

**Bhutan Power Corporation Limited
Distribution Services
Distribution Construction Department
Electrification Division
Thimphu: Bhutan**



Specification No. BPC/DS/DCD/ED/C-06

Bidding Document

For

**Supply & Construction of UG DISTRIBUTION
NETWORK for MONTANGA INDUSTRIAL PARK,
SAMDRUPJONKHAR**

Volume I Part-1 – Terms and Condition

February 2021

Section 1A – Invitation for Bids

INSTRUCTION TO BIDDERS (ITB)

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PART – 1

SECTION 1A - INSTRUCTION TO BIDDERS

A. GENERAL

1. **Scope of Bid**
 - 1.1 Bhutan Power Corporation Limited (BPC), Distribution Services, Distribution Construction Department, Electrification Division (hereinafter referred to as the Employer), invites sealed bid for the “Supply & Construction of UG DISTRIBUTION NETWORK for Montanga Industrial Park, Samdrupjongkhar” involving.
 - (a) Engineering, manufacture, testing at works, supply and delivery of 33 kV substation and Line materials, handling, storage, erection, testing and commissioning of Substation equipment to complete the works in all respects.
 - (b) Civil works involving site grading, excavation, leveling and finishing foundations for equipment, structures, cable trenches, fence and gates, as per the bill of quantities.
 - (c) The overall scope of works is to construct, erect, test and commission 5 numbers of “33kV, 6 -Ways RMU with 2 nos. isolator and 4 nos. VCB (with PT in two incomer), rated 630 Amps and with O/C and E/F protection, short time current - 20kA for 3 sec, Outdoor Type”, 1 numbers of Compact Secondary Substation, 750kVA, 33/0.415kV, Outdoor type, 6-Ways RMU (2 nos. isolator and 4 nos. VCB), rated 630 Amps and with O/C and E/F protection, short time current - 20kA for 3 sec, with 1 Nos ACB - 1250 amps and 2 no. 400 Amps & 5 nos. of 200 Amps MCCB outgoing feeders with adjustable setting, Non - Walk in type and underground cable network. (Hereinafter referred to as the Works).
 - (d) All the works those are required for proper functioning of the Distribution Network.
 - 1.2 Bidders shall adhere to all the statutory regulations of Royal Government of Bhutan while undertaking the works.

- 1.3 The Successful bidder will be expected to complete the Works within 7 (Seven) months from the date of handing over of the site.
2. **Eligible Bidders**
 - 2.1 This Invitation to Bid is open to registered and eligible for large electrical contractors who have experience in the works of similar nature, who fulfill the Qualification requirements given in Clause 4 and meet the following requirements:

A bidder (including all members of a joint venture and all sub-contractors of a bidder) shall not be affiliated with a firm or entity

 - a) which has provided consulting services to the Employer during the preparatory stages of the Works or of the project of which the Works form a part, or
 - b) Which has been hired (or is proposed to be hired) by the Employer as Engineer for the Contract.
 - 2.2 Bidders shall provide such evidence of their eligibility satisfactory to the Employer as the Employer shall reasonably request.
3. **Origin of Materials, Equipment and Services**
 - 3.1 "Origin" means the place where the materials and equipment are mined, grown, produced or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing or substantial or major assembling of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.
4. **Qualification of the Bidder**
 - 4.1 To be qualified for award of Contract, bidders shall:
 - a) submit a written power of attorney authorising the signatory of the bid to commit the bidder; and
 - b) submit satisfactory evidence concerning the following:
 - i. The bidder is a qualified manufacturer/erector/ or an authorised representative of a qualified manufacturer/erector who regularly manufactures/erects the equipment/ materials of the type quoted and has adequate technical knowledge and practical experience.
 - ii. The bidder has adequate financial

- capability to meet the financial obligations pursuant to the scope of the works (submit copies of profit and loss account for the past three (3) years).
- iii. The bidder does not anticipate change in ownership during the proposed period of work (if such a change is anticipated, the scope and effect thereof shall be defined).
 - iv. Bhutanese bidders, who wish to participate in the tender either by themselves or as a partner of any Joint Venture, shall furnish a copy of the Valid Business License, Construction Development Board (CDB) registration certificate and Tax Clearance Certificate (TCC) issued by competent authorities. With regard to submission of Tax Clearance Certificate, this clause is equally applicable to other taxpaying non-Bhutanese firms working in Bhutan.
 - v. The bidder has adequate equipment, plant and manufacturing capacity to execute the works within the time specified. The evidence shall consist of written details of the installed manufacturing capacities and present commitments (excluding the work under this specification) of the bidder or his principal. If the present commitments are such that the installed capacity results in inadequacy of the manufacturing capacity to meet the requirement of equipment/materials corresponding to this bid then the details of alternative arrangements made shall also be furnished.
 - vi. The bidder has adequate field service organisation to provide the necessary field erection and management services required to successfully erect, test and commission the equipment/ materials as required under the specifications.
 - vii. The bidder has established Quality Assurance System and Design Organisation to achieve high level of equipment/ material reliability during manufacture and installation.
 - viii. The bidder should provide details of any current litigation that he is involved with.
 - ix. Submit duly signed "Integrity pact" provided in the bidding documents.

4.2 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements failing which the bids shall be treated

as non-responsive and shall be liable for rejection:

- a) the JV Agreement shall be signed so as to be legally binding on all partners;
- b) one of the partners shall be authorised to be in charge (referred as Lead partner or partner – in-charge); and this authorisation shall be evidenced by submitting a power of attorney signed by legally authorised signatories of all the partners;
- c) the partner in-charge/Lead partner shall meet all the Technical Qualification Requirements and each of other partners shall meet at least 25% of the technical or financial qualification requirements;
- d) the partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any or all partners of the joint venture and the entire execution of the Contract including payment shall be done exclusively with the partner in charge. The partner In-charge cannot transfer his responsibility/authority to any other partners during the currency of the contract;
- e) all partners of the joint venture shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms, and a relevant statement to this effect shall be included in the authorization mentioned under b) above as well as in the Form of Agreement (in case of successful bid); and a relevant statement to this effect shall be included in the authorization mentioned under b) above as well as in the Form of Agreement (in case of successful bid; and”.
- f) A copy of the agreement entered into by the joint venture partners shall be submitted with the bid.

4.3 Bidders shall also submit proposals of work methods and schedule, in sufficient detail to demonstrate the adequacy of the bidders' proposals to meet the technical specifications and the completion time referred to in Sub-Clause 1.3 above.

4.4 Qualification will also be based on meeting all the following minimum criteria regarding the Bidder's general and particular experience, personnel and

equipment capabilities and financial position as demonstrated by the Bidder's responses in the corresponding schedules to the Bid. The Employer reserves the right to waive minor deviations if they do not materially affect the capability of a Bidder to perform the Contract.

4.5 Experience of the Contractor/ Bidder

The Bidder shall meet the following minimum qualification criteria:

A minimum qualifying requirement is that the Bidder should have successfully carried out, as a prime contractor, the execution of at least two projects of similar nature and complexity comparable to the proposed project during the last ten years. This experience should include the following:

a) Technical

- i. Designed, supplied the equipment, erected, tested and commissioned at least two (02) projects of Medium Voltage UG Network with Ring Main Unit (RMU) and Compact Secondary Substations (CSS) including civil foundation. The above works should have been in operational for a minimum period of three (3) years as on the date of bid opening. The Bidder shall furnish along with the bid, documentary evidence like project competition and performance certificates etc. from their Clients as a proof of their competencies.
- ii. The bidder has adequate personnel (electrical and civil engineer) in their pay roll.

b) Financial

- i. The bidder should have an average annual turnover (defined as billing for works in progress and completed) over last three (3) years of Nu. 144.694 million.
- ii. The Bidder should also demonstrate that he has access to, or available, liquid assets unencumbered real assets, line of credit and other financial means (inter alia including a Guarantee or an undertaking from a Bank or Financier) sufficient to meet the construction cash

flow for a period of three months, estimated as Nu. 24.116 million or equivalent; net of the Bidder's commitments for other contract.

The audited balance sheets for the last Three (3) years should be submitted and must demonstrate the soundness of the Bidder's position, showing long term profitability. Where necessary the Employer will make inquiries with the Bidder's bankers.

The Bidder shall fill the above information in Schedules given in the bid document.

4.6 Qualification of Associate Contractors/Manufacturers

A list of approved manufacturers whose product is only to be supplied is enclosed in Part 2 of Volume I. The bidder may propose to any manufacturer/vendors which are not mentioned in the list of approved makes and the Employer may approve these proposed vendors/manufacturers subjected to factory assessment, if required. However, the Employer reserves the right to insist on the Contractor to supply through any Approved Makes mentioned in the bid document. In case of unavailability of the any make, it shall be clearly brought out in the technical bids. The Employer may approve alternate supplier in case of closure/merger of the specified make.

5 **One Bid per Bidder**

5.1 Each bidder shall submit only one bid either by itself, or as a partner in a joint venture or as a responsible officer in the management of the company. A bidder who submits or participates in more than one bid other than alternatives pursuant to Sub-Clause 17.1 will be disqualified.

6. **Cost of Bidding**

6.1 The bidder shall bear all costs associated with the preparation and submission of its bid and the Employer will in no case be responsible or liable for those costs.

7. **Site Visit**

7.1 The bidder is advised to visit and examine the site of works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into contract for the works. The costs of visiting the site shall be at the bidders own expenses and at his own risk.

The bidder shall make appointment for site visit and

the contact persons for the field visits shall be as below.

**Mr. Pushpa Lal Acharya,
Senior Manager,
ED, DCD, DS, Thimphu
Telephone No. 02-321846**

- 7.2 The bidder and any of his personnel or agents will be granted permission by the Employer to enter upon its premises and land for the purpose of such inspection, but only upon the express condition that the bidder, its personnel and agents, will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof and will be responsible for death or personal injury, loss of or damage to property and any other loss, damage, costs and expenses incurred as a result of the inspection.

B. BIDDING DOCUMENTS

8. **Content of Bidding Documents**
- 8.1 The bidding documents are those stated below, and should be read in conjunction with any Addenda issued in accordance with Clause 10.

Volume I

PART - 1

Invitation for Bids

- 1A Instructions to Bidders
- 1B General Conditions of Contract
(FIDIC – E & M Works Third Edition 1987)
Reprinted with further amendments in 1992.
- 1C Conditions of Particular Application

PART- 2

- 2A Technical requirements –General
- 2B Technical specifications (Electrical)
- 2C Technical specifications (Civil)
- 2D Installation, testing and commissioning
- 2E Drawings, test certificates and O & M manuals
- 2F Contractor's safety program
- 2G List of approved makes
- 2H Bid purpose drawings

Volume II

PART – 1

- 3A Forms and Technical information,
Forms of Bid and Bid Security,
Form of Agreement,
Forms of Performance Bank Guarantee
and Bank Guarantee for Advance
Payment.
Integrity Pact
- 3B Schedules of Supplementary Information
Containing Schedules – Guaranteed
Technical Particulars should be submitted
in the form of Electronic storage (CD).

PART - 2

Schedule of Prices (including Bill of
Quantities) (to be filled by Bidder)

The bidder is expected to examine carefully the contents of the Bidding documents. Failure to comply with the requirements of bidding documents will be at the bidder's own risk. Pursuant to Clause 28, bids which are not substantially responsive to the requirements of the bidding documents will be rejected.

9. Clarification of Bidding Documents

- 9.1 A prospective bidder requiring any clarification of the bidding documents may notify the Employer in writing or by facsimile at the Employer's address indicated in the Invitation to Bid. The Employer will respond to any request for clarification, which it receives earlier than 14 days prior to the deadline for submission of bids. Copies of the Employer's response will be forwarded to all the bidders, including a description of the enquiry.

However, bidders shall not be allowed to seek any clarifications on the bidding documents in person or through any verbal communications.

10. Amendment of Bidding Documents

- 10.1 At any time prior to the deadline for submission of bids, the Employer may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective bidder, or based on the proceedings of the pre-bid conference modify the bidding documents by issuing addenda.
- 10.2 Any addendum thus issued shall be part of the bidding documents pursuant to Sub-Clause 8.1, and shall be communicated by the Employer in writing or email or by fax to all the Bidders. Prospective

bidders shall acknowledge receipt of each addendum by fax to the Employer.

- 10.3 To afford prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer may extend the deadline for submission of bids, in accordance with Clause 21.

C. PREPARATION OF BIDS

11. **Language of Bid** 11.1 The bid, and all correspondence and documents, related to the bid, exchanged between the bidder and the Employer shall be written in the English language. Supporting documents and printed literature furnished by the bidder may be in another language provided they are accompanied by an accurate translation of the relevant passages in the English language, in which case, for purposes of interpretation of the bid the English translation shall prevail.

