

MINISTRY OF WORKS AND URBAN DEVELOPMENT

**STANDARD CONDITIONS OF CONTRACT
FOR
CONSTRUCTION OF CIVIL WORK PROJECTS**

DECEMBER, 1994

STANDARD CONDITIONS OF CONTRACT FOR CONSTRUCTION OF CIVIL WORK PROJECTS

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DEFINITIONS AND INTERPRETATION

Clause 1 Definitions

(a) "Employer" means the party named in the Tender proposal who has called for Tenders to build or construct erect or deliver the Works and who will employ the Contractor and the legal successors in title to the Employer but not (except with the consent of the Contractor) any assignee of the Employer.

(b) "Contractor" means the person or persons, firm or Company whose tender has been accepted by the Employer and includes the Contractor's personal representatives, successors and permitted assigns.

(c) "Engineer" the Engineer is natural or juridical person designated as Engineer in writing by The Ministry of Works and Urban Development (MoWUD) Addis Ababa, Ethiopia.

(d) "MoWUD" means the Ministry of Works and Urban Development and shall include Departments and Officials of the Ministry P.O.Box 5608 Addis Ababa, Ethiopia.

(e) "Engineer's Representative" means any Resident Engineer or assistant of the Engineer or any clerk of works appointed from time to time by the Employer or the Engineer to perform the duties set Forth in Clause 2 hereof, whose authority the Engineer shall notify in writing to the Contractor.

(f) "Works" means the works to be executed in accordance with the Contract and shall include both permanent and temporary works.

(g) "Contract" means the Conditions of Contract, Specifications, Methods of Measurement, Drawings, priced Bill of Quantities, Schedule of Rates and Prices, the Letter of Acceptance, the Contract Agreement, Addenda and other documents issued thereof.

(h) "Contract Price" means the sum named in the Letter of Acceptance, subject to such additions thereto or deductions there from as may be made under the provisions hereinafter contained.

(i) "Constructional Plant" means all appliances or things of whatsoever nature required in or about the execution or maintenance of the Works but does not include materials or other things intended to form or forming part of the Permanent Works.

(k) "Permanent Works" means the permanent works to be executed and maintained in accordance with the Contract.

(l) "Specification" means the specification referred to in the Tender and any modification thereof or addition thereto as may from time to time be furnished or approved in writing by the Engineer.

(m) "Drawings" means the drawings referred to in the Specification and any modification of such drawings approved in writing by the Engineer and such other drawings as may from time to time be furnished or approved in writing by the Engineer.

(n) "Site" means the land and other places on, under, in or through which the Permanent Works or Temporary Works designed by the Engineer are to be executed and any other lands and places provided by the Employer for working space or any other purpose as may be specifically designated in the Contract as forming part of the Site.

(o) "Approved" means approved in writing, including subsequent written confirmation of previous verbal approval and **"Approval"** means approval in writing including as aforesaid.

2. Singular and plural

Words importing the singular only also include the plural and vice versa where the context requires.

3. Headings or Notes

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

4. Cost

*The word "**Cost**" shall be deemed to include direct or indirect costs, overhead costs whether on or off the Site.*

ENGINEER AND ENGINEER'S REPRESENTATIVE

Clause 2 Duties and Powers of the Engineer

(1) The Engineer shall carry out such duties in issuing decisions, certificates and orders as are specified in the Contract.

The Engineer requires the specific approval of MoWUD for the execution of his duties in connection with:-

- (a) The sufficiency of tender under Clause 12.*
 - (b) Certification of repayments and sums, which have been paid by the Contractor in respect of such fees under Clause 26(3).*
 - (c) Certification of completion of works under Clause 48.*
 - (d) Variations exceeding 10% under Clause 52 (3).*
 - (e) Determination of Provisional sum under Clause 58.*
 - (f) Issuance of Final Certificate under Clause 60(8).*
 - (g) Issuance of Certificate of completion of works and maintenance Certificate under Clauses 48 and 62 (1) respectively.*
 - (h) Dispute settlement under Clause 67.*
- and*
- (i) Time extension under clause 44:-*
 - Making variations under Clause 51;*
 - Valuation of variation under clause 52(1);*
 - Fixing rates under clause 52(2);*

Where

- The cumulative time extension granted under clause 44 exceeding 25 % of the Contract Time.*
- The increase, decrease in quantity, the omission of works and additional works for which the contract rates are applicable exceed 15% of the contract value.*
- The rates contained in the contract are not applicable for additional works;*

- (j) *Termination of contacts under clause 63 and 69.*
- (k) *Increase of decrease of costs under clause 70.*

(2) *The Engineer's Representative shall be responsible to the Engineer and his duties are to watch and supervise the Works and to test and examine any materials to be used or workmanship employed in connection with the Works. He shall have no authority to relieve the Contractor of any of his duties or obligations under the Contract or, except as expressly provided hereunder or elsewhere in the Contract, to order any work involving delay or any extra payment by the Employer, or to make any variation of or in the Works.*

(3) *The Engineer may from time to time in writing delegate to the Engineer's Representative any of the powers and authorities vested in the Engineer and shall furnish to the Contractor and to the Employer a copy of all such written delegations of powers and authorities. Any written instruction or approval given by the Engineer's Representative to the Contractor within the terms of such delegation, but not otherwise, shall bind the Contractor and the Employer as though it had been given by the Engineer. Provided always as follows:-*

- a. *Failure of the Engineer's Representative to disapprove any work or materials shall not prejudice the power of the Engineer thereafter to disapprove such work or materials and to order the pulling down, removal or breaking up thereof.*
- b. *If the contractor shall be dissatisfied by reason of any decision of the Engineer's Representative he shall be entitled to refer the matter to the Engineer, who shall thereupon confirm, reverse or vary such decision.*

ASSIGNMENT AND SUB-LETTING

Clause 3 Assignment

The Contractor shall not assign the Contract or any part thereof, or any benefit or interest therein or there under, otherwise than by a charge in favor of the Contractor's bankers of any Monies due or to become due under this Contract, without the prior written consent of the Employer.

Clause 4 Sub-letting

The Contractor shall not sub-let the whole of the Works. Except where otherwise provided by the Contract, the Contractor shall not sub-let any part of the Works without the prior written consent of the Engineer, which shall not be unreasonably withheld, and such consent, if given, shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults or neglects of any Sub-contractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the

Contractor, his agents, servants or workmen. Provided always that the provision of labor on a piecework basis shall not be deemed to be a sub-letting under this Clause.

CONTRACT DOCUMENTS

Clause 5

(1) Language and Laws

- a. The language of the Contract Documents shall be English.*
- b. The Contract shall in all respects be construed and operate as an Ethiopian Contract and in conformity with the laws of Ethiopia. The Courts of Ethiopia shall have exclusive jurisdiction over any matter arising out of or in connection with this Contract.*

(2) Documents Mutually Explanatory

Except if and to the extent, otherwise provided by the Contract, the Provision of this Standard Conditions of Contract and the Project's Particular Conditions shall prevail over those of any other document forming part of the Contract. Subject to the foregoing, the several documents forming the Contract are to be taken as mutually explanatory of one another, but in case of ambiguities or discrepancies the same shall be explained and adjusted by the Engineer who shall thereupon issue to the contractor instructions thereon. Provided always that if, in the opinion of the Engineer, compliance with any such instructions shall involve the Contractor in any cost, which by reason of any such ambiguity or discrepancy could not reasonable have been foreseen by the Contractor, the Engineer shall certify and the Employer shall pay such additional sum as may be reasonable to cover such costs.

Clause 6

(1) Custody of Drawings

The drawing shall remain in the sole custody of the Engineer, but two copies thereof shall be furnished to the Contractor free of charge. The Contractor shall provide and make at his own expense any further copies required by him. At the completion of the Contract the Contractor shall return to the Engineer all Drawings provided under the Contract.

(2) One copy of Drawings to be kept on Site

One copy of Drawings, furnished to 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.

(3) Disruption of Progress

The Contractor shall give written notice to the Engineer whenever planning or progress of the Works is likely to be delayed or disrupted unless any further drawing or order, including a direction, instruction or approval, is issued by the Engineer within a reasonable time. The notice shall include details of the drawing or order required and of why and by when it is required and of any delay or disruption likely to be suffered if it is late.

(4) Delays and Cost of Delay of Drawings

If, by reason of any failure or inability of the Engineer to issue within a time reasonable in all the circumstances any drawing or order requested by the Contractor in accordance with sub-clause (3) of this Clause, the Contractor suffers delay and/or incurs costs then the Engineer shall take such delay into account in determining any extension of time to which the Contractor is entitled under Clause 44 hereof and the Contractor shall be paid the amount of such cost as shall be reasonable.

Clause 7 Further Drawings and Instructions

The Engineer shall have full power and authority to supply to the Contractor from time to time, during the progress of the Works, such further drawings and instructions as shall be necessary for the purpose of the proper and adequate execution and maintenance of the Works. The Contractor shall carry out and be bound by the same.

