment, designed, constructed, installed and removed by the Contractor that are needed in or about the execution and completion of the Works and the remedying of any defects therein;
- (iv) **“Permanent Works”** means permanent works to be executed, including the Plant and Equipment, other than the Contractor’s Equipment, in accordance with the Contract;
- (v) **“Defect”** means any part of the Works, which was not completed in accordance with the provisions of the Contract, or the Engineer’s instructions;
- (vi) **“Daywork”** means varied work inputs subject to payment on a time basis for the Contractor’s Personnel and Equipment, in addition to payments for associated Materials, Plant and Equipment;
- (vii) **“Plant”** means machinery, apparatus and the like, intended to form, or forming integral part of the Permanent Works, which shall have a mechanical, electrical, chemical, or biological function;
- (viii) **“Materials”** means products, supplies and natural, processed, or manufactured things of all kinds, other than Plant or Equipment, including consumables used by the Contractor for incorporation in the Works;
- (ix) **“Equipment”** means the appliances, furniture, and things of whatsoever nature, intended to form or forming integral part of the Permanent Works, but it does not include the Contractor’s Equipment;

- (x) **“Contractor’s Equipment”** means all production equipment, appliances, vehicles, tools and things of whatsoever nature required for the execution and completion of the Works and the remedying of any defects therein, but does not include Temporary Works and Materials, Plant and Equipment or other things intended to form, or forming part of the Permanent Works;
- (xi) **“Section”** means a subdivision of the Works specifically identified in the Contract as a Section;
- (xii) **“Part”** means a portion of the Works or a section of the Works not specifically identified in the Contract as such;
- (xiii) **“Services”** means either an intellectual activity, such as design and manual preparation, or physical work, such as the maintenance of the Works, as identified and specified in the Contract;
- (xiv) **“Site”** means the places provided by the Employer to the Contractor where the Works are to be executed, and to which Materials, Plant and Equipment are to be delivered, or any other places as may be specifically designated in the Contract as forming part of the Site;
- (xv) **“Dubai Municipality Datum”** means the Lowest Astronomical Tide at Port Rashid;
- (xvi) **“Writing”** means a type-written or printed communication including letters, notices, and type-written fax transmissions. It may also include cable, telex, if stated explicitly in one of the Contract Documents with specific addresses;
- (xvii) **“Variation”** is an instruction given by the Engineer to the Contractor with the consent of the Employer to change the scope and/or volume of works pursuant to Clause 51 of these Conditions;

(xviii) **“After Due Consultation by the Engineer**

**with the Employer and the Contractor”** means that the Engineer shall consult with the Employer and the Contractor to such extent as is appropriate in the circumstances, except as stated hereunder. The term “due consultation” shall not be construed in any instance as to mean no consultation with the Employer and the Contractor, unless:

- (a) the Employer having been contacted in writing shall fail to make himself available for such consultation, having been requested by the Engineer,
  - (b) if in the opinion of the Engineer, an emergency occurs affecting the safety of life, or of the Works, or of adjoining property;
- (xix) **“Terminate”, “Terminated”, and/or “Termination”**: refers to the ending of the contract or agreement, usually before the end of the anticipated term, which termination may be by mutual agreement or by exercise of one party of its rights under the contract.
- (xx) **“Expel” and/or “Expulsion”** means to eject, remove or banish from the Project.
- (xxi) A **“Unit of the Works”** means a temporary, well defined, measurable, homogeneous subdivision of the Works, constructed from the same materials in one shift or another uninterrupted work period, as agreed between the Engineer and the Contractor for the purposes of quality control and quantity measurements;
- (xxii) Abbreviations used in the Contract Documents are as follows:

**BOQ** : Bill of Quantities

**DCL** : Dubai Municipality Central Laboratory

**DM** : Dubai Municipality

**DEWA** : Dubai Electricity and Water Authority

**DEWA-ED** : DEWA - Electricity Department

**DEWA-WD** : DEWA - Water Department

**DPH** : Dubai Police Headquarters

**ETISALAT** : Emirates Telecommunications Corporation

**GC** : General Conditions of Contract for Works of Civil Engineering Construction; or Conditions, Part I

**MPWH** : Ministry of Public Works and Housing

**NOC** : No Objection Certificate

**PC** : Particular Conditions of Contract for Works of Civil Engineering Construction; or Conditions, Part II

**UAE** : United Arab Emirates

**Headings and  
Marginal Notes**

- 1.2** The headings and marginal notes in these Conditions shall not be deemed part thereof, or be taken into consideration in the interpretation or construction thereof, or of the Contract.

**Interpretation**

- 1.3 (A)** Unless specifically defined otherwise in Clause 1.1 (priority No.1), words have their normal meaning defined in the Webster's New World College Dictionary (priority No. 2).
- (B)** As the context requires, words such as persons, entities and parties may refer to individuals, contractors, companies, suppliers, service providers, joint ventures, corporate bodies, government organizations, or institutions having a legal capacity.
- (C)** Unless the context otherwise requires, singular includes plural, and vice versa. Notable exceptions to this rule are "Member" and "Members", and "Party" and "Parties", which are defined in Clause 1.1(a).
- (D)** Unless the context otherwise requires, masculine includes the feminine, or neuter and vice versa.

**Notices,  
Consents,  
Approvals,  
Certificates and  
Determinations**

- 1.4 (A)** Wherever in the Contract, provision is made for the giving or issuing any notice, consent, approval, certification or determination by any person, unless otherwise specified, such notice, consent, approval, certification, determination, or request shall be in writing pursuant to the provisions of Clause 1.1(f) and the words “notify”, “no objection”, “approve”, “certify”, “determine”, or “request” shall be construed accordingly. Additional provisions are specified under Clauses 2.5 and 68.

**(B)** Any consent, approval, certification, or determination shall not unreasonably be withheld, or delayed.

**Authorized  
Representatives**

- 1.5 (A) Authorized Signatures:**

Any action required or permitted to be taken, and any document required or permitted to be executed, including the Amendments to the Contract, by the Employer, Engineer and the Contractor may be taken or executed by the persons listed in the Appendix to Tender. The names of persons overseeing this Contract from the Employer’s office are also listed in the said Appendix. Additional provisions about the Engineer’s Authorized Representatives are stated in Clauses 2.2 and 2.4 and about the Contractor’s Authorized Superintendent are stated in Clause 15.1.

- (B) Authorized Focal Points:**

The Parties shall respect the contractual chain of command, which proceeds from the Employer through the Engineer to the Contractor and to the Subcontractor, if any. In the case of the Contractor’s requests or initiatives, the above order is reversed, but the steps remain the same. Under exceptional circumstances, when the Contractor communicates directly with the Employer, or vice versa, the Contractor has the obligation to inform the Engineer about the Contractor’s all Contract related communications with the Employer, which are outside the above described chain of command. Consistent with all these conditions and the provisions of Clauses 68.1 and 68.2, the names, addresses, phone and fax numbers of those, who are authorized to receive, initiate and transmit all communications, and who can give information on

the preparation of Monthly and Final Statements in the Contractor's office and on the status of processing Monthly Payment Certificates in the Employer's office are specified in the Appendix to Tender. The names, addresses and fax and phone numbers of those in the Employer's office who, according to the provisions of the Contract can receive copies and documents directly from the Contractor, are also listed in the said Appendix. Any change of data related to all these listed persons shall be communicated to the other persons listed in the said Appendix and the Engineer, pursuant to the provisions of Clause 68.3.

## ENGINEER AND ENGINEER'S REPRESENTATIVE

### Engineer's Duties and Authority

**2.1** (A) The Engineer shall carry out the duties specified for the Engineer in the Contract.

(B) The Engineer may exercise the authority specified in or necessarily to be inferred from the Contract, provided, however, that if the Engineer is required, under the terms of this appointment by the Employer, to obtain the specific approval of the Employer in addition to those listed under Sub-Clause (C) below, before exercising any such authority, particulars of such requirements shall be set out in Conditions, Part II. Provided further that any requisite approval shall be deemed to have been given by the Employer for any such authority exercised by the Engineer.

(C) The Engineer shall obtain the specific approval of the Employer before taking any of the following actions:

- a) Consenting to the subcontracting of any part or section of the Works under Clause 4;
- b) Certifying additional cost determined under Clause 12;
- c) Consenting to the Contractor's Work Program under Clause 14;
- d) Requiring tests to be carried out, or witnessed at any place other than the UAE, in accordance with Clause 36.
- e) Determining an extension of time under Clause 44.
- f) Issuing any Taking – Over Certificate under Clause 48.
- g) Issuing a variation under Clause 51, which will result in an addition to, or a subtraction from, the “Effective Contract Price” defined in Clause 1.1(e), or a change in the Specifications of Materials, Equipment, or Plant. However, the Engineer shall create an exception to this rule in an emergency situation, as reasonably determined by the Engineer. Emergency situations are limited to impending danger to



life, existing Works and neighboring properties.

Under these conditions, the Engineer may instruct the Contractor to execute all such works, or prevent measures, which in the opinion of the Engineer, will be necessary to abate or reduce the risks. The Contractor shall forthwith comply, despite the absence of the Employer's approval, with any such instruction of the Engineer. In this case, the Engineer shall determine, with the consent of the Employer, an addition to the Effective Current Price in respect of such instruction, in accordance with Clause 52.1, and Clause 52.2, if applicable, and shall notify the Contractor accordingly, with a copy to the Employer,

- h) Fixing rates or prices under Clause 52.2 with the exception of the case stated in Sub Clause (g) above,
- i) Issuing instructions for executing work or purchases, either optional Sections of the works, or major items of goods, Materials, Equipment, Plant or Services under Clauses 58 and 59, to be paid from the Provisional Sums, and
- j) Issuing a Defects Liability Certificate under Clause 62.

D) Except as specifically stated in the Contract, the Engineer shall have no authority to relieve the Contractor of any of his obligations under the Contract.

**Engineer's  
Representative**

- 22** The Engineer's Representative shall be appointed by and be responsible to the Engineer and shall carry out such duties and exercise such authority as may be delegated to him by the Engineer under Clause 2.3.

**Engineer's  
Authority to  
Delegate**

- 23** (A) The Engineer may from time to time delegate to the Engineer's Representative any of the duties and authorities vested in the Engineer, and he may at any time revoke such delegation. Any such delegation or revocation shall be in writing and shall not take effect until a copy thereof has been delivered to the Employer and the Contractor.
- (B) Any communication given by the Engineer's Representative to the Contractor in accordance with such delegation shall have the same effect as though it had been by the Engineer. Provided that:

(a) any failure of the Engineer's Representative to disapprove any work, Materials, Plant or Equipment shall not prejudice the authority of the Engineer to disapprove such work, Materials, Plant, or Equipment and to give instructions for the rectification thereof; and

(b) if the Contractor questions any communication of the Engineer's Representative he may refer the matter to the Engineer who shall confirm, reverse or vary the contents of such communication.

#### **Appointment of Assistants**

**2.4**

(A) The Engineer, or the Engineer's Representative, may appoint any number of persons to assist the Engineer's Representative in the carrying out of his duties under Clause 2.2. He shall notify the Contractor regarding the names, duties and scope of authority of such persons.

(B) Such assistant shall have no authority to issue any instructions to the Contractor except in so far as such instructions may be necessary to enable them to carry out their duties and to secure their acceptance of Materials, Plant, Equipment, or workmanship as being in accordance with the Contract. Any instruction given by any of them for these purposes shall be deemed to have been given by the Engineer's Representative.

#### **Instructions in Writing**

**2.5**

(A) The Engineer shall give instructions to the Contractor in writing in the form of a Notice pursuant to the provisions of Clauses 1.1 (f), 1.4 and 6.8 and the word "instructions" shall be construed accordingly in the Notice.

(B) Under exceptional circumstances, so stated in the Notice, the Engineer may give instructions hand-written or orally, which shall be confirmed by the Engineer in writing as soon as possible, but not later than within 24 hours from the first issue of such hand-written or oral instructions. In case of Fridays and other public holidays in Dubai following the day of the instruction, if such days are not approved working days at the Site, then the 24 hour limit is extended by the duration of the holidays.

(C) The Contractor shall acknowledge every instruction in writing to the Engineer within 24 hours of first receipt of such written instruction shall describe briefly his

plans and progress made in its implementation. In case of Fridays and other public holidays, the 24-hour time period is extended by the duration of the holiday.

(D) The Contractor shall comply and start implementing the Engineer's instructions immediately, unless stated otherwise in the Notice. However if the hand-written instructions are unreadable, or if the hand-written or oral instructions are unclear to the Contractor, he shall immediately request the Engineer to clarify them. While waiting for the clarifications, the Contractor shall take no action, unless life, property and the Works are in danger in the opinion of the Contractor, in which case, he shall proceed according to standard professional practices, which will be reviewed and subsequently approved by the Engineer with the Employer's consent.

(E) The provisions of this Clause shall equally apply to instructions given by the Engineer's Representative and any assistants of the Engineer or the Engineer's Representative pursuant to the provisions of Clause 2.4.

## **Engineer to Act Impartially**

### **2.6**

Wherever, under the Contract, but subject to the provisions of Clause 2.1, the Engineer is required to exercise his discretion by:

- (a) giving his decision, opinion or consent,
- (b) expressing his satisfaction, or approval,
- (c) determining value, or
- (d) otherwise taking action, which may affect the rights and obligations of the Employer, or the Contractor,

he shall exercise such discretion impartially within the terms of the Contract and having regard to all circumstances. Any such decision, opinion, consents; expression of satisfaction, or approval, determination of value, or action may be opened up, reviewed, or revised as provided in Clause 67.

# ASSIGNMENT AND SUBCONTRACTING

## Assignment of Contract

**3.1** The Contractor shall not, without the prior consent of the Employer (which consent, notwithstanding the provisions of Clause 1.4, shall be at the sole discretion of the Employer), assign the Contract, or any part thereof, or any benefit, or interest therein, or thereunder, otherwise than by:

- a) a charge in favor of the Contractor's banker of any monies due, or to become due under the Contract, or
- b) to the Contractor's insurers (in case where the insurers have discharged the Contractor's loss or liability) of the Contractor's right to obtain relief against any other party liable.

## Subcontracting

**4.1** (A) The Contractor shall not subcontract the whole of the Works.

(B) Except where otherwise provided by the Contract, the Contractor shall not subcontract any section or part of the Works without the prior consent of the Engineer, subject to the provisions of Clause 2.1(C). Any such consent shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any Subcontractor, his agents, or personnel as fully as if they were the acts, defaults and neglects of the Contractor, his agents, or personnel.

(C) In reference to Sub-Clause (B) above, the Contractor shall not be required to obtain such consent for:

- (a) the provision of labor,
- (b) the purchase of materials, which are in accordance with the standards specified in the Contract, and
- (c) the subcontracting of any section or part of the Works for which the Subcontractor is named in the Contract.

**Assignment of  
Subcontractor's  
Obligations**

- 4.2** In the event of a Subcontractor having undertaken towards the Contractor in respect of the work executed, or the Goods, Materials, Plant, Equipment or Services supplied by such Subcontractor, any continuing obligation extending for a period exceeding that of the Defects Liability Period under the Contract, the Contractor shall at any time, after the expiration of such period, assign to the Employer, at the Employer's request and cost, the benefit of such obligation for the unexpired duration thereof.

# CONTRACT DOCUMENTS

## Law

**5.1** (A) This Contract, its meaning and interpretation, and the relation between the parties shall be governed by the Applicable Law as defined in Clause 1.1 (f).

(B) The Contractor shall adhere to the Applicable Law, and DM Regulations and shall take all practicable steps to ensure that any Subcontractors, as well as the Personnel of the Contractor and any Subcontractor, comply with the Applicable Law and DM Regulations.

## Language

**5.2** (A) The governing language of this Contract is the English language only in those cases, where it is used exclusively in the particular Contract Document. However in those Contract Documents, where both Arabic and English are used in parallel, the governing language is Arabic for that part of the text, which is printed in both languages. Furthermore, when Arabic is inserted in the English text, it governs. Additional requirements may be stated in Conditions, Part II.

(B) The language of the drawings, specifications, instructions, manuals and other documents prepared by the Contractor and to be submitted to the Engineer and the Employer is specified in Conditions, Part II.

(C) The language of the Contract related communications, correspondence, instructions, notices, invoices, bills, accounts and other documentation is specified in Conditions, Part II.

(D) Some of the Contract related official documents to be prepared for the Employer, the Government and other Authorities may be required to be submitted only in Arabic, or in both English and Arabic according to the Applicable Law.

## Priority of Contract Documents

**5.3** (A) The several documents forming the Contract are to be taken as mutually explanatory of one another. However, any ambiguities or discrepancies shall be explained and adjusted by the Engineer. In this case, the Engineer shall issue instructions to the Contractor thereon with a copy to the Employer.

(B) Unless otherwise provided in the Agreement, the

priority of the Contract Documents forming the Contract, starting with No. 1 as the highest priority document, shall be as follows:

- (1) Contract Agreement
  - (2) Letter of Acceptance
  - (3) Tender and Appendix to Tender (as submitted by the Contractor in the Tender)
  - (4) Particular Conditions of Contract, Conditions Part II (part of Tender Documents)
  - (5) General Conditions of Contract, Conditions Part I (as published by DM)
  - (6) Specifications (part of Tender Documents)
  - (7) Drawings (part of Tender Documents)
  - (8) Priced Bill of Quantities (part of Tender Documents)
  - (9) Other Documents, as listed in the Appendix to Tender (part of Tender Documents)
- (C) In those cases, where other documents are listed in the Appendix to Tender, the Agreement shall list all Contract Documents in their order of priority. If the Agreement does not list the Contract Documents forming the Contract, the list in Sub-Clause (B) above shall govern the priority of Contract Documents.
- (D) Specifications may be provided in one or two parts. If Specifications are provided in two parts, General Specifications and Particular Specifications, then Particular Specifications have priority over the General Specifications.
- (E) Tender Queries and Answers and all Clarification related Post-offer Submission correspondence shall be collected in one volume and incorporated in the Contract as Annexes. This Annexes volume shall not be ranked among Contract Documents. However, each particular question and the corresponding answer belong to the Contract Document they related to, and have priority over this Contract Document, but their overall rank is determined by the rank of the Contract Document itself.
- (F) Before the signature of the Agreement by the Parties, the Employer's acceptance of the Contractor's Tender

in the Letter of Acceptance establishes a contractual relationship between the Employer and the Contractor. However, at this point no Data of Commencement of the Contract is set as this depends on the Effective Date. Consequently, the Works can not start, but the contractual relationship between the Employer and the Contractor is legally binding and based on the existing Contract Documents at that time. The existing Contract Documents consist of those listed under Sub-Clause (B) above without the Agreement and the Items, if any, specified in the Appendix to Tender. This Contractual relationship is enforceable under the Applicable Law and can only be modified or terminated by either Party according to the provisions of the Applicable Law and the existing Contract Documents, primarily Clause 65.10 of the GC.

- (G) Any future Amendment to this Contract, when executed, will be an integral part of this Contract and will have priority over the Contract Document, which is modified by the Amendment. The priority among Amendments is established by their chronological order starting with the Amendment dated most recently.

#### **Modification of the Contract**

- 5.4** Modification of the terms and conditions of this Contract may only be made by a written agreement between the Parties. The resulting written agreements are the Amendments of the Contract, which shall be numbered in chronological order. The implementation of the modifications of the Contract must await the signature of the Amendment by both Parties

#### **Custody and Supply of Drawings and other Documents**

- 61** (A) The following unsold, if any, Tender Documents: Drawings, Particular Conditions of Contract, Specifications and the unpriced Bill of Quantities shall remain in the sole custody of the Engineer. However, the Contractor may request them in writing from the Engineer and the Engineer shall provide them to the Contractor free of charge. The Contractor shall make at his own cost further copies required by him.
- (B) Unless it is strictly necessary for the purpose of the Contract and in the exceptional cases of conciliation, arbitration and legal actions, the documents provided



by the Employer, or the Engineer, shall not, without the consent of the Engineer, be used or communicated to a third party by the Contractor.

- (C) The Contractor shall supply to the Engineer four copies of all Drawings and other documents submitted by the Contractor and approved by the Engineer in accordance with Cause 7.2, together with a diskette compatible with DM's system and a reproducible copy of any material which can not be reproduced by photocopying. In addition the Contractor shall supply such further copies of such drawings and other documents as the Engineer may request in writing for the use of the Employer, who shall pay their cost.
- (D) The Contractor shall prepare all the "As Built Drawings" according to the instructions of the Engineer and the concerned Service Authorities. The Engineer shall verify their accuracy and certify them, and the Contractor will be paid for their preparation by the Employer at BOQ rates. Within two months after the Substantial Completion of the Works, the Contractor shall supply to the Engineer two reproducible originals (one for the Employer and one for the Engineer) and four copies (two for the Employer and two for the Engineer) of all certified "As built Drawings" together with two diskettes (one for the Employer and one for the Engineer) compatible with DM's system. If the Contractor does not submit these Items to the Employer by the deadline, then the Employer will withhold the Penultimate and Final Payment until these Items are delivered to the Employer and the Service Authorities pursuant to the provisions of Sub-Clause (E) below. In addition, the Contractor shall supply such further copies of such Drawings and other documents as the Engineer may request in writing for the use of the Employer, who will pay their cost.
- (E) If surface or underground structures or utility lines have to be connected to the Works or had to be relocated because of the Works, "As Built Drawings" of these connections and/or relocations certified as such by the Engineer shall be provided to the concerned Service Authorities by the Contractor according to the specified scale, specifications and

other requirements of these Authorities.

- (F) Upon issue of the Defects Liability Certificate, the Contractor shall return to the Engineer all but one complete set of Drawings, Specifications and other documents whether provided by the Engineer, Employer or obtained from other sources, or made by the Contractor. The Contractor shall keep one complete set of all documents and Drawings for the duration of the decennial liability period pursuant to the provisions of Clause 8.3. At the end of the decennial liability period, the Contractor shall destroy these documents and all Drawings.

**One Copy of Documents to be Kept on Site**

**62**

One copy of the Drawings and Specifications, provided to or supplied by the Contractor as aforesaid, shall be kept by the Contractor on the Site and the same shall at all reasonable times be available for inspection and use by the Engineer and the Engineer's Representative and by any other person authorized by the Engineer in writing.

**Notice of Disruption of Progress**

**63**

The Contractor shall give notice to the Engineer, with a copy to the Employer, whenever his planning or the execution of the Works is likely to be delayed or disrupted unless any further drawing, specification, or instruction is issued by the Engineer within a reasonable time. The notice shall include details of the drawings, specification, or instruction required and of any delay, or disruption likely to be suffered if it is late.

**Delays and Cost of Delay in Issuing Documents**

**64**

If, by reason of any failure or inability of the Engineer to issue, within a time reasonable in all the circumstances, any drawing, specification, or instruction for which notice has been given by the Contractor in accordance with Clause 6.3, and consequently, the Contractor suffers delay and/or incurs costs, then the Engineer shall, after due consultation with the Employer and the Contractor, determine:

- (a) any extension of time to which the Contractor is entitled under Clause 44, and
- (b) the amount of such costs, which shall be added to the Effective Contract Price, and

shall notify the Contractor accordingly, with a copy to the Employer.