12. **Documents comprising the Bid** 12.1 The bidder shall submit Technical and Price Bids separately. Technical bid will be opened first and evaluated. Price bid shall be opened only after the technical bid of a bidder is found acceptable.

- 12.2 Technical bid shall comprise of the following:

Technical Bid form, integrity pack, Appendix to Bid, Bid security, the information on eligibility and qualification, schedules of supplementary information including those for alternatives, where proposed by the bidder and any other materials required to be completed and submitted by Bidders in accordance with these Instructions to Bidders. The documents listed in Volume II, Part 1 shall be filled in without exception, subject to extensions thereof in the same format. The Technical Bid Form and Appendix to Bid shall be without any price information. The Bidder shall also submit soft copy of Schedules along with the bid.

Technical bids containing any price and other commercial terms other than deviations to the terms will be rejected.

- 12.3 Price bid shall comprise the following:

Price Bid form and Appendix to Bid, priced Bill of Quantities, Price Bids for alternatives where proposed by the bidder and any other material required to be completed and submitted by Bidders in accordance with these Instructions to Bidders.

13. **Bid Prices**

13.1 Unless stated otherwise in the Bidding documents, the Contract shall be for the whole Works as described in Sub-Clause 1.1, based on prices submitted by the bidder.

13.2 The Bidder must quote unit Free at Site (FAS) prices of all items (alongwith Ex-works prices) for delivery of items to the actual site of erection including any storage, carriage (during transit and at site) by head load (if any) charges etc. as may be necessary. The unit FAS price shall comprise of the following components:

Ex-works price, packing and forwarding charges, railway freight, transport charges to actual work site, storage as where necessary, charges for transit insurance against all risks and storage after receipt of equipment at destination stores, all taxes and duties and levies. Insurance of materials/equipment/goods at site is a mandatory requirement of the Royal Govt. of Bhutan.

13.3 The bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the bidder will not be paid for by the Employer when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities.

13.4 All duties, taxes and other levies payable by the Contractor in Bhutan under the Contract, or any other clause, as of the date 28 days prior to the deadline for submission of bids shall be included in the rates and prices and the total bid price submitted by the bidder, and the evaluation and comparison of bids by the Employer shall be made accordingly. It is the responsibility of the Bidder to ascertain the value of applicable tax rates (Bhutan Sales Tax and / or Customs Duty and or any other applicable taxes / duties) for various items under Price Schedule and indicate the same in the price schedules. It shall be noted that payment towards such taxes / duties in Bhutan, will be limited to the value obtained by using the rate quoted in the Bid, unless there is any change in rates notified by relevant authorities after the date 28 days prior to the submission of Bids. In the event of such change by relevant authorities, the differential amount (increase or decrease) will be based on the differential rates between revised notified value and the maximum of (i) the rates assumed by the Bidder in its offer and (ii) the actual rate prevalent at the time 28 days prior to the due date of bid submission.

- 13.5 The rates and prices quoted by the bidder shall not be subject to adjustment during the performance of the Contract in accordance with Clause 31 of the Conditions of Contract.
14. **Currency of Bid and Payment**
- 14.1 The unit rates and the prices shall be quoted by the bidder entirely in Bhutanese Ngultrum and the payment will be made in Bhutanese Ngultrum. Payment in other foreign currencies is not allowed. There will be no variation in prices for imported goods due to exchange rate fluctuations.
15. **Bid Validity**
- 15.1 Bids shall remain valid up to **July 27, 2021**.
- 15.2 In exceptional circumstances, prior to expiry of the original bid validity period, the Employer may request that the bidders extend the period of validity for a specified additional period. The request and the responses thereto shall be made in writing or by fax. A bidder may refuse the request without forfeiting its bid security. A bidder agreeing to the request will not be required or permitted to modify its bid, but will be required to extend the validity of its bid security for the period of the extension, and in compliance with Clause 16 in all respects.
16. **Bid Security**
- 16.1 The bidder shall furnish, as part of its bid, a bid security in the amount of **Nu. 1,126,000.00** (Ngultrum one million one hundred twenty six thousand only).
- 16.2 The bid security shall, at the bidder's option, be in the form of a banker's certified cheque, cash warrant, standby letter of credit or bank guarantee from a reputable financial institution in Bhutan or counter guaranteed by a reputable financial institution in Bhutan and should be enforceable & encashable in Bhutan. The bid security shall be drawn in favor of Director, Finance & Accounts Services, Bhutan Power Corporation Limited, Thimphu, Bhutan, payable at Bank of Bhutan, Thimphu. The format of the bank guarantee shall be in accordance with the sample form of bid security included in Part 1 in Volume 2. Letters of credit and bank guarantees issued, as surety for the bid shall be valid up to **August 26, 2021**.

All the Bank Guarantees or securities/sureties associated with this tender like Bid Security, Performance Security etc. provided by the bidder shall be either from a Bank/Financial Institution in Bhutan or a Bank/Financial Institution outside Bhutan with a correspondent Financial Institution

located in Bhutan to make these enforceable. This is a pre-requisite for the Bid to be considered responsive. Bid not conforming to this requirement shall be treated as non-responsive resulting in outright rejection of the Bid.

16.3 Any bid not accompanied by an acceptable bid security shall be rejected by the Employer as non-responsive.

16.4 The bid securities of unsuccessful bidders shall be returned after signing of the Contract, in any case not later than the expiration of the period of bid security validity.

16.5 The bid security of the successful bidder will be returned upon furnishing required performance security and signing of the Contract by bidder.

16.6 The bid security may be forfeited

- a) if the bidder withdraws its bid during the period of bid validity; or
- b) if the bidder does not accept the correction of its bid price, pursuant to Sub-Clause 29.2; or
- c) in the case of a successful bidder, if he fails within the specified time limit to
 - i. sign the Agreement, or
 - ii. furnish the required performance security.

17. **Alternative Proposals by Bidders**

17.1 Bidders wishing to offer technical alternatives to the requirements of the bidding documents must first price the Employer's design as described in the bidding documents and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methods. Only the technical alternatives, if any, of the lowest evaluated bidder conforming to the basic technical requirements shall be considered by the Employer for adoption, at the sole discretion of the Employer.

18. **Pre- Bid Meeting**

18.1 Delete

18.2 The bidder is requested to submit any questions in writing or by fax, to reach the employer not later than fourteen days before the bid submission date.

19. **Format and
Signing of
Bid**

- 19.1 The bidder shall prepare one original and two copies of the Bid documents (both Technical and Price) comprising the bid as described in Clause 12 of these Instructions to Bidders, bound with the volume containing the Form of Bid, and clearly marked "ORIGINAL" and "COPY" as appropriate, on both the bids. In the event of discrepancy between them, the original shall prevail.
- 19.2 The original and all copies of the Technical and Price bids shall be typed or written in indelible ink (in the case of copies, photostats are also acceptable) and shall be signed by a person or persons duly authorised to sign on behalf of the bidder, pursuant to Sub-Clause 4.1 a) or 4.2 b), as the case may be. All pages of the bid where entries or amendments have been made shall be initialed by the person or persons signing the bid.
- 19.3 The Technical and Price bids shall contain no alterations, omission or additions, except those to comply with instructions issued by the Employer, or as necessary to correct errors made by the bidder, in which case such corrections shall be initialed by the person or persons signing the bid.

D. SUBMISSION OF BIDS

20. **Sealing and
Marking of Bids**

- 20.1 The bidder shall seal the original and each copy of the Technical bid in an inner and an outer envelope, duly marking the envelopes as "TECHNICAL BID - ORIGINAL" and "TECHNICAL BID - COPY".
- 20.2 The bidder shall seal the original and each copy of the Price bid in an inner and an outer envelope, duly marking the envelopes as "PRICE BID- ORIGINAL" and "PRICE BID - COPY".
- 20.3 The inner and outer envelopes shall
- a) be addressed to the Employer at the following address :

General Manager,
Distribution Construction Department,
Distribution Services,
Bhutan Power Corporation Limited,
Thimphu, Bhutan.
Phone: (975) (2) 335931
Fax : (975) (2) 321847

b) bear the following identification:

Bids for the "SUPPLY & CONSTRUCTION
OF UG DISTRIBUTION NETWORK
FOR MONTANGA INDUSTRIAL PARK,
SAMDRUPJONGKHAR.

Bid Reference Number :
BPC/DS/DCD/ED/C-06
DO NOT OPEN BEFORE:
30.03.2021, 14:15 hours

- 20.4 In addition to the identification required in Sub-Clause 20.3, the inner envelope shall indicate the name and address of the bidder to enable the bid to be returned unopened in case it is declared "late" pursuant to Clause 22.
- 20.5 If the outer envelope is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or premature opening of the bid.
21. **Deadline for Submission of Bids**
- 21.1 Bids must be received by the Employer at the address specified above no later than **13:00 hours on 30.03.2021.**
- 21.2 The Employer may, at his discretion, extend the deadline for submission of bids by issuing an addendum in accordance with Clause 10 in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline will thereafter be subject to the deadline as extended.
22. **Late Bids**
- 22.1 Any bid received by the Employer after the deadline for submission of bids prescribed in Clause 21 will be rejected and returned unopened to the bidder.
23. **Modification and Withdrawal of Bids**
- 23.1 The bidder may modify or withdraw its bid after bid submission, provided that written notice of the modification or withdrawal is received by the Employer prior to the deadline for submission of bids.
- 23.2 The bidder's modification or withdrawal notice shall be prepared, sealed, marked and delivered in accordance with the provisions of Clause 20, with the outer and inner envelopes additionally marked "MODIFICATION" or "WITHDRAWAL", as appropriate. A withdrawal notice may also be sent by fax but must be followed by a signed confirmation copy.

- 23.3 No bid may be modified by the bidder after the deadline for submission of bids.
- 23.4 Withdrawal of a bid during the interval between the deadline for submission of bids and the expiration of the period of bid validity specified in the Form of Bid may result in the forfeiture of the bid security pursuant to Clause 16.6.

E. BID OPENING AND EVALUATION

24. Bid Opening

- 24.1 The Employer will open the Technical bids, including modifications made pursuant to Clause 23, in the presence of bidders' representatives who choose to attend, at **14:15 hours on 30.03.2021** at the Conference Hall of BPC, Thimphu.

Bidders or their authorized representatives only, shall be allowed to attend the bid opening. The bidder's representative attending the bid opening shall have an authorization letter from the bidder, without which the representative shall not be permitted to attend the bid opening. Each bidder will be allowed only one representative to attend the bid opening. The bidders' representatives who are present shall sign an attendance sheet evidencing their attendance.

- 24.2 Envelopes marked "WITHDRAWAL" shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to Clause 23 shall not be opened.

- 24.3 The bidders' names, bid modifications and withdrawals, the presence or absence of bid security, and such other details as the Employer may consider appropriate, will be announced and recorded by the Employer at the opening. The bidder's representatives will be required to sign the record.

- 24.4 The Employer shall prepare, besides the record of bid opening, minutes of the bid opening, including the information disclosed to those present in accordance with Sub-Clause 24.3.

25. Opening of Price Bids

- 25.1 After the technical evaluation, the price bids of technically qualified Bidders shall be opened on such other date to be informed to the technically qualified bidders.
- 25.2 The Price envelopes of only the technically responsive bidders shall be opened. The Price

envelopes of technically non-responsive bidders shall be returned unopened to respective Bidders.

- 25.3 The names of responsive Bidders, their bid prices, the total amount of each, any discount shall be announced and recorded by the Employer at the bid opening. Any bid price, discount or alternative bid price which is not read out and recorded at bid opening will not be taken in account in bid evaluation. The Bidders' representatives who are present shall sign an attendance sheet evidencing their attendance.
26. **Process to be Confidential**
- 26.1 Information relating to the examination, clarification, evaluation and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process until the award to the successful bidder has been announced. Any effort by a bidder to influence the Employer's processing of bids or award decisions may result in the rejection of the bidder's bid.
27. **Clarification of Bids**
- 27.1 To assist in the examination, evaluation and comparison of bids, the Employer may, at its discretion, ask any bidder for clarification of its bid, including technical data and breakdown of unit rates. The request for clarification and the response shall be in writing or by fax, but no change in the price or substance of the bid shall be sought, offered or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids in accordance with Clause 30.
28. **Preliminary Examination of Bids and Determination of Responsiveness**
- 28.1 Prior to the detailed evaluation of bids, the Employer will determine whether each bid i) meets the eligibility criteria; ii) has been properly signed; iii) is accompanied by the required securities; iv) is substantially responsive to the requirements of the bidding documents; and v) provides any clarification and/or substantiation that the Employer may require pursuant to Clause 27.
- 28.2 A substantially responsive bid is one, which conforms to the terms, conditions and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one i) which affects in any substantial way the scope, quality or performance of the Works; ii) which limits in any substantial way, inconsistent with the bidding documents, the Employer's rights or the bidder's obligations under the Contract; or iii) whose rectification would affect

unfairly the competitive position of other bidders presenting substantially responsive bids.