GENERAL OBLIGATIONS

Clause 8 Contractors General Responsibilities

(1) The Contractor shall, subject to the provisions of the Contract, and with due care and diligence, execute and maintain the Works and provide all labour, including the supervision thereof, materials, constructional Plant and all other things, whether of a temporary or permanent nature, required in and for such execution and maintenance, so far as the necessity for providing the same is specified in or is reasonable to be inferred from the contract.

(2) The Contractor shall take full responsibility for the adequacy, stability and safety of all site operations and methods of construction, provided that the Contractor shall not be responsible, except as may be expressly provided in the

Contract, for the design or specification of the Permanent Works, or the design or specification of any Temporary Works prepared by the Engineer.

(3) The Contractor shall promptly inform the Employer and Engineer of any error, omission, fault and other defect in the design of or specifications for the works which are discovered when reviewing the Contract documents or in the process of execution of the Works.

Clause 9 Contract Agreement

The Contractor shall when called upon so to do enter into and execute a Contract Agreement, to be prepared and completed at the cost of the Employer, in the form annexed with such modification as may be necessary.

Clause 10 Performance Bond

The contractor undertakes to enter into a Bond with 30 days after the receipt of the letter of Acceptance for the due and proper performance of the contract and observance of all provisions, covenants, conditions and stipulations there in the sum of 10% of the contract price. The Bond shall be in the form as may be agreed between the employer and the contractor. The contractor shall enter in the space provided in the tender proposal the name of the proposed surety.

The institution providing such Bond shall be domiciled and licensed to do business in Ethiopia and subject to the approval of the Employer.

The cost of complying with the requirements of this clause shall be borne by the contractor.

The bond shall be reduced to 5% of the contract price at the completion of works and shall remain valid until the expiration of the period of maintenance as defined in clause 49 (1) here or of the last of such period if there be more than one. Notwithstanding anything here in above contained, the Bond shall not be released until the Employer has given a certificate in writing that all outstanding matters in dispute between the Employer and the Contractor have been settled.

Clause 11 Site Inspection

The Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied himself before submitting his Tender as to all matters necessary for the due performance of the contract including the form and nature of the site, geological, hydrological, subsurface and climatic conditions, details, location and levels of all existing and projected utility and services above and below ground, the nature and carrying capacity of existing, and projected roads, the extent and nature of the work, materials,

labour and all things necessary for the completion of the works, the access to and egress from the site and the accommodation he may require, and in general shall be deemed to have obtained all necessary information as to the risks, contingencies and all other circumstances which may influence or affect his Tender.

The Employer shall when and wherever possible give information on the above for the initial guidance of the Contractor.

Clause 12 Sufficiency of Tender

The Contractor shall be deemed to have satisfied himself before tendering as to the correctness and sufficiency of his Tender for the Works and of the rates and prices stated in the priced Bill of Quantities and the Schedule of Rates and Prices, if any, which Tender rates and prices shall, except in so far as it is otherwise provided in the Contract, cover all his obligations under the Contract and all matters and things necessary for the proper execution and maintenance of the Works. If, however, during the execution of the works the Contractor shall encounter physical conditions, other than climatic conditions on the Site, or artificial obstructions, which conditions or obstructions could, in his opinion, not have been reasonably foreseen by an experienced Contractor, the Contractor shall forthwith give written notice thereof to the Engineer's Representative and if, in the opinion of the Engineer, such conditions or artificial obstructions could not have been reasonably foreseen by an experienced Contractor, then the Engineer shall certify and the Employer shall pay the additional cost to which the Contractor shall have been put by reason of such conditions, including the proper and reasonable cost:-

- a. of complying with any instruction which the Engineer may issue to the Contractor in connection therewith, and*
- b. of any proper and reasonable measures approved by the Engineer which the Contractor may take in the absence of specific instructions from the Engineer, as a result of such conditions or obstructions being encountered.*

Clause 13 Work to be to the Satisfaction of the Engineer

Save in so far as it is legally or physically impossible, the Contractor shall execute and maintain the Works in strict accordance with the Contract to the satisfaction of the Engineer and shall comply with and adhere strictly to the Engineer's instructions and directions on any matter whether mentioned in the contract or not, touching or concerning the Works. The Contractor shall take instructions and directions only from the Engineer or, subject to the limitations referred to in Clause 2 hereof, from the Engineer's Representative.

Clause 14 Programme to be furnished

(1) *Within the time stated in the Project Particular Conditions of Contract, the contractor shall, after the acceptance of his Tender, submit to the Engineer for his approval a programme showing the order of procedure in which he proposes to carry out the Works. The Contractor shall whenever required by the Engineer or Engineer's Representative, also provide in writing for his information a general description of the arrangements and methods which the contractor proposes to adopt for the execution of the Works.*

(2) *If at any time it should appear to the Engineer that the actual progress of the works does not conform to the approved programme referred to in sub-clause (1) of this Clause, the contractor shall produce, at the request of the Engineer, a revised programme showing the modifications to the approved programme necessary to ensure completion of the Works within the time for completion as defined in Clause 43 hereof.*

(3) *The submission to and approval by the Engineer or Engineer's Representative of such programmes or the furnishing of such particulars shall not relieve the Contractor of any of his duties or responsibilities under the Contract.*

(4) *The Contractor shall submit to the Engineer two copies of the programme of Works referred to in sub-clause 14(1) above within 30 days after being notified of the acceptance of his bid. The programme shall be revised at three monthly intervals and should include a chart of the principal quantities of work forecast for monthly execution and a schedule of payments expected to be made to the contractor by the Employer.*

Clause 15 Contractor's Superintendence

The Contractor shall give or provide all necessary superintendent 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. The Contractor, or a competent and authorized agent or representative approval of in writing by the Engineer, which approval may at any time be withdrawn, is to be constantly on the Works and shall give his whole time to the superintendent of the same. If such approval shall be withdrawn by the Engineer, the contractor shall, as soon as is practicable, having regard to the requirement of replacing him as hereinafter mentioned, after receiving written notice of such withdrawal, remove the agent from the Works and shall not thereafter employ him again on the works in any capacity and shall replace him by another agent approved by the Engineer. Such authorized agent or representative shall receive, on behalf of the contractor, directions and instructions from the Engineer or, subject to the limitations of Clause 2 hereof, the Engineer's Representative.

The contractor's authorized agent or representative on the site shall be a Professional Engineer and fluent in the English Language, and a sufficient number of the Technical Personnel of the contractor's Site Staff, as the

Engineer shall consider necessary for the satisfactory execution of the Works, shall be capable of reading and interpreting drawings.

Clause 16 Contractor's Employees

(1) The Contractor shall provide and employ on the site in connection with the execution and maintenance of the works.

- a. only such technical assistants as are skilled and experienced in their respective callings and such sub-agents, foremen and leading hands as are competent to give proper supervision to the work they are required to supervise, and*
- b. such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution and maintenance of the works.*

(2) The Engineer shall be at liberty to object to and require the contractor to remove forthwith from the Works any person employed by the Contractor in or about the execution or maintenance of the Works who, in the opinion of the Engineer, misconduct himself, or is incompetent or negligent in the proper performance of his duties, or whose employment is otherwise considered by the Engineer to be undesirable and such person shall not be again employed upon the Works without the written permission of the Engineer. Any person so removed from the Works shall be replaced as soon as possible by a competent substitute approved by the Engineer.

Clause 17 Setting-out

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

Clause 18 Boreholes and Exploratory Excavation

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

Clause 19 Watching and Lighting

The Contractor shall in connection with the Works provide and maintain at his own cost all lights, guards, fencing and watching when and where necessary or required by the Engineer or the Engineer's Representative, or by any duly constituted authority, for the protection of the Works, or for the safety and convenience of the public or others.

Clause 20

(1) Care of Works

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

(2) Excepted Risks

The "excepted risks" are war, hostilities (whether war be declared or not), invasion, act of foreign enemies, rebellion, revolution, insurrection or military or usurped power, civil war, or unless solely restricted to employees of the contractor or of his sub-contractors and arising from the conduct of the works, riot, commotion or disorder, or use or occupation by the Employer of any part of the permanent works, or a cause solely due to the Engineer's design of the works, or ionizing radiations or contamination by radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive, nuclear assembly or nuclear component thereof, pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds, or any such operation of the forces of nature as an experienced contractor could not foresee, or reasonably make provisions for or insure against all of which are herein collectively referred to as "the excepted risks."

Clause 21 Insurance of Works etc.

Without limiting his obligations and responsibilities under Clause 20 hereof, the Contractor shall insure in the joint names of the Employer and the Contractor against all loss or damage from whatever cause arising, other than the excepted risks, for which he is responsible under the terms of the Contract and in such manner that the Employer and Contractor are covered for the period stipulated in clause 20(1) hereof and are also covered during the Period of Maintenance for loss or damage arising from a cause, occurring prior to the Commencement of the Period of Maintenance, and for any 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 hereof:-

- a. the Works for the time being executed to the estimated current contract value thereof, or such additional sum as may be specified in project particular condition together with the materials for incorporation in the Works at their placement value.*
- b. the Constructional Plant and other things brought on to the Site by the Contractor to the replacement value of such Constructional Plant and other things.*

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

For applicability in respect of this insurance policy, refer to instruction pertinent to the particular project on Tender.