<b>Failure by Contractor to Submit Documents</b>	<b>6.5</b>	If the failure, or inability of the Engineer to issue any drawings, specification, or instruction is caused in whole, or in part by the failure of the Contractor to submit drawings, specification, or other documents, which he is required to submit under the Contract, the Engineer shall take such failure by the Contractor into account when making his determination pursuant to the provisions of Clause 6.4
<b>Supplementary Drawings, Specifications, Instructions and Other Documents</b>	<b>7.1</b>	The Engineer shall have the authority to issue to the Contractor from time to time such supplementary drawings, specifications and instructions as shall be necessary for the proper and adequate execution and completion of the Works and the remedying of any defect therein. The Contractor shall carry out and be bound by the same.
<b>Permanent Works Designed by Contractor</b>	<b>7.2</b>	<p>Where the Contract expressly provides that part of the Permanent Works shall be designed by the Contractor, he shall submit to the Engineer, for approval:</p> <ul style="list-style-type: none"> <li>(a) such drawings, specifications, calculations and other information as shall be necessary to satisfy the Engineer as to the suitability and adequacy of that design, and</li> <li>(b) operation and maintenance manuals together with drawings of the Permanent Works as completed in sufficient detail to enable the Employer to operate, maintain, dismantle, reassemble and adjust the Permanent Works incorporating that design. The Works shall not be considered to be completed for the purpose of taking over in accordance with Clause 48 until such operation and maintenance manuals, together with drawings on completion, have been submitted to and approved by the Engineer.</li> </ul>
<b>Responsibility Unaffected by Approval</b>	<b>7.3</b>	Approval of construction methods, equivalent standards, materials, equipment, plant, designs, emergency procedures, corrective measures and any other proposal of the Contractor by the Engineer shall not relieve the Contractor of any of his responsibilities and liabilities under the Contract.

# GENERAL OBLIGATIONS

## Contractor's General Responsibilities

- 8.1 (A) The Contractor shall, with due care and diligence, design, to the extent provided for by the Contract, execute and complete the Works and remedy any defects therein in accordance with the provisions of the Contract.
- (B) The Contractor shall provide all offices, facilities, workshops, instruments, Contractor's Equipment, superintendence, Personnel, Materials, Plant, Equipment, laboratory, testing facilities, computer hardware and software compatible with the Consultants' and DM's systems and all other things, whether of a temporary or permanent nature, required in and for such design, execution, completion and remedying of any defects, so far as the necessity for providing the same is specified in or is reasonably to be inferred from the Contract.
- (C) The Contractor shall be liable for the consequences of incorporating defective Materials, Equipment and Plant in the Works and for bad workmanship (Clause 8.3). Furthermore, the Contractor is obligated to have his own quality control system (36.1) and shall be responsible for complying with the Time for Completion (Clause 47.1).
- (D) The Contractor shall provide offices, facilities, furniture, equipment, computer hardware and software compatible with the Consultants' and DM's systems, services and other things to the Engineer as specified in the Contract.
- (E) The Contractor shall give prompt notice to the Engineer, with a copy to the Employer, of any error, omission, fault or other defect in the design of or Specifications for the Works which he discovers when reviewing the Contract or executing the Works. However, if the Contractor does not discover any

error, omission, fault or other defects in the design of or Specifications for the Works, then this shall not release the Engineer of any of his responsibilities and liabilities under his contract with the Employer.

- (F) The Contractor shall establish and enforce safety and health regulations at the Site pursuant to the provisions of Clauses 19.1, 34.6, 34.8, 35.2, 35.3 and 35.4.
- (G) The Contractor shall protect the environment at and in the vicinity of the Site pursuant to the provisions of Clauses 19.1 and 42.4.

**Site Operations  
and Methods of  
Construction**

**8.2**

- (A) The Contractor shall take full responsibility for the:
  - (a) adequacy, quality, stability and safety of all Site operations and methods of construction, and
  - (b) the adequacy and quality of the workmanship.
- (B) Provided that the Contractor shall not be responsible, except as stated under Sub-Clause (C) or as may be otherwise agreed, for the design or specifications of Permanent Works, or for the design or specifications of any Temporary Works, not prepared by the Contractor.
- (C) Where the Contract expressly provides that part of the Permanent Works shall be designed by the Contractor, he shall be fully responsible for that part of such Works, notwithstanding any approval by the Engineer.

**Decennial  
Liability**

**8.3**

- (A) For ten (10) consecutive years, unless specified otherwise in the Particular Conditions, following the date certified in the Defects Liability Certificate, the Contractor shall be liable for the consequences of bad workmanship, the use of defective or inferior quality materials, errors, omissions, or negligence on his part pursuant to the provisions of Sub-Clauses (B) and (C) below. The approval of the Engineer shall not in any way absolve or relieve the Contractor from any such obligation, responsibility, or liability. The liability of the Contractor shall be limited to the cost of rectification of the Works, such costs to

include supervision and investigation costs, with the exception of the liability specified for design, if any, performed by the Contractor, under Sub-Clause (C) below.

- (B) The Contractor shall be liable for any defects in the construction of any part of the Works, where such defects are due to any bad workmanship, the use of defective or inferior quality materials, error, omission, or negligence of the Contractor, provided that such defects become apparent during the period of ten (10) years, unless specified otherwise in the Particular Conditions, from the date certified in the Defects Liability Certificate for the part of the Works in question. However, the Contractor shall not be liable for defects arising from lack of proper maintenance, fair wear and tear, or damage caused by any person other than the Contractor or his agents or Personnel.
- (C) The Contractor shall be liable for the consequences of faulty design and specifications, lack of care and negligence for that part of the Works, which was designed and specified by the Contractor for the period specified either in Sub-Clause (A) or (B) above, or in the Particular Conditions, as the case may be. The Contractor shall keep the Employer fully and effectively indemnified against all legally enforceable losses, damages, injuries, deaths, actions, proceedings, claims, demands and all associated costs suffered by the Employer or any third party.
- (D) In connection with defective Plant or Equipment, the duration and terms of the long term liability of the Contractor shall be specified in the Particular Conditions of the Contract. If none is specified, the liability of the Contractor ends at the end of the Defects Liability Period pursuant to the provisions of Clauses 49.6 and 62.1.

## **Contract Agreement**

- 9.1** The Contractor shall, when called upon to do so, enter into and execute the Contract Agreement, in the form attached to the Tender Documents with such modification as may be agreed.

**Performance  
Security**

- 10.1** (A) Immediately on receiving the Letter of Acceptance, the successful Tenderer shall extend the validity of the Tender Bond as a temporary Performance Security until the Employer accepts the Performance Security specified in Sub-Clause (B) below.
- (B) The Contractor shall provide a security to the Employer in the sum of 10 percent of the Contract Price for his proper performance of the Contract before the end of the Mobilization Period specified in the Letter of Acceptance. The performance security shall be in the form of an unconditional bank guarantee from an approved bank, or financial institution in the UAE, or as may be specified in the Appendix to Tender. The Contractor shall notify the Engineer when providing the performance security to the Employer. The bank or institution and the terms of the guarantee shall be subject to the approval of the Employer, but shall conform with the specimen security provided with the Tender Documents. The cost and charges of complying with the requirements of this Clause shall be borne by the Contractor.
- (C) Without limitation to the provisions of Sub-Clause (B) above, whenever the combined cost of the:
- (i) Engineer's determination of an addition to, or deduction from, the Effective Contract Price as a result of change in legislation pursuant to Clause 70.2, and
  - (ii) The cumulative value of variations (positive or negative)
- exceeds plus or minus 10 percent of the Contract Price, then the Contractor, at the Engineer's written request, shall promptly increase or decrease the value of the performance security by an equal percentage.
- (D) The performance security of the joint venture shall be in the name of the joint venture.
- (E) The withdrawal of the temporary or full performance security by the Contractor before its date of expiration pursuant to Clauses 10.1(A) or 10.2 shall

require the written authorization of the Employer and the performance security shall be construed accordingly.

**Period of  
Validity of  
Performance  
Security**

- 10.2** (A) The performance security shall be valid for a period, which ends 90 days after the Effective Period of the Contract, or until such time as the final NOCs from Service Authorities have been provided by the Contractor to the Employer, whichever comes later.
- (B) The Contractor may secure release of his performance security after the applicable time period stated in Sub-Clause (A) by presenting his request in writing accompanied by photocopies of the final NOCs and the Defects Liability Certificate for the whole of the Works issued in accordance Clause 62.1. The Employer shall promptly return the performance security, but in any case not later than 14 days from the date of satisfaction of the applicable condition under Sub-Clause (A) above.

**Claims under  
Performance  
Security**

- 10.3** Prior to making a claim under the performance security, the Employer shall, in every case, notify the Contractor stating the nature of the default in respect of which the claim is to be made.

**Default of  
Institution  
Providing  
Security**

- 10.4** (A) During the performance of the Contract, if, in the opinion of the Employer, the institution providing the Contractor's performance security experiences difficulties in abiding by its commitments, then the Employer shall:
- (i) treat the submitted performance security as terminated, and
  - (ii) give a formal notice to the Contractor to provide a new performance security on the same terms as the previous one.

Should the Contractor fail to provide the new security within 14 days from the date of the Employer's notice to this effect and from an institution approved by the Employer, then the Employer will purchase the said



security from an institution of his choice and at a market price available to the Employer and found reasonable by the Employer on or after the 15<sup>th</sup> day from the date of the Employer's notice stated above. In this case, the cost of this purchase shall be deducted from the sums due to the Contractor, or in case of insufficiency of funds, from the retention money held by the Employer.

**Inspection of  
Site**

- 11.1** (A) The Employer may have made available to the Contractor, before the submission of the Tender by the Contractor, such data on hydrological and sub-surface conditions as have been obtained by, or on behalf of, the Employer from investigations undertaken relevant to the Works. However, the Contractor shall be responsible for his own interpretation thereof.
- (B) The Contractor shall be deemed to have inspected and examined the Site and its surroundings and information available in connection therewith and to have satisfied himself, so far as is practicable, having regard to considerations of cost and time, before submitting his Tender, as to:
- (a) the form and nature thereof, including sub-surface conditions,
  - (b) the hydrological and climatic conditions,
  - (c) the extent and nature of work and materials necessary for the execution and completion of the Works and the remedying of any defects therein, and
  - (d) the means of access to the Site and accommodations he may require.
- (C) In general, the Contractor shall be deemed to have obtained all necessary information, subject as above mentioned, as to risks, contingencies and all other circumstances which may influence or affect his Tender.
- (D) The Contractor shall be deemed to have based his Tender on the data made available to him by the Employer and on his own inspection and

		examination, all as aforementioned.
<b>Access to Data</b>	<b>11.2</b>	Data made available by the Employer in accordance with Clause 11.1 shall be deemed to include data listed elsewhere in the Contract as open for inspection at the offices of the Employer, whose address is stipulated under Clause 1.1(a) in the Appendix to Tender.
<b>Sufficiency of Tender</b>	<b>121</b>	The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Tender and of the rates and prices stated in the Bill of Quantities, all of which shall, except insofar as it is otherwise provided in the Contract, cover all his obligations under the Contract (including those in respect of the supply of Goods, Materials, Plant, Equipment or Services, or of contingencies for which there is a Provisional Sum) and all matters and things necessary for the proper execution and completion of the Works and the remedying of any defects therein.
<b>Adverse Physical Obstructions or Conditions</b>	<b>122</b>	<p>(A) If during the execution of the Works on the Site, the Contractor encounters physical obstructions or physical conditions, other than climatic conditions, which obstructions or conditions were, in his opinion, not foreseeable by an experienced contractor, then the Contractor shall forthwith proceed according to the time schedule and procedures specified in Clause 12.3 below. Additional provisions are specified in Clauses 44 and 53.</p> <p>(B) Wherever the conditions stated in Sub-Clause (A) above are encountered by the Contractor, the Engineer shall proceed according to the time schedule and procedures specified in Clause 12.4.</p> <p>(C) The Employer shall not unreasonably delay any consultation, or withhold any consent, determination, or decision requested by the Engineer.</p>
<b>Procedures for the Contractor</b>	<b>123</b>	(A) In the case of unforeseen physical obstructions and conditions defined under Clause 12.2, the Contractor shall alert the Engineer verbally as soon as possible, but not later than the end of the day of the event and

give a written notice (Physical Obstruction or Condition Notice) to the Engineer, with a copy to the Employer, within three (3) days, which shall be extended by the duration of public holidays, which falls within the 3-day period, from the day of the event, as day number 1, describing:

- (a) the event (details about date, hour, method of work leading to the event, observations, estimated geometric dimensions, nature of the problem)
  - (b) details of the anticipated effects and consequences thereof
  - (c) measures the Contractor has undertaken already and is proposing to take to overcome the problem, and
  - (d) a preliminary estimate of the anticipated delays in the Work Program and interference with the Contractor's other activities in connection with the Works.
- (B) If the Physical Obstruction or Condition Notice states explicitly the Contractor's intention to prepare a claim, then the Contractor is not obligated to submit another claim notice within 28 days from the event pursuant to Clauses 44 and/or 53 to be eligible for claiming time extensions and/or extra costs. However, if the Physical Obstruction or Condition Notice does not make this statement, the Contractor must still meet the 28 days deadline for notice of claim under Clauses 44 and/or 53. In all cases, the provisions of Sub-Clause (A), above, must be fully satisfied.
- (C) In the event the Contractor believes that he is entitled to a time extension, or an additional cost, or both, provided he satisfied the requirements stated in Sub-Clauses (A) and (B) above, he may prepare a detailed claim according to the:
- requirements of the Engineer  
(documentation, format, level of details, proof, arguments, supporting documents etc.), and

- provisions of Clauses 12, 44 and 53 as applicable to the case.

**Procedures for the Engineer**

- 12.4** (A) The Engineer shall visit the physical obstruction or condition immediately after the receipt of the Contractor's verbal alert.
- (B) Upon receipt of the Physical Obstruction or Condition Notice defined under Clause 12.3(A) above, after due consultation with the Employer, the Engineer may select one of the following alternatives:
- (a) require the Contractor to provide a cost estimate of the measures undertaken and planned within a stated time period as reasonably determined by the Engineer under the circumstances;
  - (b) approve in writing the Contractor's proposed measures with or without modifications;
  - (c) give written instructions to the Contractor about the appropriate methods, materials, and equipment to be used and the proper ways and procedures to be applied to overcome the physical obstructions or conditions; or
  - (d) order a suspension under Clause 40, or a variation under Clause 51.

The Contractor shall follow the Engineer's instructions and cooperate with the Engineer to resolve the problem.

- (C) Within seven (7) days following the receipt of the Contractor's Physical Obstruction or Condition Notice, the Engineer shall prepare a short report to the Employer stating the basic data, analyzing the problems, evaluating the probable cost and time consequences of the physical obstruction or condition and recommend a course of action to the Employer.
- (D) In the event the Contractor states (in Notice of Claim) that he intends to claim a time extension, or additional costs, or both, the Engineer shall issue instructions to the Contractor within three (3) days, which shall be extended by the duration of public holidays which fall within the 3 day period, from the receipt of such Notice about the format, level of

detail and documentation required.

(E) Upon receipt of the detailed claim, the Engineer shall:

- (a) review the Contractor's compliance with his instructions
- (b) carry out a preliminary evaluation of the arguments used by the Contractor.

(F) The Engineer shall take one of the following actions within seven (7) days from the receipt of the Contractor's detailed claim:

- (a) reject the Contractor's claim on the ground that it was not prepared in accordance with the provisions of the Contract specifying the Clauses applicable to justify the rejection with a copy to the Employer.
- (b) ask for additional clarifications and fix a reasonable deadline for resubmission with a copy to the Employer.
- (c) accept the claim for review and study.

In case of acceptance, the Engineer shall prepare a detailed analysis of the Contractor's claim with specific recommendations to the Employer. The Engineer shall, within 28 days from the receipt of the Contractor's detailed claim, submit both the Contractor's original claim and the Engineer's analysis to the Employer in the number of copies specified in the Appendix to Tender.

(G) Subject to the provisions of Clause 2.1(C), within fifty-six (56) days after the receipt of the Contractor's Claim, the Engineer shall determine:

- (a) any extension of time to which the Contractor is entitled under Clause 44, and
- (b) the amount of any costs, which may have been incurred by the Contractor pursuant to Clause 53 by reason of such obstruction, or condition, which shall be added to the Effective Contract Price.

Such determination shall take into account any instruction, which the Engineer may have issued to the

Contractor in connection therewith, and any proper and reasonable measures acceptable to the Engineer, which the Contractor may have taken in the absence of specific instructions from the Engineer.

**Conditions  
Reasonably  
Foreseeable**

**12.5** (A) Pursuant to the provisions of Clause 12.4(G), if and when the Engineer determines that the physical obstructions or conditions could, in whole or in part, have been reasonably foreseen by an experienced contractor, he shall notify the Contractor in writing immediately.

(B) In the case specified under Sub-Clause (A), if the Engineer had ordered variations pursuant to the provisions of Clause 12.4(B)(d), which were executed by the Contractor before the receipt of the Engineer's determination referred to in Sub-Clause (A), then he shall assess these variations in accordance with Clause 52 and increase the Effective Contract Price accordingly with a copy to the Employer.

**Work to be in  
Accordance with  
Contract**

**13.1** (A) Unless it is legally or physically impossible, the Contractor shall execute and complete the Works and remedy any defects therein in strict accordance with the Contract to the satisfaction of the Engineer.

(B) The Contractor shall comply with and adhere strictly to the Engineer's instructions on any matter, whether mentioned in the Contract or not, touching or concerning the Works.

(C) The Contractor shall take instructions only from the Engineer, or from the Engineer's Representatives, subject to the provisions of Clause 2.

**Program to be  
Submitted**

**14.1** (A) The Contractor shall, within the time period stated in the Appendix to Tender after the date of the Letter of Acceptance, but prior to the end of the Mobilization Period (Clause 41.1(C)a and Sub-Clause (C) below) stated in the Letter of Acceptance, submit to the Engineer for his consent, a program for the execution of the Works, with a copy to the Employer, in such

form and detail as the Engineer shall reasonably prescribe. This program shall contain the following elements, which may be expanded or amended by the Engineer in writing:

- (a) a detailed list of the Contractor's resources (Plant, equipment, vehicles, materials, laboratory, workshop, professional personnel, specialists, labor, organization chart, etc.) assigned to the Works;
  - (b) the order in which the Contractor proposes to carry out the Works;
  - (c) the time limits within which submission and approval of any Drawings and Specification may be required;
  - (d) a general description of the arrangements and methods proposed by the Contractor to carry out the Works;
  - (e) a time schedule of the mobilization and deployment of the required resources and their estimated average production rates to achieve the proposed program;
  - (f) time limits for the execution of the tests; and
  - (g) a complete critical path analysis of the execution of the Works.
- (B) Any tentative program, if it was required in the Tender Documents, is not a substitute for the above described "sufficiently detailed program" before the start of the Works.
- (C) The Contractor shall not start the Permanent Works, except as noted in Clause 41.1(B)(a and b), until 14 days, or as stated in the Appendix to Tender, after the submission of a sufficiently detailed program, in the opinion of the Engineer, notwithstanding the passing of the Commencement of the Works. No extension of time shall be given to the Contractor in respect of any delay caused by a late submission, or the insufficiency of the details of the submitted program.
- (D) The Contractor, whenever requested by the Engineer in writing during the Contract Period, shall update, expand or provide additional information under Sub-

Clauses from (a) to (g) of (A) above for any part, or the entirety of the remaining Works.

**Revised  
Program**

- 14.2** If at any time it should appear to the Engineer that the actual progress of the Works does not conform to the program to which consent has been given under Clause 14.1, the Contractor shall produce, at the request of the Engineer, a revised program showing the modifications to such program necessary to ensure the completion of the Works within the Time for Completion. The Contractor shall produce this revised program with a copy to the Employer within 14 days from the date of the Engineer's request.

**Cash Flow  
Estimate to be  
Submitted**

- 14.3** The Contractor shall, within the number of days specified in the Appendix to Tender after the date of the Letter of Acceptance, provide to the Engineer for his information a detailed cash flow estimate in monthly periods. This estimate shall include all payments to which the Contractor will be entitled under the Contract. Also, the Contractor shall subsequently supply revised cash flow estimates when required to do so by the Engineer.

**Contractor not  
Relieved of  
Duties or  
Responsibilities**

- 14.4** The submission to and consent by the Engineer of such programs or the provision of such general description or cash flow estimates shall not relieve the Contractor of any of his duties or responsibilities under the Contract.

**Contractor's  
Superintendence**

- 15.1** (A) The Contractor shall provide all necessary superintendence during the execution of the Works and as long thereafter as the Engineer may consider necessary for the proper fulfilling of the Contractor's obligations under the Contract.
- (B) The Contractor's competent and authorized Superintendent approved by the Engineer, which approval may at any time be withdrawn, is to be constantly at the Works and shall give his whole time to the superintendence of the Works. Such authorized Superintendent shall receive, on behalf of



the Contractor, instructions from the Engineer, or the Engineer's Representative, subject to the provisions of Clause 2. This Superintendent of the Contractor is to be nominated by the Contractor to facilitate the communication between the Engineer and the Contractor, and to implement the Engineer's instructions immediately, or as specified in the instruction.

- (C) If approval of the Superintendent is withdrawn by the Engineer, the Contractor shall within one month, or such other reasonable time as may be agreed by the Engineer, after receiving notice of such withdrawal, remove the Superintendent from the Works and shall not thereafter employ him again on the Works in any capacity and shall replace him by another Superintendent approved by the Engineer.

**Language  
Ability of the  
Contractor's  
Superintendent**

- 15.2** The Contractor's authorized Superintendent on Site should be fluent in both English and Arabic. If the Contractor's authorized Superintendent is not fluent in one of these languages, the Contractor shall employ on Site at all times a competent engineer who is fluent in both languages in order to assist the Contractor or his authorized Superintendent in receiving instructions pursuant to Clause 15.1.

**Contractor's  
Employees**

- 16.1** The Contractor shall provide on the Site in connection with the execution and completion of the Works and the remedying of any defects therein:

- (a) only such technical assistants as are skilled and experienced in their respective callings and such foremen and leading hands as are competent to give proper superintendence of the Works;
- (b) such skilled, semi-skilled and unskilled labor as is necessary for the proper and timely fulfilling of the Contractor's obligations under the Contract, and
- (c) a competent person who shall have a fluent command of written and spoken English, present during all working hours to be at the service of the

Engineer, or of the Engineer's Representative as may be required.

**Engineer at  
Liberty to  
Object**

- 16.2** The Engineer shall be at liberty to object to and require the Contractor to remove forthwith from the Works any person provided by the Contractor who, in the opinion of the Engineer, misconducts himself, or is incompetent, or negligent in the proper performance of his duties, or whose presence on Site is otherwise considered by the Engineer to be undesirable, and such person shall not be again allowed upon the Works without the consent of the Engineer. Any person so removed from the Works shall be replaced as soon as possible.

**Setting-Out**

- 17.1 (A)** The Contractor shall be responsible for:

- (a) the accurate setting-out of the Works in relation to original points, lines and levels of reference given by the Engineer in writing,
- (b) the correctness, subject as above mentioned, of the position, levels, dimensions and alignment of all parts of the Works, and
- (c) the provision of all necessary instruments, equipment, appliances and labor in connection with the foregoing responsibilities.

(B) If, at any time during the execution of the Works, any error appears in the position, levels, dimensions, or alignment of any part of the Works, the Contractor shall, on being required to do so by the Engineer, at his own cost, rectify such error to the satisfaction of the Engineer. However, if such error is based on incorrect data supplied in writing by the Engineer or the Engineer's Representative, subject to the provisions of Clause 2, the Engineer shall determine an addition to the Effective Contract Price in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the Employer.

(C) The checking of any setting-out, or of any line, or level, by the Engineer shall not in any way relieve the Contractor of his responsibility for the accuracy thereof, and the Contractor shall carefully protect and

preserve all bench-marks, sight-rails, pegs and other things used in setting-out the Works.