- 28.3 If a bid is not responsive, it will be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the non-conforming deviation or reservation.

29. **Correction of Errors**

- 29.1 Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Arithmetic errors will be rectified on the following basis. If there is a discrepancy between the unit rate and the total cost per item that is obtained by multiplying the unit rate and quantity, the unit rate shall prevail and the total cost per item will be corrected unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit rate, in which case the total cost per item as quoted will govern and the unit rate corrected. If there is a discrepancy between the total bid amount and the sum of total costs per item, the sum of the total costs per item shall prevail and the total bid amount will be corrected.

- 29.2 The amount stated in the Form of Bid will be adjusted by the Employer in accordance with the above procedure for the correction of errors and, shall be considered as binding upon the bidder. If the bidder does not accept the corrected amount of bid, its bid will be rejected, and the bid security may be forfeited in accordance with Sub-Clause 16.6 (b).

30. **Evaluation and Comparison of Bids**

- 30.1 The Employer will evaluate and compare only the bids determined to be responsive in accordance with Clause 28.

- 30.2 In evaluating the bids, the Employer will determine for each bid the Evaluated Bid Price by adjusting the Bid Price as follows :

- a) making any correction for errors pursuant to Clause 29;
- b) excluding Provisional Sums and the provision, if any, for Contingencies in the Summary Bill of Quantities, but including Daywork, where priced competitively;
- c) making an appropriate adjustment for any other acceptable variations, or deviations; and
- d) applying any discounts offered by the bidder for the award.

- 30.3 The Employer reserves the right to accept or reject any variation or deviations. Variations, and other factors, which are in excess of the requirements of the bidding documents or otherwise result in the accrual of unsolicited benefits to the Employer shall not be taken into account in bid evaluation.
- 30.4 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.
- 30.5 When the prices in the particular bid appear abnormally low (below 10% of the Analyzed Market Value) or the bid appears seriously unbalanced as determined, the Employer shall seek written explanations from the bidder submitting the low or seriously unbalanced bid and shall request the bidder an analysis of rates of the relevant items. Based on the bidder's written explanation, decision shall be taken to reject/accept the abnormally low or seriously unbalanced bids.
- 30.6 When the prices in the particular bid appear abnormally high (above 10% of the Analyzed Market Value), the Employer shall seek written explanations from the bidder submitting the high bid and shall request the bidder an analysis of rates of the relevant items. Based on the bidder's written explanation, decision shall be taken to reject/accept the abnormally high bids.

F. AWARD OF CONTRACT

31. Award

- 31.1 Subject to Clause 32, the Employer will award the Contract to the bidder whose bid has been determined to be substantially responsive to the bidding documents, provided that such bidder has been determined to be i) eligible in accordance with the provisions of Sub-Clause 2.1; and ii) qualified in accordance with the provisions of Clause 4.

It is not binding on the Employer to place order on the lowest (evaluated) priced Bid. The reasonability of prices will be duly considered in the evaluation.

32. Employer's Right to Accept any Bid and to Reject any or all Bids

- 32.1 Bids will be rejected if:
- a) Technical bid contains price/commercial terms.
 - b) Any conditional bids.
 - c) Bids that do not comply with completion time stated in Clause 1.3.
 - d) Deviations to commercial and payment terms are taken by the Bidder.

- 32.2 Notwithstanding Clause 31, the Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids, at any time prior to award of Contract, without thereby incurring any liability to the affected bidder or bidders or any obligation to inform the affected bidder or bidders of the grounds for the Employer's action.
33. **Notification of Award**
- 33.1 Prior to expiration of the period of bid validity prescribed by the Employer, the Employer will notify the successful bidder by fax confirmed by registered letter that its bid has been accepted. This letter (hereinafter called the "Letter of Acceptance") shall name the sum which the Employer will pay the Contractor in consideration of the execution, completion and maintenance of the Works by the Contractor as prescribed by the Contract (hereinafter and in the Conditions of Contract called "the Contract Price").
- 33.2 The notification of award will constitute the formation of the Contract.
- 33.3 Upon furnishing by the successful bidder of a performance security, the Employer will promptly notify the other bidders that their bids have been unsuccessful.
34. **Signing of Agreement**
- 34.1 At the same time that the Employer notifies the successful bidder that its bid has been accepted, the Employer will intimate the date of signing of the agreement to the Bidder.
- 34.2 The Agreement shall be signed within twenty eight (28) days of receipt of Letter of Acceptance from the Employer.
35. **Performance Security**
- 35.1 Within twenty eight (28) days of receipt of the Letter of Acceptance from the Employer, the successful bidder shall furnish to the Employer a performance security in an amount of ten (10) percent of the Contract Price in accordance with the Conditions of Contract. The form of performance security provided in Part -1 of Volume II of the bidding documents shall be used.
- 35.2 Failure of the successful bidder to comply with the requirements of Clauses 34 or 35 shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security.
36. **Fraud & Corruption**
- 36.1 It is Royal Government of Bhutan's (RGoB) policy to require that Employers, Bidders, Suppliers, Contractors and their Subcontractors observe the highest standards of ethics during the procurement and execution of contracts. In pursuance to this

policy the Employer/RGoB:

- (a) defines, for the purposes of this provision, the terms set forth below as:
 - (i) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - (ii) “fraudulent practice” is any intentional act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party’
 - (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the action of a party;
 - (v) “obstructive practice” is deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede any investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to investigation or from pursuing the investigation; or acts intended to materially impede the exercise of the inspection and audit rights of the Employer or any organization or person appointed by the Employer.
- (b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question.
- (c) will sanction a firm or an individual, including declaring them ineligible, either indefinitely or for a stated period of time, to be awarded a contract if it at any time determines that they have, directly or

through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing contract;

- (d) will have the right to require that a provision be included in the bidding documents and in contracts, requiring bidders, suppliers, contractors and their subcontractors to permit the Employer, any organization or person appointed by the Employer and/or any relevant RGoB agency to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by the Employer;
- (e) requires that bidders, as a condition to admission to eligibility, execute and attach to their bids an Integrity Pact Statement in the form provided in the Instructions to bidders.
- (f) will report any case of corrupt, fraudulent, collusive, coercive or obstructive practice to relevant RGoB agencies, including but not limited to the Anti-Corruption Commission (ACC) of Bhutan, for necessary action in accordance with the statutes and provisions of the relevant agency.

Section 1B – Condition of Contract for E&M works

PREAMBLE

The Employer	Sub-Clause 1.1.12. The Employer is Bhutan Power Corporation Limited, Distribution Services, Distribution Construction Department.
The Engineer	Sub-Clause 1.1.15. The Engineer is as appointed by BPC for the works.
Time for Completion	Sub-Clause 1.1.35. Time for Completion is 7 months from the date handing over of the site.
Ruling Language	Sub-Clause 5.1. The version in English language (ruling language) shall prevail.
Day to Day Communications	Sub-Clause 5.2. The language for day to day communications is English.
Program to be Furnished	Sub-Clause 12.1. The program must be submitted in the form of MS Project.
Electricity, Water, Gas and Other Services	Sub-Clause 14.3. The Contractor shall make his own arrangements for the required services related to electricity including extension of temporary lines, internal wiring, water, stores from relevant authorities. BPC shall provide liasioning assistance only. All the costs incurred against these services shall be borne by the Contractor.
Employer's Equipment	Sub-Clause 14.4. The following Employer's equipment is available for use by the Contractor under the Employer's operation: The clause is not applicable. The Contractor shall make his own arrangements for all the related equipments required for the project.
Working Hours	Sub-Clause 18.3. It shall be as per the Labour Laws of Bhutan. The normal working hours are: 8 am to 6 pm. Sundays are considered the days for rest. Also refer Conditions of Contract Part II Special Conditions
Delay in Completion	Sub-Clause 27.1. Failure to meet the Time for Completion entitles the Employer to levying Liquidity Damage as follows: Refer Conditions of Contract Part II Special Conditions.
Prolonged Delay	Sub-Clause 27.2. Maximum amount recoverable from the Contractor by the Employer:

Not stated and will be recovered as detailed in Clause 27.2.

Terms of Payment	Sub-Clause 33.1. The terms of payment shall be as indicated in Conditions of Contract Part II Special Conditions. The time of payment shall be 45 days from the date of submission of bills and proper documents as mentioned in clause 33.1 and 33.2 of the special conditions.
Payment in Foreign Currencies	Sub-Clause 35.1. Payment in foreign currencies shall be arranged as follows: Clause is not applicable.
Rates of Exchange	Sub-Clause 35.3. The rates of exchange for the purpose of the Contract are: Clause is not applicable.
Payment against Provisional Sums	Sub-Clause 36.4. The percentage to be applied to Provisional Sums shall be Sums. Clause is not applicable.
Maximum Liability	Sub-Clause 42.2. The maximum liability of the Contractor to the Employer shall be: Contract Price.
Insurance of Works	Sub-Clause 43.1. The deductible limit in the insurance cover of the Works shall not exceed : Deductible limit is not applicable. The Contractor shall insure the Works to cover full amount. Sub-Clause 43.1. (a) The additional risks to be insured are: Nil.
Third Party Liability	Sub-Clause 43.3. The amount of insurance against third party liability taken out by the Contractor shall not be less than: Nu. One (1) hundred Thousand.
Payment on Termination for Employer's Default	Sub-Clause 46.3. The additional amount payable by the Employer on termination shall not exceed: Clause is not applicable.
Labour, Materials and Transport	Sub-Clause 47.1. Clause is not applicable.
Notices to Employer and Engineer	Sub-Clause 49.2. The address of the Employer for notice is: General Manager, Distribution Construction Department, Distribution Services, Bhutan Power Corporation Limited,

Thimphu, Bhutan.
Telephone : +975 – 2- 335931
Fax :+975-2- 321847

The address of the Engineer for notices is:
Sr. Manager,
Electrification Division,
Distribution Construction Department,
Distribution Services,
Bhutan Power Corporation Limited,
Thimphu, Bhutan.
Telephone - +975 – 2- 321846, Fax – +975-2-321847

Applicable Law	Sub-Clause 51.1. The applicable law is Bhutanese law.
Procedural Law for Arbitration	Sub-Clause 51.2. The procedural law for arbitration is as per prevalent laws in Bhutan.
Language and Place of Arbitration	Sub-Clause 51.3. The language of arbitration is English language. The place of arbitration is Thimphu, Bhutan.



FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS

CONDITIONS OF CONTRACT

FOR ELECTRICAL AND

MECHANICAL WORKS

INCLUDING ERECTION ON SITE

WITH FORMS OF TENDER AND AGREEMENT

THIRD EDITION 1987

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However, FIDIC has been solely responsible for decisions concerning the content of the document and the above acknowledgement does not imply approval by ORGALIME of the conditions contained herein.

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Employer's
Equipment

Sub-Clause 14.4.
The following Employer's equipment is available for use by the Contractor under
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Working Hours

Sub-Clause 18.3.
The normal working hours are _____

Delay in Completion

Sub-Clause 27.1.
Failure to meet the Time for Completion entitles the Employer to reduction in
Contract Price as follows: _____
Percentage per day _____ %
Maximum _____ %

Prolonged Delay

Sub-Clause 27.2.
Maximum amount recoverable from the Contractor by the Employer: _____

Terms of Payment

Sub-Clause 33.1.
In addition to the provisions under Clause 33, the terms of payment shall be: _____

Payment in Foreign
Currencies

Sub-Clause 35.1.
Payment in foreign currencies shall be arranged as follows: _____

Rates of Exchange

Sub-Clause 35.3.
The rates of exchange for the purpose of the Contract are: _____

Payment against
Provisional Sums

Sub-Clause 36.4.
The percentage to be applied to Provisional Sums shall be Sums
_____ %.

Maximum Liability

Sub-Clause 42.2.
The maximum liability of the Contractor to the Employer shall be _____

PREAMBLE

This Preamble must be completed in all cases referring to completed schedules where appropriate. When completed, this Preamble, the General Conditions, Specification, Employer's and Contractor's Drawings, Schedules and other documents can constitute a contract on the basis of the General Conditions in Part I. If this is not what is required, Part II must also be completed.

The Employer

Sub-Clause 1.1.12.

The Employer is _____

The Engineer

Sub-Clause 1.1.15.