Clause 22 Damage to Persons and Property

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

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

(2) Indemnity by Employer

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

Clause 23

(1) Third party Insurance

Before commencing the execution of the Works the Contractor, but with limiting his obligations and responsibilities under Clause 22 hereof, shall insure against his liability for any material physical damage, loss or injury which may occur to any property, including that of the Employer, or to any person, including any employee of the Employer, by or arising out of the execution of the Works or

in the carrying out of the Contract, otherwise than due to the matters referred to in the proviso to Clause 22(1) hereof.

(2) Minimum Amount of Third Party Insurance

Such insurance shall be effected with an insurer domiciled and licensed to carry out business in Ethiopia and in terms approved by the Employer, which approval shall not be reasonably withheld for at least 10% of the contract value but not exceeding Birr 200,000 per occurrence, with the number of occurrences unlimited. The Contractor shall, whenever required produce to the Engineer or the Engineer's Representative the Policy or Policies of insurance and the receipts for payment of the current premiums.

(3) Provisions to Indemnify Employer

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

Clause 24

(1) Accident or Injury to Workmen

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

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

The Contractor shall insure against such liability with an insurer domiciled and licensed to carry out business in Ethiopia approved by the Employer which approval shall not be unreasonably withheld, and shall continue such insurance during the whole of the time that any

Persons are employed by him on the works and shall, when required, produce to the Engineer or the Engineer's Representative such policy of insurance and the receipts for payment of the current premium. Provided always that, in respect of any persons employed by any Sub-contractor, the Contractor's obligation to insure as aforesaid under this sub-clause shall be satisfied if the Sub-contractor shall have insured against the liability in respect of such person

in such manner that the Employer is indemnified under the policy, but the Contractor shall require such Sub-contractor to produce to the Engineer or the Engineer's Representative, when required, such policy of insurance and the receipt for the payment of the current premium.

Clause 25 Remedy on Contractor's Failure to Insure

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

The Contractor shall cause the insurer to transmit to the employer the original or certified copies of such insurance policy within 14 days of being awarded the contract referred to in Clauses 23 and 24 hereof.

The Policies of Insurance provided shall require the insurer to furnish the Employer with written notice 30 (thirty) days prior to the effective date of any materials change, cancellation, renewal, change in name of insured, policy, limit, deductible or loss provision.

Clause 26

(1) Giving of Notices and Payment of Fees

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

(2) Compliance with Statutes, Regulations, etc.

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

(3) *The Employer will repay or allow to the Contractor all such sums as the Engineer shall approve and certify to have been properly payable and paid by the Contractor in respect of such fees.*

Clause 27 Fossils, etc.

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

Clause 28 Patent Rights and Royalties

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

Clause 29 Interference with Traffic and Adjoining Properties

All operations necessary for the execution of the Works shall, so far as compliance with the requirements of the Contract permits, be carried on so as not to interfere unnecessarily or improperly with the convenience of the public, or the access to, use and occupation of public or private roads and footpaths to or of properties whether in the possession of the Employer or of any other person.

The Contractor shall save harmless and indemnify the Employer in respect of all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of, or in relation to, any such matters in so far as the Contractor is responsible therefore.

Clause 30

(1) Extraordinary Traffic

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

(2) Special Loads

Should it found necessary for the Contractor to move one or more loads of Constructional Plant, machinery or pre-constructed units or parts of units of work over part of a highway or bridge, the moving whereof is likely to damage any highway or bridge unless special protection or strengthening is carried out, then the Contractor shall before moving the load on to such highway or bridge give notice to the Engineer or Engineer's Representative of the weight and other particulars of the load to be moved and his proposals for protecting or strengthening the said highway or bridge. Unless within fourteen days of the receipt of such notice the Engineer shall by counter-notice direct that such protection or strengthening is unnecessary, then the Contractor will carry out such proposals or any modification thereof that the Engineer shall require and, unless there is an item or are items in the Bill of Quantities for pricing by the Contractor of the necessary works for the protection or strengthening aforesaid, the costs thereof shall be paid by the Employer to the Contractor.

(3) Settlement of Extraordinary Traffic Claims

If during the execution of the works or at any time thereafter the Contractor shall receive any claim arising out of the execution of the Works in respect of damage or injury to highways or bridges he shall immediately report the same to the Engineer and thereafter the Employer shall negotiate the settlement of and pay all sums due in respect of such claim and shall indemnify the Contractor in respect thereof and in respect of all claims, proceedings, damages, costs, charges and expenses in relation thereto. Provided always that if and so far as any such claims or part thereof shall in the opinion of the Engineer be due to any failure on the part of the Contractor to observe and perform his obligations under sub-clauses (1) and (2) of this Clause, then the amount certified by the Engineer to be due to such failure shall be paid by the Contractor to the Employer

(4) Waterborne Traffic

Where the nature of the works is such as to require the use by the Contractor of waterborne transport the foregoing provisions of this Clause shall be construed as though "highway" included a lock, dock, sea wall or other

structure related to a waterway and "vehicle" included craft, and shall have effect accordingly.

Clause 31 Opportunities for Other Contractors

The Contractor shall, in accordance with the requirements of the Engineer, afford all reasonable opportunities for carrying out their work to any other contractors employed by the employer and their workmen and to the workmen of the employer and of any other duly constituted authorities who may be employed in the execution on or near the site of any work not included in the contract or of any contract which the employer may enter into in connection with or ancillary to the works. If, however, the Contractor shall, on the written request of the Engineer or the Engineer's Representative, make available to any such other Contractor, or to the employer or any such authority, and roads or ways for the maintenance of which the contractor is responsible, or permit the use by any such of the contractor's scaffolding or other plant on the Site, or provide any other service of whatsoever nature for any such, the employer shall pay to the Contractor in respect of such use or service such sum or sums as shall, in the opinion of the Engineer, be reasonable.

Clause 32 Contractor to Keep Site Clear

During the progress of the works the Contractor shall keep the site reasonably free from all unnecessary obstruction and shall store or dispose of any Constructional Plant and surplus materials and clear away and remove from the Site any wreckage, rubbish or Temporary Works no longer required.

Clause 33 Clearance of Site on Completion

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

LABOUR

Clause 34

(1) Engagement of Labour

The contractor shall make his own arrangements for the engagement of all labour, local or otherwise, and, save in so far as the contract otherwise provides, for the transport, housing, feeding and payment thereof.

(2) Supply of Water

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

(3) Alcoholic Liquor or Drugs

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

(4) Arms and Ammunition

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

(5) Festivals and Religious Customs

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

(6) Epidemics

In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by the Government, or the local medical or sanitary authorities for the purpose of dealing with and overcoming the same.

(7) Disorderly Conduct

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst his employees and for the preservation of peace and protection of persons and property in the neighbourhood of the Works against the same.

(8) Observance by Sub-Contractors

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

(9) First Aid

The Contractor shall at his own cost provide, equip and maintain throughout the construction period and so far as may be necessary during the period of maintenance, in a position on the site approved by the Engineer, suitable and sufficient first-aid facilities for the general use of his and his sub-contractor's staff and work people.

The Employer shall be responsible for the ascertainment of the presence of adequate preventive medical care for the Contractor's and Employer's staff and work people.

(10) Costs, etc.

All costs, charges and expenses whatsoever, that may be incurred by the Contractor, and all risks involved in giving effect to the provisions of the relevant sub-clauses of this clause, shall be included in and covered by the Contract Price.

Clause 35 Returns of Labour, etc.

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

MATERIALS AND WORKMANSHIP

Clause 36

(1) Quality of Materials and Workmanship and Tests

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

(2) Cost of Samples

All samples shall be supplied by the Contractor at his own cost if the supply thereof is clearly intended by or provided for in the Contract, but if not, then at the cost of the Employer.

(3) Cost of Tests

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

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

If any test is ordered by the Engineer which is either

*(a) not so intended by or provided for, or
(b) (in the cases above mentioned) is not so particularized, or
(c) though so intended or provided for is ordered by the Engineer to be carried out by an independent person at any place other than the Site recognized testing institutes or the place of manufacture or fabrication of the materials tested, then the cost of such test shall be borne by the Contractor, if the test shows the workmanship or materials not to be in accordance with the provisions of the Contract or the Engineer's instructions, but otherwise by the Employer.*

Clause 37 Inspection of Operations

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

Clause 38

(1) Examination of Work before Covering up

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

(2) Uncovering and Making Openings

The Contractor shall uncover any part or parts of the Works or make openings in or through the same as the Engineer may from time to time direct and shall reinstate and make good such part or parts to the satisfaction of the Engineer. If any such part or parts have been covered up or put out of view after compliance with the requirement of sub-clause (1) of this Clause and are found to be executed in accordance with the Contract, the expenses of uncovering, makings, openings in or through, reinstating and making good the

same shall be borne by the Employer, but in any other case all costs shall be borne by the Contractor.