**Orientation  
Towards Mecca**

**17.2** The Contractor shall contact the Surveying Department of Dubai Municipality in connection with the correct orientation of the buildings towards Mecca, and shall provide written certification to the Engineer that the buildings have been oriented to the satisfaction of the Surveying Department, Dubai Municipality.

**Boreholes and  
Exploratory  
Excavations**

**18.1** If, at any time during the execution of the Works, the Engineer requires the Contractor to make boreholes, or to carry out exploratory excavations, such requirements shall be the subject of an instruction in accordance with Clause 51, unless an item or a Provisional Sum in respect of such work is included in the Bill of Quantities.

**Safety, Security  
and Protection  
of the  
Environment**

**19.1** The Contractor shall, throughout the execution and completion of the Works and the remedying of any defects therein:

- (a) have full regard for the safety of all persons entitled to be upon the Site and keep the Site (so far as the same is under his control) and the Works (so far as the same are not completed, or occupied by the Employer) in an orderly state appropriate to the avoidance of danger to such persons.
- (b) provide and maintain at his own cost all lights, guards, fencing, warning signs and watching, when and where necessary, or required by the Engineer, or by any duly constituted authority under the Applicable Law, for the protection of the Works, or for the safety and convenience of the public or others.
- (c) take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise, or other causes arising as a consequence

of his method of operation.

- (d) cooperate with DM's Environmental Protection and Safety Section and comply with the said Section's guidelines.
- (e) assign a person to be responsible for resolving all environmental issues and implementing the provisions of Clause 42.4(D).

**Employer's  
Responsibilities**

**19.2** If under Clause 31, the Employer shall carry out work on the Site with his own workmen and/or staff, he shall, in respect of such work:

- (a) have full regard to the safety of all persons entitled to be upon the Site, and
- (b) keep the Site in an orderly state appropriate to the avoidance of danger to such persons.

If under Clause 31, the Employer shall employ other contractors on the Site, he shall require them to have the same regard for safety and avoidance of danger.

**Care of Works 20.1** (A) The Contractor shall take full responsibility for the care of the Works and Materials, Equipment and Plant for incorporation therein from the Commencement Date until the date of issue of the Taking-Over Certificate for the whole of the Works, or any Section or Part thereof, when the responsibility for the said care shall pass to the Employer, provided that:

- (a) if the Engineer issues a Taking-Over Certificate for any Section, or part of the Permanent Works, the Contractor shall cease to be liable for the care of that Section or Part, from the date of issue of the Taking-Over Certificate, when the responsibility for the care shall pass to the Employer, and
- (b) the Contractor shall take full responsibility for the

care of any outstanding Works and materials, equipment and Plant for incorporation therein, which he undertakes to finish during the Defects Liability Period until such outstanding Works have been completed pursuant to Clause 49.

- (B) If the Contractor is expelled, or the Contract is terminated in accordance with the provisions of Clauses 63, 65, 66 or 69, the date of issue of the Taking-Over Certificate in Sub-Clause (A) above shall be replaced by the date of effectiveness of the expulsion or termination in the notices given.

**Responsibility to Rectify Loss or Damage**

**202**

If any loss or damage happens to the Works, or any part thereof, or materials, equipment, or Plant for incorporation therein, during the period for which the Contractor is responsible for the care thereof, from any cause whatsoever, other than the risks defined in Clause 20.4, the Contractor shall, at his own cost, rectify such loss or damage so that the Permanent Works conform in every respect with the provisions of the Contract to the satisfaction of the Engineer. The Contractor shall also be liable for any loss or damage to the Works occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations under Clauses 49 and 50. If the subject of the damage or loss had been previously condemned by the Engineer under the provisions of Clause 39, then the Contractor, if required by the Engineer, shall be responsible for the repair and restitution thereof at his own cost.

**Loss or Damage Due to Employer's Risks**

**203**

In the event of any such loss or damage happening from any of the risks defined in Clause 20.4, or in combination with other risks, the Contractor shall, if and to the extent required by the Engineer, rectify the loss or damage and the Engineer shall determine an addition to the Effective Contract Price in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the Employer. In the event of any loss or damage happening from a combination of Employer's and Contractor's Risks, as defined in Clauses 20.4 and 20.5, the responsibility for rectification of such loss or damage shall be shared proportionately. Under such circumstances, the Engineer shall, when determining an

addition to the Effective Contract Price in accordance with Clause 52, take into account the proportional responsibility of both the Contractor and the Employer and shall notify the Contractor accordingly, with a copy to the Employer.

## **Employer's Risks**

### **204 The Employer's Risks are:**

- (A) insofar as they directly affect the execution of Works in Dubai:
  - (a) war and hostilities (whether war be declared or not), invasion, hostile acts of foreign enemies;
  - (b) restrictive acts of Government, rebellion, revolution, insurrection, or military or usurped power, or civil war;
  - (c) ionizing radiations, or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
  - (d) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds;
  - (e) riot, commotion, or disorder, unless solely restricted to the employees of the Contractor, or of his Subcontractors and arising from the conduct of the Works;
- (B) loss or damage due to the use or occupation by the Employer of any Section or part of the Permanent Works, except as may be provided for in the Contract;
- (C) damage to crops on the Site, save so far as possession has not been given to the Contractor,
- (D) damage, other than that resulting from the Contractor's method of construction, which is the unavoidable result of the construction of the Works in accordance with the Contract;
- (E) any interference, whether temporary or permanent with any right of way, light, air, water, or other easements which are the unavoidable results of the construction of the Works in accordance with the

Contract;

(F) loss or damage to the extent that it is due to the design of the Works, other than any part of the design provided by the Contractor, or for which the Contractor is responsible; and

(G) any operation of the forces of nature (insofar as it occurs at the Site) which an experienced contractor:

(i) could not have reasonably foreseen, or

(ii) could have reasonably foreseen, but against which he could not reasonably have taken at least one of the following measures:

(a) prevent loss or damage to physical property from occurring by taking appropriate measures, or

(b) insure against such loss or damage.

Forces of nature include, but are not restricted to, bad weather, flood, earthquake, meteorite, etc.

## **Contractor's Risks**

**205**

The Contractor shall be deemed to have responsibility for all the Risks not stated under the Employer's Risks in Clause 20.4.

## **Insurance of Works and Contractor's Equipment**

**21.1**

The Contractor shall, without limiting his or the Employer's obligations and responsibilities under Clause 20, insure:

(a) the Works, together with materials and Plant for incorporation therein, to the full replacement cost and with deductible limits for the Employer's Risks not exceeding the sum stated in the Appendix to Tender,

(b) an additional sum of 15 percent of the replacement cost, or as may be specified in the Appendix to Tender, to cover any additional costs of and incidental to the rectification of loss or damage, including professional fees and cost of demolishing and removing any part of

the Works and of removing debris of whatsoever nature, and

- (c) the Contractor's Equipment and other things, including Plant brought onto the Site by the Contractor, for a sum sufficient to provide for their replacement at the Site.

**Scope of Cover**

**21.2**

(A) The insurance in Clauses 21.1(a) and 21.1(b) shall be in the joint names of the Contractor and the Employer, and shall cover:

- (a) the Employer and the Contractor against all loss or damage from whatsoever cause arising, other than as provided in Clause 21.4, from the first working day after the Commencement Date until the date of issue of the relevant Taking-Over Certificate in respect of the Works, or any Section, or any part thereof, as the case may be, and

(b) the Contractor for his liability:

- (i) during the Defects Liability Period for loss or damage arising from a cause occurring prior to the start of the Defects Liability Period, and
- (ii) for loss or damage 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.

(B) The Contractor's Equipment under Clause 21.1(c) is to be insured only in the Contractor's name.

(C) It shall be the responsibility of the Contractor to notify the insurance companies of any change in the nature and extent of the Works and to ensure the adequacy of the insurance coverage at all times during the Contract Period.

**Responsibilities  
for Amounts Not  
Recovered**

**21.3**

Any amounts not insured or not recovered from the insurers shall be borne by the Employer or the Contractor in accordance with their respective responsibilities under Clause 20.



## **Exclusions**

- 21.4** (A) There shall be no obligation for the insurance in Clause 21.1 to include loss or damage caused by the risks listed under Clause 20.4(A).
- (B) Without limiting his obligations and responsibilities under Clause 20, the Contractor shall not be required to insure:
- (i) against the necessity for the repair or reconstruction of any work constructed with materials and workmanship not in accordance with the requirements of the Contract unless the Bill of Quantities shall provide a special item for this insurance in respect of specific elements.
  - (ii) in respect of consequential loss including penalties for delay and non-completion wear and tear shortages and pilferage.

## **Damage to Persons and Property**

- 22.1** (A) The Contractor shall, except if and so far as the Contract provides otherwise, indemnify the Employer against all losses and claims in respect of:
- (a) death of or injury to any person, or
  - (b) loss of or damage to any property (other than the Works),
- which may arise out of or in consequence of the execution and completion of the Works and the remedying of any defects therein. Also, the Contractor shall indemnify the Employer against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof, or in relation thereto, subject to the exceptions defined in Clause 22.2.
- (B) The Contractor's liability to indemnify the Employer shall be limited to the sum stated in the Appendix to Tender and (in accordance with the provisions of Clause 22.3) shall be reduced proportionally by the extent of the consequences of the acts and/or neglects of the Employer, or his contractors, servants, or agents.

## **Exceptions**

**22.2** The “exceptions” referred to in Clause 22.1 are:

- (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) damage to property, which is the unavoidable result (other than that resulting from the Contractor’s method of construction) of the execution and completion of the Works, or the remedying of any defects therein, in accordance with the Contract, and
- (d) death of or injury to persons, or loss of or damage to property resulting from any act or neglect of the Engineer, the Employer, his agents, servants or other contractors, not being employed by the Contractor. Further, the same applies to 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 said injury or damage 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 injury or damage.

## **Indemnity by Employer**

**22.3** The Employer shall indemnify the Contractor against all claims, proceedings, damages, costs, charges and expenses in respect of matters referred to in the exceptions defined in Clause 22.2. The Employer’s liability to indemnify the Contractor shall be reduced proportionally with the extent of the consequences of the acts and/or neglects of the Contractor and his Subcontractors, or their servants or agents may have contributed to the said injury or damage.

## **Third Party Insurance (Including Employer’s Property)**

**23.1** (A) The Contractor shall, without limiting his or the Employer’s obligations and responsibilities under Clause 22, insure, in the joint names of the Contractor and the Employer, against liabilities for death of or injury to any person (other than as

provided in Clause 24), or loss or damage to any property (other than the Works) arising out of the performance of the Contract, other than the exceptions defined in Sub-Clauses (a), (b) and (c) of Clause 22.2.

(B) The Contractor's third party insurance shall include indemnity in respect of any vehicles not owned by the Contractor, or his Subcontractors, which are used by their employees in connection with the Works.

(C) Notwithstanding the provisions of Clause 22.2(d) and without limiting his obligations under these Conditions of Contract, the Contractor shall indemnify and keep indemnified the Employer, his agents, servants and employees against legal liability for any damage, loss or injury incurred by any person who is a passenger in any vehicle owned, hired, or used by the Contractor, or his Subcontractors irrespective of who is the driver of such vehicles or the purpose for which it may be used, and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of or in relation thereto.

**Minimum  
Amount of  
Insurance**

**23.2** Such insurance shall be for at least the amount stated in the Appendix to Tender and shall be unlimited as to the number of occurrences in any one period of insurance.

**Cross Liabilities**

**23.3** The insurance policy shall include a cross liability clause such that the insurance shall apply to the Contractor and to the Employer as separate insureds.

**Accident or  
Injury to  
Workmen**

**24.1** The Employer shall not be liable for any damages or compensation payable to any workman or other person in the employment of the Contractor or any Subcontractor, or to any person, whose services may be loaned for the time being, or made available to the Contractor or any Subcontractor, other than death or injury resulting from any act or default of the Employer, his agents, or personnel. The Contractor shall indemnify and keep indemnified the Employer against all such damages and

compensation, other than those for which the Employer is liable as aforesaid, and against all claims, proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.

**Insurance  
Against  
Accident to  
Workmen**

- 242** The Contractor shall insure against liabilities arising out of accidents to workmen and shall continue such insurance during the whole of the time that any persons are employed by him on the Works. Provided that, in respect of any persons employed by any Subcontractor, the Contractor's obligations to insure as aforesaid under this Clause shall be satisfied if the Subcontractor 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 Subcontractor to produce to the Employer, when required, such policy of insurance and the receipt for the payment of the current premium.

**Evidence and  
Terms of  
Insurances**

- 251** The Contractor shall provide evidence to the Employer as soon as practicable after the respective insurances have been taken out, but in any case prior to the start of work at the Site that the insurances required under the Contract have been effected, and shall, within 84 days of the Commencement Date, or as stated in the Appendix to Tender, provide the insurance policies to the Employer. When providing such evidence and such policies to the Employer, the Contractor shall notify the Engineer of so doing. Such insurance policies shall be consistent with the general terms agreed prior to the issue of the Letter of Acceptance. The Contractor shall effect all insurances for which he is responsible with insurers and in terms approved by the Employer, and all such insurances shall be endorsed by the insurers stating their compliance with the relevant terms of these Contract Documents.

**Adequacy of  
Insurances**

- 252** (A) The Contractor shall notify the insurers of changes in the nature, extent or program for the execution of the Works with a copy to the Employer and ensure the adequacy of the insurances at all times in accordance with the terms of the Contract and shall, when required, produce to the Employer the insurance policies in force and the receipts of payment of the current premiums.

(B) Notwithstanding the provisions of Sub-Clause (A) above, it shall be a condition of any insurance policies by the insurers in accordance with the terms of this Contract that the insurers will not exercise their rights to avoid benefit payments under this insurance on the grounds of any non-disclosure, misdescription, and misrepresentation concerning any information related to the risks insured under such policies, unless the insurer can establish that such non-disclosure, misdescription or misrepresentation was wittingly and willfully committed by the insured.

**Remedy on  
Contractor's  
Failure to Insure**

**25.3** If the Contractor fails to effect and keep in force any of the insurances required under the Contract, or fails to provide the policies to the Employer within the period required by Clause 25.1, then and in any such case, the Employer may effect and keep in force any such insurances and pay any premium as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or to become due to the Contractor, or recover the same as a debt due from the Contractor.

**Compliance  
with Policy  
Conditions**

**25.4** The Contractor and the Employer shall comply with the conditions imposed by the insurers as given in the policies for insurance coverage mentioned in Clauses 21 and 23. In the event that the Contractor or the Employer fails to comply with conditions imposed by the insurance policies effected pursuant to the Contract, then the Party which failed to comply shall indemnify the other against all losses and claims arising from such failure.

**Compliance  
with Statutes  
and Regulations**

**26.1** (A) The Contractor shall conform in all respects, including the giving of all notices and the paying of all fees, with the provisions of:

(a) the Applicable Law as defined in Clause 1.1 in relation to the execution and completion of the Works and the remedying of any defects therein, and

(b) the rules and regulations of Service Authorities as

defined in Clause 1.1 and all other public bodies and Government agencies, such as the Police Department and various UAE and Dubai Ministries, and private companies whose property and rights are affected and may be affected by the Works.

- (B) Furthermore, the Contractor shall keep the Employer indemnified against all penalties and liabilities of every kind for breach of any such provisions, provided always that the Employer shall be responsible for obtaining any planning, zoning or other similar permission required for the Works to proceed and shall indemnify the Contractor in accordance with Clause 22.3.

## **Fossils**

**27.1** All fossils, coins, articles of value or antiquity structures and other remains of things of geological or archeological interest discovered on the Site shall 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 articles or things, and shall, immediately upon discovery thereof and before removal, acquaint the Engineer of such discovery and carry out the Engineer's instructions for dealing with the same. If, by reason of such instructions, the Contractor suffers delay and/or incurs costs, then the Engineer shall, after due consultation with the Employer and the Contractor, determine:

- (a) any extension of time to which the Contractor is entitled under Clause 44, and
- (b) the amount of such costs, which shall be added to the Effective Contract Price,

and shall notify the Contractor accordingly, with a copy to the Employer.

## **Patent Rights**

**28.1** 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 Contractor's Equipment, materials or Plant used for or in connection with, or for incorporation in the Works, and from and against all damages, costs, charges and

expenses whatsoever in respect thereof or in relation thereto, except where such infringement results from compliance with the Design or Specification provided by the Engineer.

**Royalties**

**28.2** Except where otherwise provided for in the Contract

Documents, 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.

**Interference  
with Traffic and  
Adjoining  
Properties**

**29.1**

(A) All operations necessary for the execution and completion of the Works and the remedying of any defects therein shall, so far as compliance with the requirements of the Contract permits, be carried on so as not to interfere unnecessarily or improperly with:

(a) the convenience of the public, or

(b) 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.

(B) If any lands or other places and facilities outside the Site, which are the property of, or under the control of the Employer, are made available to the Contractor, they shall be used strictly in accordance with the directions of the Engineer.

(C) The Contractor shall observe all agreements entered into by the Employer and made known to the Contractor with any person or persons relating to the occupation of the land and property by the Employer, which are affected by the execution of the Works. Provided always that compliance with such agreements shall not relieve the Contractor of his obligations under this Clause. On request, the Contractor shall be given copies of any agreement, or part thereof, relevant to such matters.

(D) 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 insofar as the Contractor is responsible therefor.

**Avoidance of  
Damage to  
Roads**

**30.1** The Contractor shall use every reasonable means to prevent any of the roads 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 Subcontractors. In particular, the Contractor 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 materials, Plant, Contractor's Equipment, or Temporary Works 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 roads and bridges.

**Transport of  
Contractor's  
Equipment or  
Temporary  
Works**

**30.2** Save insofar as the Contract otherwise provides, the Contractor shall be responsible for and shall pay the cost of strengthening any bridges or altering and improving any road communicating with or on the routes to the Site to facilitate the movement of the Contractor's Equipment or Temporary Works. Furthermore, the Contractor shall indemnify and keep indemnified the Employer against all claims for damage to any such roads or bridges caused by such movement, including claims as may be made directly against the Employer, and shall negotiate and pay all claims arising solely out of such damage.

**Transport of  
Materials,  
Equipment, or  
Plant**

**30.3** (A) If, notwithstanding Clause 30.1, any damage occurs to any bridge or road connected with or on the routes to the site, arising from the transport of Materials, Equipment or Plant, the Contractor shall notify the Engineer with a copy to the Employer, as soon as he becomes aware of such damage, or as soon as he receives any claim from the entity entitled to make such claim. Where, under any law or regulation, the hauler of such Materials, Equipment, or Plant is required to indemnify DM's Roads Department against damage, the Employer shall not be liable for any costs, charges, or expenses in respect thereof, or in relation thereto.

(B) In other cases, 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 that:

- (1) if and so far as any such claim or part thereof is, in the opinion of the Engineer, due to any failure on the part of the Contractor to observe and perform his obligations under Clause 30.1, then the amount, determined by the Engineer, after due consultation with the Employer and the Contractor, to be due to such failure shall be recoverable from the Contractor by the Employer. Such amounts may be deducted by the Employer from any monies due or become due to the Contractor, and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.
- (2) the Employer shall notify the Contractor whenever a settlement is to be negotiated and, where any amount may be due from the Contractor. The Employer shall consult with the Contractor before such settlement is agreed.

**Waterborne  
Traffic**

- 30.4** 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 30 shall be construed as though “road” included a lock, dock, sea wall, port facilities, or other structure related to a waterway or a port, and “vehicle” included craft, ship, boat, barge, etc. and shall have effect accordingly.

**Opportunities  
for Other  
Contractors**

- 31.1** The Contractor shall, in accordance with the requirements of the Engineer, afford all reasonable opportunities for carrying out their work to:
- (a) any other contractors employed by the Employer and their workmen,
  - (b) the workmen of the Employer, and
  - (c) the workmen and agents of any 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.

**Facilities for  
Other  
Contractors**

**31.2** If, however, pursuant to Clause 31.1 the Contractor shall, on the written request of the Engineer:

- (a) make available to any such other contractor, or to the Employer, or any such authority, any roads, or ways for the maintenance of which the Contractor is responsible,
- (b) permit the use, by any such other contractor, or by the Employer, or by any such authority, of Temporary Works, or Contractor's Equipment on the Site, or
- (c) provide any other service of whatsoever nature for any such other contractor, or for the Employer, or for any such authority,

and the Engineer shall, after due consultation with the Employer and the Contractor, determine an addition to the Effective Contract Price in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the Employer.

**Contractor to  
Keep Site Clear**

**32.1** (A) During the execution of the Works and notwithstanding or limiting his obligations under Clause 20.1, the Contractor shall keep the Site reasonably free from all unnecessary obstruction and visually unacceptable material and shall store or dispose of, subject to the provisions of Clause 54, any Contractor's Equipment and surplus materials.

(B) In reasonable time periods approved by the Engineer, the Contractor shall clear away and remove from the Site:

- any wreckage, rubbish and garbage
- Temporary Works no longer required, and
- all materials, natural, processed, fabricated or manufactured, and structural elements, which were rejected by the Engineer and notified in writing to the Contractor.

**Clearance of  
Site on  
Completion**

- 33.1** (A) Upon the issue of any Taking-Over Certificate, the Contractor shall, subject to the provisions of Clause 54, clear away and remove from that part of the Site to which such Taking-Over Certificate relates all Contractor's Equipment, surplus materials, rubbish and Temporary Works of every kind, and leave such part of the Site and Works clean and in a workmanlike condition to the satisfaction of the Engineer.
- (B) Provided further that the Contractor shall be entitled to retain on Site, until the end of the Defects Liability Period, such materials, Contractor's Equipment and Temporary Works as are required by him for the purpose of fulfilling his obligations during the Defects Liability Period.

# LABOR

<b>Engagement of Staff and Labor</b>	<b>34.1</b>	The Contractor shall, unless otherwise provided in the Contract, make his own arrangements, but in compliance with the Applicable Law in this matter, for the engagement of all Personnel, including staff and labor, local or other, and for their regular payment, housing, feeding and transport.
<b>Supply of Water</b>	<b>34.2</b>	The Contractor shall, as reasonably practicable in regard to local conditions, provide on the Site an adequate supply of drinking water and other water for the use of his Personnel, including staff and labor.
<b>Alcoholic Beverages and Drugs</b>	<b>34.3</b>	The Contractor shall not, otherwise than provided under the Applicable Law, import, sell, give, barter, or otherwise dispose of any alcoholic beverages and drugs; or permit, or tolerate any such importation, sale, gift, barter, or disposal by his Subcontractors, agents, and personnel, including staff and labor.
<b>Arms and Ammunition</b>	<b>34.4</b>	The Contractor shall not, unless otherwise provided under the Applicable Law, give, distribute, barter, or otherwise dispose of any arms or ammunition of any kind to any person; or permit, or tolerate doing the same by his Subcontractors, agents and personnel, including staff and labor.
<b>Festivals and Religious Customs</b>	<b>34.5</b>	The Contractor shall, in all dealings with his staff and labor, have due regard to all recognized festivals, days of rest, and religious, or other customs in Dubai.
<b>Epidemics</b>	<b>34.6</b>	In the event of any outbreak of illness of an epidemic nature in the UAE, the Contractor shall comply with and execute the related UAE and Dubai regulations. In particular, he shall carry out the orders and comply with the requirements of the Government and the local medical or sanitary authorities, in dealing with, limiting and overcoming the problems caused by the epidemics.
<b>Disorderly Conduct</b>	<b>34.7</b>	The Contractor shall at all times take all reasonable precautions and actions to prevent any unlawful, riotous,

or disorderly conduct by or among his personnel, including staff and labor. In particular, he shall take all necessary actions to preserve the peace and protect all persons and property at, and in the vicinity of, the Works.