The Engineer is _____

for Completion

Sub-Clause 1.1.35.

The Time for Completion is _____ days from the Commencement Date.

Contractor's Profit

Sub-Clause 1.6.

The percentage to cover profit entitlement, where appropriate, is
_____ %.

Ruling Language

Sub-Clause 5.1.

The version in _____ language (ruling language) shall prevail.

Day to Day
communications

Sub-Clause 5.2

The language for day to day communications is _____

Programme to be
Furnished

Sub-Clause 12.1.

The Programme must be submitted in the form of _____

Electricity Water,
Gas and Other
Services

Sub-Clause 14.3.

Supplies on the Site are:

a. Electricity: _____

b. Water: _____

c. Gas: _____



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Insurance of Works

Sub-Clause 43.1.

The deductible limits in the insurance cover of the Works shall not exceed _____

Sub-Clause 43.1. (a)

The additional risks to be insured are:

Third Party Liability

Sub-Clause 43.3.

The amount of insurance against third party liability taken out by the Contractor shall not be less than:

Payment on
Termination for
Employer's Default

Sub-Clause 46.3.

The additional amount payable by the Employer on termination shall not exceed:

Labour, Materials
and Transport

Sub-Clause 47.1.

The method of calculating adjustments for changes in costs shall be:

Notices to Employer
and Engineer

Sub-Clause 49.2.

The address of the Employer for notices is:

The address of the Engineer for notices is:

Applicable Law

Sub-Clause 51.1.

The applicable law is _____ law.

Procedural Law
for Arbitration

Sub-Clause 51.2.

The procedural law for arbitration is

Language and Place
of Arbitration

Sub-Clause 51.3.

The language of arbitration is _____ language.

The place of arbitration is



PART I: GENERAL CONDITIONS

Definitions and Interpretations

- Definitions 1.1 In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them:
- 1.1.1 "Commencement Date" means whichever is the latest of:
- i) the date specified in the Preamble as the date for commencement of the Works or the date when the Contractor receives:
 - ii) such payment in advance of the commencement of the Works as may be specified in the terms of payment, or
 - iii) notice of the issue of any import licence necessary for commencing performance of the Contract, or
 - iv) notice that any legal requirements necessary for the Contract to enter into force have been fulfilled, or
 - v) notice that any necessary financial or administrative requirements specified in Part II as conditions precedent to commencement have been fulfilled.
- 1.1.2 "Conditions" means the Preamble to and these Conditions of Contract, Parts I and II.
- 1.1.3 "Contract" means the agreement between the Employer and the Contractor for the execution of the Works incorporating the Conditions, Specification, Employer's Drawings and Contractor's Drawings, priced and completed Schedules, Tender, Letter of Acceptance and such further documents as may be expressly incorporated by the Letter of Acceptance.
- 1.1.4 "Contract Agreement" means the document recording the terms of the Contract between the Employer and the Contractor.
- 1.1.5 "Contract Price" means the sum stated in the Letter of Acceptance as payable to the Contractor for the execution of the Works.
- 1.1.6 "Contractor" means the person whose tender has been accepted by the Employer and the legal successors in title to the Contractor but not (except with the consent of the Employer) any assignee of the Contractor.
- 1.1.7 "Contractor's Drawings" means all drawings, samples, patterns, models and operation and maintenance manuals to be submitted by the Contractor in accordance with Clause 6.
- 1.1.8 "Contractor's Equipment" means all appliances or things of whatsoever nature required for the purposes of the Works but does not include Plant.
- 1.1.9 "Contractor's Risks" means the risks defined in Sub-Clause 37.3.
- 1.1.10 "Defects Liability Certificate" means the certificate to be issued by the Engineer to the Contractor in accordance with Sub-Clause 30.11.
- 1.1.11 "Defects Liability Period" means one year or the period stated in Part II following taking over, during which the Contractor is responsible for making good defects and damage in accordance with Clause 30.
- 1.1.12 "Employer" means the person named as such in the Preamble and the legal successors in title to the Employer but not (except with the consent of the Contractor) any assignee of the Employer.

- 1.1.13 "Employer's Drawings" means all the drawings and information provided by the Employer or the Engineer to the Contractor under the Contract.
- 1.1.14 "Employer's Risks" means those risks defined in Sub-Clause 37.2.
- 1.1.15 "Engineer" means the person appointed by the Employer to act as Engineer for the purposes of the Contract and designated as such in the Preamble.
- 1.1.16 "Engineer's Representative" means any representative of the Engineer appointed from time to time by the Engineer under Sub-Clause 2.2.
- 1.1.17 "Final Certificate of Payment", means the certificate to be issued by the Engineer to the Employer in accordance with Sub-Clause 33.10.
- 1.1.18 "Force Majeure" has the meaning assigned to it under Sub-Clause 44.1.
- 1.1.19 "Foreign Currency" means a currency of a country other than that in which Plant is to be installed.
- 1.1.20 "Gross Misconduct" means any act or omission of the Contractor in violation of the most elementary rules of diligence which a conscientious contractor in the same position and under the same circumstances would have followed.
- 1.1.21 "Letter of Acceptance" means the formal acceptance by the Employer of the Tender incorporating any adjustments or variations to the Tender agreed between the Employer and the Contractor.
- 1.1.22 "Performance Security" means the security to be provided by the Contractor in accordance with Sub-Clause 10.1. for the due performance of the Contract.
- 1.1.23 "Plant" means machinery, apparatus, materials and all things to be provided under the Contract for incorporation in the Works.
- 1.1.24 "Programme" means the Programme to be submitted by the Contractor in accordance with Sub-Clause 12.1. and any approved revisions thereto.
- 1.1.25 "Provisional Sum" means a sum, described as such for the execution of work or for the supply of goods or services, to be used in accordance with Sub-Clause 36.1.
- 1.1.26 "Risk Transfer Date" means the date when the risk of loss of or damage to the Works passes from the Contractor to the Employer in accordance with Sub-Clause 39.1.
- 1.1.27 "Schedule of Prices" means the completed and priced Schedule of Prices, or any part or individual schedule thereof, submitted by the Contractor with his Tender and forming a part of the Contract documents.
- 1.1.28 "Section" means a part of the Works specifically identified as such in the Contract.
- 1.1.29 "Site" means the place or places, provided or made available by the Employer where work is to be done by the Contractor or to which Plant is to be delivered, together with so much of the area surrounding the same as the Contractor shall with the consent of the Employer use in connection with the Works otherwise than merely for the purposes of access.
- 1.1.30 "Specification" means the specification of the Works included in the Contract and any modification thereof made under Clause 31.

Contract for any part of the Works, or any person to whom any part of the Contract has been subcontracted with the consent of the Engineer, and the Subcontractor's legal successors in title but not any assignee of the Subcontractor.

1.1.32 "Taking-Over Certificate" means the certificate to be given by the Engineer to the Contractor in accordance with Clause 29.

1.1.33 "Tender" means the Contractor's priced offer to the Employer for the execution of the Works.

1.1.34 "Tests on Completion" means the tests specified in the Contract or otherwise agreed by the Engineer and the Contractor to be performed before the Works are taken over by the Employer.

1.1.35 "Time for Completion" means the time stated in the Preamble for completing the Works or any Section thereof and passing the Tests on Completion calculated from the Commencement Date unless extended in accordance with Clause 26.

1.1.36 "Variation Order" means any written order, identified as such, issued to the Contractor by the Engineer under Sub-Clause 31.1.

1.1.37 "Works" means all Plant to be provided and work to be done by the Contractor under the Contract.

Headings and Titles

1.2 The headings and titles in these Conditions shall not be deemed part thereof or be taken into consideration in the interpretation or construction of the Contract.

Interpretation

1.3 Words importing persons or parties shall include firms and corporations and any organisation having legal capacity.

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

Written Communications

1.4 Wherever in the Contract provision is made for a communication to be "written" or "in writing" this means any hand-written, type-written or printed communication, including telex, cable and facsimile transmission.

Notices, Consents and Approvals

1.5 Wherever in the Contract provision is made for the giving of notice, consent or approval by any person, such consent or approval shall not be unreasonably withheld. Unless otherwise specified, such notice, consent or approval shall be in writing and the word "notify" shall be construed accordingly.

Costs, Overhead Charges and Profit

1.6 Whenever by these Conditions the Contractor is entitled to be paid cost, such cost shall be properly incurred and shall include any overhead charges properly allocable thereto but not profit unless so stated. Any profit entitlement shall be added to cost at the percentage stated in the Preamble.

Periods

1.7 In these Conditions "day" means calendar day and "year" means 365 days.

Engineer and Engineer's Representative

Engineer's Duties

2.1 The Engineer shall carry out the duties specified in the Contract.

If the Engineer is required, under the terms of his appointment by the Employer, to obtain the specific approval of the Employer before carrying out any of these duties, full particulars of such requirements shall be set out in Part II.

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

Engineer's Representative	2.2	The Engineer's Representative shall be appointed by and be responsible to the Engineer and shall only carry out such duties and exercise such authority as may be delegated to him by the Engineer under Sub-Clause 2.3.
Engineer's Power to Delegate	2.3	<p>The Engineer may from time to time delegate to the Engineer's Representative any of the duties vested in the Engineer and may at any time revoke such delegation.</p> <p>Any such delegation or revocation shall be in writing and shall not take effect until a copy thereof has been delivered to the Contractor and the Employer.</p> <p>Any decision, instruction or approval given by the Engineer's Representative to the Contractor in accordance with such delegation shall have the same effect as though it had been given by the Engineer. However:</p> <p>(a) any failure of the Engineer's Representative to disapprove any Plant or workmanship shall not prejudice the right of the Engineer to disapprove such Plant or workmanship and to give instructions for the rectification thereof;</p> <p>(b) if the Contractor questions any decision or instruction of the Engineer's Representative he may refer the matter to the Engineer who shall confirm, reverse or vary such decision or instruction.</p>
Engineer to Act Impartially	2.4	<p>Wherever under the Contract the Engineer is required to exercise his discretion by:</p> <p>(a) giving his decision, opinion or consent, or</p> <p>(b) expressing his satisfaction or approval, or</p> <p>(c) determining value, or</p> <p>(d) otherwise taking action which may affect the rights and obligations of the Employer or the Contractor,</p> <p>he shall exercise such discretion impartially within the terms of the Contract and having regard to all the circumstances.</p>
Engineer's Decisions and Instructions	2.5	The Contractor shall proceed with the decisions and instructions given by the Engineer in accordance with these Conditions.
Confirmation in Writing	2.6	The Contractor may require the Engineer to confirm in writing any decision or instruction of the Engineer which is not in writing. The Contractor shall notify the Engineer of such requirement without undue delay. Such a decision or instruction shall not be effective until written confirmation thereof has been received by the Contractor.
Disputing Engineer's Decisions and Instructions	2.7	<p>If the Contractor disputes or questions any decision or instruction under Clause 2.5 or a written confirmation under Clause 2.6, he shall give notice to the Engineer within 28 days after receipt thereof, giving his reasons.</p> <p>The Engineer shall within a further period of 28 days by notice to the Contractor and the Employer with reasons, confirm, reverse or vary such decision or instruction.</p> <p>If either party disagrees with the action taken by the Engineer, or if the Engineer fails to reply to the Contractor's notice within the stipulated 28 days, and the matter cannot be settled amicably that party shall be at liberty, subject to Sub-Clause 50.1, to refer the matter to arbitration in accordance with the Contract.</p>
Replacement of Engineer	2.8	The Employer shall not appoint any person to act in replacement of the Engineer without the consent of the Contractor.

Assignment and Subcontracting

- Assignment** 3.1 The Contractor shall not assign the Contract or any part of his obligations under the Contract. A charge in favour of the Contractor's bankers of any monies due under the Contract shall not be considered an assignment.
- Subcontracting** 4.1 The Contractor shall not subcontract the whole of the Works.
- Except where otherwise provided by the Contract the Contractor shall not subcontract any part of the Works without the prior consent of the Engineer.
- The Contractor shall however, not require such consent for purchases of materials or to place contracts for minor details or for any part of the Works of which the manufacturer or supplier is named in the Contract.
- The Contractor shall be responsible for the acts, defaults and neglects of any Subcontractor, his agents or employees as fully as if they were the acts, defaults or neglects of the Contractor, his agents or employees.