Clause 39

(1) Removal of Improper Work and Materials

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

(a) the removal from the Site, within such time or times as may be specified in the order, of any materials which, in the opinion of the Engineer, are not in accordance with the Contract.

(b) the substitution of proper and suitable materials and the removal and proper re-execution, notwithstanding any previous test thereof or interim payment therefrom of any work which in respect of materials or workmanship is not, in the opinion of the Engineer, in accordance with the Contract.

(2) Default of Contractor in Compliance

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

Clause 40

(1) Suspension of Work

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

(a) otherwise provided for in the Contract, or

(b) necessary by reason of some default on the part of the Contractor, or

(c) necessary by reason of climatic conditions on the Site, or

(d) *necessary for the proper execution of the Works or for the safety of the Works or any part thereof in so far as such necessity does not arise from any act or default by the Engineer or the Employer or from any of the excepted risks defined in Clause 20 hereof.*

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

(2) Suspension Lasting more than 90 days

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

COMMENCEMENT TIME AND DELAYS

Clause 41 Commencement of Works

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

Clause 42

(1) Possession of Site

Save in so far as the Contract may prescribe, the extent of portions of the Site of which the Contractor is to be given possession from time to time and the order in which such portions shall be made available to him and, subject to any requirement in the Contract as to the order in which the Works shall be executed, the Employer will, with the Engineer's written order to commence the Works, give to the Contractor possession of so much of the Site as may be

required to enable the Contractor to commence and proceed with the execution of the Works in accordance with the programme referred to in Clause 14 hereof, if any, and otherwise in accordance with such reasonable proposals of the Contractor as he shall, by written notice to the Engineer, make and will, from time to time as the Works proceed, give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to proceed with the execution of the Works with due dispatch in accordance with the said programme or proposals, as the case may be. If the Contractor suffers delay or incurs cost from failure on the part of the Employer to give possession in accordance with the terms of this Clause, the Engineer shall grant an extension of time for the completion of the Works and certify such sum as, in his opinion, shall be fair to cover the cost incurred, which sum shall be paid by the Employer.

(2) Wayleave, etc.

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

Clause 43 Time for Completion

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

Clause 44 Extension of Time for Completion

Should the amount of extra or additional work of any kind or any cause of delay referred to in these Conditions, or exceptional adverse climatic conditions, or other special circumstances of any kind whatsoever which may occur, other than through a default of the Contractor, be such as fairly to entitle the Contractor to an extension of time for the completion of the Works, the Engineer, after due consultation with the Employer, determine the amount of such extension and shall notify the Employer and the Contractor accordingly. Provided that the Engineer is not bound to take into account any extra or additional work or other special circumstances unless the Contractor has within twenty-eight days after such work has been commenced, or such circumstances have arisen, or as soon thereafter as is practicable, submitted to the Engineer's Representative full and 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.

Clause 45 No Night or Sunday Work

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

Clause 46 Rate of Progress

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

Clause 47

(1) Liquidated Damages for Delay

If the Contractor shall fail to achieve completion of the Works within the time prescribed by Clause 43 hereof, then the Contractor shall pay to the Employer 1/1000 of the contract price per day as liquidated damages for such default and not as a penalty for every day or part of a day which shall elapse between the time prescribed by Clause 43 hereof and the date of certified completion of the works. Depending on the nature of the works, Liquidated damage higher than the minimum limit provided herein above may be fixed in the contract. The Employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies in his hands, due or which may become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from any other of his obligations and liabilities under the Contract.

(2) Reduction of Liquidated Damages

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

value of the part or section so certified bears to the value of the whole of the Works.

(3) Bonus for Completion

If it is desired to provide in the Contract for the payment of a bonus in relation to completion of the Works or of any part or section thereof this shall be set out in the projects Particular Conditions of Contract.

(4) Limits of Liquidated Damages

The maximum limit of the liquidated damage shall be 20% of the Contract Price.

Clause 48

(1) Certification of Completion of works

When the whole of the Works have been substantially completed and have satisfactorily passed any final test that may be prescribed by the Contract, the Contractor may give a notice to that effect to the Engineer or to the Engineer's Representative accompanied by an undertaking to finish any outstanding work during the Period of Maintenance.

Such notice and undertaking shall be in writing and shall be deemed to be a request by the Contractor for the Engineer to issue a Certificate of Completion in respect of the works. The Engineer shall, within twenty-one days of the date of delivery of such notice either issue to the Contractor, with a copy to the Employer, a Certificate of Completion stating the date on which, in his opinion, the Works were substantially completed in accordance with the Contract or give instructions in writing to the Contractor specifying all the work which, in the Engineer's opinion, requires to be done by the Contractor before the issue of such Certificate. 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 specified therein. The Contractor shall be entitled to receive such Certificate of Completion within twenty-one days of completion to the satisfaction of the Engineer of the Works so specified and making good any defects so notified.

(2) Certification of completion by Stages

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

(a) any section of the Permanent Works in respect of which separate time for completion is provided in the Contract and

(b) any substantial part of the Permanent Works which has been both completed to the satisfaction of the Engineer and occupied or used by the Employer.

(3) If any part of the Permanent Works shall have been substantially completed and shall have satisfactorily passed any final test that may be prescribed by the Contract, the Engineer may issue a Certificate of Completion in respect of that part of the Permanent Works before completion of the whole of the Works and, upon the issue of such Certificate, the Contractor shall be deemed to have undertaken to complete any outstanding work in that part of the Works during the Period of Maintenance.

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

MAINTENANCE AND DEFECTS

Clause 49

(1) Definition of Period of Maintenance

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

(2) Execution of Work of Repair, etc.

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

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

All such work shall be carried out by the Contractor at his own expense if the necessity thereof shall, in the opinion of the Engineer, be due to the use of materials or workmanship not in accordance with the Contract, or to neglect or

failure on the part of the Contractor to comply with any obligation, expressed or implied, on the Contractor's part under the Contract. If, in the opinion of the Engineer, such necessity shall be due to any other cause, the value of such work shall be ascertained and paid for as if it were additional work.

(4) Remedy on Contractor's Failure to Carry Out Work Required

If the Contractor shall fail to do any such work as aforesaid required by the Engineer, the Employer shall be entitled to employ and pay other persons to carry out the same and if such work is work which, in the opinion of the engineer, the Contractor was liable to do at his own expense under the Contract, then all expenses consequent therein or incidental thereto shall be recoverable from the Contractor by the Employer, or may be deducted by the Employer from any monies due or which may become due to the Contractor.

Clause 50 Contractor to Search

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

ALTERATIONS, ADDITIONS AND OMISSIONS

Clause 51

(1) Variations

The Engineer shall make any variation of the form, quality or quantity of the Works or any part thereof that may, in his opinion, be necessary and for that purpose, or if for any other reason it shall, in his opinion be desirable, he shall have power to order the Contractor to do and the Contractor shall do any of the following:-

- (a) increase or decrease the quantity of any work included in the Contract,*
- (b) omit any such work,*
- (c) change the character or quality or kind of any such work,*
- (d) change the levels, lines, position and dimensions of any part of the Works, and*

(e) execute additional work of any kind necessary for completion of the Works and no such variation shall in any way vitiate or invalidate the Contract, but the value, if any, of all such variations shall be taken into account in ascertaining the amount of the Contract Price.

(2) Orders for Variations to be in Writing

No such variations shall be made by the Contractor without an order in writing of the Engineer. Provided that no order in writing shall be required for increase or decrease in the quantity of any work where such increase or decrease is not the result of an order given under this Clause, but is the result of the quantities exceeding or being less than those stated in the bill of quantities. Provided also that if for any reason the Engineer shall consider it desirable to give any such order verbally, the Contractor shall comply with such order and any confirmation in writing of such verbal order given by the Engineer, whether before or after the carrying out of the order, shall be deemed to be an order in writing within the meaning of this Clause. Provided further that if the Contractor shall within seven days confirm in writing to the Engineer and such confirmation shall not be contradicted in writing within fourteen days by the Engineer, it shall be deemed to be an order in writing by the Engineer.

Clause 52

(1) Valuation of Variations

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

(2) Power of Engineer to Fix Rates

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

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

(a) by the Contractor to the 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) the Contractor shall give the varied rate to the Engineer within not more than 30 days from the date of instruction by the Engineer of the variation. The Engineer shall give his comments on the varied rate within 15 days of receipt from the Contractor and forward the document for approval by MoWUD.