## **Labor Laws**

**34.8** The Contractor shall comply with the Applicable Law, and in particular the Labor Law, with respect to his relationship and dealings with his Personnel, including staff and labor. The Contractor can not claim any exception, or assume that he is entitled to an exemption, for any reason whatsoever. In all cases, the Applicable Law governs:

- (a) the definition of normal and overtime working hours,
- (b) the limitation on normal hours of work and overtime hours,
- (c) the reduction of the normal hours of work during the holy month of Ramadan,
- (d) normal working day, night and holiday rates,
- (e) overtime compensations, and
- (f) entitlements.

If work is required above the normal hours and the allowable overtime, the Contractor shall schedule and operate multiple shifts at the Site.

## **Observance by Subcontractors**

**34.9** The Contractor shall be responsible that his Subcontractors observe the Applicable Law, and in particular, the Labor Law, in their relationship and dealings with their personnel, including their staff and labor.

## **Returns of Labor and Contractor's Equipment**

**35.1** The Contractor shall, if required by the Engineer, deliver to the Engineer a return in detail, in such form and at such intervals as the Engineer may prescribe, showing the staff and the numbers of several classes of labor from time to time employed by the Contractor on the Site and such information with respect to the Contractor's Equipment as the Engineer may require.

## **Records of Safety and Health**

**35.2** In addition to the provisions of Clauses 8.1(F) and 19.1, the Contractor shall:

- (a) apply latest safety manuals in his operations,
- (b) comply with DM's Code for Construction Safety Practice,
- (c) appoint a person responsible for all safety and accidents matters,
- (d) establish and maintain records of accidents and health problems of Personnel, including staff and labor, and
- (e) keep records of damage made to property on and in the vicinity of the Site.

### **Reporting Accidents**

- 35.3** (A) The Contractor shall report to the Engineer the details of any accident on or about the Site, or at any place in connection with the execution of the Works, as soon as possible, but not later than 24 hours after the event.
- (B) The Contractor is also responsible to bring the accident to the attention of the Authorities in compliance with the Applicable Law. In the case of fatal or serious accidents, the Contractor must alert the Engineer immediately.

### **Protection of Labor**

- 35.4** As a minimum requirement, the Contractor shall equip his whole workforce with helmets, safety footwear, overalls, and as required by the activity, protective gloves and goggles.

# MATERIALS, PLANT AND WORKMANSHIP

## **Quality of Materials, Plant, Equipment, Supplies and Workmanship**

- 36.1** (A) All natural, processed, prepared, mixed, placed, reworked, transformed, manufactured and fabricated materials, prefabricated or manufactured structural elements, Plant, Equipment, supplies, goods, products and workmanship shall be:
- (a) of the respective kinds described and specified in the Contract and/or in accordance with the Engineer's instructions, and
  - (b) subjected from time to time to such tests as specified in the Contract, and as the Engineer may require them at the place of manufacture, fabrication, processing, transformation, or preparation, or on the Site, or at such other place(s) as may be specified in the Contract, or at all, or any of such places.
- (B) The Contractor shall be responsible for the full documentation of the quality, physical characteristics and, if applicable, the standard, of all imported Plant, Equipment, products, goods and Materials to be incorporated in the Works to the satisfaction of the Engineer. The Engineer shall not approve products, goods, Materials, Plant and Equipment, which are either insufficiently documented, or their equivalency to specified products, goods, Materials, Plant and Equipment is not proven to the satisfaction of the Engineer.
- (C) The Contractor is obligated to have his own complete quality assurance system to assist him with his planning and work program. The Specifications set forth the minimum quality requirements for each Material to be met by the Contractor. The Contractor shall interpret his own test results and draw appropriate conclusions for his own purposes. However, the Contractor's test results shall not be taken into account by the Engineer in his approval or rejection of the Materials, which approval shall be based solely on the results of the Engineer's quality control system.
- (D) Certain field or laboratory tests within the Engineer's quality control system will require the Contractor's assistance and the Contractor shall

provide the required assistance. For these tests, which are called tests designated for the Contractor's assistance, or simply designated tests, and are specified and particularized as such in the Contract Documents. The Contractor shall provide specialists, labor, equipment, materials, tools, electricity, fuel, transportation, instruments, field testing equipment and field or laboratory test set-ups to satisfy the requirements of the Contract. The Contractor shall provide all assistance required by the Engineer, DCL and/or the Accredited Laboratory, to execute these designated tests. In particular, the Contractor shall:

- supply samples and prefabricated structural elements for testing
- provide the site, equipment, material and instruments for the tests
- set up and prepare these tests in the field or in a laboratory as specified in the Contract Documents
- provide assistance in testing
- remove and dispose of the equipment, instruments and materials
- clean the test site, and
- carry out and execute all other activities associated with testing with the exception of the measurements, recording, interpretation and documentation.

(E) The Contractor shall supply samples and pre-structural elements, which are specified in the Contract Documents, and deliver them to the location approved by the Engineer at BOQ rates. The Engineer may require additional samples, structural elements, test set-ups and other assistance with testing, not included in the Contract, which shall be all carried out and executed by the Contractor according to the Engineer's instructions and specifications at rates determined pursuant to the provisions of Clauses 36.3, 36.4 and 36.5, as the case may be.

(F) After consultation with the Engineer, the Contractor shall present his schedule for designated test preparations, and for the Final Acceptance Test, if defined in the Contract Documents, to the Engineer in writing at least seven (7) days before the scheduled



activities. Furthermore, he shall notify the Engineer 24 hours before testing is to begin.

(G) The fundamental characteristics of the Engineer's quality control system are described in the Specifications. The Engineer shall interpret all test results, decide the need for additional tests, and accept or reject the Contractor's Materials. Under the Engineer's supervision, DCL and/or the Accredited Laboratory, without using the Contractor's resources and without interference with the Contractor's activities, shall:

- extract and collect the samples at the Site
- provide transportation, storage and testing facilities
- set up and execute the tests
- document the test results (tabular and graphical form)
- sign data sheet, and
- perform a preliminary interpretation of the data.

It is the Contractor's responsibility to restore the Works and clean the Site after the Consultants', DCL's and/or the Accredited Laboratory's field work. The cost of these restoration and cleaning activities is deemed to be included in the BOQ unit prices for the Materials, and the Contractor shall not claim an additional compensation for these activities.

(H) The Engineer shall provide DCL's and/or the Accredited Laboratory's test results to the Contractor as and when they become available to him. Unrelated to the time schedule of issuing the Notice of the Acceptance or Rejection of the Contractor's Material for a unit of the Works (Clause 1.1(f)(xix)), the Engineer shall discuss the results of each test and the available tests for the unit with the Contractor on a daily, or if agreed between them, another periodic basis. In case of disagreement, the Engineer decides the need for repeated tests and defines the number of tests, proper procedures and time schedule with the consent of the Employer as required pursuant to the provisions of Clause 2.1(C), or its amendments.

(I) The Engineer shall prepare weekly reports of all the test results of the week and provide a thorough interpretation of the data according to latest standards and the requirements of the Contract Documents. These reports shall be completed within 3 days from the end of the week they report on and a copy shall be

immediately transmitted to the Contractor. A copy of this weekly report shall be available at all times at the Site for the Employer's scrutiny and another copy shall be attached to the Engineer's Monthly Report to the Employer. In case of public holidays interfering with the stated 3-day period, the length of the 3-day period is increased by the duration of the holiday.

- (J) When all the Engineer's quality control tests are available for a unit of the Works (Clause 1.1(f)(xix), pursuant to the provisions of the Specifications, the Engineer shall perform a statistical analysis and either accept or reject the unit, or determine the need for additional investigation of the Contractor's Materials. The Engineer shall promptly notify the Contractor about his decision, but not later than 3 days after the completion of the weekly report on the test results. In any case, the lag between the availability of all the quality control test results for the unit under consideration and the Engineer's determination of acceptability or rejection of the unit shall not exceed 3 days, which shall be increased by the duration of any holidays interfering with this 3-day period.
- (K) After the acceptance test of Plant and Equipment, or the Final Acceptance Test of the Works, if defined in the Contract, pursuant to the provisions of the Specifications, the Engineer shall either accept or reject them, or determine the need for additional investigation and shall promptly notify the Contractor about his decision. The lag between the availability of the test result and the Engineer's determination of acceptability or rejection shall not exceed 3 days, which shall be increased by the duration of any holidays interfering with this 3-day period.
- (L) The Engineer shall notify the Contractor in writing immediately when the Contractor's workmanship is incompatible with the Contract Documents and latest practices. In such cases, the Contractor shall take immediate measures to remedy the problem.
- (M) The Engineer shall periodically inspect the Contractor's material lots and establish and update a Material Approval Record, which shall include statements about the quality and quantity status of each particular lot and the Engineer's course of action if quality deterioration or changes were observed. For each lot, the Engineer shall certify the provisional acceptability of the Material, which may be revoked

at any time. The Contractor shall remove immediately, according to a schedule approved by the Engineer, those materials from the Site, which are not certified by the Engineer for provisional acceptability. The Engineer and the Contractor shall review periodically, as agreed between them, the status of the Material Approval Record.

(O) The Contractor shall obtain the Engineer's certification of approval for incorporation of certain critical materials, such as cement, reinforcing steel, etc. to be defined by the Engineer, before the Contractor proceeds with their incorporation in the Works. The Engineer shall issue these Certificates on a daily basis after a thorough visual inspection of the proposed Materials, but may also require testing before their incorporation under justifiable circumstances, at his discretion. If the Contractor proceeds with the incorporation of these critical materials without the Engineer's Certificate, the Engineer may order, at his discretion, their removal from the Works at no cost to the Employer.

(P) The Contractor shall be responsible and liable for the consequences of incorporating defective materials, plant and equipment in the Works.

(Q) The Engineer shall advise the Contractor in writing within 3 days, which is extended by the duration of public holidays which interfere with this 3-day period, from the last of the following two dates:

- when the quantities are measured pursuant to the provisions of Clause 56.1, and
- the quality is verified pursuant to the provisions of Sub-Clause (J) above

for any part or unit of the Works under consideration, and transmit the associated data to the Contractor. However, unless specified otherwise in the PC, the Engineer's approval of the part or unit shall not exceed 3 days, which shall be extended by the duration of any public holidays which interferes with this 3-day period, after the completion of the weekly report on the test results.

(R) The Engineer's approval, certification or determination of the acceptability of the Material, Equipment and Plant shall not affect, reduce or cancel the Contractor's obligation, responsibilities and

liabilities under this Contract.

- Cost of Samples    36.2**
- (A) If any item in the BOQ, such as the assistance to testing, or designated tests, includes the supply of samples and/or prefabricated elements in the listed activities, then no separate payment is due to the Contractor for supplying the samples or prefabricated elements.
- (B) If unit prices are stated in the BOQ, then supplying the samples and prefabricated elements will be paid by the Employer to the Contractor at the BOQ rates, provided such payments are not prohibited by the provisions of Sub-Clause (A) above and Clause 36.3.
- (C) If no unit prices were included in the BOQ, but samples or prefabricated elements are required by the Engineer, then the Engineer, after due consultation with the Employer and the Contractor, shall determine such unit prices. The Contractor shall deliver these samples or prefabricated structural elements in the condition specified by the Engineer to the location stated by the Engineer and the Contractor shall be paid at the unit prices determined by the Engineer.

- Cost of Tests    36.3**
- (A) The cost of providing assistance to designated tests, or the Final Acceptance Test, if any shall be borne either by the Contractor, or the Employer, depending on the provisions of Sub-Clause (B) below. The tasks associated with the assistance to these tests shall be specified in detail in one of the Contract Documents in such a manner to enable the Contractor to allow pricing the related BOQ item. If the BOQ item “providing assistance to designated testing”, or “providing assistance to the Final Acceptance Test” states that the unit prices include all the costs associated with testing with the exception of carrying out the measurements, then the Contractor’s tasks include, but are not limited to, providing:
- the sample or prefabricated structural elements
  - equipment, labor and specialists
  - tools, fuel, electricity and other consumables
  - storage and transportation
  - test set-up
  - assistance to testing
  - the removal and disposal of the equipment, tested

materials and the cleaning of the test site.

For the above tasks, the Contractor shall not be entitled to receive separate compensation even if all, one or a combination of these tasks are also listed as separate items in the BOQ.

(B) The Contractor shall be paid for his assistance with designated tests or the Final Acceptance Test, if any, at the BOQ rates, provided these tests were successful and prove the acceptability of the Material, structural element, or the Works according to the Specifications. The Contractor shall not be paid for inconclusive tests or tests which were not properly set up, or the tested material or structural element had characteristics inferior to those specified in the Contract Documents.

(C) The Contractor shall not pay for the quality control tests performed by DCL or an Accredited Laboratory, if those tests prove the acceptability of the Materials in accordance with the Specifications.

(D) However, the Contractor shall compensate the Employer for the cost of those quality control tests, performed by either DCL or an Accredited Laboratory, which determined that the Material did not meet the minimum requirements stated in the Specifications. The Engineer shall calculate the amount of these compensations from the published DCL rates (the same rate whether DCL or an Accredited Laboratory was involved in the actual testing) and deduct the calculated amount from the Contractor's Monthly Payment Certificate.

(E) If no unit prices were included in the Contractor's or DCL's BOQ for testing or assistance with testing, but certain tests or assistance with testing are required by the Engineer, then the Engineer, after due consultation with the Employer and the Contractor, shall determine such unit prices pursuant to the provisions of Clause 36.5.

(F) The details of quality control tests, if any, for Equipment and Plant shall be given in the Specifications and the associated costs stated in the BOQ. The Party who bears the cost of these tests shall be identified in the Particular Conditions.

<b>Cost of Tests not Provided for</b>	<p><b>36.4</b> If, following the Engineer's inspection, the Contractor's work method or his Materials, in the opinion of the Engineer, appear to be not in accordance with the Contract, or the Engineer's quality control data are inconclusive, then the Engineer may require additional tests not provided for in the Contract to resolve the problem. In these cases, according to the determination by the Engineer, if the results indicate that the Materials, Equipment or Plant were:</p> <ul style="list-style-type: none"> <li>(a) deficient, then the Contractor shall bear the cost of all these proving tests. Furthermore, the Contractor shall also change his work method, Materials, or both, and remove and replace the parts of the Works which are defective in accordance with provisions of Clause 39.1;</li> <li>(b) according to Specifications, then the Employer shall bear the cost of all these proving tests according to the rates specified in the BOQ or determined pursuant to the provisions of Clause 36.3.</li> </ul>
<b>Engineer's Determination where Tests not Provided for</b>	<p><b>36.5</b> (A) If in the opinion of the Engineer the Contract Documents are deficient and do not provide for tests, or a sufficient number of tests, required to approve any part or unit of the Works, then the Engineer, after due consultation with the Employer and the Contractor, shall determine the testing requirements and the Contractor's role, if any, in these additional tests.</p> <p>(B) In case of delays in the Contractor's Work Program caused by the provisions of Sub-Clause (A) above, the Engineer shall, subject to the provisions of Clause 2.1(C) or its amendment and after due consultation with the Employer and the Contractor, determine:</p> <ul style="list-style-type: none"> <li>(a) any extension of time to which the Contractor is entitled under Clause 44, and</li> <li>(b) the amount of such costs, which shall be added to the Effective Contract Price,</li> </ul> <p>and shall notify the Contractor accordingly, with a copy to the Employer.</p>
<b>Inspection of Operations</b>	<p><b>37.1</b> The Employer and the Engineer, and any person authorized by them, shall at all reasonable times have</p>

access to the Site and to all workshops and places where materials or Plant are being manufactured, fabricated, or prepared for the Works, and the Contractor shall afford every facility for and every assistance in obtaining the right to such access.

## **Inspection and Testing**

**37.2** (A) The Engineer and the Employer, and any person authorized by them, shall at all reasonable times have access to and inspect the Site, the Material storage areas, the Works, Contractor's testing ground and the places where materials, or Plant, or structural elements are being manufactured, fabricated, or prepared and tested for the Works, and the Contractor shall afford every facility for and every assistance in obtaining the right to such access and inspection.

(B) The Engineer, and any persons authorized by him, shall be entitled to:

(a) extract samples from the Materials, structural elements and structures proposed, or prepared for, or incorporated in the Works,

(b) test Plant, Equipment, Materials and structural elements to be supplied under the Contract at their place of storage, manufacture, fabrication, preparation, or structures in place in the Works,

provided such activities are notified 24 hours ahead to the Contractor, and do not interfere with the Contractor's work program. If such activities damage the existing parts of the Works, the person authorized by the Engineer shall notify the Contractor in writing about such occurrences. It is deemed that such repairs of the Works are included in the Contractor's unit prices for the materials in the BOQ.

(C) If Materials or Plant are being manufactured, fabricated, or prepared in workshops or places other than those of the Contractor, the Contractor shall obtain permission for the Engineer, or persons authorized by him, to carry out such inspection or testing in those workshops or places.

(D) If specified in the Particular Conditions, the Contractor shall provide an On-Site Laboratory, or testing ground for the sole use of the Engineer or his Sub-Consultants. The cost of these facilities shall be itemized and priced in the BOQ.

(E) The Engineer shall inspect the Site, Material storage areas and the Works every day during the Contract Period and prepare an Inspection Report, which shall be available at the Site for scrutiny by the Employer at any time. The Engineer shall discuss his findings with the Contractor on a daily or another periodic basis as agreed between them.

(F) Such inspection or testing by the Employer and the Engineer shall not release the Contractor from any obligation under the Contract.

**Dates for  
Inspection and  
Testing**

**37.3** The Contractor shall agree with the Engineer on the time and place for the special inspection or testing of items specifically listed as special inspections, special tests, designated tests or Final Acceptance Tests in one of the Contract Documents for this purpose (Plant, Equipment, Materials, structural elements, or structures, or the Works). The Engineer shall coordinate the activities of the Contractor, DCL or the Accredited Laboratory and give the Contractor, DCL or Accredited Laboratory not less than 24 hours notice of his intention to carry out the special inspections, or to carry out the tests.

**Rejection**

**37.4** (A) If, at the time and place agreed in accordance with Clause 37.3, the Plant, Equipment, Materials, structural elements, or structures are not ready for inspection, or testing, or if, as a result of the inspection, or testing referred to in this Clause 37, the Engineer determines that the Plant, Equipment, Materials, structural elements, or structures are defective, or otherwise not in accordance with the Contract, he may reject the Plant, Equipment, Materials, structural elements, or structures and shall notify the Contractor thereof immediately. The notice shall state the Engineer's objections with reasons. The Contractor shall then promptly make good the defect, or ensure that rejected Plant, Equipment Materials, structural elements, or structures comply with the Contract. Defaults by the Contractor with respect to meeting the time and place requirement for inspection and/or testing shall be subject to the provisions of Clause 39.2.

(B) If the Engineer so requests, the tests of rejected, Plant, Equipment, Materials, structural elements, or structures shall be made or repeated under the same terms and conditions.



(C) All costs incurred by the Employer by the failed tests shall, after due consultation with the Employer and the Contractor, be determined by the Engineer. Such monies shall be recoverable from the Contractor by the Employer and may be deducted from monies due or to become due to the Contractor. The Engineer shall notify the Contractor accordingly, with a copy to the Employer.

**Independent  
Inspection**

**37.5** The Engineer may delegate inspection and testing of Plant, materials, structural elements, or structures to an independent inspector. Any such delegation shall be effected in accordance with Clause 2.4 and for this purpose such independent inspector shall be considered as an assistant of the Engineer. Notice of such appointment (not being less than 14 days) shall be given by the Engineer to the Contractor.

**Examination of  
Work before  
Covering up**

**38.1** (A) No part of the Works shall be covered up, or put out of view without the Engineer's approval, and the Contractor shall afford full opportunity for the Engineer to:

- (a) examine and measure any such part of the Works, which is about to be covered up, or put out of view,
- (b) examine foundations before any part of the Works is placed thereon, and
- (c) examine utility lines, verify their standards and the Contractor's determination of their exact geometry and locations.

(B) Notwithstanding the provisions of Sub-Clause (A)(c) above, the Contractor has full responsibility for satisfying all the requirements of the Service Authorities, in particular, to notify them, allow their inspection of the Openings and to prepare "As Built Drawings" and other documents, if required, meeting their specifications.

(C) The Contractor shall give notice to the Engineer whenever any such part(s) of the Works is, or are, ready or about to be ready for examination, and the Engineer shall, without unreasonable delay, unless he considers it unnecessary and advises the Contractor accordingly, attend for the purpose of examining and measuring such part of the Works or of examining such foundations or utilities and other services.

**Uncovering and  
Making  
Openings**

**38.2** The Contractor shall uncover any part of the Works, or make openings in or through the same, as the Engineer may from time to time instruct, and shall reinstate and make good such part, subject to the following provisions:

- (a) If any such part has been covered up, or put out of view after compliance with the requirement of Clause 38.1 and is found to be executed in accordance with the Contract, except as provided in Sub-Clause (c) below, the Engineer shall, after due consultation with the Employer and the Contractor, determine the amount of the Contractor's costs in respect of such uncovering, making openings in or through, reinstating and making good the same, which shall be added to the Effective Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer.
- (b) In cases other than those provided in Sub-Clause (a) above, all costs shall be borne by the Contractor.
- (c) If the Engineer identifies Defects in any part of the Works, and reasonably suspects defects in other part(s) of the Works, the Contractor shall uncover the part(s) designated by the Engineer, and reinstate and make good such part(s). The cost of all such works shall be borne by the Contractor, and the Contractor shall have no right to claim time extension, nor shall the Engineer determine a time extension for such works.

**Removal of  
Improper Work,  
Materials, Plant,  
or Equipment**

**39.1** The Engineer shall have authority to issue instructions in the form of a notice from time to time, for:

- (a) the removal from the Site, within such time or times as may be specified in the instruction, of any Materials, Plant, or Equipment, which, in the opinion of the Engineer, are not in accordance with the Contract,
- (b) the substitution of proper and suitable Materials, Plant, or Equipment and
- (c) The removal and proper execution, notwithstanding any previous test thereof, or interim payment therefor, of any work which, in respect of:

- (i) Materials, Plant, Equipment, or workmanship, or
- (ii) design by the Contractor, or for which he is responsible,

is not, in the opinion of the Engineer, in accordance with the Contract.

The cost of any work so instructed to be carried out pursuant to this Clause 39.1 shall be borne by the Contractor.

**Default of Contractor in Compliance**

- 39.2**
- (A) In the case of default on the part of the Contractor in carrying out the Engineer's instructions within the time specified therein, or, if none, within a reasonable time, the Employer shall be entitled to employ and pay other persons to carry out the same. In this case, all costs consequent thereon, or incidental thereto, shall, after due consultation with the Employer and the Contractor, be determined by the Engineer.
  - (B) The costs determined by the Engineer pursuant to the provisions of Sub-Clause (A) above shall be recoverable from the Contractor by the Employer and may be deducted by the Employer from any monies due or to become due to the Contractor. The Engineer shall notify the Contractor accordingly, with a copy to the Employer.

## SUSPENSION

### **Suspension of Work**

- 40.1** (A) The Contractor shall, on the instructions of the Engineer, suspend the progress, or any part thereof, for such time and in such manner as the Engineer may consider necessary and shall, during such suspension, properly protect and secure the Works, or such part thereof, so far as is necessary in the opinion of the Engineer. In this respect, Clause 40.2 shall apply unless such suspension is:
- (a) otherwise provided for in the Contract,
  - (b) necessary by reason of some default of, or breach of contract by the Contractor, or for which he is responsible,
  - (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 (save to the extent that necessity arises from any act, or default by the Engineer, or the Employer, or from any of the risks defined in Clause 20.4).
- (B) The Contractor shall not be entitled to suspend the Works, except as provided for under Clause 69.4, without the specific order of the Engineer to this effect.