Contract Documents

- Ruling Language** 5.1 Where versions of the Contract are prepared in different languages, the version which is to prevail shall be specified in the Preamble. The language of such version is referred to as the ruling language.
- Day to Day Communications** 5.2 The language for day to day communications is stated in the Preamble.
- Priority of Contract Documents** 5.3 Unless otherwise provided in the Contract the priority of the Contract documents shall be as follows:
1. The Letter of Acceptance
 2. The Preamble
 3. The Conditions of Contract, Part II
 4. The Conditions of Contract, Part I
 5. Any other documents forming part of the Contract.
- Documents Mutually Explanatory** 5.4 Subject to Sub-Clause 5.3. the Contract documents shall be taken as mutually explanatory. Any ambiguities or discrepancies shall be resolved by the Engineer, who shall then instruct the Contractor thereon.
- If the Contractor considers that compliance with such instructions will result in any cost which the Contractor could not reasonably have anticipated, he shall forthwith inform the Engineer with full supporting details. The Engineer shall then, if he approves, certify such costs as may be reasonable, together with profit where appropriate, which shall be added to the Contract Price.
- If on the other hand compliance with such instructions results in lower costs for the Contractor than he had reason to anticipate, the Engineer shall certify a deduction from the Contract Price allowing for profit where appropriate.
- Contractor's Drawings** 6.1 The Contractor shall submit to the Engineer for approval:
- (a) within the time given in the Contract or in the Programme such drawings, samples, models or information as may be called for therein, and in the numbers therein required, and
 - (b) during the progress of the Works, such drawings of the general arrangement and details of the Works as specified in the Contract or as the Engineer may require.
- The Engineer shall signify his approval or disapproval thereof. If he fails to do so within the time given in the Contract or the Programme or if no time limit is specified, within 28 days of receipt, they shall be deemed to be approved.

Approved drawings, samples and models shall be signed or otherwise identified by the Engineer.

The Contractor shall supply additional copies of approved drawings in the form and numbers stated in the Contract.

Consequences
of Disapproval
of Contractor's
Drawings

6.2 Any Contractor's Drawings which the Engineer disapproves, shall be forthwith modified to meet the requirements of the Engineer and shall be re-submitted.

Approved
Contractor's
Drawings

6.3 Approved Contractor's Drawings shall not be departed from except as provided in Clause 31.

Inspection of
Contractor's
Drawings

6.4 The Engineer shall have the right at all reasonable times to inspect, at the Contractor's premises, all Contractor's Drawings of any part of the Works.

Erection Information

6.5 The Contractor shall provide, within the times stated in the Contract or in the Programme, drawings showing how the Plant is to be affixed and any other information required for:

(a) preparing suitable foundations or other means of support, and

(b) providing suitable access on the Site for the Plant and any necessary equipment to the place where the Plant is to be erected, and

(c) making necessary connections to the Plant.

Operation and
Maintenance
Manuals

6.6 Before the Works are taken over in accordance with Clause 29 the Contractor shall supply operation and maintenance manuals together with drawings of the Works as built. These shall be in such detail as will enable the Employer to operate, maintain, adjust and repair all parts of the Works.

Unless otherwise stated in Part II the manuals and drawings shall be in the ruling language, and in such form and numbers as stated in the Contract.

Unless otherwise agreed, the Works shall not be considered to be completed for the purposes of taking over until such manuals and drawings have been supplied to the Employer.

Employer's Use of
Contractor's
Drawings

6.7 Contractor's Drawings may be used by the Employer for no other purpose than completing, operating, maintaining, adjusting and repairing the Works.

Contractor's Use
of Employer's
Drawings

6.8 The Employer's Drawings, Specification and other information submitted by the Employer or the Engineer to the Contractor shall remain the property of the Employer. They shall not, without the consent of the Employer, be used, copied or communicated to a third party by the Contractor unless necessary for the purposes of the Contract.

Manufacturing
Drawings

6.9 Unless otherwise specified in Part II the Contractor shall not be required to disclose to the Employer or the Engineer the Contractor's confidential manufacturing drawings, designs, know-how or manufacturing practices, processes or operations.

Errors in
Contractor's
Drawings

7.1 The Contractor shall be responsible for any errors or omissions in the Contractor's Drawings unless they are due to incorrect Employer's Drawings or other written information supplied by the Employer or the Engineer. Approval by the Engineer of the Contractor's Drawings shall not relieve the Contractor from any responsibility under this Sub-Clause.

The Contractor shall bear any costs he may incur as a result of delay in providing Contractor's Drawings and other information or as a result of errors or omissions therein, for which the Contractor is responsible.

The Contractor shall at his own cost carry out any alterations or remedial work necessitated by such errors or omissions for which he is responsible and modify the Contractor's Drawings and such other information accordingly.

The performance of his obligations under this Clause shall be in full satisfaction of the Contractor's liability under this Clause but shall not relieve him of his liability under Sub-Clause 27.1.

Errors by Employer or Engineer

- 7.2 The Employer shall be responsible for the Employer's Drawings and for other written information supplied by the Employer or the Engineer and for the details of special work specified by either of them. If such Employer's Drawings, information or details are incorrect and necessitate alterations of the work, the Employer shall pay the Contractor the cost of the alterations together with profit as certified by the Engineer.

Obligations of the Contractor

General Obligations

- 8.1 The Contractor shall, in accordance with the Contract, with due care and diligence, design, manufacture, deliver to Site, erect, test and commission the Plant and carry out the Works within the Time for Completion. The Contractor shall also provide all necessary Contractor's Equipment, superintendence, labour and, except as stated in Part II, all necessary facilities therefor.

Setting Out

- 8.2 The Contractor shall set out the Works in relation to original points, lines and levels of reference given by the Engineer in writing and provide all necessary instruments, appliances and labour for such purposes.

If, at any time during the execution of the Works, any error appears in the positions, levels, dimensions or alignment of the Works, the Contractor shall rectify the error.

The Contractor shall bear the cost of rectifying the error, unless the error results from incorrect information supplied in writing by the Employer, the Engineer or from default by another contractor, in which case the cost together with profit shall be borne by the Employer.

The checking of any setting-out by the Engineer shall not relieve the Contractor of his responsibility for the accuracy thereof.

Contract Agreement

- 9.1 The Contractor shall, if called upon so to do, execute a Contract Agreement recording all the terms of the Contract, to be prepared by and completed at the cost of the Employer in the form annexed hereto.

Performance Security

- 10.1 If Part II requires the Contractor to obtain a Performance Security, he shall obtain the same in the sum required, within 28 days after the receipt of the Letter of Acceptance. The Performance Security shall be provided by a person and in a form approved by the Employer. The cost of complying with the requirements of this Clause shall be borne by the Contractor.

Period of Validity

- 10.2 The Performance Security shall be valid until the Contractor has executed, completed and remedied defects in the Works in accordance with the Contract. No claim shall be made against the Performance Security after the issue of the Defects Liability Certificate and the Performance Security shall be returned to the Contractor within 14 days of the issue of the Defects Liability Certificate.

Claims under Performance Security

- 10.3 Whether or not the Performance Security is stated by its terms to be payable on the demand of the Employer the Employer shall not make a claim under the Performance Security unless one of the following conditions is satisfied:

(a) the Contractor is in breach of the Contract and fails to remedy the breach within 42 days after receiving written notice from the Employer requiring him so to do. The notice shall state the intention to claim under the Performance Security, the amount claimed and the breach relied upon, or

(b) the Employer and the Contractor have agreed in writing that the amount demanded is payable to the Employer, and the amount has not been paid within 42 days thereafter, or

(c) the Employer has obtained an award in arbitration under Clause 50 and the amount awarded has not been paid within 42 days after the award, or

(d) the Contractor has gone into liquidation or is bankrupt.

In every case the Employer shall, when making the claim, send a copy to the Contractor.

Site Data 11.1 The Tender shall be deemed to have been based on such data on climatic, hydrological and general conditions on the Site and for the operation of the Works as the Employer or the Engineer has made available to the Contractor for the purposes of the Tender. The Contractor shall be responsible for his own interpretation of such data.

Sufficiency of Contract Price 11.2 The Contractor shall be deemed to have satisfied himself on and taken account of in his Tender:

(a) all the conditions and circumstances affecting the Contract Price,

(b) the possibility of carrying out the Works as described in the Contract,

(c) the general circumstances at the Site (if access has been made available to him) and

(d) the general labour position at the Site.

The Contractor shall not be responsible for the accuracy of information given in writing by the Employer or the Engineer but shall be responsible for his interpretation of information received from whatever source.

Physical Obstructions and Conditions 11.3 If during the execution of the Works on Site the Contractor encounters physical obstructions or conditions of the kind stipulated in Sub-Clause 26.1. c) the Contractor shall be entitled to recover the additional cost incurred in consequence.

The Engineer shall certify and there shall be added to the Contract Price the additional cost of:

(a) complying with any instruction which the Engineer, after due consultation with the Employer and the Contractor, issues to the Contractor in connection therewith, and

(b) any necessary measures which the Contractor may take in the absence of specific instructions from the Engineer.

Programme to be Furnished 12.1 The Contractor shall submit to the Engineer for his approval the Programme which shall contain the following:

(a) the order in which the Contractor proposes to carry out the Works (including design, manufacture, delivery to Site, erection, testing and commissioning),

(b) the times when submission and approval of the Contractor's Drawings are required,

- (ii) to provide access to the Site,
- (iii) to have completed the necessary civil engineering work (including foundations for the Plant) and
- (iv) to have obtained any import licences, consents, wayleaves and approvals necessary for the purpose of the Works.

The Contractor shall submit the Programme in the form stated in the Preamble within 28 days after the Commencement Date.

The approval by the Engineer of the Programme shall not relieve the Contractor or the Employer from any obligation under the Contract.

Alteration to Programme	12.2	No material alteration to the Programme shall be made without the approval of the Engineer.
Revision of Programme	12.3	<p>If the progress of the Works does not conform to the Programme, the Engineer may instruct the Contractor to revise the Programme.</p> <p>If such modifications are required for reasons for which the Contractor is not responsible, the cost of preparing the revised Programme shall be certified by the Engineer and added to the Contract Price.</p>
Contractor's Representative	13.1	<p>The Contractor shall employ one or more competent representatives to superintend the carrying out of the Works on Site. They shall be fluent in the language for day to day communications. Their names shall be communicated in writing to the Engineer before work on Site begins.</p> <p>Any instruction or notice which the Engineer gives to the Contractor's representatives shall be deemed to have been given to the Contractor.</p>
Objection to Contractor's Employees	13.2	The Contractor shall, upon the Engineer's written instruction, remove from the Works any person employed by him in the execution of the Works, who misconducts himself or is incompetent or negligent.
Contractor's Equipment	14.1	<p>Except to the extent specified in Part II, the Contractor shall provide all Contractor's Equipment necessary to complete the Works.</p> <p>All Contractor's Equipment shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the Works. The Contractor shall not remove from the Site any such equipment, except:</p> <ul style="list-style-type: none"> (a) when it is no longer required for the completion of the Works, or (b) when the Engineer has given his consent.
Safety Precautions	14.2	<p>The Contractor shall observe all applicable regulations regarding safety on the Site.</p> <p>Unless otherwise agreed, the Contractor shall, from the commencement of work on Site until taking over provide:</p> <ul style="list-style-type: none"> (a) fencing, lighting, guarding and watching of the Works, and (b) temporary roadways, footways, guards and fences which may be necessary for the accommodation and protection of owners and occupiers of adjacent property, the public and others.
Electricity, Water and Gas	14.3	The Contractor shall be entitled to use for the purposes of the Works such supplies of electricity, water, gas and other services as may be available on the Site and of which details are given in the Preamble. The Contractor shall pay the Employer a fair price for such use. The Contractor shall at his own cost provide any apparatus necessary for such use.

Employer's
Equipment

14.4 The Employer shall, if the Contractor so requests for the execution of the Works, operate any available equipment of which details are given in the Preamble. The Contractor shall pay the Employer a fair price for such use.

The Employer shall during such operation retain control of and be responsible for the safe working of the equipment.

Clearance of Site

14.5 The Contractor shall from time to time during the progress of the Works clear away and remove all surplus materials and rubbish. On completion of the Works the Contractor shall remove all Contractor's Equipment and leave the whole of the Site and the Works clean and in a workmanlike condition, to the satisfaction of the Engineer.

Opportunities for
Other Contractors

14.6 The Contractor shall, in accordance with the Engineer's instructions, afford to other contractors engaged by the Employer to work on the Site and persons lawfully upon the Site all reasonable opportunities for carrying out their work provided that the same shall not obstruct or disturb the progress of the Works. The Contractor shall also afford such opportunities to the employees of the Employer.

If the Contractor, on the written request of the Engineer, makes available any Contractor's Equipment or provides any other service, the Employer shall pay the Contractor accordingly. The amount to be paid shall be certified by the Engineer and added to the Contract Price.

Authority for Access

14.7 No persons other than the employees of the Contractor and his Subcontractors shall be allowed on the Site except with the consent of the Engineer.