(3) Variations Exceeding 10%

If, on certified completion of the whole of the Works it shall be found that a reduction or increase greater than 10% (ten percent) other sum named in the Contract excluding all fixed sums, provisional sums and allowances for day works, if any, results from:-

(a) the aggregate effect of all Variation Orders, and

(b) all adjustments upon remeasurement of the estimated quantities set out in the Bill of Quantities, excluding all provisional sums, and day works but not from any other cause, the amount of the Contract Price shall be adjusted by such sum as may be agreed between the Contractor and the Engineer or, failing agreement, fixed by the Engineer having regard to all material and relevant factors, including the Contractor's Site and general overhead costs of the Contract.

(4) Day work

The Engineer may, if, in his opinion it is necessary or desirable, order in writing that any additional or substituted work shall be executed on a day work basis. The Contractor shall then be paid for such work under the conditions set out in the day work Schedule included in the Contract and at the rates and prices affixed thereto by him in his tender.

The Contractor shall furnish to the Engineer such receipts of 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.

In respect of all work executed on a day work basis, the Contractor shall, during the continuance of such work, deliver each day to the Engineer's Representative an exact list in duplicate of the names, occupation and time of all workmen employed on such work and a statement, also in duplicate, showing the description and quantity of all materials and plant used therein or therefore

(other than plant which is included in the percentage addition in accordance with the Schedule herein before referred to). One copy of each list and statement will, if correct, or when agreed, be signed by the Engineer's Representative and returned to the Contractor.

At the end of each month the Contractor shall deliver to the Engineer's Representative a priced statement of the labour, material and plant, except as aforesaid, used and the Contractor shall not be entitled to any payment unless such lists and statements have been fully and punctually rendered.

Provided always that if the Engineer shall consider that for any reason the sending of such lists or statements by the Contractor, in accordance with the foregoing provision, was impracticable he shall nevertheless be entitled to authorize payment for such work, either as day work, on being satisfied as to the time employed and plant and materials used on such work, or at such value therefore as shall, in his opinion, be fair and reasonable.

(5) Claims

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

No final or interim claim for payment for any such work or expense will be considered which has not been included in such particulars. Provided always that the Engineer shall be entitled to authorize payment to be made for any such work or expense, notwithstanding the Contractor's failure to comply with this condition, if the Contractor has, at the earliest practicable opportunity, notified the Engineer in writing that he intends to make a claim for such work.

PLANT, TEMPORARY WORKS AND MATERIALS

Clause 53

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

All Constructional Plant, Temporary Works and materials provided by the Contractor shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the Works and the Contractor shall not remove the same or any part thereof, except for the purpose of moving it from one part of the Site to another, without the consent, in writing, of the Engineer, which shall not be unreasonably withheld.

(2) Removal of Plant, etc.

Upon completion of the Works the Contractor shall remove from the Site all the said Constructional Plant and Temporary Works remaining thereon and any unused materials provided by the Contractor.

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

The Employer shall not at any time be liable for the loss of or damage to any of the said Constructional Plant, Temporary Works or materials save as mentioned in Clauses 20 and 64 hereof.

(4) Import and Export Licenses

The Employer shall obtain his own information with regard to the granting of import and export licenses for materials and plant for the works and shall be deemed to have satisfied himself with regard to all his liabilities under the laws and regulations governing the granting of licenses. The Employer shall bear the full responsibility of obtaining the foreign exchange required for the works.

The Contractor shall bear the expense of obtaining all import and export licenses for materials, equipment and other things required for the execution of the Works. The Contractor shall ensure that requests for import and export licenses are submitted in sufficient time so that all formalities are cleared before such licenses are required.

(5) Temporary Works

Within a reasonable time (and in any case not less than 10 days) before he intends to commence construction of the Temporary Works the Contractor shall submit full particulars, including drawings, of the same for the approval of the Engineer. The submission to and approval by the Engineer of any such particulars shall not relieve the Contractor of his responsibilities for the sufficiency of the Temporary Works or of his other duties and responsibilities under the Contract. The Contractor shall make safe and reinstate all areas affected by Temporary Works.

(6) Definitions

For the purpose of sub-clauses (7) and (8) the following expressions shall have the meanings hereby assigned to them:-

(a) the expression "equipment" shall mean any Constructional Plant, Equipment, Temporary Works and materials for Temporary Works, and includes vehicles engaged in transporting these and supervisory staff and materials for the Permanent Works on the Site, but shall exclude any vehicles engaged in transporting any labour, Constructional Plant, Equipment, Temporary Works and materials for the Permanent Works to or from the Site;

(b) the expression "agreement for hire" shall be deemed not to include an agreement for hire purchase.

(7) Conditions of Hire Equipment

With a view to securing in the event of a forfeiture under Clause 63 the continued availability for the purpose of executing the Works of any hired Equipment, the Contractor shall not bring on to the Site any hired Equipment unless there is an agreement for the hire thereof which contains a provision that the owner thereof will on request in writing made by the Employer within Seven days after the date on which any forfeiture has become effective, and on the Employer undertaking to pay all hire charges in respect thereof from such date hire such 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 completing and maintaining the Works under the terms of the said Clause 63.

(8) Costs

In the event of the Employer entering into any agreement for the hire of Equipment pursuant to sub-clause (7) of this Clause, all sums properly paid by the Employer under the provisions of any such agreement and all expenses 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 completing and maintaining the Works.

Clause 54 Approval of Materials, etc., not Implied

The operation of Clause 53 hereof 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

Clause 55 Quantities

The quantities set out in the Bill of Quantities are the estimated quantities of the work, but they are not to be taken as the actual and correct quantities of the Works to be executed by the Contractor in fulfillment of his obligations under the Contract.

Clause 56 Works to be Measured

The Engineer shall, except as otherwise stated, ascertain and determine by measurement the value in terms of the Contract of work done in

accordance with the Contract. He shall, when he requires any part or parts of the Works to be measured, give notice to the Contractor's authorized agent or representative, who shall forthwith attend or send a qualified agent to assist the Engineer or the Engineer's Representative in making such measurement, and shall furnish all particulars required by either of them. Should the Contractor not attend, or neglect or omit to send such agent, then the measurement made by the Engineer or approved by him shall be taken to be the correct measurement of the Work. For the purpose of measuring such permanent work as is to be measured by records and drawings, the Engineer's Representative shall prepare records and drawings month by month of such work and the Contractor, as and when called upon to do so in writing, shall, within fourteen days, attend to examine and agree such records and drawings with the Engineer's Representative and shall sign the same when so agree. If the Contractor does not so attend to examine and agree such records and drawings, they shall be taken to be correct. If, after examination of such records and drawings, the Contractor does not agree the same or does not sign the same as agreed, they shall nevertheless be taken to be correct, unless the Contractor shall, within fourteen days of such examination, lodge with the Engineer's Representative, for decision by the Engineer, notice in writing of the respects in which such records and drawings are claimed by him to be incorrect.

Clause 57 Method of Measurement

The Works shall be measured in accordance with the method of measurement stated in the Bill of Quantities.

PROVISIONAL SUMS

Clause 58

(1) Definition of "Provisional Sums"

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

(2) Use of Provisional Sums

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

(a) *work to be executed, including goods, materials or services to be supplied by the Contractor. The Contract Price shall include the value of such work executed or such goods, materials or services supplied determined in accordance with Clause 52 hereof.*

(b) *work to be executed or goods, materials or services to be supplied by a nominated Sub-contractor as hereinafter defined. The sum to be paid to the Contractor therefore shall be determined and paid in accordance with Clause 59(4) hereof.*

(c) *goods and materials to be purchased by the Contractor. The sum to be paid to the Contractor therefore shall be determined and paid in accordance with Clause 59(4) hereof.*

(3) Production of Vouchers

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

NOMINATED SUB-CONTRACTORS

Clause 59

(1) Definition of "Nominated Sub-contractor"

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

(2) Nominated Sub-contractors, Objections to Nomination

The Contractor shall not be required by the Employer or the Engineer or be deemed to be under any obligation to employ any nominated Sub-contractor against whom the Contractor may raise reasonable objection, or who shall decline to enter into a Sub-contract with the Contractor containing the following Sub-contract provisions and such provisions shall become part of this Contract-

(a) *that in respect of the work, goods, materials or services the subject of the Sub-contract, the nominated Sub-contractor will undertake towards the Employer by the terms of the Contract and will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection therewith, or arising out of or in connection with any failure to perform such obligations or to fulfill such liabilities, and*

(b) that the nominated Sub-contractor will save harmless and indemnify the Contractor from and against any negligence by the nominated Sub-contractor, his agents, workmen and servants and from and against any misuse by him or them of any Constructional Plant or Temporary Works provided by the Contractor for the purposes of the Contract and from all claims as aforesaid.

(c) that the Sub-contract Works shall be completed within the period or (where they are to be completed in sections) periods therein specified. The Contractor shall not without the written consent of the Engineer grant any extension of time for completion of the Sub-contract Works or any section thereof, and the Contractor shall inform the Engineer of any representations made by the Nominated Sub-contractor as to the cause of any delay in the progress or completion of the Sub-contract Works or any section thereof.