### **Engineer's Determination Following Suspension**

- 40.2** (A) Pursuant to Clause 40.1(A), the Engineer shall, after due consultation with the Employer and the Contractor, determine:
- (a) any extension of time to which the Contractor is entitled under Clause 44, and
  - (b) the amount, which shall be added to the Effective Contract Price, in respect of the cost incurred by the Contractor by reason of such suspension.
- (B) Immediately following the determination under Sub-Clause (A) above, the Engineer shall notify the Contractor with a copy to the Employer.

### **Suspension**

- 40.3** (A) If:

**Lasting More  
than 84 Days**

- (a) the progress of the Works, or any part thereof, is suspended on the instruction of the Engineer, and
- (b) permission to resume work is not given by the Engineer within a period of 84 days from the date of suspension then,

unless such suspension is within Sub-Clauses (a), (b), (c), or (d) of Clause 40.1(A), the Contractor may give notice to the Engineer requiring permission, within 28 days from the receipt thereof, to proceed with the Works, or that part thereof in regard to which progress is suspended.

(B) If, within the time period stated in Sub-Clause (A) above, such permission is not granted, the Contractor may, but is not bound to, elect to treat the suspension:

- (a) where it affects part only of the Works, as an omission of such part under Clause 51 by giving a further notice to the Engineer to that effect, or
- (b) where it affects the whole of the Works, as an event of default by the Employer and terminate his employment under the Contract in accordance with the provisions of Clause 69.1, whereupon the provisions of Clause 69.2 and 69.3 shall apply.

# COMMENCEMENT AND DELAYS

**Commencement 41.1** (A) The Date of Commencement of the Contract (the Commencement Date) is the day following the date of effectiveness of the Contract. On this day, the Site, or the first Section or Part of the Site, and access to it as stated in the Contract Documents, is transferred to the Contractor in accordance with the provisions of the Contract Documents. No specific notification of the Contractor is required to execute this transfer unless a correction of the Contract Documents becomes necessary.

(B) On the Commencement Date, the Contractor shall start:

- (a) surveying the Site, or the first Section or Part of the Site, and staking out its boundaries according to the provisions of the Contract Documents, in liaison with, if required, DM's Surveying Section,
- (b) making trial holes to meet the Service Authorities' final NOC requirements, and
- (c) mobilizing for the Works.

In case of an ambiguity or error within the Contract Documents concerning reference points and data, or the location of boundaries, or problems related to the involvement of DM's Surveying Section, the Contractor shall notify the Engineer immediately with a copy to the Employer. The Engineer shall resolve the problem expeditiously.

(C) The Commencement of the Works by the Contractor requires the Engineer's Notice of Approval, with a copy to the Employer, following the Engineer's verbal consultation with the Employer's relevant offices. After having received the Contractor's request in writing, this Notice of Approval shall be issued within one day, which shall be extended by the duration of any Friday or public holiday interfering with this one day period, whether such request arrives before or after the end of the Mobilization Period stated in the Letter of Acceptance, provided:

- (a) the Contractor satisfied the provisions of

Clauses 10.1(B), 14.1(C) and 25.1 with respect to actions requiring completion before the end of the Mobilization Period; and

- (b) the Contractor is sufficiently mobilized at the Site to start the Works with the approximate rate of production implied from his Work Program.

Thereafter, the Contractor shall proceed with the Works with due expedition and without delay.

(D) In connection with the provisions of Sub-Clause (C) above, the Construction Period shall not change whether the Engineer's Notice of Approval is issued before or after the end of the contractual Mobilization Period stated in the Letter of Acceptance. In particular, if the Notice of Approval is issued after the end of the contractual Mobilization Period, the Construction Period shall not be extended and if the shortened Construction Period results in delays at the end of the Construction Period, the Contractor shall compensate the Employer in accordance with the provisions of Clause 47.1.

**Possession of  
Site and Access  
Thereeto**

**42.1** Save insofar as the Contract may prescribe:

- (a) the extent of Sections or Parts of the Site of which the Contractor is to be given possession from time to time,
- (b) the order in which such Sections or Parts shall be made available to the Contractor, and
- (c) the order in which the Works shall be executed,

the Employer will, with the Engineer's Notice to Proceed, give to the Contractor possession of:

- (i) so much of the Site, and
- (ii) such access as is to be provided by the Employer in accordance with the Contract

as may be required to enable the Contractor to proceed with the execution of the Works, in accordance with the program referred to in Clause 14, with due dispatch in accordance with such program or proposals, as the case may be.

**Failure to Give  
Possession**

**42.2** If the Contractor suffers delay and/or incurs costs from failure on the part of the Employer to give possession in accordance with the terms of Clauses 41.1 and 42.1, the

Engineer shall, after due consultation with the Employer and the Contractor, determine:

- (a) any extension of time to which the Contractor is entitled under Clause 44, and
- (b) the amount of such costs, which shall be added to the Effective Contract Price,

and shall notify the Contractor accordingly, with a copy to the Employer.

**Rights of Way  
and Facilities**

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

**Use of the Site**

**42.4** (A) The Contractor shall not use any portion of the Site for purposes unrelated to the Works without a prior approval of the Engineer. The Engineer shall issue such an approval only after due consultation with the Employer.

(B) The Contractor shall maintain and permit access for the inspection, operation and maintenance of any plant, or works belonging to the Employer, Government, or Service Authorities, which lie within the Site, or other areas affected by the Contractor's operations.

(C) The Contractor shall observe all agreements entered into by the Employer and made known to the Contractor with any person in connection with the Employer's occupation of land and properties within and in the vicinity of the Site and the execution of work thereon.

(D) Pursuant to the provisions of Clause 19.1, the Contractor shall protect the environment at and in the vicinity of the Site. In particular, he shall not disturb, damage, extract or remove any hedges, trees, walls, or buildings outside the area to be occupied by the permanent Works without the consent of the Engineer following the approval by the Employer, unless specifically stated in the Contract.



**Time for  
Completion**

- 43.1** The whole of the Works and, if applicable, any Section or Part required to be completed within a particular time, as stated in the Appendix to Tender, shall be completed, in accordance with the provisions of Clause 48, within the time stated in the Appendix to Tender for the whole of the Works, or the Section, or the Part (as the case may be), calculated from the Commencement Date, or such extended time as may be allowed under Clause 44. The Time for Completion of the whole of the Works includes the contractual Mobilization and Construction Periods, which constitute the Contract Period.

**Extension of  
Time for  
Completion**

- 44.1** (A) Subject to the provisions of Clauses 2.1(C) and 53, in the event of:
- (a) the amount or nature of extra or additional work,
  - (b) any cause of delay referred to in these Conditions,
  - (c) exceptionally adverse climatic conditions,
  - (d) any delay, impediment, or prevention by the Employer, or
  - (e) other special circumstances which may occur, other than through a default of, or breach of contract by the Contractor, or for which he is responsible,

being such as fairly to entitle the Contractor to an extension of the Time for Completion of the Works, or any Section or Part thereof, the Engineer shall, after due consultation with the Employer and the Contractor, determine the amount of such extension and shall notify the Contractor accordingly, with a copy to the Employer.

- (B) In those cases, where the Contractor believes that he is also entitled to receive financial compensation for costs associated with or related to the event which caused the time delay, the provisions of Clause 53 shall apply to the preparation, justification, time schedule, documentation, processing and payment, if any, of such claims.

**Contractor to  
Provide  
Notification and  
Detailed  
Particulars**

- 44.2** (A) The Engineer shall not make any determination, unless the Contractor has:
- (a) within 28 days after the event has first arisen notified the Engineer with a copy to the Employer, and

(b) within 28 days, or such other reasonable time as may be agreed by the Engineer, after such notification submitted to the Engineer detailed particulars of any extension of time to which he may consider himself entitled in order that such submission may be investigated at the time.

(B) The detailed particulars referred to in Sub-Clause (A) above shall include:

(a) all relevant references to the Work Program defined in Clause 14,

(b) description and analysis of the encountered problems, and

(c) justification of the Contractor's claim for a time extension.

**Interim  
Determination  
of Extension**

**44.3** (A) If an event has a continuing effect such that it is not practicable for the Contractor to submit detailed particulars within the period of 28 days referred to in Clause 44.2(A)(b), he shall nevertheless be entitled to an extension of time provided that he has submitted to the Engineer interim particulars at intervals of not more than 28 days and final particulars within 28 days of the end of the effects resulting from the event.

(B) On receipt of such interim particulars and after due consultation with the Employer and the Contractor, the Engineer shall, without undue delay, make an interim determination of the extension of time with the consent of the Employer.

(C) Upon receipt of the final particulars, the Engineer shall review all circumstances and shall determine, but subject to the provisions of Clause 2.1(C), an overall extension of time in regard to the event.

(D) In both such cases, Sub-Clauses (B) and (C) above, the Engineer shall notify the Contractor of the determination, with a copy to the Employer.

(E) No final review shall result in a decrease of any extension of time already determined by the Engineer with the Employer's consent.

**Restrictions on  
Working Hours**

**45.1** (A) Subject to the provisions of Clause 34.8 and any other provision to the contrary contained in the Contract, none of the Works shall, save as hereinafter

provided, be carried on during the night, or on Fridays, or on public holidays in Dubai without the consent of the Engineer, after due consultation with the Employer and the Contractor.

(B) The general exceptions to the rule stated in Sub-Clause (A) above are:

(a) when work is unavoidable, or absolutely necessary for saving life or property, or assuring the safety of the Works. However, in any of these cases, the Contractor shall immediately advise the Engineer.

(b) any work, which is customarily carried out in multiple shifts.

(C) A particular exception to the rule stated in Sub-Clause (A) above is the case, where the Contract specifies that the Works must be carried out in multiple shifts including all work days and nights, Fridays and other public holidays in Dubai due to the urgency of the project. In this case no consent of the Engineer is required, and the Engineer shall schedule the supervision in a similar manner.

#### **Engineer's Overtime**

**45.2** (A) In the event the Contractor intends to accelerate the work to meet the contractual Time for Completing the Works, or the Section, or Part, as the case may be, he shall notify the Engineer to this effect three (3) days before the start of the scheduled acceleration, with a copy to the Employer. This Notice of acceleration shall contain the dates and hours of the acceleration and identify the supervision team applicable to the selected work. If subsequently changes are required in the requested time schedule, the Contractor shall notify the Engineer, with a copy to the Employer, at least 24 hours before the event.

(B) The Contractor shall compensate the Employer for the extra cost of supervision due to the acceleration in the interest of the Contractor according to the team composition and rates specified in Annex III of the Appendix to Tender.

#### **Rate of Progress**

**46.1** (A) 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 Engineer, too slow to comply with the

Time for Completion, the Engineer shall notify the Contractor who shall thereupon take such steps as are necessary, subject to the consent of the Engineer, to expedite progress so as to comply with the Time for Completion.

(B) The Contractor shall not be entitled to any additional payment for taking such steps.

(C) If, as a result of any notice given by the Engineer under this Clause, the Contractor considers that it is necessary to do any work at night, or on Fridays, or on declared Public Holidays in Dubai, he shall be entitled to seek the consent of the Engineer to do so, provided that if any steps taken by the Contractor in meeting his obligations under this Clause involve the Employer in additional supervision costs, such costs shall be determined by the Engineer following the provisions of Clause 45.2 and may be deducted by the Employer from any monies due or to become due to the Contractor. The Engineer shall notify the Contractor accordingly, with a copy to the Employer.

#### **Employer's Acceleration**

**46.2** (A) Should the Employer require the Works to be accelerated in order to:

- (a) avoid delays caused by variations or other circumstances for which the Employer is responsible, or
- (b) achieve substantial completion of the Works, or Sections, or Parts thereof, before the contractual Completion Date of the Works, or Section, or Part, as the case may be,

then the Engineer shall consult with the Contractor concerning the possible method of acceleration, the availability of the Contractor's resources, and estimate all costs associated with the acceleration. The Engineer shall prepare an analytic report with recommendations to the Employer.

(B) Upon receipt of the Employer's decision, the Engineer shall proceed and either prepare a modification of the Contract pursuant to the provisions of Clause 5.4, or issue a variation order pursuant to the provisions of Clauses 51 and 52.

**Compensation  
for Delays**

- 47.1** (A) If the Contractor fails to comply with the Time for Completion in accordance with Clause 48, for the whole of the Works or, if applicable, any Section or Part within the time prescribed by Clause 43, then the Contractor shall pay to the Employer the relevant sum, calculated with the rate stated in the Appendix to Tender and the time delay, as compensation for such default (which sum shall be the only monies due from the Contractor for such default). The said time delay is computed for every day, which shall elapse between the relevant contractual Time for Completion and the actual Completion Date stated in the Taking-Over Certificate for the whole of the Works or the relevant Section or Part. However, the total compensation is subject to the limit as stated in the appendix to tender.
- (B) The Employer may, without prejudice to any other method of recovery, deduct the amount of such compensations from the monies due or to become due to the Contractor. The payment or deduction of such compensations shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the Contract.

**Reduction of  
Compensation  
Requirements**

- 47.2** If, before the Time for Completion of the whole of the Works or, if applicable, any Section, or Part, a Taking-Over Certificate has been issued for any Part of the Works, or of a Section, the compensation for delay in completing the remainder of the Works, or that Section, or Part shall, for any period of delay after the Completion Date stated in such Taking-Over Certificate, and in the absence of alternative provisions in the Contract, be reduced in the proportion which the value of the part so certified bears to the value of the whole Works, or Section, or Part, as applicable. The provisions of this Clause shall only apply to the rate of compensation requirements and shall not affect the limit thereof.

**Taking-Over  
Certificate**

- 48.1** (A) The Contractor shall request the Engineer to schedule the Tests on Completion, or inspection of the Works, or any Section, or Part thereof. After due consultation with the Employer and the Contractor, the Engineer shall give Notice to the Contractor, with a copy to the Employer, of the schedule of the Tests on Completion, or inspection of the Works, or Section, or Part thereof, as specified in the Contract.

(B) The Employer will attend with the Engineer, or with the Engineer's Representative, any Tests on Completion or inspection prescribed by the Contract for the whole of the Works, or any Section, or any Part thereof. Furthermore, the Employer will scrutinize the Engineer's Materials Approval Record and Material Approval Certificates for the Works.

(C) When the whole of the Works, or any Section, or any Part thereof, has been substantially completed and has satisfactorily passed the Tests on Completion prescribed in the Contract, the Contractor shall give a Notice to that effect to the Engineer, with a copy to the Employer, accompanied by a written undertaking to finish with due expedition any outstanding work during the Defects Liability Period. Such Notice and undertaking shall be deemed to be a request by the Contractor to the Engineer to issue the Taking-Over Certificate in respect of the Works, or any Section, or any Part thereof. The Engineer shall, within 28 days of the date of delivery of such notice, subject to the provisions of Clause 2.1(C) and after due consultation with the Employer:

(a) either issue to the Contractor, with a copy to the Employer, a Taking-Over Certificate, stating the date on which, in his opinion, the Works, or Section, or Part thereof, were substantially completed in accordance with the Contract, or

(b) give instructions to the Contractor specifying all the work which, in the Engineer's opinion, is required to be done by the Contractor before the issue of such certificate.

(c) the Engineer shall also notify the Contractor of any defects in the Works affecting substantial completion that may appear after such instructions and before completion of the Works, or any Section, or any Part thereof, specified therein.

(D) Wherever multiple certificates were issued for Sections and/or Parts of the Works, at the substantial completion of the whole of the Works, the Engineer shall issue a Taking-Over Certificate for the Works stating the Completion Dates of all the Sections and/or Parts of the Works and the Completion Date of the whole of the Works.

<b>Taking Over of Sections or Parts</b>	<b>48.2</b>	<p>Pursuant to the provisions of Clause 48.1, the Contractor may request and the Engineer shall issue a Taking-Over Certificate, but subject to the provisions of Clause 2.1(C), in respect of:</p> <ul style="list-style-type: none"> <li>(a) any Section in respect of which a separate Time for Completion is provided in the Appendix to Tender,</li> <li>(b) any substantial part of the Permanent Works, which has been both completed to the satisfaction of the Engineer and, otherwise than as provided for in the Contract, occupied or used by the Employer, or</li> <li>(c) any part of the Permanent Works, which the Employer has elected to occupy or use prior to completion (where such prior occupation, or use is not provided for in the Contract, or has not been agreed by the Contractor as a temporary measure).</li> </ul>
<b>Substantial Completion of Sections or Parts</b>	<b>48.3</b>	<p>If any section or part of the Permanent Works has been substantially completed and has satisfactorily passed all Tests on Completion prescribed by the Contract, the Engineer may issue a Taking-Over Certificate, subject to the provisions of Clause 2.1(C), in respect of that section or part of the Permanent Works before completion of the whole of the Works and, upon the issue of the Certificate, the Contractor shall be deemed to have undertaken to complete with due expedition any outstanding work in that section or part of the Permanent Works during the Defects Liability Period.</p>
<b>Surfaces Requiring Reinstatement</b>	<b>48.4</b>	<p>Provided that a Taking-Over Certificate given in respect of any Section, or Part of the Permanent Works before completion of the whole of the Works shall not be deemed to certify completion of any ground, or surfaces requiring reinstatement, unless such Taking-Over Certificate shall expressly so state.</p>
<b>Prevention from Testing</b>	<b>48.5</b>	<p>(A) If the Tests on Completion or the Final Acceptance Test were delayed by a cause for which the Employer or the 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 these Tests would have been completed. The Engineer shall issue a Taking-Over Certificate accordingly. Provided always that the Works shall not be deemed to</p>

have been taken over if they are not substantially completed in accordance with the Contract.

(B) If the Works are taken over under this Clause, the Engineer shall nevertheless carry out the required Tests during the Defects Liability Period. The Engineer shall require the Tests to be carried out by giving 14 days' notice to the Contractor, DCL, or the Accredited Laboratory.

(C) Any additional costs which the Contractor may incur in giving assistance with the Tests on Completion, or the Final Acceptance Test during the Defects Liability Period, shall be added to the Effective Contract Price.



# DEFECTS LIABILITY

- Defects Liability Period**      **49.1**      (A) In these Conditions, the expression “Defects Liability Period” shall mean either the defects liability period stated in the Appendix to Tender, or if applicable, the extended time period defined pursuant to the provisions of Clause 49.6, and calculated from:
- (a) the date of substantial completion of Works certified by the Engineer in accordance with Clause 48, or
  - (b) in the event of more than one certificate having been issued by the Engineer under Clause 48, the respective dates so certified,
- and in relation to the Defects Liability Period, the expression “the Works” shall be construed accordingly.
- (B) At the end of the Defects Liability Period(s), the Defects Liability Certificate(s) shall be issued by the Engineer pursuant to the provisions of Clause 62.1.
- 
- Completion of Outstanding Work and Remedying Defects**      **49.2**      To the intent that the Works shall, at or as soon as practicable after the expiration of the Defects Liability Period, be delivered to the Employer in the condition required by the Contract, fair wear and tear excepted, to the satisfaction of the Engineer, the Contractor shall:
- (a) complete the work, if any, outstanding on the date stated in the Taking Over Certificate as soon as practicable after such date,
  - (b) execute all such work of amendment, reconstruction, and remedying defects, shrinkage, or other faults as the Engineer may, during the Defects Liability Period, or within 14 days after its expiration, as a result of an inspection made by, or on behalf of the Engineer prior to its expiration, instruct the Contractor to execute.
- 
- Cost of Remedying Defects**      **49.3**      All work referred to in Clause 49.2(b) shall be executed by the Contractor at his own cost if the necessity thereof is, in the opinion of the Engineer, due to:
- (a) the use of materials, Plant, or workmanship not in

accordance with the Contract,

- (b) where the Contractor is responsible for the design of part of the Permanent Works, any fault in such design, or
- (c) the neglect or failure on the part of the Contractor to comply with any obligation, expressed or implied, on the Contractor's part under the Contract.

If, in the opinion of the Engineer, subject to the provisions of Clause 2.1(C), such necessity is due to any other cause, he shall determine an addition to the Effective Contract Price in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the Employer.

**Contractor's  
Failure to Carry  
Out Instructions**

**49.4** In the case of default on the part of the Contractor in carrying out any instruction pursuant to Clause 49.2 within a reasonable time:

- (a) the Employer shall be entitled to employ and pay other persons to carry out the same, and
- (b) if such work is, in the opinion of the Engineer, the Contractor was liable to do at his own cost under the Contract, then all costs consequent thereon or incidental thereto shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and
- (c) such costs defined in Sub-Clause (b) above may be deducted by the Employer from any monies due or to become due to the Contractor, and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

**Temporary  
Reinstatement**

**49.5** Temporary reinstatement of any road, structure, property, or other land expressly required by the Contract shall be considered to be part of the Permanent Works for the purpose of this Clause. Furthermore, the Contractor's obligations and responsibilities under the Contract shall extend in all respects to such temporary reinstatements as if they were Permanent Works until:

- (a) either the expiration of the Defects Liability Period, or
- (b) such time as possession of the area in which such temporary reinstatement has been made is taken for

the purpose of further works under a separate contract, whichever comes first.

**Extension of  
Defects Liability**

- 49.6** (A) The provisions of this Clause shall apply to all replacements or renewals of Plant carried out by the Contractor to remedy defects and damages 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 could not 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 for the whole of the Works be extended beyond the number of years from the date of taking over, as specified in the Appendix to Tender.
- (B) 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 the number of years stipulated in the Appendix to Tender after the Time for Completion established on the date of the Letter of Acceptance.
- (C) At the end of the extended Defects Liability Period(s), the Defects Liability Certificate(s) shall be issued by the Engineer pursuant to the provisions of Clause 62.1.

**Contractor to  
Search**

- 50.1** (A) If any defect, shrinkage, or other fault in the Works appears at any time prior to the end of the Defects Liability Period, the Engineer may instruct the Contractor, with a copy to the Employer, to search under the direction of the Engineer for the cause thereof.
- (B) Unless such defect, shrinkage, or other fault is one for which the Contractor is liable under the Contract, the Engineer shall, after due consultation with the Employer and the Contractor, determine the amount in respect of the costs of such search incurred by the Contractor, which shall be added to the Effective Contract Price. The Engineer shall notify the Contractor accordingly, with a copy to the Employer.
- (C) If such defect, shrinkage, or other fault is one for which the Contractor is liable, the cost of the work

carried out in searching as stated under Sub-Clause (A) above shall be borne by the Contractor, and he shall in such case remedy such defect, shrinkage, or other fault at his own cost in accordance with the provisions of Clause 49.

# ALTERATIONS, ADDITIONS AND OMISSIONS

## Variations

**51.1** (A) Subject to the provisions of Clause 2.1(C), the Engineer shall make any variation of the form, quality, or quantity of the Works, or any part thereof that may be necessary, and for that purpose, or if for any other reason it shall be appropriate, he shall have authority to instruct the Contractor to do, and the Contractor shall do, any of the following:

- (a) increase or decrease the quantity of any work included in the Contract,
- (b) omit any such work (but not if the omitted work is to be carried out by the Employer, or by another contractor),
- (c) change the character, or quality, or kind of any such work,
- (d) change the levels, lines, position and dimensions of any part of the Works,
- (e) execute additional work of any kind necessary for the completion of the Works,
- (f) change any specified sequence, or timing of construction of any part of the Works, or
- (g) change the specifications of the Materials, Equipment and Plant.

(B) One copy of the Engineer's instructions to the Contractor shall be sent by the Engineer to the Employer upon the issue of the instructions.

(C) No such variation shall in any way vitiate, or invalidate the Contract, but the effect, if any, of all such variations shall be valued in accordance with Clause 52.