Facilities to inspect the Works shall at all times be afforded by the Contractor to the Engineer and his representatives, the Employer's representatives, authorities and officials.

Information for
Import Permits
and Licences

14.8 The Contractor shall submit to the Employer in good time such details of all Plant and Contractor's Equipment as will enable the Employer to obtain all necessary import permits or licences.

Compliance with
Statutes,
Regulations

15.1 The Contractor shall, in all matters arising in the performance of the Contract, comply in all respects with, give all notices and pay all fees required by the provisions of any national or state statute, ordinance or other law or any regulation or bye-law of any duly constituted authority.

Compliance
with Laws

15.2 The Contractor shall comply with the laws of the country of manufacture concerning the manufacture of the Plant, and the laws of the country where the Plant is to be erected so far as such laws concern the manufacture, erection and operation of the Works.

Patent Rights

16.1 The Contractor shall indemnify the Employer against all claims of infringement of any patent, registered design, copyright, trade mark or trade name or other intellectual property right provided that all of following conditions are satisfied:

(a) The claim or proceedings arise out of the design, construction, manufacture or use of the Works or any Plant supplied by the Contractor.

(b) The right was protected at the date of the Contract in the Contractor's country or the country in which the Plant is to be manufactured or erected.

(c) The infringement or allegation of infringement was not caused by any use of the Works otherwise than for the purpose indicated by or reasonably to be inferred from the Specification.

(d) The infringement or allegation of infringement was not caused by the use of any Plant in association or combination with any plant not supplied by the Contractor, unless such association or combination was disclosed to the Contractor prior to the date of the Tender.

Contractor following the design or instructions of the Employer or the Engineer.

**Claims in respect of
Patent Rights**

16.2 The Contractor shall be promptly notified of any claim under this Clause made against the Employer. The Contractor may at his own cost conduct negotiations for the settlement of such claim, and any litigation that may arise therefrom.

The Employer shall not make any admission which might be prejudicial to the Contractor unless the Contractor has failed to take over the conduct of the negotiations or litigation within a reasonable time after having been so requested.

The Contractor may not, however, conduct such negotiations or litigation before he has given the Employer such reasonable security as the Employer may require. The security shall be for an amount which is an assessment of the compensation, damages, expenses and costs for which the Employer may become liable and which are the subject of the indemnity under Sub-Clause 16.1.

The Employer shall, at the request of the Contractor, provide all available assistance for the purpose of contesting any such claim or action, and shall be repaid all reasonable costs incurred in so doing.

**Employer's
Warranty for
Patent Rights**

16.3 If any matter for which the Contractor is not liable to indemnify the Employer under Sub-Clause 16.1 causes the infringement or allegation of infringement by the Contractor of any patent, registered design, trade mark, copyright or other intellectual property right, the Employer shall indemnify the Contractor against all claims, damages, expenses and costs which the Contractor may incur in relation thereto. The provisions of Sub-Clause 16.2 shall apply mutatis mutandis.

Obligations of the Employer

**Access to
and Possession
of the Site**

17.1 The Employer shall in reasonable time grant the Contractor access to and possession of the Site, which may, however, not be exclusive to the Contractor.
The Employer shall to the extent stated in the Specification provide means of access for the delivery of all Plant and Contractor's Equipment to the Site.

**Assistance with
Local Regulations**

17.2 The Employer shall assist the Contractor in ascertaining the nature and extent of any laws, regulations, orders or bye-laws, and customs in the country where the Plant is to be erected, which may affect the Contractor in the performance of his obligations under the Contract. The Employer shall if so requested procure for the Contractor copies thereof and information relating thereto at the Contractor's cost.

Civil Works on Site

17.3 Any building, structure, foundation or means of access on the Site to be provided by the Employer shall be in a condition suitable for the reception, movement, installation and maintenance of the Works within the time or times indicated in the Programme.

**Consents and
Wayleaves**

17.4 The Employer shall in due time obtain or grant all consents including permits-to-work, wayleaves and approvals required for the Works.

**Import Permits
and Licences**

17.5 The Employer shall obtain all import permits or licences required for any part of the Plant or Works in reasonable time having regard to the time for delivery of the Plant and completion of the Works.

Labour

**Engagement
of Labour**

18.1 The Contractor shall, unless otherwise provided in the Contract, make his own arrangements for the engagement of all labour and for their payment, housing, feeding and transport.

Returns of Labour 18.2 The Contractor shall submit detailed returns showing the supervisory staff and the numbers of the several classes of labour from time to time employed by the Contractor and Subcontractors on the Site. The returns shall be submitted in such form and at such intervals as the Engineer may prescribe.

Working Hours 18.3 On the Site the Contractor shall observe the normal working hours stated in the Preamble. The Employer shall allow the Contractor to carry out work on the Site continuously during such working hours.

The Engineer may after consulting the Employer and the Contractor, direct that work shall be done at other times. The extra cost, together with profit, shall be added to the Contract Price unless it has become necessary for the completion of the Works within the Time for Completion, and this is due to default of the Contractor.

Restriction on Working Hours 18.4 No work shall be carried out on the Site outside normal working hours or on the locally recognised days of rest, unless:

(a) the Contract so provides, or

(b) the work is unavoidable or 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, or

(c) the Engineer gives his consent.

Workmanship and Materials

Manner of Execution 19.1 All Plant to be supplied shall be manufactured and all work to be done shall be executed in the manner set out in the Contract.

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

Covering up Work 19.2 The Contractor shall give the Engineer full opportunity to examine, measure and test any work on Site which is about to be covered up or put out of view.

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

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

Uncovering Work 19.3 If so instructed by the Engineer, the Contractor shall expose any parts of the Works. The Contractor shall reinstate and make good such parts to the Engineer's satisfaction.

If any parts of the Works have been covered up or put out of view by the Contractor after complying with Sub-Clause 19.2 and are found to be in accordance with the Contract the cost incurred by the Contractor in complying with the Engineer's instructions including profit shall be certified by the Engineer and added to the Contract Price.

Independent Inspection 20.1 The Engineer may, if so provided in the Contract or with the Contractor's consent, delegate inspection and testing of Plant to an independent inspector. Any such delegation shall be effected in the manner required by Sub-Clause 2.3, and for this purpose such independent inspector shall be considered as an Engineer's Representative. Notice of such appointment (being not less than 14 days) shall be given by the Engineer to the Contractor.

Manufacture

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

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

Tests for Inspection and Testing

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

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

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

Facilities for Testing

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

Certificate of Testing

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

Rejection

- 21.1 If, as a result of the inspection, examination or testing referred to in Clause 20, the Engineer decides that any Plant is defective or otherwise not in accordance with the Contract, he may reject such Plant and shall notify the Contractor thereof immediately. The notice shall state the Engineer's objections with reasons. The Engineer shall not reject any Plant for minor defects which do not affect the commercial operation of such Plant.

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

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

Permission to Deliver

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

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

Suspension of Works, Delivery or Erection

Order to Suspend

- 23.1 The Engineer may at any time instruct the Contractor to:

(a) suspend progress of the Works, or

(b) suspend delivery of Plant or Contractor's Equipment which is ready for delivery to the Site at the time for delivery specified in the Programme, or if no time is specified, at the time appropriate for it to be delivered, or

(c) suspend the erection of Plant which has been delivered to the Site.

When the Contractor is prevented from delivering or erecting Plant in accordance with the Programme the Engineer shall be deemed to have instructed a suspension except when such prevention is caused by the Contractor's default.

The Contractor shall during suspension protect and secure the Works or Plant affected at the Contractor's works or elsewhere or at the Site, as the case may be, against any deterioration, loss or damage.

Cost of Suspension 24.1

The additional cost incurred by the Contractor in protecting, securing and insuring the Works or Plant and in following the Engineer's instructions under Sub-Clause 23.1 and in resumption of the work, shall be added to the Contract Price.

The Contractor shall not be entitled to be paid any additional costs if such suspension is necessary by reason of a default on the part of the Contractor.

The Contractor shall not be entitled to additional costs unless he notifies the Engineer of his intention to make such claim, within 28 days after receipt of the order to suspend progress or delivery or of the date of deemed suspension under Sub-Clause 23.1.

Payment in Event of Suspension 24.2

The Contractor shall be entitled to payment for Plant which has not been delivered to Site if the work on Plant or delivery of Plant has been suspended for more than 28 days. After 28 days of suspension, the Contractor shall be entitled to payment of the value of such Plant as at the date of suspension.

A certificate of payment shall be issued on condition that:

(a) the Contractor has marked the Plant as the Employer's property in accordance with the Engineer's instructions, and

(b) the suspension is not due to the Contractor's default.

Prolonged Suspension 24.3

If suspension under Clause 23.1 has continued for more than 84 days, and the suspension is not due to the Contractor's default, the Contractor may by notice to the Engineer require permission to proceed within 28 days.

If permission is not granted within that time, the Contractor may treat the suspension as an omission under Clause 31 of the Section it affects, or if the suspension affects the whole of the Works, terminate the Contract and the provisions of Clause 46 shall apply.

Resumption of Work 24.4

If the Contractor chooses not to treat prolonged suspension as an omission or termination under Sub-Clause 24.3, the Employer shall upon the request of the Contractor, take over the responsibility for protection, storage, security and insurance of the suspended Works and the risk of loss or damage thereto shall thereupon pass to the Employer.

After receipt of permission or an order to proceed, the Contractor shall, after due notice to the Engineer, examine the Works and the Plant affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant that may have occurred during the suspension. Cost properly incurred by the Contractor which would not have been incurred but for the suspension shall be added to the Contract Price together with profit.

The Contractor shall not be entitled to payment for costs incurred in making good any deterioration, defect or loss caused by faulty workmanship or materials or by the Contractor's failure to take the measures specified in Sub-Clause 23.1.

If the Employer has taken over risk and responsibility for the suspended Works under this Sub-Clause, risk and responsibility shall revert to the Contractor 14 days after receipt of the permission or order to proceed.

Time for Completion	25.1	The Works shall be completed and shall have passed the Tests on Completion within the Time for Completion.
Extension of Time for Completion	26.1	<p>The Contractor may claim an extension of the Time for Completion if he is or will be delayed in completing the Works by any of the following causes:</p> <ul style="list-style-type: none"> (a) extra or additional work ordered in writing under Clause 31, (b) exceptional adverse weather conditions, (c) physical obstructions or conditions which could not reasonably have been foreseen by the Contractor, (d) Employer's or Engineer's instructions, otherwise than by reason of the Contractor's default, (e) the failure of the Employer to fulfil any of his obligations under the Contract, (f) delay by any other contractor engaged by the Employer, (g) any suspension of the Works under Clause 23, except when due to the Contractor's default, (h) any industrial dispute, (i) the Employer's Risks. (j) Force Majeure. <p>The Contractor shall give to the Engineer notice of his intention to make a claim for an extension of time within 14 days of the circumstances for such a claim becoming known to the Contractor. The notice shall be followed as soon as possible by the claim with full supporting details.</p> <p>The Engineer shall, after due consultation with the Employer and the Contractor, grant the Contractor from time to time, either prospectively or retrospectively, such extension of Time for Completion as may be justified. The Engineer shall notify the Employer and the Contractor accordingly.</p> <p>The Contractor shall be entitled to such extension whether the delay occurs before or after the Time for Completion.</p>
Delays by Subcontractors	26.2	The Contractor shall be entitled to claim an extension of time if delay on the part of a Subcontractor is due to a cause mentioned in Clause 26.1, and such delay prevents the Contractor from meeting the Time for Completion.
Earlier Completion	26.3	<p>The Employer may require completion of the Works or part thereof earlier than the Time for Completion, on the following conditions:</p> <ul style="list-style-type: none"> (a) The Employer and the Contractor shall first agree the extra sum to be paid for each day by which the Contractor completes the Works or part thereof earlier than the Time for Completion. (b) The Contractor shall not become liable under Sub-Clause 27.1 for any failure to complete the Works or the part thereof by the earlier time.
Delay in Completion	27.1	<p>If the Contractor fails to complete the Works within the Time for Completion, the Employer shall be entitled to a reduction in the Contract Price unless it can be reasonably concluded from the circumstances that the Employer will suffer no loss.</p> <p>The Employer shall within a reasonable time give the Contractor notice of his intention to claim a reduction.</p>

The reduction shall be the percentage per day stated in the Preamble of that part of the Contract Price which is attributable to such part of the Works as cannot in consequence of the failure be put to the intended use. The reduction shall be computed for each day between the Time for Completion and the actual date of completion.

The reduction shall in no case exceed the maximum percentage of the Contract Price of such part stated in the Preamble.