(d) that if the Nominated Sub-contractor shall fail to complete the Sub-contract Works or (where the Sub-contract Works are to be completed in sections) any section thereof, within the period therein specified or within any extended period granted by the Contractor with the written consent of the Engineer, and provided that the Engineer, certifies in writing to the Contractor with a duplicate copy thereof to the Nominated Sub-contractor that the same ought reasonably to have been completed, the Nominated Sub-contractor or shall pay or allow to the Contractor a sum equal to any loss or damage suffered or incurred by the Contractor and caused by the failure of the Nominated Sub-contractor as aforesaid.

(e) that payments in respect of any work, materials or goods comprised in the Sub-contract shall be made within seven days after the receipt by the Contractor of Payment under Clause 60 of the Main Conditions of Contract.

(f) that the Contractor shall retain from sums directed by the Engineer to be paid to the Nominated Sub-contractor the same percentage (if any) as may be specified in the Main Contract and if and when any sums or any part thereof are released to the Nominated Sub-contractor they should be paid in full within seven days of their being paid to the Main Contractor.

(g) that the Engineer and his Representative shall have a right of access to the places of the Nominated Sub-contractor in accordance with the requirements of Clause 37 of these Conditions.

(h) that the employment of the Nominated Sub-contractor under the Sub-contract shall be determined immediately upon the determination (for any reason) of the Contractor's employment under this Contract unless at the time of such determination the Employer might require the Contractor to assign to him the benefit of the Sub-contract.

(i) that in the event of the last paragraph of sub-clause 59(5) of these Conditions being operated by the Engineer, the Sub-contractor shall

indemnify the Contractor against any claim which the Employer might make in respect of latent defects in the Sub-contract Works.

(3) Design Requirements to be Expressly Stated

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

4) Payments to Nominated Sub-contractors

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

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

(b) the sum, if any, entered in the Bill of Quantities for labour supplied by the Contractor in connection therewith, or if ordered by the Engineer pursuant to Clause 58(2) (b) hereof, as may be determined in accordance with Clause 52 hereof;

(c) in respect of all other charges and profit, a sum being a percentage rate of the actual price paid or due to be paid calculated, where provision has been made in the Bill of Quantities for a rate to be set against the relevant Provisional Sum, at the rate inserted by the Contractor against that item or, where no such provision has been made, at the rate inserted by the Contractor in the Appendix to the Tender and repeated where provision for such is made in a special item provided in the Bill of Quantities for such purpose.

(5) Certification of Payments to Nominated Sub-contractors

The Engineer shall in any certificate issued under Clause 60 of these conditions direct the Contractor as to the total value of the work, materials or goods executed or supplied by a Nominated Sub-contractor included in the calculation of the amount stated as due in the certificate and shall forthwith inform the Nominated Sub-contractor in writing of the amount of the said total value. The sum representing such total value shall be paid by the Contractor to the Nominated Sub-contractor within seven days of receiving the certificate of payment less only any retention money which the Contractor may be entitled to deduct under the terms of the Sub-contract and any other sums of which the Contractor may be entitled in respect of other Conditions of Contract or of delay

in completion of the Sub-contract works or any section thereof under sub-clause 2(d) of this Clause above.

(6) Assignment of Nominated Sub-contractors' Obligations

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

(7) Employer not Liable to Nominated Sub-contractor

Neither the existence nor the exercise of the foregoing powers, nor anything else contained in these conditions shall render the Employer in any way liable to any nominated Sub-contractor.

CERTIFICATES AND PAYMENT

Clause 60

(1) Monthly Statement for Progress Payments

The Contractor shall submit to the Engineer after the end of each month, statements signed by the Contractor showing:-

- (a) the quantities and value of the permanent work executed on Site.*
- (b) the value of materials on Site intended to form part of the permanent work together with supporting invoices.*
- (c) the value of temporary work, as included in the Bill of Quantities and completed on Site.*
- (d) an amount reflecting any changes in cost pursuant to Clause 70 hereunder.*
- (e) amounts approved in respect of day works executed up to the end of the month in question.*
- (f) the monthly statements shall be in an approved form and shall comprise an original and one copy, each duly signed by the contractor.*

i) *the Engineer shall, after checking and agreeing to the contents attach the statements to the Interim Payment Certificate.*

ii) *the rates and prices, used to ascertain the values of permanent works, in such monthly statements shall be those in the priced Bills of Quantities, in so far as such rates and prices are in the opinion of the Engineer applicable.*

iii) *if the said Bill of Quantities do not, in the opinion of the Engineer, contain any rates or prices applicable to some or any part of the work executed and there has not been a rate or price fixed at the time when the statement is prepared, then temporary rates or prices shall be assigned thereto by the Engineer.*

iv) *neither the temporary rates or prices assigned under paragraph (iii) of this sub-clause nor the Quantities mentioned in the statement submitted under paragraph (i) of this sub-clause shall be binding on the Employer or the Contractor.*

(2) Monthly Payment

The Contractor will be paid monthly, within 30 days of the presentation of the Engineer's Interim Payment Certificate to the Employer, 100% of the estimated value of the work executed up to the end of the previous month, together with the value of materials on Site intended to form part of the permanent work as and from such time as they are reasonably, properly and not prematurely brought upon the Site but only if adequately stored and/or protected against weather or damage.

Payment shall be subject to a retention in the sum of 10% of value certified until completion of the Works. The amount shall be reduced to 5% at completion, which sum shall be retained until the expiration of the maintenance period.

(3) Payment on Certificate of Completion

When the Engineer has granted a Certificate or Certificates of Completion for the whole of the Works under Clause 48 hereof, the Engineer shall, after allowing for the amount of all previous payments and after determining and allowing for any sum due to the Employer from the Contractor, certify as payable to the Contractor such a sum out of the balance so calculated as remaining due to the Contractor as will leave to be retained by the employer a sum equal to 5% of the value of work executed of the complete sections of the Works.

(4) Payment after Expiration of Period of Maintenance

Upon the expiration of the Period of Maintenance, or if different periods of maintenance shall become applicable to different sections or parts of the Works, the expiration of the latest such period, and provided what the Contractor has submitted to the Engineer a statement of final account all as outlined in sub-clause (6) of this Clause, the Engineer shall certify as payable to the Contractor the retention amount outlined in sub-clause (3) of this Clause.

(5) Corrections and Withholding of Payment Certificates

The Engineer may, by any Payment Certificate make any correction or modification in any previous Payment Certificate which shall have been issued by him, and the Engineer shall have power to withhold any Certificate if the works or any part thereof are not being carried out to his satisfaction or to deduct the value of damaged materials, plant or equipment supplied by the Employer to the Contractor or the purposes of the Works in the event of such damage being caused by the Contractor's negligence or mishandling.

(6) Final Account

Not later than 30 days after the date of issue of the maintenance Certificate the Contractor shall submit to the Engineer a statement of final account with supporting documents showing in detail the value of the work done in accordance with the Contract together with all further sums which the contractor considers to be due to him under the Contract. Within 30 days after receipt of this final account and of all information reasonably required for its verification, or after the issue of the Maintenance Certificate, whichever is the later, the Engineer shall issue a final certificate stating:-

- i) the amount which in his opinion is finally due under the Contract and after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled under the Contract.*
- ii) the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer as the case may be. Such balance shall, subject to Clause 47 hereof, be paid to or by the Contractor as the case may require within thirty days from the date of the Certificate.*

(7) Currency of Payment

All payment under this Contract shall be in Birr unless otherwise agreed upon.

Clause 61 Approval only by Maintenance Certificate

No certificate other than the Maintenance Certificate referred to in Clause 62 hereof shall be deemed to constitute approval of the Works.

Clause 62

(1) Maintenance Certificate

The Contractor shall not be considered as completed until a Maintenance Certificate shall have been signed by the Engineer and delivered to the Employer stating that the Works have been completed and maintained to his satisfaction. The Maintenance Certificate shall be given by the Engineer within twenty-eight days after the expiration of the Period of Maintenance, or, if different periods of maintenance shall become applicable to different sections or parts of the Works, the expiration of the latest such period, or as soon thereafter as any works ordered during such period, pursuant to Clauses 49 and 50 hereof, shall have been completed to the satisfaction of the Engineer and full effect shall be given to this Clause, notwithstanding any previous entry on the Works or the taking possession, working or using thereof or any part thereof by the Employer. Provided always that the issue of the Maintenance Certificate shall not be a condition precedent to payment to the Contractor of the second portion of the retention money in accordance with the conditions set out.

(2) Cessation of Employer Liability

The Employer shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or the execution of the Works unless before the giving of the Maintenance Certificate under this Clause, the Contractor shall have made a claim in writing in respect thereof giving full and detailed particulars of the circumstances giving rise to together with all substantiating documents and the amount of the claim including the manner in which such amount is calculated.