(D) Provided that where the issue of an instruction to vary the Works is necessitated by some:

- (a) default of the Contractor, or
- (b) breach of contract by the Contractor, or
- (c) variation for which he is responsible,

any additional cost attributable to such default shall be borne by the Contractor. If, as a consequence of, or incidental to, such default by the Contractor, the Employer must pay a certain sum to a third party to

correct the Contractor's default, such costs shall be borne by the Contractor and may be recoverable from the Contractor by the Employer by deducting these costs from monies due, or to become due to the Contractor.

**Instructions for Variations**

**51.2** (A) The Contractor shall not make any such variation without an instruction from the Engineer. However, no such instruction shall be required for increasing or decreasing the quantity of any work item, where such increase or decrease is not the result of an instruction given under this Clause 51, but is the result of the quantities exceeding, or being less than those stated in the BOQ estimates.

(B) Wherever a considered additional variation risks exceeding the still uncommitted contingency funds under the Provisional Sums as defined under Clause 58.1(B), the Engineer shall evaluate the availability of uncommitted contingency funds according to:

- (a) the difference between the current and initial estimates of all the Work Items listed in the BOQ,
- (b) the cumulative costs of the already approved variations, and
- (c) the sum of claims, if any, already paid and estimated to be required for settlement of unpaid claims,

and prepare a detailed report with specific recommendations to the Employer.

(C) No variation order shall be issued by the Engineer before the Employer's review of the Engineer's detailed report and the receipt of the Employer's decision In Writing to this effect by the Engineer.

(D) Depending on the availability of contingency funds, the Employer will determine one of the following alternatives:

- (a) the issuance of a variation order, or
- (b) the amendment of the Contract pursuant to Clause 5.4 and the allocation of funds for the variation.

Depending on the alternative determined by the Employer, the Engineer shall proceed in the following manner:

In case (a), issue the variation order to the Contractor.

In case (b), prepare an amendment of the Contract and secure the Contractor's agreement to the amendment after due consultation by the Engineer with the Employer and the Contractor.

## **Valuation of Variations**

**52.1** (A) All variations referred to in Clause 51 and any additions to, or deductions from the Effective Contract Price, which are required to be determined in accordance with Clause 52 (for the purposes of this Clause referred to as "varied work"), shall be valued by the Engineer, but subject to the provisions of Clause 2.1(C), in the following manner:

(a) at the rates and prices set out in the Contract if, in the opinion of the Engineer, the same shall be applicable,

(b) if the Contract does not contain any rates or prices applicable to the varied work, the rates and prices in the Contract shall be used as the basis for valuation so far as may be reasonable in the opinion of the Engineer,

(c) if Sub-Clauses (a) and (b) above are not applicable, after due consultation by the Engineer with the Employer and the Contractor, suitable rates or prices shall be agreed upon between the Engineer and the Contractor,

(d) in the event of disagreement under Sub-Clause (c), which can not be resolved by further negotiations between the Engineer and the Contractor in the opinion of the Engineer, the Engineer shall fix such rates or prices as are, in his opinion, appropriate and shall notify the Contractor accordingly, with a copy to the Employer.

(B) Pursuant to the Sub-Clauses above, until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on-account payments to be included in certificates issued in accordance with Clause 60.

**Power of  
Engineer to Fix  
Rates**

**52.2** (A) Provided that, if the nature or amount of any varied work relative to the nature or amount of the whole of the Works, or to any part thereof, is such that, in the opinion of the Engineer, the rate or price contained in the Contract for any item of the Works is, by reason of such varied work, rendered inappropriate or inapplicable, then, after due consultation by the Engineer with the Employer and the Contractor, a suitable rate or price shall be agreed upon between the Engineer and the Contractor, but subject to the provisions of Clause 2.1(C). In the event of disagreement, the Engineer shall fix such other rate or price as is appropriate, after due consultation with the Employer, and shall notify the Contractor accordingly, with a copy to the Employer. Until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on-account payments to be included in certificates issued in accordance with Clause 60.

(B) Provided also, that no varied work instructed to be done by the Engineer pursuant to Clause 51 shall be valued under Clauses 52.1 or 52.2 unless, within 14 days of the date of such instruction and, other than in the case of omitted work, before the commencement of the varied work, notice shall have been given either:

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

(C) Provided further that, no change in the rate or price for any item contained in the Contract shall be considered unless such item accounts for an amount more than 2 percent of the Effective Contract Price and the actual quantity of work executed under the item exceeds or falls short of the quantity set out in the BOQ by more than 30 percent.

**Variations  
Exceeding 15  
Percent**

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

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



52.2, and

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

but not from any other cause, there have been additions to or deductions from the Effective Contract Price, which taken together are in excess of 15 percent of the “Initial Effective Contract Price” (which shall mean the Initial Contract Price, excluding the Provisional Sums) then and in such event (subject to any action already taken under Clause 52), after due consultation by the Engineer with the Employer and the Contractor, there shall be added to, or deducted from, the Effective Contract Price such further sum as may be agreed upon between the Contractor and the Engineer or, failing agreement, determined by the Engineer having regard to the Contractor’s Site and general overhead costs of the Contract.

- (B) The Engineer shall notify the Contractor of any determination made under this Clause 52.3, with a copy to the Employer. Such sum shall be based only on the amount by which such additions or deductions shall be in excess of 15 percent of the Initial Effective Contract Price.

## **Daywork**

### **52.4**

- (A) The Engineer may, if in his opinion it is necessary or desirable, issue an instruction that any varied work shall be executed on a daywork basis. The Contractor shall then be paid for such varied work under the terms set out in the daywork schedule included in the Contract and at rates and prices affixed thereto by him in the Tender.
- (B) The Contractor shall furnish to the Engineer such receipts or other vouchers as may be necessary to prove the amounts paid and, before ordering materials, shall submit to the Engineer quotations for the same for his approval.
- (C) In respect of such Works executed on a daywork basis, the Contractor shall, during the continuance of such work, deliver each day to the Engineer an exact list in duplicate of the names, occupation and time of all workmen employed on such work, and a statement also in duplicate, showing the description and quantity of all materials and the Contractor’s Equipment used

thereon or therefor, other than the Contractor's Equipment which is included in the percentage addition in accordance with such daywork schedule. One copy of each list and statement will, if correct, or when agreed, be signed by the Engineer and returned to the Contractor.

- (D) At the end of each month, the Contractor shall deliver to the Engineer a priced statement of the labor, materials and Contractor's Equipment, except as aforesaid, used and the Contractor shall not be entitled to any payment unless such lists and statements have been fully and punctually rendered. Provided always that if the Engineer considers that for any reason the sending of such lists or statements by the Contractor, in accordance with the foregoing provision, was impracticable, he shall nevertheless be entitled to authorize payment for such work, but subject to the provisions of Clause 2.1(C), either as daywork, on being satisfied as to the time employed and the labor, materials and Contractor's Equipment used on such work, or at such value therefor as shall, in his opinion, be fair and reasonable.

## PROCEDURE FOR CLAIMS

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

**Contemporary Records**      **53.2**      Upon the happening of the event referred to in Clause 53.1, the Contractor shall keep such contemporary records as may reasonably be necessary to support any claim he may subsequently wish to make. Without necessarily admitting the Employer's liability, the Engineer shall, on receipt of a Notice under Clause 53.1, inspect such contemporary records and may instruct the Contractor to keep any further contemporary records as are reasonable and may be material to the claim of which Notice has been given. The Contractor shall permit the Engineer to inspect all records kept pursuant to this Clause 53.2 and shall supply him with copies thereof as and when the Engineer so instructs.

**Substantiation of Claims**      **53.3**      (A) Within 28 days of giving Notice under Clause 53.1, or at such other reasonable time as may be agreed by the Engineer, but in any case not later than the deadline for substantiation stated in Sub-Clause (D) below, the Contractor shall send to the Engineer an account giving detailed particulars of the amount and/or the time extension claimed and the grounds upon which the claim is based. This account shall contain:

(a) the description of the event (date, hour, method of work leading to the event, the characterization of the event, the nature of the encountered problem)

(b) the impact of the event on the Contractor's Work Program, resources, deployment of Materials, Equipment and Personnel, the Works, the Contractor's site operations, costs, etc.

(c) an analysis of the measures undertaken to deal

with or alleviate the problem.

(d) references to the applicable Clauses of the Contract and to the critical path of the Contractor's approved Work Program pursuant to the provisions of Clauses 14.1 and 14.2.

(e) a detailed justification of the Contractor's extra costs and/or the time delay suffered by the Contractor, including the details of all the calculations.

(f) any other requirement of the Engineer related to the format, level of details, arguments, documentation, etc.

(g) supporting documents.

(B) Where the event giving rise to the claim has a continuing effect, such account shall be considered to be an interim account and the Contractor shall send further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based at the end of each week following the submission of the first account, or at such other intervals as the Engineer may reasonably require. In cases where interim accounts are sent to the Engineer, the Contractor shall send a final account within 28 days of the end of the effects resulting from the event, but in any case not later than the deadline for substantiation stated in Sub-Clause (D) below.

(C) The Contractor shall, if required by the Engineer to do so, transmit one copy to the Employer of all accounts sent to the Engineer pursuant to this Clause 53.3.

(D) If the Contractor has a claim for time extension and/or additional costs and so notified the Engineer in due time pursuant to the provisions of Clause 53.1, and subsequently, the Engineer agreed to an extension of the deadline to submit the substantiation of the claim and the detailed particulars, the Contractor shall submit the detailed claim with the supporting documents to the Engineer, at the latest before the Contractor notifies the Engineer about the substantial completion of:

(a) the whole of the Works, if only one certificate is to be issued by the Engineer (Clause 48.1), or

(b) any Section or any Part of the Works (Clause 48.2)

that is subject to the claim, if more than one certificate is to be issued by the Engineer.

However, the provisions of this Sub-Clause (D) do not exclude the possibility of providing additional substantiation or details at any later time, if requested by the Engineer, or if the Contractor intends to present them to a Conciliator, or Arbitrator(s), or in a Court of Law, whether or not such records of substantiation were brought to the Engineer's attention earlier pursuant to Clauses 53.2 and 53.3.

(E) Upon receipt of the Contractor's account, after due consultation with the Employer, the Engineer shall take one of the following actions:

- (a) reject the Contractor's claim on the ground that either the Contractor did not comply with the provisions of Clause 53.4 or that the Contractor's arguments were not supported by the provisions of the referenced Clauses of the Contract.
- (b) return the Contractor's claim to the Contractor and set a new deadline for resubmission, if the Contractor did not develop his claim according to the provisions of Sub-Clause (A) above, did not follow the Engineer's instructions, or the Contractor's arguments were insufficiently developed, calculations incorrect, or the documentation incomplete.
- (c) accept the Contractor's claim for analysis and verification. In this case, the Engineer may ask the Contractor to provide clarifications in Notices and the Contractor shall comply. The Engineer shall prepare a detailed analysis of the Contractor's claim with specific recommendations to the Employer. Within 28 days from the receipt of the Contractor's detailed, complete and valid claim, the Engineer shall submit both the Contractor's original claim and the Engineer's analysis to the Employer and the number of copies or photocopies of these two documents as specified in the Appendix to Tender in connection with Clause 12.4(F).

#### **Failure to Comply**

**53.4** (A) Failure by the Contractor to comply with any of the provisions of Clause 53 shall invalidate any such

claim.

- (B) Failure by the Contractor to comply with any of the provisions of Clause 12 or 44 shall invalidate the related claim.

**Payment of  
Claims**

- 53.5** (A) Provided that the Contractor complies with the provisions of this Clause 53 with respect to any claim he seeks to make, his entitlement to payment by the Employer in respect thereof shall not exceed the amount determined either by:

- (a) the Engineer after due consultation with the Employer, or
- (b) a Conciliator appointed pursuant to the provisions of Clause 67.3, or
- (c) an Arbitration Court appointed pursuant to the provisions of Clause 67.4

assessing the claim considers to be justified. In all cases, the determination shall be based on contemporary records, whether or not such records were brought to the Engineer's attention at first under the procedures defined in Clauses 53.2 and 53.3 or introduced at a later time by the Contractor either to the Engineer or to another forum during the dispute resolution procedures pursuant to the provisions of Clause 67.

- (B) The Contractor shall be entitled to have included in any interim payment certified by the Engineer pursuant to Clause 60 such amount in respect of any claim as the Engineer, after due consultation with the Employer and the Contractor, may consider due to the Contractor provided that the Contractor has supplied sufficient particulars to enable the Engineer to determine the amount due. If such particulars are insufficient to substantiate the whole of the claim, the Contractor shall be entitled to payment in respect of such part of the claim as such particulars may substantiate to the satisfaction of the Engineer. The Engineer shall notify the Contractor of any determination made under this Clause 53.5, with a copy to the Employer.

## **CONTRACTOR'S EQUIPMENT, TEMPORARY WORKS AND MATERIALS**

- |                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Contractor's Equipment, Temporary Works and Materials; Exclusive Use for the Works</b> | <b>54.1</b> All Contractor's Equipment, Temporary Works and materials provided by the Contractor shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the Works. 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 written consent of the Engineer. Provided further that, consent shall not be required for vehicles engaged in transporting any staff, labor, Contractor's Equipment, Temporary Works, Plant, Equipment, or materials to or from the Site.                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Employer not Liable for Damage</b>                                                     | <b>54.2</b> The Employer shall not at any time be liable, save as mentioned in Clauses 20 and 65, for the loss or damage to any of the said Contractor's Equipment, Temporary Works, or materials.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Customs Clearance</b>                                                                  | <b>54.3</b> The Contractor shall be responsible for the payment of all Customs duties and all other import duties, harbor and port dues, wharfage, landing, pilotage and other dues that are in force during the time of the work.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Conditions of Hire of Contractor's Equipment</b>                                       | <b>54.4</b> With a view to securing, in the event of termination and/or expulsion under Clause 63, the continued availability, for the purpose of executing the Works, of any hired Contractor's Equipment, the Contractor shall not bring to the Site any hired Contractor's Equipment unless there is an agreement for the hire thereof (which agreement shall be deemed not to include an agreement for hire purchase) which contains a provision that the owner thereof will, on request in writing made by the Employer within 7 days after the date on which any termination has become effective, and on the Employer undertaking to pay all hire charges in respect thereof from such date, hire such Contractor's Equipment to the Employer on the same terms in all respects as the same was hired to the Contractor save that the Employer shall be entitled to permit the use thereof by any other contractor employed by him for the purpose of executing and completing the Works and remedying any defects therein, under the terms of the said Clause 63. |

<b>Costs for the Purpose of Clause 63</b>	<b>54.5</b>	In the event of the Employer entering into any agreement for the hire of Contractor's Equipment pursuant to Clause 54.4, all sums properly paid by the Employer under the provisions of any such agreement and all costs incurred by him (including stamp duties) in entering into such agreement shall be deemed, for the purpose of Clause 63, to be part of the cost of executing and completing the Works and remedying of any defect therein.
<b>Incorporation of Clause in Subcontract</b>	<b>54.6</b>	The Contractor shall, where entering into any subcontract for the execution of any part of the Works, incorporate in such subcontract (by reference or otherwise) the provisions of this Clause 54 in relation to Contractor's Equipment, Temporary Works, or materials brought on to the Site by the Subcontractor.
<b>Approval of Materials not Implied</b>	<b>54.7</b>	The operation of this Clause 54 shall not be deemed to imply any approval by the Engineer of the materials, or other matters referred to therein, nor shall it prevent the rejection of any such materials at any time by the Engineer.



## MEASUREMENT

## Quantities

**55.1** The quantities set out in the Bill of Quantities are the estimated quantities for the Works, and they are not to be taken as the actual and correct quantities of the Works to be executed by the Contractor in fulfillment of his obligations under the Contract. The actual quantities for payment purposes shall be determined by remeasurement during the Effective Period of the Contract, unless a lump sum is indicated for the item, in which case the procedure pursuant to the provisions of Clause 57.3 is applicable.

# Errors and Omissions in the Bill of Quantities

**55.2** (A) Any error in description in the Bill of Quantities, or omissions therefrom, shall not vitiate or invalidate the Contract, nor release the Contractor from the execution of the whole, or any part of the Works, according to the Specifications and Drawings, or from any of his obligations, or liabilities under the Contract.

(B) Items of the Works described in the Bill of Quantities for which no rate or price has been entered in the Contract shall be considered as included in other rates and prices in the Contract and will not be paid for separately by the Employer to the Contractor. However, in connection with testing, exceptions are created to this rule under Clauses 36.1(E), 36.2(C), 36.3(E) and 36.5.

(C) In case of varied works, if the Bill of Quantities does not include all the rates or prices for the varied quantities, or some of the rates or prices included are inappropriate for the particular varied work, then Clause 52 is applicable.

## Works to be Measured

**56.1** (A) The Engineer shall, except as otherwise stated, ascertain and determine by measurement the value of the Works in accordance with the Contract and the Contractor shall be paid that value in accordance with Clause 60. The Engineer shall, when he requires any part or unit of the Works to be measured, give reasonable notice to the Contractor's authorized agent, who shall:

(a) forthwith attend or send a qualified representative to assist the Engineer in making such

measurement, and

(b) supply all particulars required by the Engineer.

(B) Should the Contractor not attend, or neglect, or omit to send such representative, then the measurement made by the Engineer, or approved by him, shall be taken to be correct measurement of such part of the Works. For the purpose of measuring such Permanent Works as are to be measured by records and drawings, the Engineer shall prepare records and drawings as the work proceeds and the Contractor, as and when called upon to do so in writing, shall, within 14 days, attend to examine and agree on such records and drawings with the Engineer and shall sign the same when so agreed.

(C) If the Contractor does not attend to examine and agree on such records and drawings, they shall be taken to be correct.

(D) If, after examination of such records and drawings, the Contractor does not agree with the same, or does not sign the same as agreed, they shall nevertheless be taken to be correct, unless the Contractor, within 14 days of such examination, lodges with the Engineer notice of the respects in which such records and drawings are claimed by him to be incorrect. On receipt of such notice, the Engineer shall review the records and drawings and either confirm, or vary them.

**Method of  
Measurement**

**57.1**

The Works shall be measured net, notwithstanding any general or local custom, except where otherwise provided for in the Contract.

**Breakdown of  
Lump Sum  
Items**

**57.2**

For the purposes of statements submitted in accordance with Clause 60.1, the Contractor shall submit to the Engineer, within 28 days after the receipt of the Letter of Acceptance, a breakdown for each of the lump sum items contained in the Tender. Such breakdowns shall be subject to the approval of the Engineer. The purpose of this break down is to establish a basis for determining cost of additional lump sum items not specified or particularized in the Contract Documents, but introduced later in connection with a variation.

**Lump Sum  
Items not to Be  
Remeasured**

**57.3** Except where otherwise provided for in the Contract, lump sum prices shall not be subject to remeasurement. In particular, any lump sum for preliminary items of works included in the BOQ shall not be adjusted irrespective of the Contractor's completion of the work earlier or later than the period stated for completion in the Appendix to Tender.

# PROVISIONAL SUMS

## Definition of “Provisional Sums”

**58.1** (A) “Provisional Sums” means a sum included in the Contract and so designated in the Bill of Quantities for the execution of any part of the Works, or for the supply of goods, materials, Plant, equipment, or services, or for contingencies, which sum may be used, in whole or in part, or not at all, on the instructions of the Engineer, but subject to the provisions of Clause 2.1(C).

(B) The Provisional Sum includes some or all of the following headings:

(a) Service Authorities

(b) Contingencies (unpredictable expenses)

(1) remeasured quantities exceed BOQ estimates

(2) variations:

- Engineer initiated

- DM initiated

(3) claims

(c) Estimates for items defined in general terms, without knowing the details, particulars, or specifications at the time of the award of the contract:

(1) extra tests, if any, under Clause 36.4

(2) other items, as identified

(d) Subcontractors and Suppliers

(e) Daywork

(C) The Contractor shall be entitled to only such amounts in respect of the work, supply, or contingencies to which such Provisional Sums relate as the Engineer shall determine in accordance with this Clause 58 and subject to the provisions of Clause 2.1(C). The Engineer shall notify the Contractor of any determination made under this Clause 58.1, with a copy to the Employer.

## Use of

**58.2** (A) In respect of every Provisional Sum, the Engineer

**Provisional  
Sums**

shall have the authority, but subject to the provisions of Clause 2.1(C), to issue instructions for the execution of work, or for supply of goods, Materials, Plant, Equipment, or services by:

- (a) the Contractor, in which case the Contractor shall be entitled to an amount equal to the value thereof determined in accordance with Clause 52, and
- (b) a nominated Subcontractor, as hereinafter defined in Clause 59.1, in which case the sum to be paid to the Contractor therefor shall be determined and paid in accordance with Clause 59.4.

(B) Any estimated use or actual use of the Provisional Sums shall be detailed according to the provisions of Clause 58.1(B), or to any other breakdown as determined by the Engineer after due consultation with the Employer.

**Production of  
Vouchers**

**58.3** The Contractor shall submit to the Engineer all quotations, invoices, vouchers and accounts, or receipts in connection with expenditure in respect of Provisional Sums, except where work is valued in accordance with rates, or prices set out in the Tender.

## NOMINATED SUBCONTRACTORS

### Definition of “Nominated Subcontractors”

**59.1** All specialists, merchants, tradesmen and others executing any work, or supplying any goods, Materials, Plant, or services for which Provisional Sums are included in the Contract, who may have been, or will be nominated, or selected, or approved by the Employer, or the Engineer, but subject to the provisions of Clause 2.1(C), and all persons to whom by virtue of the provisions of the Contract the Contractor is required to subcontract shall, in the execution of such work, or the supply of such goods, Materials, Plant or services, be deemed to be subcontractors to the Contractor and are referred to in this Contract as “nominated Subcontractors”.

### Nominated Subcontractors; Objection to the Nomination

**59.2** The Contractor shall not be required by the Employer, or the Engineer, or be deemed to be under any obligation, to employ any nominated Subcontractor against whom the Contractor may raise reasonable objection, or who declines to enter into a subcontract with the Contractor containing provisions:

- (a) that in respect of the work, goods, Materials, Plant, or services the subject of the subcontract, the nominated Subcontractor will undertake towards the Contractor such obligations and liabilities as will enable the Contractor to discharge his own obligations and liabilities towards the Employer under the terms of the Contract and will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection therewith, or in connection with any failure to perform such obligations, or to fulfill such liabilities, and
- (b) that the nominated Subcontractor will save harmless and indemnify the Contractor from and against any negligence by the nominated Subcontractor, his agents, workmen and servants and from and against any misuse by him, or them, of any Temporary Works provided by the Contractor for the purposes of the Contract and from all claims as aforesaid.

### Design

**59.3** If, in connection with any Provisional Sum, the services

**Requirements to  
be Expressly  
Stated**

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

**Payments to  
Nominated  
Subcontractors**

**594**

For all work executed, or goods, Materials, Equipment, Plant, or Services supplied by any nominated Subcontractor, the Contractor shall be entitled to:

- (a) the actual price paid or due to be paid by the Contractor, on the instructions of the Engineer, and in accordance with the subcontract;
- (b) in respect of labor supplied by the Contractor, the sum, if any, entered in the Bill of Quantities or, if instructed by the Engineer pursuant to Clause 58.2(A)(b), as may be determined in accordance with Clause 52; and
- (c) in respect of all other charges and profit, a sum being a percentage rate of the actual price paid, or due to be paid calculated, where provision has been made in the Bill of Quantities for a rate to be set against the relevant Provisional Sum, at the rate inserted by the Contractor against that item or, where no such provision has been made, at the rate inserted by the Contractor in the Appendix to Tender and repeated where provision for such is made in special item provided in the Bill of Quantities for such purpose.