Except as provided in Sub-Clause 27.2, such reduction shall be to the exclusion of any other remedy of the Employer in respect of the Contractor's failure to complete within the Time for Completion.

Prolonged Delay

27.2

If the Employer has become entitled to the maximum reduction under Clause 27.1 for any part of the Works, he may by notice require the Contractor to complete. Such notice shall fix a final time for completion which shall be reasonable.

If the Contractor fails to complete within such time, and this is not due to a cause for which the Employer or some other contractor employed by him is responsible, the Employer may by further notice to the Contractor either:

(a) require the Contractor to complete, or

(b) may himself complete at the Contractor's cost provided that he does so in a reasonable manner, or

(c) terminate the Contract.

If the Employer terminates the Contract, he shall be entitled to recover from the Contractor any loss he has suffered up to the maximum amount stated in the Preamble. If no maximum amount is stated, the Employer shall not be entitled to recover more than that part of the Contract Price which is attributable to that part of the Works which cannot by reason of the Contractor's failure be put to the intended use.

The Employer shall give credit for the value of any part of the Works which he retains.

Tests on Completion

Notice of Tests

28.1

The Contractor shall give to the Engineer 21 day's notice of the date after which he will be ready to make the Tests on Completion (the Tests). Unless otherwise agreed, the Tests shall take place within 14 days after the said date on such day or days as the Engineer shall notify the Contractor.

Time for Tests

28.2

If the Engineer fails to appoint a time after having been asked to do so, or does not attend at the time and place appointed, the Contractor shall be entitled to proceed with the Tests in his absence. The Tests shall then be deemed to have been made in the presence of the Engineer and the results of the Tests shall be accepted as accurate.

Delayed Tests

28.3

If the Tests are being unduly delayed by the Contractor the Engineer may by notice require the Contractor to make the Tests within 21 days after the receipt of such notice. The Contractor shall make the Tests on such days within that period as the Contractor may fix and of which he shall give notice to the Engineer.

If the Contractor fails to make the Tests within 21 days the Engineer may himself proceed with the Tests. All Tests so made by the Engineer shall be at the risk and cost of the Contractor and the cost thereof shall be deducted from the Contract Price. The tests shall then be deemed to have been made in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

be reasonably required by the Contractor to carry out the Tests.

Retesting 28.5 If the Works or any Section fails to pass the Tests, the Engineer or the Contractor may require such Tests to be repeated on the same terms and conditions. All costs to which the Employer may be put by the repetition of the Tests under this Sub-Clause or under Sub-Clause 30.7 shall be deducted from the Contract Price.

Disagreement as to Result of Tests 28.6 If the Engineer and the Contractor disagree on the interpretation of the Test results, each shall give a statement of his views to the other within 14 days after such disagreement arises. The statement shall be accompanied by all relevant evidence.

Consequences of Failure to Pass Tests on Completion 28.7 If the Works or any Section fails to pass the Tests on the repetition thereof under Sub-Clause 28.5, the Engineer, after due consultation with the Employer and the Contractor, shall be entitled to:

(a) order one further repetition of the Tests under the conditions of Sub-Clause 28.5, or

(b) reject the Works or Section in which event the Employer shall have the same remedies against the Contractor as are provided under Sub-Clause 30.5 (c), or

(c) issue a Taking-Over Certificate, if the Employer so wishes, notwithstanding that the Works are not complete; The Contract Price shall then be reduced by such amount as may be agreed by the Employer and the Contractor or, failing agreement, as may be determined by arbitration.

ie by the Employer 28.8 In considering the results of Tests carried out under Sub-Clauses 29.3, 29.4 and 30.7 the Engineer shall make allowances for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works.

Test Certificate 28.9 As soon as the Works or any Section thereof has passed the Tests, the Engineer shall issue a Certificate to the Contractor and the Employer to that effect.

Taking Over

Taking Over 29.1 The Works shall be taken over by the Employer when they have been completed in accordance with the Contract, except in minor respects that do not affect the use of the Works for their intended purpose, have passed the Tests on Completion and a Taking-Over Certificate has been issued or deemed to have been issued in accordance with Sub-Clause 29.2.

Taking-Over Certificate 29.2 The Contractor may apply by notice to the Engineer for a Taking-Over Certificate not earlier than 14 days before the Works will in the Contractor's opinion be complete and ready for taking over under Sub-Clause 29.1.

The Engineer shall within 28 days after the receipt of the Contractor's application either:

(a) issue the Taking-Over Certificate to the Contractor with a copy to the Employer stating the date on which the Works were complete and ready for taking over, or

(b) reject the application giving his reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued.

If the Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days he shall be deemed to have issued the Taking-Over Certificate on the last day of that period.

If the Works are divided by the Contract into Sections the Contractor shall be entitled to apply for separate Taking-Over Certificates for each such Section.

Taking Over

Certificate has been issued in respect thereof.

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

The provisions of Sub-Clause 27.1 shall not apply to any part of the Works while being so used by the Employer. Clause 30 shall apply as if the part had been taken over on the date it was taken into use.

Interference with Tests on Completion 29.4

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

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

If the Works are taken over under this Clause the Contractor shall nevertheless carry out the Tests on Completion during the Defects Liability Period. The Engineer shall require the Tests on Completion to be carried out by 14 days notice and in accordance with the relevant provisions of Clause 28.

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

Defects after Taking Over

Defects Liability Period 30.1

Where any part of the Works is taken over separately from the Works the Defects Liability Period for that part shall commence on the date it was taken over.

Making Good Defects 30.2

The Contractor shall, subject to Sub-Clause 30.9, be responsible for making good any defect in or damage to any part of the Works which may appear or occur during the Defects Liability Period and which arises from, either:

(a) any defective materials, workmanship or design, or

(b) any act or omission of the Contractor during the Defects Liability Period.

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

Notice of Defects 30.3

If any such defect appears or damage occurs, the Employer or the Engineer shall forthwith notify the Contractor thereof.

Extension of Defects Liability Period 30.4

The provisions of this Clause shall apply to all replacements or renewals carried out by the Contractor as if the replacements and renewals had been taken over on the date they were completed.

The Defects Liability Period for the Works shall be extended by a period equal to the period during which the Works cannot be used by reason of a defect or damage. If only part of the Works is affected the Defects Liability Period shall be extended only for that part.

In neither case shall the Defects Liability Period be extended by more than one year.

... The Contractor's obligations under this Clause shall not apply to any defects occurring more than three years after it would have been delivered but for the suspension or such period as may be stated in Part II.

Failure to Remedy Defects

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

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

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

(b) require the Contractor to grant the Employer a reasonable reduction in the Contract Price to be agreed or fixed by arbitration under Clause 50, or

(c) if the defect or damage is such that the Employer has been deprived of substantially the whole of the benefit of the Works or a part thereof, he may terminate the Contract in respect of such parts of the Works as cannot be put to the intended use. The Employer shall to the exclusion of any remedy under Clause 45 be entitled to recover all sums paid in respect of such parts of the Works together with the cost of dismantling the same, clearing the Site and returning Plant to the Contractor or otherwise disposing of it in accordance with the Contractor's instructions.

Removal of Defective Work

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

Further Tests on Completion

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

Right of Access

30.8 Until the Final Certificate of Payment has been issued, the Contractor shall have the right of access to all parts of the Works and to records of the working and performance of the Works.

Such right of access shall be during the Employer's normal working hours at the Contractor's risk and cost. Access shall also be granted to any duly authorised representative of the Contractor whose name has been communicated in writing to the Engineer.

Subject to the Engineer's approval, the Contractor may also at his own risk and cost make any tests which he considers desirable.

Defects in Employer's and Engineer's Designs

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

Contractor to Search

30.10 The Contractor shall, if required by the Engineer in writing, search for the cause of any defect, under the direction of the Engineer. Unless the defect is one for which the Contractor is liable under this Clause, the cost of the work carried out by the Contractor in searching for the cause of the defect shall be added to the Contract Price.

Defects Liability Certificate

30.11 When the Defects Liability Period for the Works or any part thereof has expired and the Contractor has fulfilled all his obligations under the Contract for defects in the Works or that part, the Engineer shall issue within 28 days to the Employer and the Contractor a Defects Liability Certificate to that effect.

Exclusive Remedies 30.12 Except in the case of Gross Misconduct, the Employer's remedies under this Clause shall be in place of and to the exclusion of any other remedy in relation to defects whatsoever.

Variations

Engineer's Right to Vary 31.1 The Engineer may by Variation Order to the Contractor at any time before the Works are taken over, instruct the Contractor to alter, amend, omit, add to or otherwise vary any part of the Works.

The Contractor shall not vary or alter any of the Works, except in accordance with a Variation Order from the Engineer. The Contractor may, however, at any time propose variations of the Works to the Engineer.

Variation Order Procedure 31.2 Prior to any Variation Order under Sub-Clause 31.1 the Engineer shall notify the Contractor of the nature and form of such variation.

As soon as possible after having received such notice, the Contractor shall submit to the Engineer:

(a) a description of work, if any, to be performed and a programme for its execution, and

(b) the Contractor's proposals for any necessary modifications to the Programme according to Sub-Clause 26.1 or to any of the Contractor's obligations under the Contract, and

(c) the Contractor's proposals for adjustment to the Contract Price.

Following the receipt of the Contractor's submission the Engineer shall, after due consultation with the Employer and the Contractor, decide as soon as possible whether or not the variation shall be carried out.

If the Engineer decides that the variation shall be carried out, he shall issue a Variation Order clearly identified as such in accordance with the Contractor's submission or as modified by agreement. If the Engineer and the Contractor are unable to agree the adjustment of the Contract Price, the provisions of Sub-Clause 31.3 shall apply.

Disagreement on adjustment of the Contract Price 31.3 If the Contractor and the Engineer are unable to agree on the adjustment of the Contract Price, the adjustment shall be determined in accordance with the rates specified in the Schedule of Prices.

If the rates contained in the Schedule of Prices are not directly applicable to the specific work in question, suitable rates shall be established by the Engineer reflecting the level of pricing in the Schedule of Prices.

Where rates are not contained in the said Schedule, the amount shall be such as is in all the circumstances reasonable. Due account shall be taken of any over- or under-recovery of overheads by the Contractor in consequence of the variation.

The Contractor shall also be entitled to be paid:

(a) the cost of any partial execution of the Works rendered useless by any such variation, and

(b) the cost of making necessary alterations to Plant already manufactured or in the course of manufacture or of any work done that has to be altered in consequence of such a variation, and

(c) any additional costs incurred by the Contractor by the disruption of the progress of the Works as detailed in the Programme, and

(d) the net effect of the Contractor's finance costs, including interest, caused by the variation.

The Engineer shall on this basis determine the rates or prices to enable on-account payment to be included in certificates of payment.

to Proceed

out the variation and be bound to these Conditions in so doing as if such variation was stated in the Contract.

The work shall not be delayed pending the granting of an extension of the Time for Completion or an adjustment to the Contract Price under Sub-Clause 31.3.

- Records of Costs** 31.5 In any case where the Contractor is instructed to proceed with a variation prior to the determination of the adjustment to the Contract Price in respect thereof the Contractor shall keep records of the cost of undertaking the variation and of time expended thereon. Such records shall be open to inspection by the Engineer at all reasonable times.

Ownership of Plant

- Ownership of Plant** 32.1 Plant to be supplied pursuant to the Contract shall become the property of the Employer at whichever is the earlier of the following times:
- (a) when Plant is delivered to Site, or
 - (b) when by virtue of Sub-Clause 24.2 the Contractor becomes entitled to payment of the value of the Plant

Certificates and Payment

- Terms of Payment** 33.1 The terms of payment shall be as stated in the Preamble.
- Method of Application** 33.2 Unless otherwise specified in Part II applications by the Contractor for payment shall be made to the Engineer as follows:
- (a) in respect of the progress of the Works accompanied by such evidence of the value of the work done as the Engineer may require, and
 - (b) in respect of Plant shipped and en route to the Site identifying the Plant concerned and accompanied by such evidence of shipment and of payment of freight and insurance and by such other documents as the Engineer may require, and
 - (c) for additional payment in accordance with Clause 34.
- Any other application for payment shall state the amounts claimed and the detailed particulars in respect of which the application is made.
- Issue of Certificate of Payment** 33.3 Within 14 days after receiving an application for payment which the Contractor was entitled to make the Engineer shall issue a Certificate of Payment to the Employer showing the amount due, with a copy to the Contractor.
- A certificate of payment, other than the Final Certificate of Payment, shall not be withheld on account of:
- (a) defects of a minor character which are not such as to affect the use of the Works, or
 - (b) any part of the payment applied for being disputed. In such case a certificate of payment for the undisputed amount shall be issued.
- Corrections to Certificates of Payment** 33.4 The Engineer may in any certificate of payment make any correction or modification that should properly be made in respect of any previous certificate.
- Payment** 33.5 Unless otherwise specified in Part II, the Employer shall pay the amount certified within 28 days from the date of issue of each certificate of payment to the Contractor at his principal place of business.