(3) Unfulfilled Obligations

Notwithstanding the issue of the Maintenance Certificate the contractor and, subject to sub-clause (2) of this Clause, the Employer shall remain liable for the fulfillment of any obligation incurred under the provisions of the Contract prior to the issue of the Maintenance Certificate which remains unperformed at the time such Certificate is issued and, for the purposes of determining the nature and extent of any such obligation, the Contract shall be deemed to remain in force between the parties hereto.

REMEDIES AND POWERS

Clause 63

(1) Default of Contractor

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

shall have an execution levied on his goods, or if the Engineer shall certify in writing to the Employer that in his opinion the Contractor:-

- (a) has abandoned the Contract, or*
- (b) without reasonable excuse has failed to commence the Works or has suspended the progress of the Works for twenty-eight days after receiving from the Engineer written notice to proceed, or*
- (c) has failed to remove materials from the site or to pull down and replace work for twenty eight days after receiving from the Engineer written notice that the said materials or work had been condemned and rejected by the Engineer under these conditions, or*
- (d) despite previous warnings by the Engineer, in writing, is not executing the Works in accordance with the Contract, or is persistently or flagrantly neglecting to carry out his obligations under the Contract, or*
- (e) has, to the detriment of good workmanship, or in defense of the Engineer's instructions to the contrary, sublet any part of the Contract.*

Then the Employer may, after giving fourteen days' notice in writing to the Contractor, enter upon the Site and the Works and expel the Contractor therefrom without thereby voiding the Contract, or releasing the Contractor from any of his obligations or liabilities under the Contract, or affecting the rights and powers conferred on the Employer or the Engineer by the Contract, and may himself complete the Works or may employ any other Contractor to complete the Works. The Employer or such other Contractor may use for such completion so much of the Construction Plant, Temporary Works and materials, which have been deemed to be reserved exclusively for the execution of the Works, under the provisions of the Contract as he or they may think proper, and the Employer may, at any time, sell any of the said Constructional Plant, Temporary Works and unused materials and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to him from the Contractor under the Contract.

(2) Valuation at Date of Forfeiture

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 after reference to the parties, or after such investigation or enquiries as he may think fit to make or institute, and shall certify what amount, if any, had at the time of such entry and expulsion been reasonably earned by or would reasonably accrue to the Contractor in respect of work then actually done by him under the Contract and the value of any of the said unused or partially used materials, and Constructional Plant and any Temporary Works.

(3) Payment after Forfeiture

If the Employer shall enter and expel the Contractor under this Clause, he shall not be liable to pay to the Contractor any money on account of the Contract until the expiration of the Period of Maintenance and thereafter until the Costs of execution and maintenance, damages for delay in completion, if any, and all other expenses incurred by the Employer have been ascertained and the amount thereof certified by the Engineer. The Contractor shall then be entitled to receive only such sum or sums, 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 shall exceed the sum which would have been payable to the Contractor on due completion by him, then the Contractor shall, upon demand, pay to employer the amount of such excess and it shall be deemed a debit due by the Contractor to the Employer and shall be recoverable accordingly.

4. Assignment of Benefit of Agreement

Unless prohibited by law, the contractor shall, if so instructed by the Engineer with in 14 days of such entry and termination referred to in sub-clause 63.1, 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.

Clause 64 Urgent Remedial Work

If, by reason of any accident, or failure, or other event occurring to in or in connection with the Works, or any part thereof, either during the execution of the Works, or during the period of Maintenance, any remedial or other work or repair shall, in the opinion of the Engineer or the Engineer's Representative, be urgently necessary for the safety of the Works and the Contractor is unable or unwilling at once to do such work or repair the Employer may employ and pay other persons to carry out such work or repair as the Engineer or the Engineer's Representative may consider necessary. 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 expense under the Contract, all expenses properly incurred by the Employer in so doing shall be recoverable from the Contractor by the Employer, or may be deducted by the Employer from any monies due or which may become due to the Contractor. Provided always that the Engineer or the Engineer's Representative, as the case may be, shall, as soon after the occurrence of any such emergency as may be reasonably practicable, notify the Contractor thereof in writing.

SPECIAL RISKS

Clause 65 (1) No liability for special risks :-

The contractor shall be under no liability what so ever in consequence of any of the special risks referred to in sub-clause /2/ hereof, whether by way of indemnity or otherwise, for or in respect of:-

- a. destruction of or damage to the works, save to work condemned under the provision of clause 39 here of prior to the occurrence of any of the said special risks;*
- b. destruction of or damage to property, whether of the Employer or third parties; or*
- c. in jury or loss of life.*

2. Special Risks

The special risks are:-

- a. war hostilities/whether war be declared or not/invasion, act of foreign enemies;*
- b. ionizing radiation's, or contamination by radio-active from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive or other hazardous properties of an explosive nuclear assembly or components thereof;*
- c. pressure wave caused by aircraft or other aerial devices traveling at sonic or super sonic speeds;*
- d. riot, commotion, or disorder, unless solely restricted to employees of the contractor or his sub-contractor and arising from the conduct of the works.*
- e. rebellions, revolution, insurrection, or military or usurped power, or civil war, in so far as these relate to the country in which the works are to be executed.*

3. Damage to works by special risks

If the works or any materials on the site or any property of the contractor used or intended to be used for the purpose of the works, sustain destruction or damage by reason of any of the said special risks, the contractor shall be entitled to payments in accordance with the contract for any permanent work duly executed and for materials so destroyed or damaged and, so far as may be required by the Engineer or as may be necessary for the completion of the works, to payment for:-

- a. rectifying any such destruction or damage to the works, and*
- b. replacing or rectifying such materials or other property of the contractor used or intended to be used for the purposes of the works;*

(4) Projectile, Missile, etc.,

Destruction, damage injury or loss of life caused by the explosion or impact whenever and wherever occurring of any mine, bomb, shell, grenade, or other projectile, missile, munition, or explosive of war, shall be deemed to be a consequence of the said special risks.

(5) Increased Costs Arising from Special Risks

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 hereof prior to the occurrence of any special risk) which are howsoever attributable to or consequent or the result of or in any way whatsoever connected with the said special risks, subject however to the provisions in this Clause hereinafter contained in regard to outbreak of war but the Contractor shall, as soon as any such cost comes to his knowledge, forthwith notify the Engineer thereof. The Engineer shall, after due consultation with the Employer and Contractor, determine the amount of the Contractor's costs in respect thereof which shall be added to the contract price and shall notify the Contractor accordingly, with a copy to the Employer.

(6) Outbreak of War

If, during the currency of the Contract, there shall be an outbreak of war, whether war is declared or not, in any part of the world which, whether financially or otherwise, materially affects the execution of the Works, the Contractor shall, unless and until the Contract is terminated under the provisions of this Clause, continue to use his best endeavors to complete the execution of the Works. Provided that the Employer shall be entitled at any time after such outbreak of war to terminate the Contract by giving written notice to the Contractor and, upon

such notice being given, the Contract shall, except as to the rights of the parties under this Clause and Clause 67 terminate, but without prejudice to the rights of either party in respect of any antecedent breach thereof.

(7) Removal of Constructional Plant

If the Contract shall be terminated under the provisions of sub-clause(6) hereof, the Contractor shall, with all reasonable dispatch, remove from the Site all Constructional Plant and shall give similar facilities to his sub-contractors to do so.

(8) Payment if Contract Terminated

If the Contractor shall be terminated as aforesaid, the Contractor shall be paid by the Employer, in so far as such amounts or items shall not have already been covered by payments of account made to the Contractor, for all Work executed prior to the date of termination at the rates and prices provided in the Contract and in addition:-

(a) the amounts payable in respect of any preliminary items, so far as the Work or service comprised therein had been carried out or performed, and a proper proportion as certified by the Engineer of any such items, which have been partially carried out or performed.

(b) a sum to be certified by the Engineer, being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works in so far as such expenditure shall not have been covered by any other payments referred to in this sub clause.

(c) any additional sum payable under the provisions of sub-clause (3) and (5) of this Clause. Provided that against any payments due from the Employer under this sub-clause, the Employer shall be entitled to be credited with any outstanding balances due from the Contractor or any other sums which, at the date of termination, were recoverable by the Employer from the Contractor under the terms of the Contract.

(9) Wage Books, Time Sheets, etc.,

The Contractor shall, for the purposes of sub-clause (8) of this Clause, keep such wage books, time sheets, books of account and other documents as are necessary to ascertain the sums payable and shall at the request of the Engineer furnish to him, verified in such manner as he may require, any documents so kept and such other information as he may reasonably require in connection with matters arising out of this Clause.

FRUSTRATION

Clause 66 *Payment in Event of Frustration*

If a war, or other circumstances outside the control of both parties, arises after the Contract is made so that either party is prevented from fulfilling his contractual obligations, or under the law governing the Contract, the parties are released from further performance, then the sum payable by the Employer to the Contractor in respect of the work executed shall be the same as that which would have been payable under clause 65 hereof if the contract had been terminated under the provision of clause 65 hereof.