**Certification of  
Payments to  
Nominated  
Subcontractors**

**595**

(A) Before issuing under Clause 60 any certificate, which includes any payment in respect of work done, or goods, Materials, Equipment, Plant, or Services supplied by any nominated Subcontractor, the Engineer shall be entitled to demand from the Contractor reasonable proof that all payments, less retentions, included in previous certificates in respect of the work, or goods, Materials, Equipment, Plant, or Services of such nominated Subcontractor have been

paid, or discharged by the Contractor. If the Contractor fails to supply such proof then, unless the Contractor:

- (a) satisfies the Engineer in writing that he has reasonable cause for withholding, or refusing to make such payments, and
- (b) presents to the Engineer reasonable proof that he has so informed such nominated Subcontractor in Writing,

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

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



## CERTIFICATES AND PAYMENTS

### Monthly Statements

**60.1** (A) The Contractor shall submit to the Engineer, at the end of each month in the number of copies specified in the Appendix to Tender, a Monthly Statement which shall consist of the following items:

- (a) a Payment Certificate according to the Employer's format for the month, dated and signed by the Contractor certifying the accuracy and validity of the stated amounts;
- (b) a detailed statement (the Annexes attached to the Payment Certificate) in a tabulated form approved by the Engineer showing the details of the amounts to which the Contractor considers himself to be entitled with justifications and supporting documents;
- (c) unless stated otherwise in Conditions or Part II, diskettes containing all the above data compatible with the Engineer's and the Employer's computer software system in the number specified in the Appendix to Tender.

(B) In reference to Sub-Clause (A)(b) above, the statement shall include the following items, as applicable, which shall be taken into account in the sequence listed:

- (1) the estimated Contract value of the Works and the work by the nominated Subcontractors executed up to the end of the month in question, determined in accordance with Clause 56.1, at the unit rates and prices included in the Contract,
- (2) the actual value certified by the Engineer and approved by the Employer for payment for the Works and the work of Nominated Subcontractors executed up to the end of the previous month, at unit rates and prices included in the Contract,
- (3) the estimated Contract value at the unit rates and prices included in the Contract of the Works and

the work by the nominated Subcontractors for the month in question obtained by deducting (2) from (1),

- (4) the value of any variations executed up to the end of the month in question, less the amount certified by the Engineer and approved by the Employer in the previous Interim Payment Certificate pursuant to Clause 52,
  - (5) amounts approved in respect of Daywork executed up to the end of the month in question, less the amount for Daywork certified by the Engineer and approved by the Employer in the previous Interim Payment Certificate, as determined from the Daywork Schedule of the Bill of Quantities,
  - (6) any credit or debit for the month in question with respect to Materials, Equipment and Plant for the Permanent Works, in the relevant amounts under the conditions set forth in Clause 60.3,
  - (7) any amount to be withheld under the retention provisions of Clause 60.5, determined by applying the percentage set forth in Clause 60.5 to the amounts in Sub-Clauses (3), (4), (5) and (6),
  - (8) any amounts to be deducted as repayment of the Advance under the provisions of Clause 60.7, and
  - (9) any other sum to which the Contractor may be entitled under the Contract otherwise, such as under Clause 60.8.
- (C) Under Sub-Clauses (1), (2) and (3) above, the value of the Works and for each nominated Subcontractor shall be listed separately, and then summed for the whole Annex.

## Monthly Payments

- 60.2** (A) Notwithstanding the terms of this Clause 60, or any other Clause of this Contract, no amount will be certified by the Engineer for payment until the performance security has been provided by the Contractor and approved by the Employer.
- (B) The Contractor's Monthly Statement shall be either approved as it is, or amended by the Engineer in the Engineer's Annex in such a way that, in his opinion, it reflects the amount due to the Contractor in accordance with the Contract, after deduction, other than pursuant to Clause 47, of any sums which may have become due and payable by the Contractor to the

Employer. These sums to be deducted may include, if applicable, the retention money, repayment of advance payment, corrections to any previous Payment Certificates, etc. In cases where there is a difference of opinion as to the value of any item, the Engineer's view shall prevail.

(C) Within fourteen (14) days of receipt of the Contractor's Monthly Statement referred to in Clause 60.1, the Engineer shall determine and certify the amount due to the Contractor and shall deliver to the Employer (in the number of copies specified in the Appendix to Tender and the diskettes of the same) and the Contractor (one copy):

- (a) the signed and dated Interim Payment Certificate certifying the verified, corrected (if any) and adjusted (if any) amount due to the Contractor,
- (b) the Annex containing the Engineer's corrections, deductions, adjustments, observations, justifications, and the certified amount due to the Contractor,
- (c) the Contractor's Monthly Statement with the Annexes, and
- (d) diskettes containing all the Contractor's data and the Engineer's corrections (if any), adjustments (if any) with appropriate observations and justifications and the certified amount due to the Contractor.

(D) Provided that the Engineer shall not be bound to certify any payment under this Clause 60.2 if the net amount thereof, after all deductions, would be less than the Minimum Amount of Interim Payment Certificates stated in the Appendix to Tender. However, in such case, the uncertified amount will be added to the next interim payment, and the cumulative uncertified amount will be compared to the Minimum Amount of Interim Payment.

**Materials, Plant  
and Equipment  
for the  
Permanent  
Works**

**60.3**

(A) With respect to Materials, Equipment and Plant brought by the Contractor to the Site for incorporation in the Permanent Works, the Contractor shall:

- (a) receive a credit in the month in which these Materials, Equipment and Plant are brought to the

Site, and

- (b) be charged a debit in the month in which they were incorporated in the Permanent Works.

(B) Both such credit and debit are to be determined by the Engineer in accordance with the following provisions:

- (a) no credit shall be given unless the following conditions shall have been met to the Engineer's satisfaction:

- (1) the Materials, Equipment and Plant are in accordance with the specifications of the Works;

- (2) the Materials, Equipment and Plant have been delivered to the Site and are properly stored and protected against loss, damage, or deterioration;

- (3) the Contractor's records of the requirements, orders, receipts, and use of the Materials, Equipment and Plant are kept in a form approved by the Engineer, and such records are available for inspection by the Engineer;

- (4) the Contractor has submitted a statement of his cost of acquiring and delivering the Materials, Equipment and Plant to the Site, together with such documents (order, shipping bill, discount, etc.) as may be required for the purpose of evidencing such cost; and

- (5) the Materials, Equipment and Plant are to be used within a reasonable time.

- (b) the amount to be credited to the Contractor shall be the equivalent of 85 percent of the Contractor's substantiated value of the Materials, Equipment or Plant delivered to the Site, as determined by the Engineer after the review of the documents listed in Sub-Clause (a)(4) above. However, in no case shall the amount certified be in excess of the BOQ rates or prices whether or not the value is substantiated by the Contractor;

- (c) the amount to be debited to the Contractor for any Materials, Equipment and Plant incorporated into the Permanent Works shall be equivalent to the

credit previously granted to the Contractor for such Materials, Equipment and Plant pursuant to Sub-Clause (b) above, as determined by the Engineer; and

- (d) if, the Materials, Equipment and Plant were bought in a foreign country by the Contractor, the Engineer shall determine the Contractor's cost in UAE Dirhams using the Contractor's vouchers, receipts, shipping bills, money transactions and exchange certificates and whatever additional documents the Engineer may require to be presented by the Contractor. On this basis, the respective amounts to be credited or debited as set forth above shall be determined by the Engineer.

**Currency of Account and Place of Payment**

- 60.4** All monetary statements, estimates and payments referred to in this Clause shall be given in UAE Dirhams. The currency of account shall be the UAE Dirham and all payments made in accordance with the Contract shall be in UAE Dirhams. Payment to the Contractor by the Employer shall be made in Dubai.

**Retention Money**

- 60.5** (A) A retention amounting to ten (10) percent of the amounts due, as determined in accordance with the procedure set out in Clause 60.1(B)(7), shall be made by the Engineer in the first and following Interim Payment Certificates including the penultimate Payment Certificate.
- (B) No retention money shall be withheld from the Final Payment to the Contractor.
- (C) If the Contract is suspended or terminated earlier pursuant to Clauses 20.4, 40, 63, 65 or 69, the payment of retention money is suspended or terminated with the last regular monthly Interim Payment Certificate covering the period up to the effectiveness of the suspension or termination.
- (D) In case of the expulsion of the Contractor from the Site pursuant to the provisions of Clause 63, the deduction of the retention money stops with the last regular Interim Payment Certificate, which precedes the effectiveness of the Expulsion. Any payment after expulsion is governed by the provisions of Clause 63.3.

**Payment of**

- 60.6** (A) Upon the issue of the Taking-Over Certificate with

## **Retention Money**

respect to the whole of the Works, the Contractor shall apply for and the Engineer shall certify without delay one half of the Retention Money for payment to the Contractor. The Employer shall, upon certification by the Engineer, release one half of the Retention Money within 21 days from the day of receipt of the Contractor's request and a copy of the Taking-Over Certificate. Upon issue of a Taking-Over Certificate with respect to a Section, or Part of the Permanent Works, only such proportion of the one half of the Retention Money as the Engineer determines having regard to the relative value of such Section, or Part of the Permanent Works, shall be certified by the Engineer for payment to the Contractor. The Contractor may substitute the remaining retention money with an on-demand bank guarantee in a form, and from a source, acceptable to the Employer.

(B) Upon the date of issue of the Defects Liability Certificate for the whole of the Works, the other half of the Retention Money shall be certified by the Engineer for payment to the Contractor but subject to the provisions of Sub-Clause (C) below (or return of the remaining security, which replaced the Retention Money). Provided that, in the event of different Defects Liability Periods being applicable to different Sections or Parts of the Permanent Works pursuant to Clauses 48, 49 and 50.1, then the expression "date of issue of the Defects Liability Certificate" pursuant to Clause 62.1 shall, for the purposes of this Clause 60.6, be deemed to mean the latest of such dates. Provided further that, if the cost estimated by the Engineer for the Contractor's outstanding obligation is less than 50 percent of the still held retention money, the Engineer may certify for payment to the Contractor a sum not exceeding the free part of the retention money, which is above the estimated cost of the Contractor's obligations, after the issue of the Defects Liability Certificates for certain Sections and Parts of the Works.

(C) Provided also that, if at the issue of the Defects Liability Certificate for the whole of the Works, there shall:

- (a) remain, to be executed by the Contractor, any work in respect of the Works instructed pursuant to Clauses 49 and 50, the Engineer shall be entitled to withhold certification until

completion of such work or so much of the balance of the Retention Money as shall, in the opinion of the Engineer, represent the cost of the work remaining to be executed.

- (b) be sums due to the Employer by the Contractor pursuant to the provisions of Clauses 47.1 and 60.9, the Engineer shall be entitled to withhold certification until these sums are determined by the Engineer and provisions are made for their payment by the Contractor:

- (i) either as a deduction pursuant to the provisions of Clause 60.13, or
- (ii) as an adjustment of the remaining part of the retention money to be certified by the Engineer under this Clause 60.6 after due consultation with the Employer.

In no case shall the withholding of certification under Sub-Clauses (a) and (b) above be delayed either beyond 84 days after the issue of the Defects Liability Certificate or the certification of the Final Payment Certificate pursuant to the provisions of Clause 60.13, whichever comes first.

## **Advance Payment**

**60.7**

(A) The Employer may make an interest-free and service-charge-free advance payment to the Contractor according to the provisions of the Instructions to Tenderers, if the advance payment is announced in the Instructions to Tenderers and specified in the Appendix to Tender. In no event will the advance payment exceed the amount stipulated in the Appendix to Tender. The Employer shall pay the amount due to the Contractor within 21 days from the date of issue of the Engineer's certificate for the Contractor's eligibility to receive advance payment provided the following conditions are met:

- (a) The Contractor requests an advance payment and submits his request accompanied by an unconditional bank guarantee, in the form and amount acceptable to the Employer, to the Engineer,
- (b) The conditions in the Instructions to Tenderers, the Appendix to Tender and these Conditions are met regarding the Advance Payment, (with no exception of the requirements of Clause 14 – Program, which shall instead be submitted in

sufficient detail to reflect the requirements of the work).

- (c) The Engineer certifies the Contractor's compliance with the conditions in Sub-Clause (b) above and submits his Certificate, the Contractor's request and bank guarantee to the Employer.

The bank guarantee shall remain effective until the advance payment has been repaid pursuant to Sub-Clause (B) below, but the amount thereof shall be progressively reduced by the amount repaid by the Contractor as indicated in the Interim Payment Certificates issued in accordance with this Clause 60.

- (B) The advance payment shall be repaid through deductions from the interim payments calculated and certified by the Engineer in accordance with this Clause 60. Deductions shall commence with the first full month Interim Payment Certificate after the Contractor received the Advance pursuant to Clause 60.1(B)(9). The complete advance payment must be repaid prior to such time when the accumulative payments under the Interim Payment Certificates reach about 90 percent of the Initial Contract Price. The Engineer shall determine the advance payment repayment period.

#### **Time of Payment**

**60.8**

- (A) The amount due to the Contractor under any Interim Payment Certificate certified by the Engineer pursuant to the provisions of this Clause 60, or any other term of the Contract, shall, subject to Clause 47, be paid by the Employer to the Contractor within 21 days after the Contractor's monthly statement has been submitted to the Engineer for certification. However, the Contractor is not eligible for payment until his Performance Bond has been approved by the Employer pursuant to the provisions of Clauses 10.1(A) and 60.2(A).
- (B) In the case of the Penultimate Payment Certificate pursuant to the provisions of Clause 6.1(D), the payment by the Employer may be withheld until the Contractor satisfies all the eligibility requirements for payment.
- (C) In the case of the Final Payment Certificate pursuant to Clause 60.13, the amount due to the Contractor shall, subject to Clauses 6.1(D) and 47, be paid by the



Employer to the Contractor within 56 days after the Contractor's Final Statement has been submitted to the Engineer for certification, provided the Contractor's written discharge to the Employer has also been submitted to the Employer pursuant to the provisions of Clause 60.12 at the same time.

**Correction of  
Certificates**

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

**Statement at  
Completion**

**60.10** (A) Not later than 35 days after the issue of the Taking-Over Certificate in respect of the whole of the Works, the Contractor shall submit a draft Statement at Completion in one copy to the Engineer, who shall review this draft and comment to the Contractor in writing within 14 days from the day of receipt of the draft.

(B) Not later than 56 days after the issue of the Taking-Over Certificate in respect of the whole of the Works, the Contractor shall submit to the Engineer a Statement at Completion in the number of copies specified in the Appendix to Tender with supporting documents showing in detail, in the form approved by the Engineer after due consultation with the Employer:

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

(C) Estimated amounts shall be shown separately in such Statement at Completion.

(D) The Engineer shall verify and adjust the Statement in an Appendix and certify the payment of the approved amounts within 14 days from the day of receipt of the Statement.

**Final Statement**      **60.11** (A) Not later than 28 days after the issue of the Defects Liability Certificate pursuant to Clause 62.1, the Contractor shall submit to the Engineer for consideration a draft final statement and the diskettes in the number of copies as required by the Engineer with supporting documents showing in detail, in the form approved by the Engineer after due consultation with the employer:

(a) the value of all work done in accordance with the Contract; and

(b) any further sums which the Contractor considers to be due to him under the Contract, or otherwise.

(B) If the Engineer disagrees with, or can not verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require and shall make such changes in the draft as may be agreed between them.

(C) The Contractor shall then prepare and submit to the Engineer within 14 days from the receipt of the Engineer's comments the Final Statement as agreed (for the purposes of these Conditions referred to as the "Final Statement") in the number of copies and the diskettes stipulated in the Appendix to Tender. This Final Statement shall be verified and the Final Payment certified by the Engineer within 14 days from its day of receipt pursuant to the provisions of Clause 60.13.

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

**Discharge**      **60.12** Upon submission of the Final Statement, the Contractor shall give to the Employer, with a copy to the Engineer, a written discharge confirming that the total of the Final

Statement represents full and final settlement of all monies due to the Contractor arising out of, or in respect of, the Contract. Provided that, such discharge shall become effective only after payment due, under the Final Payment Certificate issued pursuant to Clause 60.13, has been made, the second portion of the retention money, as may be adjusted pursuant to the provisions of Clause 60.6, has been released and the Performance Security has been returned to the Contractor.

<b>Final Payment Certificate</b>	<b>60.13</b>	<p>(A) Within 14 days after receipt of the Final Statement, and the copy of the written discharge, the Engineer shall deliver to the Employer, with a copy to the Contractor, a Final Payment Certificate stating:</p> <ul style="list-style-type: none"> <li>(a) the amount which, in the opinion of the Engineer, is finally due under the Contract to the Contractor, or otherwise, and</li> <li>(b) after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled, other than under Clause 47, the balance, if any, due from the Employer to the Contractor, or from the Contractor to the Employer as the case may be.</li> <li>(c) if any sum payable to the Contractor is insufficient to satisfy by way of deduction or set-off a payment due to the Employer, in accordance with the provisions of this Clause 60.13, then the Employer will deduct such sums from the retention money.</li> </ul> <p>(B) The Final Payment Certificate shall be paid by the Employer pursuant to the provisions of Clause 60.8(A).</p>
<b>Cessation of Employer's Liability</b>	<b>60.14</b>	<p>The Employer shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or execution of the Works, unless the Contractor shall have included a claim in respect thereof in his Final Statement and (except in respect of matters or things arising after the issue of the Taking-Over Certificate in respect of the whole of the Works) in the Statement at Completion referred to in Clause 60.10.</p>
<b>Approval Only by Defects Liability</b>	<b>61.1</b>	<p>Only the Defects Liability Certificate, referred to in Clause 62, shall be deemed to constitute approval of the Works.</p>

## Certificate

### Defects Liability Certificate

- 62.1** (A) The Contract shall not be considered as completed until a Defects Liability Certificate for the whole of the Works has been signed by the Engineer, subject to the provisions of Clause 2.1(C), and delivered to the Employer, with a copy to the Contractor, stating the date on which the Contractor completed his obligations to execute and complete the Works and remedy any defects therein to the Engineer's satisfaction.
- (B) At the end of the Defects Liability Period for all of the Works, or if different Defects Liability Periods shall become applicable to different Sections or Parts of the Works pursuant to the provisions of Clauses 49.1 and 49.6, then at the expiration of the latest such period, or as soon thereafter as any works instructed, pursuant to Clauses 49 and 50, have been completed by the Contractor to the satisfaction of the Engineer, the Contractor shall notify the Engineer requesting the issuance of the Defects Liability Certificate for the whole of the Works.
- (C) Upon receipt of the Contractor's notice, the Engineer shall schedule immediately with the Employer the final inspection of the whole of the Works. The inspection shall take place within 28 days from the day of receipt of the Contractor's notice to this effect counted as day number one.
- (D) If, in the opinion of the Employer and the Engineer, the Contractor satisfied all the provisions of the Contract, the Works are in a satisfactory condition, fair wear and tear excepted, and if the Contractor completed satisfactorily the items annexed to the Taking-Over Certificate and those items instructed under Clauses 49 and 50, the Employer shall immediately, at the end of the inspection, authorize the Engineer to issue the Defects Liability Certificate. The Engineer shall promptly issue the Defects Liability Certificate to the Employer with a copy to the Contractor. The Engineer shall certify the payment of the second portion of the Retention Money to the Contractor pursuant to the provisions of Clause 60.6.
- (E) However, if, in the opinion of the Employer, the Contractor did not satisfy all the provisions of the Contract, or the Works, or Sections or Parts of the Works are in an unsatisfactory condition, or if the

Contractor did not complete satisfactorily the items annexed to the Taking-Over Certificate or those items instructed under Clauses 49 and 50, the Employer shall consult with the Engineer and the Engineer shall withhold the issuance of the Defects Liability Certificate for the Works, or for Sections or Parts thereof, as the case may be. Following this consultation, the Engineer shall notify the Contractor, with a copy to the Employer, within 28 days from the day of receipt of the Contractor's notice requesting the issuance of the Defects Liability Certificate. This notice shall specify the defects of the Works, or of Sections or Parts thereof, or the default of the Contractor and instruct the Contractor to execute or remedy the listed items identified by the Employer and the Engineer during the inspection. When these defects and defaults are remedied, the Contractor shall notify the Engineer and request the completion of the inspection of the Works. The Engineer shall proceed according to the provisions of Sub-Clauses (D), (E), and if needed (F) again.

## **Unfulfilled Obligations**

- 62.2** (A) Notwithstanding the issuance of the Defects Liability Certificate, the Contractor and the Employer shall remain liable for the fulfillment of any obligation incurred under the provisions of the Contract prior to the issuance of the Defects Liability Certificate which remains unperformed at the time such Defects Liability Certificate is issued and, for the purposes of determining the nature and extent of any such obligation, the Contract shall be deemed to remain in force between the Parties to the Contract.
- (B) Such unfulfilled obligations at the time of issue of the Defects Liability Certificate include, but are not limited to:
- (1) Employer's payments pursuant to the provisions of Clauses 53.5 and 60
  - (2) Contractor's documentation of the Works (Clauses 60.11 and 60.12)
  - (3) Contractor's decennial liability pursuant to the provisions of Clause 8.3
  - (4) Search for a settlement of the disputes, if any, pursuant to the provisions of Clause 67
  - (5) Protection of the Employer by the Contractor under Clauses 72.1 (Confidentiality), 73.1 (Bribery), 28.1 (Patent Rights) and 7.2 (Permanent Works)

Designed by the Contractor)

- (6) Other incomplete actions or procedures related to Insurance Claims pursuant to Clauses 20.5, 21.1, 21.2, 21.3, 22.1, 23.1, 23.3, 24.2 and 75.1.

Some of these unfulfilled obligations expire at the completion of the particular action, procedure, or settlement of the case, and others survive the Contract by a time period extending up to 10 years from the date certified in the Defects Liability Certificate for the whole of the Works.

## EXPULSION AND REMEDIES

### Default of Contractor and Expulsion

#### 63.1 If:

- (A) the Contractor is deemed by law unable to pay his debts as they fall due, or enters into voluntary or involuntary bankruptcy, liquidation or dissolution (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or becomes insolvent, or makes an arrangement with, or assignment in favor of, his creditors, or agrees to carry out the Contract under a committee of inspection of his creditors, or if a receiver, administrator, trustee or liquidator is appointed over any substantial part of his assets, or
- (B) under any law or regulation relating to reorganization, arrangement or readjustment of debts, proceedings are commenced against the Contractor or resolutions passed in connection with dissolution or liquidation, or
- (C) any act is done, or any steps are taken to enforce any security interest over a substantial part of the Contractor's assets, or
- (D) any act is done, or event occurs with respect to the Contractor or his assets which, under the Applicable Law has a substantially similar effect to any of the foregoing acts or events, or
- (E) the Contractor has contravened Clause 3.1, or has an execution levied on his goods, or
- (F) the Engineer certifies to the Employer, with a copy to the Contractor, that, in his opinion, the Contractor:
  - (a) has repudiated the Contract,
  - (b) without reasonable excuse has failed
    - (i) to commence the Works in accordance with Clause 41.1, or
    - (ii) to proceed with the Works, or any Section thereof, within 28 days after receiving notice pursuant to Clause 46.1,
  - (c) has failed to comply with a notice issued pursuant to Clause 37.4, or an instruction issued pursuant to

Clause 39.1 within 28 days after having received it,

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

(e) has contravened Clause 4.1,

then, after giving 14 days' notice to the Contractor, the Employer may:

- (1) enter upon the Site 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 Engineer by the Contract,
- (2) complete the Works, by himself or by employing any other contractor. The Employer or such other contractor may use for such completion so much of the Contractor's Equipment, Plant, Temporary Works, and materials, which may 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
- (3) at any time, sell any of the said Contractor's Equipment, Temporary Works, and unused Plant and 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.

**Valuation at  
Date of  
Expulsion**

**63.2** The 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 inquiries as he may think fit to make or institute, and shall certify:

- (a) what amount (if any) had, at the time of such entry and 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
- (b) the value of any of the said unused or partially used materials, any Contractor's Equipment and any Temporary Works.



**Payment after  
Expulsion**

- 63.3** (A) If the Employer shall enter and expel the Contractor under this Clause 63, he shall not be liable to pay to the Contractor any further amount (including damages) in respect of the Contract until the expiration of the Defects Liability Period and thereafter until the costs of execution, completion and remedying any defects, damages for delay in completion (if any) and all other expenses incurred by the Employer have been ascertained and the amount thereof certified by the Engineer.
- (B) Upon satisfying the conditions in Sub-Clause (A) above, the Contractor shall be entitled to receive only such sum, if any, as the Engineer may certify would have been payable to him upon due completion by him after deducting the said amount. If such amount exceeds the sum which would have been payable to the Contractor on due completion by him, then the Contractor shall, upon demand, pay to the Employer the amount of such excess and it shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly.

**Assignment of  
Benefit of  
Agreement**

- 641** Unless prohibited by law, the Contractor shall, if so instructed by the Engineer within 14 days of such entry and expulsion referred to in Clause 63.1, or termination referred to in Clauses 65.5, 65.9 and 65.10, assign to the Employer the benefit of any agreement for the supply of any goods or materials or services and/or for the execution of any work for the purposes of the Contract, which the Contractor may have entered into.

**Urgent  
Remedial Work**

- 642** (A) If, by reason of any accident, or failure, or other event occurring to, in, or in connection with the Works, or any part thereof, either during the execution of the Works, or during the Defects Liability Period, any remedial or other work is, in the opinion of the Engineer, urgently necessary for the safety of the Works or any adjoining property and the Contractor is unable or unwilling at once to do such work, the Employer shall be entitled to employ and pay other persons to carry out such work as the Engineer may consider necessary.
- (B) If the work or repair so done by the Employer is work which, in the opinion of the Engineer, the Contractor was liable to do at his own cost under the Contract,

then all costs consequent thereon or incidental thereto shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or become due to the Contractor, and the Engineer shall notify the Contractor accordingly, with a copy to the Employer. Provided that, the Engineer shall, as soon after the occurrence of any such emergency as may be reasonably practicable, notify the Contractor thereof.

## SPECIAL RISKS AND TERMINATION

- |                                         |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------------------------|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>No Liability for Special Risks</b>   | <b>65.1</b> | The Contractor shall be under no liability whatsoever in consequence of any of the special risks referred to in Clause 65.2. whether by way of indemnity or otherwise, for or in respect of: <ul style="list-style-type: none"><li>(a) destruction of or damage to the Works, save to work condemned under the provisions of Clause 39 prior to the occurrence of any of the said special risks,</li><li>(b) destruction of or damage to property, whether of the Employer or third parties, or</li><li>(c) injury or loss of life.</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Special Risks</b>                    | <b>65.2</b> | The Special Risks are the risks defined under Clause 20.4(a).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Damage to Works by Special Risks</b> | <b>65.3</b> | <p>If the Works or any Materials or Plant on or near or in transit to the Site, or any of the Contractor's Equipment, sustain destruction or damage by reason of any of the said special risks, the Contractor shall be entitled to payment in accordance with the Contract for any Permanent Works duly executed and for any Materials or Plant so destroyed or damaged and, so far as may be required by the Engineer or as may be necessary for the completion of the Works, to payment for:</p> <ul style="list-style-type: none"><li>(a) rectifying any such destruction or damage to the Works, and</li><li>(b) replacing or rectifying such Materials or Contractor's Equipment,</li></ul> <p>and the Engineer shall determine an addition to the Effective Contract Price in accordance with Clause 52 (which shall in the case of the cost of replacement of Contractor's Equipment include the fair market value thereof as determined by the Engineer) and shall notify the Contractor accordingly, with a copy to the Employer.</p> |
| <b>Projectile, Missile</b>              | <b>65.4</b> | 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, munitions, or explosive of war, shall be deemed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

<b>Increased Costs Arising from Special Risks</b>	<p>655 to be a consequence of the said special risks.</p> <p>Save to the extent that the Contractor is entitled to payment under any other provision of the Contract, the Employer shall repay to the Contractor any costs of the execution of the Works (other than such as may be attributable to the cost of reconstructing work condemned under the provisions of Clause 39 prior to the occurrence of any special risk) which are:</p> <ul style="list-style-type: none"> <li>(a) howsoever attributable to or consequent on or the result of or in any way whatsoever connected with the said special risks,</li> <li>(b) but subject to the provisions of this Clause 65 hereinafter contained in regard to outbreak of war.</li> </ul> <p>Furthermore, the Contractor shall, as soon as any such cost comes to his knowledge, forthwith notify the Engineer thereof. The Engineer shall, after due consultation with the Employer and the Contractor, determine the amount of the Contractor's costs in respect thereof which shall be added to the Effective Contract Price and shall notify the Contractor accordingly, with a copy to the Employer.</p>
<b>Outbreak of War and Termination</b>	<p>656 (A) If, during the currency of the Contract, there is an outbreak of war, whether 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 provision of this Clause 65, continue to use his best endeavor to complete the execution of the Works.</p> <p>(B) Provided that the Employer shall be entitled, at any time after such outbreak of war, to terminate the Contract by giving notice to the Contractor. Upon such notice being given, the Contract shall, except as to the rights of the Parties under this Clause 65 and Clause 67, terminate, but without prejudice to the rights of either Party in respect of any antecedent breach thereof.</p>
<b>Removal of Contractor's Equipment on Termination</b>	<p>657 If the Contract is terminated under the provisions of Clause 65, the Contractor shall, with all reasonable dispatch, remove from the Site all Contractor's Equipment and shall give similar facilities to his Subcontractors to do so.</p>

**Payment if  
Contract is  
Terminated**

- 65.8** (A) The Engineer shall, as soon as may be practicable after the termination of this Contract, fix and determine ex parte, or by or after reference to the Parties or after such investigation or inquiries as he may think fit to make or institute, and shall certify:
- (a) what amount (if any) had, at the time of termination, been reasonably earned by or would reasonably accrue to the Contractor in respect of work then actually done by him under the Contract, and
  - (b) the value of any of the said unused or partially used Materials, any Contractor's Equipment and any Temporary Works.
- (B) If the Contract is terminated as aforesaid, the Contractor shall be paid by the Employer, insofar as such amounts or items have not already been covered by payments on account made to the Contractor, for all work executed prior to the date of termination at the rates and prices provided in the Contract and in addition:
- (a) the amounts payable in respect of any preliminary items referred to in the Bill of Quantities, so far as the work or service comprised therein has been carried out or performed, and a proper proportion of any such items which have been partially carried out or performed;
  - (b) the cost of materials, Plant or goods reasonably ordered for the Works which have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery, such materials, Plant or goods becoming the property of the Employer upon such payments being made by him;
  - (c) a sum being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works insofar as such expenditure has not been covered by any other payments referred to in this Clause 65.8;
  - (d) any additional sum payable under the provisions of Clauses 65.3 and 65.5;
  - (e) such portion of the cost as may be reasonable, taking into account payments made or to be made for work executed, or for removal of Contractor's

Equipment under Clause 65.7 and, if required by the Contractor, return thereof to the Contractor's main plant yard in his country of registration, or to other destination, at no greater cost; and

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

Provided that against any payment due from the Employer under this Clause 65.8, the Employer shall be entitled to be credited with any outstanding balances due from the Contractor for an advance payment to serve as an incentive to start early the Works, or advances in respect of the Contractor's Equipment, materials and Plant and any other sums which, at the date of termination, were recoverable by the Employer from the Contractor under the terms of the Contract. Any sums payable under this Clause 65.8 shall, after due consultation with the Employer and the Contractor, be determined by the Engineer who shall notify the Contractor accordingly, with a copy to the Employer.

**Termination of  
Contract for  
Employer's  
Convenience**

**659**

**(A)** The Employer shall be entitled to terminate this Contract at any time for the Employer's convenience after giving notice to the Contractor, with a copy to the Engineer, under the following conditions:

- (a) Before the end of the Mobilization Period, the notice of termination becomes effective within 14 days after the date of delivery of this notice. However, after the receipt of this notice, the Contractor immediately loses his right to continue the mobilization and Site preparation and to start the Temporary or Permanent Works, to commit himself to any purchase of Materials, Equipment and Plant, to engage labor, or to contract services directly related to or incident to the Temporary or Permanent Works, or to sign previously approved Subcontracts or any other contract not requiring the direct approval of the Engineer after the signature of the Contract pursuant to the provisions of Clause 4.1. The Employer will not compensate the Contractor for any of these actions, commitments, engagements, Subcontracts and work concluded, signed, or ordered after the receipt of the said notice.

(b) After the Mobilization Period, the notice of termination becomes effective within 56 days from the date of delivery of this notice. However, after the receipt of this notice, the Contractor immediately loses his right to commit himself to the purchase of any additional Materials, Equipment and Plant, to engage additional labor, or to contract services, or to sign previously approved Subcontracts or any other contract not requiring the direct approval of the Engineer after the signature of the Contract pursuant to the provisions of Clause 4.1. The Employer will not compensate the Contractor for any of these actions, commitments, engagements, Subcontracts concluded, signed, or ordered after the receipt of the said notice. Starting with the day of delivery of the notice, the Contractor shall:

- (i) execute only those work items, if any, of the approved Work Program pursuant to the provisions of Clauses 14.1 and 14.2, which are specifically approved by the Engineer in writing,
- (ii) carry out varied work or daywork so ordered by the Engineer in writing pursuant to the provisions of Clauses 51 and 52.4 to preserve or remove the already constructed Works, or portions of Sections of Parts of the Works so instructed by the Engineer, and
- (iii) start demobilizing according to the instruction of the Engineer in writing in regard to the provisions of Sub-Clauses (i) and (ii) above.

**(B)** In the event of such termination under this Clause 65.9, the Contractor shall:

- (a) proceed as provided either in Clause 65.7 or under Sub-Clause A(b)(iii) of this Clause 65.9 above depending upon the instructions of the Engineer in writing, and
- (b) be paid by the Employer as provided in Clause 65.8.

## **Termination**

**65.10 (A)** The Employer is entitled to terminate this Contract, at

**Resulting from  
Contractor's  
Default**

his discretion, by a Notice of Termination in the case of any of the following events:

- (a) the Contractor fails to sign the Agreement within the time period specified in the Letter of Acceptance and the Mobilization Period is reduced to less than 7 days, or 50 percent of the Mobilization Period stated in the Letter of Acceptance, whichever is more; or
  - (b) the Contractor fails to submit to the Employer before the end of the Mobilization Period a Performance Bond specified in Clause 10.1 of these Conditions acceptable to the Employer.
- (B)** The Notice of Termination is effective immediately upon receipt by the Contractor. The Contractor is not entitled to any compensation by the Employer. In particular, the provisions of Clause 65.8 are not applicable in this case, if any of the events described in Sub-Clause (A) take place. Furthermore, the Contractor shall have 7 days to demobilize completely the Site and after the 7<sup>th</sup> day, any Equipment, Material or other belonging of the Contractor shall become the property of the Employer, who may sell or dispose otherwise of this property at his discretion. Finally, the Employer will cash the Tender Bond (Temporary Performance Security) without any Notice to the Contractor to this effect, and the provisions of Clause 10.3 are cancelled in this case.
- (C)** Under the circumstances described in Sub-Clauses (A) and (B) above, the Employer will not compensate the Contractor for any of his obligations and commitments to Sub-Contractors and Suppliers, whether the Employer gave or did not give written approval to subcontracting the Sub-Contractors or Suppliers.



## RELEASE FROM PERFORMANCE

**Payment in  
Event of Release  
from  
Performance**

**66.1** If any circumstances outside the control of both Parties arise after the issue of the Letter of Acceptance, which render it impossible or unlawful for either or both Parties to fulfill his or their contractual obligations, or under the law governing the Contract, the Parties are released from further performance, then the Parties shall be discharged from the Contract, except as:

- (a) to their rights under this Clause 66 and Clause 67 and without prejudice to the rights of either Party in respect of any antecedent breach of the Contract, and
- (b) the sum payable by the Employer to the Contractor in respect of the work executed shall be the same as that which would have been payable under Clause 65, if the Contract had been terminated under the provisions of Clause 65.

## SETTLEMENT OF DISPUTES

### Engineer's Decision

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

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

(C) If either the Employer or the Contractor be dissatisfied with any decision of the Engineer, or with the reasons given for his decision, or if the Engineer fails to give notice of his decision, or fails to specify the reasons and logical foundation of his decision, on or before the eighty-fourth (84<sup>th</sup>) day after the day on which he received the reference, then either the Employer or the Contractor may:

- (a) on or before the seventieth (70<sup>th</sup>) day after the day on which he received notice of such decision, or
- (b) on or before the seventieth (70<sup>th</sup>) day after the day on which the said period of 84 days expired,

as the case may be, give notice to the other Party, with a copy for information to the Engineer, of his intention to

commence conciliation, or arbitration, as hereinafter provided, as to the matter in dispute. Such notice shall establish the entitlement of the Party giving the same to commence conciliation or arbitration, as hereinafter provided, as to such dispute and, subject to Clause 67.5, no conciliation, or arbitration may be commenced unless such notice is given. The selection of the conciliation procedure must be approved by both Parties. Failure to agree in writing to the Conciliation Procedures within seven (7) days after the receipt of the notice of the first Party proposing conciliation means that the Arbitration Procedure is selected by the Parties to settle their dispute.

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

#### **Amicable Settlement**

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

#### **Conciliation**

**67.3** If either the Parties fail to amicably settle the dispute, or fifty-six days have passed after the day on which the notice of intention to commence conciliation was given, then such dispute shall be submitted to a Conciliator to be appointed pursuant to the current Dubai Municipality's Rules of Arbitration and Conciliation. The Conciliator has 28 days from the date of submission of the dispute to the Conciliator, or such extended time as may be mutually agreed by the Parties, to resolve the dispute. If Conciliator's decision was accepted by both Parties, such decision shall be final and binding on both Parties.

## **Arbitration**

### **67.4** Any dispute, in respect of which:

- (a) the decision, if any, of the Engineer has not become final and binding pursuant to Clause 67.1, and
- (b) amicable settlement has not been reached within the period stated in Clause 67.2, or
- (c) conciliation has not yielded results within the period stated in Clause 67.3,

shall be finally settled, unless otherwise specified in the Contract, under the current Rules of Arbitration and Conciliation of Dubai Municipality, by an Arbitral Tribunal. The decision of the Arbitral Tribunal shall be binding on both Parties.

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

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

All costs of arbitration shall initially be shared equally between the Parties, but the Arbitral Tribunal shall have the right, when making its award, to allocate such costs between the Parties as it shall think fit.

## **Failure to Comply with the Engineer's Decision**

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

## **Law and Procedures**

**67.6** The law governing the arbitration instituted pursuant to Clause 67.4 shall be the Applicable Law as defined in Clause 1.1. The procedures are governed by this Contract and by Dubai Municipality's Rules of Arbitration and Conciliation, in this order of priority. The language of the arbitration shall be English, unless both Parties agree to Arabic. The place of arbitration shall be Dubai.

## NOTICES

### Notice to Contractor

- 681** All notices and certificates pursuant to the provisions of Clause 1.4, or instructions pursuant to the provisions of Clause 2.5, to be given to the Contractor by the Employer or the Engineer under the terms of the Contract shall be:
- (a) either sent by mail, or delivered in person to the Authorized Focal Point of the Contractor stated in the Appendix to Tender in reference to Clause 1.5(b), or
  - (b) sent by cable, or telex, if specifically stated with a given address in the Appendix to Tender, Clause 1.5(b), or
  - (c) delivered in person to the Contractor's Superintendent at the Site pursuant to the provisions of Clause 15.1.

### Notice to Employer and Engineer

- 682** (A) Any notice to be given to the Employer under the terms of the Contract shall be:
- (a) either sent by mail or delivered in person to the Authorized Focal Point of the Employer stated in the Appendix to Tender in reference to Clause 1.5(b), or
  - (b) sent by cable, or telex, if specifically stated with a given address in the Appendix to Tender, Clause 1.5(b), or
  - (c) delivered in person to the Engineer at the Site.
- (B) Any notice to be given to the Engineer under the terms of the Contract shall be:
- (a) either sent by mail or delivered in person to the address stated in the Appendix to Tender in reference to Clause 1.1(a), or
  - (b) delivered in person to the Engineer at the Site.

### Change of Address

- 683** Either Party may change any of the Focal Point Addresses to another address in Dubai by prior notice to the other Party, with a copy to the Engineer, and the Engineer may do so by prior notice to both Parties.

## DEFAULT OF EMPLOYER

- |                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Default of Employer</b>                      | <b>69.1</b> In the event of the Employer failing to pay to the Contractor the amount due under any certificate of the Engineer within 56 days after the expiration of the time stated in Clause 60.8 within which payment is to be made, subject to any deduction that the Employer is entitled to make under the Contract, the Contractor shall be entitled to terminate his employment under the Contract by giving notice to the Employer, with a copy to the Engineer. Such termination shall take effect 14 days after the giving of the notice.                                                                                                                                                                                                                                                                                                                                                       |
| <b>Removal of Contractor's Equipment</b>        | <b>69.2</b> Upon the expiration of the 14 days' notice referred to in Clause 69.1, the Contractor shall, notwithstanding the provisions of Clause 54.1, with all reasonable dispatch, remove from the Site all Contractor's Equipment brought by him thereon.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Payment on Termination</b>                   | <b>69.3</b> 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.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Contractor's Entitlement to Suspend Work</b> | <b>69.4</b> (A) Without prejudice to the Contractor's entitlement to terminate under Clause 69.1, the Contractor may, if the Employer fails to pay the Contractor the amount due under any certificate of the Engineer within 56 days after the expiration of the time stated in Clause 60.8 within which payment is to be made, subject to any deduction that the Employer is entitled to make under the Contract, after giving 14 days' prior notice to the Employer, with a copy to the Engineer, suspend work or reduce the rate of work.<br><br>(B) If the Contractor suspends work or reduces the rate of work in accordance with the provisions of this Clause 69.4 and thereby suffers delay or incurs costs, the Engineer shall, after due consultation with the Employer and the Contractor, determine:<br><br>(i) any extension of time to which the Contractor is entitled under Clause 44, and |

(ii) the amount of such costs, which shall be added to the Effective Contract Price,

and shall notify the Contractor accordingly, with a copy to the Employer.

**Resumption of Work**

69.5 Where the Contractor suspends work, or reduces the rate of work, after having given notice in accordance with Clause 69.4, and the Employer subsequently pays the amount due, then the Contractor's entitlement under Clause 69.1 shall, if notice of termination has not been given, lapse and the Contractor shall resume normal working as soon as reasonably possible.

## CHANGES IN COST AND LEGISLATION

<b>Increase or Decrease of Cost</b>	<b>70.1</b>	No adjustments to the Effective Contract Price shall be made in respect of rise and fall in the cost of labor and/or materials, or any other matters affecting the cost of the execution of Works.
<b>Subsequent Legislation</b>	<b>70.2</b>	No adjustment shall be made to the Effective Contract Price in respect of any cost changes for the Contractor resulting from changes in the Applicable Law, as defined in Clause 1.1.



# JOINT VENTURE

- |                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Joint Venture</b>                     | <b>71.1</b> If the Contractor is a Joint Venture as defined under Clause 1.1(a) consisting of the Members listed in the Tender, then the constitution of the Joint Venture is subject to the Client's review and approval before the signature of the Agreement. The composition and/or the constitution of the Joint Venture shall not be altered without the prior consent of the Employer during the Contract Period.                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Joint and Several Liability</b>       | <b>71.2</b> If the Contractor is a Joint Venture, then the Members shall be jointly and severally bound to the Employer for the fulfillment of the terms and conditions of the Contract.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Authority of the Member in Charge</b> | <b>71.3</b> If the Contractor is a Joint Venture, then the Members shall appoint a Member in Charge of the Joint Venture, so named in the Agreement, pursuant to the provisions of Clause 1.1(a). The signed Agreement shall constitute a Power of Attorney by the Members to the Member in Charge and his Authorized Representatives pursuant to Clause 1.5. The Member in Charge shall act as the leader of the Joint Venture. Hereby, the Members authorize the Member in Charge to act on their behalf in exercising all the Contractor's rights and obligations toward the Employer under this Contract, including, but without limitation, the receiving of instructions and payments from the Employer. Also, the Members invest authority in the Member in Charge to bind the Joint Venture, and negotiate and sign Amendments of this Contract, with the Employer on their behalf. |

## MISCELLANEOUS

### **Details to be Confidential**

**72.1** The Contractor shall treat the details of the Contract as private and confidential, save insofar as may be necessary for the purposes thereof, and shall not publish or disclose the same or any particulars thereof in any trade or technical paper or elsewhere without the previous consent in writing of the Employer. If any dispute arises between the Engineer and the Contractor as to the necessity of any publication or disclosure for the purpose of the Contract, the same shall be referred to the Employer whose decision shall be final.

### **Bribery**

**73.1 (A)** If the Contractor, or any of his Subcontractors, agents, or Personnel, gives or offers to give to any person any payment, advantage, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any action in relation to the Contract, or any other contract with the Employer, or so showing or forbearing to show favor or disfavor to any person in relation to the Contract, or to any other contract with the Employer, then the Employer may enter upon the Site and the Works, and expel the Contractor and the provisions of Clause 63 hereof shall apply as if such entry and expulsion had been made pursuant to said Clause.

**(B)** When the Contractor is expelled from the Site pursuant to the provisions of Sub-Clause (A) above, in addition to any criminal liability, which may be implemented according to the Applicable Law, the Contractor shall compensate the Employer for any loss, damage, construction delays, legal and other expenses resulting from such expulsion.

### **Compensation for Failing to Provide Traffic Diversions and their Maintenance and Protection of Public**

**74.1 (A)** If the Contractor fails to provide and/or maintain road diversions, protective structures and services according to the Contract and DM's Traffic Control Devices Manual within seven days after having received a notice to that effect from the Engineer, then the Employer shall be entitled to employ and pay other persons immediately to carry out the required work. These costs shall be recovered from the Contractor by the Employer and may be deducted from monies due or become due to the Contractor.

(B) Furthermore, the Contractor shall compensate the Employer for all expenses, losses and discomfort consequent on or incidental to his default at a daily rate determined in the Appendix to Tender for the period from the date the diversion, protective structures, and services were required to the date when the default was rectified. These compensations shall be recovered from the Contractor by the Employer and may be deducted from monies due or to become due to the Contractor.

(C) The payment or deduction of such compensations shall not relieve the Contractor from any of his obligations and liabilities under this Contract.

**Indemnity to  
Employer's  
Officials and  
Engineer**

**75.1** If the Employer has to pay any money with respect to any claims or demands in respect to any indemnity which the Contractor is to provide, the amount so paid and the cost incurred by the Employer shall be charged to and paid by the Contractor, provided always that the Employer shall, if circumstances permit, give to the Contractor reasonable opportunity to examine such claims or demands before payment. In the event of the Contractor disputing the amount of any payment, except payments made in accordance with legal obligations or approval by the Contractor, then the Contractor shall have the right to dispute the matter and refer it to conciliation or arbitration in accordance with the provisions of Clause 67.3 or 67.4.

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