SETTLEMENT OF DISPUTES ARBITRATION

Clause 67 *Settlement of Disputes-Arbitration*

If any dispute or difference of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract, or the execution of the Works whether during the progress of the work or after their completion and whether before or after the termination, abandonment or breach of the Contract, it shall, in the first place, be referred to and settled by the Engineer who shall, within a period of ninety days after being requested by either party to do so give written notice of his decision to the Employer and the Contractor. Subject to appeal to MoWUD or its Authorized Representative, as hereinafter provided. Such decision in respect of every matter so referred shall be final and binding upon the Employer and the Contractor and shall forthwith be given effect to by the Employer and by the Contractor, who shall proceed with the execution of the Works with all due diligence whether the Employer or Contractor requires arbitration as hereinafter provided, or not. If the Consultant has given written notice of his decision to the Employer and the Contractor and no claim to appeal has been communicated to him by either the Employer or the Contractor within a period of ninety days from receipt of such notice, the said decision shall remain final and binding upon the Employer and the Contractor. If the Engineer shall fail to give notice of his decision, as aforesaid, within a period of ninety days after being requested as aforesaid or if either the Employer or the Contractor be dissatisfied with any such decision then and in any such case either the Employer or the Contractor may within ninety days after receiving notice of such decision or within ninety days after the expiration of the first named period of ninety days, as the case may be required that the matter or matters in dispute be referred to MoWUD or his Authorized Representative hereinafter provided. All disputes or differences in respect of which the decision, if any of the Engineer has not become final and binding as aforesaid shall be finally settled by MoWUD or his Authorized Representative. The decision of the Ministry, or his Authorized Representative shall be final and binding.

No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the authority or his Authorized Representative on any matter whatsoever relevant to the dispute or difference referred to MoWUD or

his Authorized Representative as aforesaid. The reference to MoWUD or his Authorized Representative may proceed notwithstanding that the Works shall not then be or be alleged to be complete provided always that the obligations of the Employer, the Engineer and the Contractor shall not be altered by reason of the appeal being conducted during the progress of the Works.

NOTICES

Clause 68

(1) Service or Notices on Contractor

All certificates, notices or written orders to be given by the Employer or by the Engineer to the Contractor under the terms of the Contract shall be served by sending by post to or delivering the same to the Contractor's principal place of business, or such other address as the Contractor shall nominate for this purpose.

(2) Services of Notices on Employer or Engineer

The Employer's and Engineer's address is the address given in the Tender proposal or such other change of address as may be notified during the contract period.

(3) Change of Address

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

DEFAULT OF EMPLOYER

Clause 69

Default of Employer

(1) In the event of the Employer:-

(a) failing to pay to the Contractor the amount due under any certificate of the Engineer within thirty days after the same shall have become due under the terms of the Contract, subject to any deduction that the Employer is entitled to make under the Contract, or

(b) interfering with or obstructing or refusing any required approval to the issue of any such certificate, or

(c) becoming bankrupt or, being a company, going into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation, or

(d) giving formal notice to the Contractor that for unforeseen reasons, due to economic dislocation, it is impossible for him to continue to meet his contractual obligations the Contractor shall be entitled to terminate his employment under the Contract after giving thirty days' prior written notice to the Employer with a copy to the Engineer.

(2) Upon the expiry of the above mentioned thirty days' notice the Contractor shall, notwithstanding the provisions of Clause 53(1) hereof, with all reasonable dispatch, remove from the Site all Constructional Plant brought by him thereon.

(3) In the event of such termination the Employer shall be under the same obligations to the Contractor in regard to payment as if the Contract had been terminated under the provisions of Clause 65 hereof, but, in addition to the payments specified in Clause 65(8) hereof, the Employer shall pay to the Contractor the amount of any loss or damage to the Contractor arising out of or in connection with or by consequence of such termination.

CHANGES IN COST AND LEGISLATION

Clause 70

(1) Increase or Decrease of Costs

The Contract price shall be deemed to have been calculated in the manner set out below and shall be subject to the adjustment in the event specified hereunder:-

(a) the rates contained in the priced Bill of Quantities are based upon the rates of wages and other emoluments and expenses applicable at the Site at the date of bid pricing (as defined in sub-clause (6) hereinafter)

(b) if the said rates of wages and other emoluments and expenses are increased or decreased by any Act, Statute, Decree, Regulation and the like after the said date of bid pricing, then the net amount of the increased or decreased of the emoluments and expenses shall after due consultation with the Employer and the contractor, be determined by the Engineer and shall form an addition or deduction as the case may be to or from the Contract Price and be paid to or allowed by the Contractor accordingly.

(c) the rates contained in the priced Bill of Quantities are based upon the rates of the Contractor's compulsory contributions payable at the date of bid pricing under or by virtue of any act, Statute, Decree, Regulation and the like applicable at the Site.

(d) if any of the said rates of contribution shall be increased or decreased after the said date of bid pricing or if any new compulsory contribution becomes payable after that date, then the net amount of the

difference between what the Contractor actually pays in respect of work people engaged upon or in connection with the Works and what he would have paid in respect of such persons had any of the said rates not been increased or decreased, or had a new contribution not become payable as aforesaid shall form an addition or deduction as the case may be to or from the Contract Price and be paid to or allowed by the Contractor accordingly, provided always that the Employer and the Contractor may agree upon a sum which shall be deemed to be the net amount of the aforesaid difference, and such sum shall be deemed for the purpose of this Contract to be that which is to be paid to or allowed by the Contractor by virtue of this paragraph.

(2) Sub-contract

(a) If the Contractor shall decide, subject, to Clause 4 hereof, to sublet any portion of the Works, he shall incorporate in the Sub-contract provisions to the like effect as those contained in sub-clause (1) of this Clause.

(b) If the price payable under Sub-contract as aforesaid is increased or decreased by reason of the operation of the incorporated provisions of sub-clause (1) of this Clause, then the net amount of such increase or decrease shall, when determined by the Engineer, form an addition or deduction as the case may be to or from the Contract Price and be paid to or allowed by the Contractor accordingly.

(3) Notice by the Contractor

The Contractor shall, within a reasonable time, give written notice to the Engineer of the happening of any of the events referred to in paragraphs (b) and (d) of sub-clause (1) of this Clause, or of any reduction or increase in the sub-contract price for any portion of the Works sub-let..

(4) Profit

No addition to or deduction from the Contract Price made by virtue of this Clause shall alter in any way the amount of profit of the Contractor included in the Contract Price.

(5) Nominated Sub-contractor

This Clause shall not apply in respect of Work executed by any nominated Sub-contractor (fluctuation in relation to nominated Sub-contractors shall be dealt with under provisions in relation thereto which may be included in the appropriate Sub-contract or Contract of sale).

(6) Date of Bid Pricing

The expression "the date of bid pricing" as used in this Clause means the date 15 days prior to the deadline for the submission of bids as determined by the Employer in the bidding documents.

(7) Subsequent Legislation

Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited as aforesaid if the same shall already have been taken into account in accordance with the provisions of sub-clauses (1) through (6) of this Clause.

OTHER MATTERS

Clause 71 Warranty in Respect of Defects of Construction

1. Unless otherwise provided, the Contractor shall be liable to the Employer for the defects of construction of the Works during ten years from the day on which the Employer has entered into possession of the Works.

2. The warranty shall not be due, however, in respect of the defects which were apparent at the time of the final acceptance of the works.

3. The warranty shall apply to such defects only as prevent the works from being used for the purpose mentioned in the Contract or as render such use more onerous or less profitable.

Clause 72 Taxation

The Contractor and his employees, his sub-contractors and their employees shall not be exempted from local income or other taxes, charges and dues.

Clause 73 Explosives

(1) The importation, transportation, storage and use of explosives shall be strictly in accordance with all applicable regulations. The use of explosives shall be kept to the minimum possible and shall only be employed for purposes and in manners approved by the Engineer. Approval of the Contractor's method of using explosives shall not relieve the Contractor of any of his responsibilities under the Contract.

(2) The Contractor shall notify the Engineer or personnel of his staff who are qualified and competent to use explosives and only those persons shall be permitted to use explosives in accordance with these conditions.

(3) *The Contractor shall provide and operate an efficient system to warn all persons likely to be endangered by the use of explosives or blasting. The system shall include arrangements to indicate clearly the beginning and end of the period of danger.*

(4) *All costs associated with the use of and consequences from explosives shall be born by the Contractor.*

Clause 74 Contract Confidential

The Contractor shall treat the Contract and everything in connection therewith as private and confidential. In particular the Contractor shall not publish any information, drawings or photographs concerning the Works and shall not use the Site for the purpose of advertisement except with the written consent of the Engineer and subject to such conditions as he may prescribe.

Clause 75 Publicity

All requests for information concerning the Works by the news media or other organization or individual shall be referred to the Employer. All plans for publicity by the Contractor, his Sub-contractor or suppliers shall be submitted to the Employer for approved.