Delayed Payment

33.6 If payment of any sum payable under Sub-Clause 33.5 is delayed, the Contractor shall be entitled to receive interest on the amount unpaid during the period of delay. Unless otherwise stated in Part II the interest shall be at the annual rate three percentage points above the discount rate of the central bank in the Contractor's country. The Contractor shall be entitled to such payment without formal notice and without prejudice to any other right or remedy.

Remedies on Failure to Certify or Make Payment

33.7 The Contractor shall be entitled to stop the Works by giving 14 days notice to the Engineer and the Employer, if either:

(a) the Engineer fails to issue a certificate of payment upon proper application by the Contractor, or

(b) the Employer fails to make any payment as provided in this Clause.

The cost to the Contractor together with profit occasioned by the stoppage and the subsequent resumption of work, shall be added to the Contract Price.

The Contractor shall also be entitled to terminate the Contract by giving 28 days notice to the Engineer and the Employer in any case where the Engineer has failed to issue a certificate of payment upon proper application by the Contractor.

Payment by Measurement

33.8 For any part of the Works which is to be paid according to quantity supplied or work done, the provisions for measurement shall be stated in Part II.

Application for Final Certificate of Payment

33.9 The Contractor shall make application to the Engineer for the Final Certificate of Payment within 28 days after the issue of the Defects Liability Certificate, or if more than one, the last Defects Liability Certificate.

The application for the Final Certificate of Payment shall be accompanied by a final account prepared by the Contractor. The final account shall give full details of the value of all Plant supplied and work done under the Contract together with:

(a) such additions to or deductions from the Contract Price as have been agreed, and

(b) all claims for additional payment to which the Contractor may consider himself entitled.

Issue of Final Certificate of Payment

33.10 The Engineer shall issue to the Employer with a copy to the Contractor, the Final Certificate of Payment within 28 days after receiving an application in accordance with Sub-Clause 33.9.

If the Contractor has not applied for a Final Certificate of Payment within the time specified in Sub-Clause 33.9 the Engineer shall request the Contractor to do so within a further period of 28 days. If the Contractor fails to make such an application, the Engineer shall issue the Final Certificate of Payment for such amount as he deems correct.

Final Certificate of Payment Conclusive

33.11 A Final Certificate of Payment shall be conclusive evidence of the value of the Works, that the Works are in accordance with the Contract and that the Contractor has performed all his obligations under the Contract.

Payment of the amount certified in the Final Certificate of Payment shall be conclusive evidence that the Employer has performed all his obligations under the Contract.

A Final Certificate of Payment or payment shall not be conclusive:

(a) to the extent that fraud or dishonesty relates to or affects any matter dealt with in the certificate, or

(b) if any arbitration or court proceedings under the Contract have been commenced by either party before the expiry of 84 days after the issue of the Final Certificate of Payment.

Claims

Procedure 34.1 In any case where under these Conditions there are circumstances which the Contractor considers entitle him to claim additional payment, the Contractor shall:

(a) if he intends to make any claim for additional payment give to the Engineer notice of his intention to make such claim within 28 days after the said circumstances became known to the Contractor stating the reasons for his claim, and

(b) as soon as reasonably practical after the date of such notice submit to the Engineer full and detailed particulars of his claim but not later than 182 days after such notice unless otherwise agreed by the Engineer. In any event such particulars shall be submitted no later than the application for the Final Certificate of Payment. The Contractor shall thereafter promptly submit such further particulars as the Engineer may reasonably require to assess the validity of the claim.

Assessment 34.2 When the Engineer has received full and detailed particulars of the Contractor's claim in accordance with Sub-Clause 34.1 and such further particulars as he may reasonably have required he shall after due consultation with the Employer and the Contractor determine whether the Contractor is entitled to additional payment and notify the parties accordingly.

The Engineer may reject any claim for additional payment which does not comply with the requirements of Sub-Clause 34.1.

Foreign Currency and Rates of Exchange

Payment in Foreign Currencies 35.1 Arrangements for payment in foreign currencies shall be as stated in the Preamble.

Currency Restrictions 35.2 The Employer shall reimburse the Contractor for any loss arising from:
(a) currency restrictions, and

(b) restrictions on the transfer of currency in which the Contractor is to be paid which are imposed by the government or authorised agency of the government of the country from which any payments under the Contract are to be made.

This Sub-Clause only applies to restrictions imposed after the date 28 days prior to the latest date for submission of tenders for the Works.

Rates of Exchange 35.3 Where the Contract provides for payment in Foreign Currency the rates of exchange between the currencies shall be fixed for the purpose of the Contract and shall be as stated in the Preamble.

If such rates of exchange are not stated in the Preamble the rates to be used shall be those quoted by the central bank of the country whose currency is to be sold 28 days or the nearest day thereto prior to the latest date for submission of tenders for the Works.

Provisional Sums

Use of Provisional Sums 36.1 A Provisional Sum shall only be used, in whole or in part in accordance with the Engineer's instructions.

The total sum paid to the Contractor shall include only such amounts in respect of work, supplies or services to which such Provisional Sums relate as the Engineer shall have instructed.

Ordering
Work against
Provisional Sums

36.2 In respect of every Provisional Sum the Engineer may after due consultation with the Employer and the Contractor order:

- (a) work to be executed, including goods, materials or services to be supplied by the Contractor. The value of such work executed, determined in accordance with Clause 31, shall be paid to the Contractor in accordance with Clause 33, and
- (b) goods and materials to be purchased by the Contractor, for which payment will be made in accordance with Sub-Clause 36.4.

Invoices and
Receipts

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

Payment against
Provisional Sums

36.4 For all work executed or goods, materials or services supplied or purchased by the Contractor under Sub-Clause 36.2 (b), there shall be included in the sums paid to the Contractor:

- (a) the actual price paid or due to be paid by the Contractor, and
- (b) in respect of all other charges and profit, a percentage of the actual price paid or due to be paid. Such percentage shall be as stated in the Preamble.

Risk and Responsibility

Allocation of Risk
and Responsibility

37.1 The Risks of loss of or damage to physical property and of death and personal injury which arise in consequence of the performance of the Contract shall be allocated between the Employer and the Contractor as follows:

- (a) the Employer: the Employer's Risks as specified in Sub-Clause 37.2;
- (b) the Contractor: the Contractor's Risks as specified in Sub-Clause 37.3.

Employer's Risks

37.2 The Employer's Risks are:

- (a) war and hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (b) rebellion, revolution, insurrection, military or usurped power or civil war insofar as it relates to the country in which the Works are located or countries through which plant must be transported;
- (c) ionising radiation or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosives or other hazardous properties of any explosive nuclear assembly or nuclear components thereof;
- (d) pressure waves caused by aircraft travelling at sonic or supersonic speed;
- (e) riot, commotion or disorder, unless solely restricted to the employees of the Contractor or of his Subcontractors;
- (f) use or occupation of the Works or any part thereof by the Employer;
- (g) fault, error, defect or omission in the design of any part of the Works by the Engineer, Employer or those for whom the Employer is responsible;
- (h) the use or occupation of the Site by the Works or any part thereof, or for the purposes of the Contract; or interference, whether temporary or permanent with any right of way, light, air or water or with any easement, wayleaves or right of a similar nature which is the inevitable result of the construction of the Works in accordance with the Contract;
- (i) the right of the Employer to construct the Works or any part thereof on, over, under, in or through any land;

(j) damage (other than that resulting from the construction) which is the inevitable result of the construction of the Works in accordance with the Contract;

(k) the act, neglect or omission or breach of contract or of statutory duty of the Engineer, the Employer or other contractors engaged by the Employer or of their respective employees or agents;

and all risks which an experienced contractor could not have foreseen or, if foreseeable, against which measures to prevent loss, damage or injury from occurring could not reasonably have been taken by such contractor.

Contractor's Risks 37.3 The Contractor's Risks are all risks other than those identified as the Employer's Risks.

Care of the Works and Passing of Risk

Contractor's Responsibility for the Care of the Works 38.1 The Contractor shall be responsible for the care of the Works or any Section thereof from the Commencement Date until the Risk Transfer Date applicable thereto under Sub-Clause 38.2.

The Contractor shall also be responsible for the care of any part of the Works upon which any outstanding work is being performed by the Contractor during the Defects Liability Period until completion of such outstanding work.

Risk Transfer Date 38.2 The Risk Transfer Date in relation to the Works or a Section thereof is the earliest of either:

(a) the date of issue of the Taking-Over Certificate, or

(b) the date when the Engineer is deemed to have issued the Taking-Over Certificate or the Works are deemed to have been taken over in accordance with Clause 29, or

(c) the date of expiry of the notice of termination when the Contract is terminated by the Employer or the Contractor in accordance with these Conditions.

Passing of Risk of Loss of or Damage to the Works 39.1 The risk of loss of or damage to the Works or any Section thereof shall pass from the Contractor to the Employer on the Risk Transfer Date applicable thereto.

Loss or Damage Before Risk Transfer Date 39.2 Loss of or damage to the Works or any Section thereof occurring before the Risk Transfer Date shall:

(a) to the extent caused by any of the Contractor's Risks, be made good forthwith by the Contractor at his own cost, and

(b) to the extent caused by any of the Employer's Risks, be made good by the Contractor at the Employer's expense if so required by the Engineer within 28 days after the occurrence of the loss or damage. The price for making good such loss and damage shall be in all circumstances reasonable and shall be agreed by the Employer and the Contractor, or in the absence of agreement, shall be fixed by arbitration under Clause 50.

Loss or Damage After Risk Transfer Date 39.3 After the Risk Transfer Date, the Contractor's liability in respect of loss of or damage to any part of the Works shall, except in the case of Gross Misconduct, be limited:

(a) to the fulfillment of the Contractor's obligations under Clause 30 in respect of defects therein, and

(b) to making good forthwith loss or damage caused by the Contractor during the Defects Liability Period.

Damage to Property and Injury to Persons

Contractor's Liability 40.1 Except as provided under Sub-Clause 41.1, the Contractor shall be liable for and shall indemnify the Employer against all losses, expenses and claims in respect of any loss of or damage to physical property (other than the Works), death or personal injury occurring before the issue of the last Defects Liability Certificate to the extent caused by:

- (a) defective design, material or workmanship of the Contractor, or
- (b) negligence or breach of statutory duty of the Contractor, his Subcontractors or their respective employees and agents.

Employer's Liability 40.2 The Employer shall be liable for and shall indemnify the Contractor against all losses, expenses or claims in respect of loss of or damage to any physical property or of death or personal injury whenever occurring, to the extent caused by any of the Employer's Risks.

Accidents 41.1 The Contractor shall be liable for and shall indemnify the Employer against all losses, expenses or claims arising in connection with the death of or injury to any person employed by the Contractor or his Subcontractors for the purposes of the Works, unless caused by any acts or defaults of the Engineer, the Employer or other contractors engaged by the Employer or by their respective employees or agents. In the latter cases the Employer shall be liable for and shall indemnify the Contractor against all losses, expenses and claims arising in connection therewith.

Limitations of Liability

Liability for Indirect or Consequential Damage 42.1 Neither party shall be liable to the other for any loss of profit, loss of use, loss of production, loss of contracts or for any other indirect or consequential damage that may be suffered by the other, except:

- (a) as expressly provided in Clause 27, and
- (b) those provisions of these Conditions whereby the Contractor is expressly entitled to receive profit.

Maximum Liability 42.2 The liability of the Contractor to the Employer under these Conditions shall in no case exceed the sum stated in the Preamble or, if no such sum is stated, the Contract Price.

Liability after Expiration of Defects Liability Period 42.3 The Contractor shall have no liability to the Employer for any loss of or damage to the Employer's physical property which occurs after the expiration of the Defects Liability Period unless caused by Gross Misconduct of the Contractor.

Exclusive Remedies 42.4 The Employer and the Contractor intend that their respective rights, obligations and liabilities as provided for in these Conditions shall alone govern their rights under the Contract and in relation to the Works.

Accordingly, the remedies provided under the contract in respect of or in consequence of:

- (a) any breach of contract, or
- (b) any negligent act or omission, or
- (c) death or personal injury, or
- (d) loss or damage to any property

are, save in the case of Gross Misconduct, to be to the exclusion of any other remedy that either may have against the other under the law governing the Contract or otherwise.

Mitigation of
Loss or Damage

42.5 In all cases the party claiming a breach of Contract or a right to be indemnified in accordance with the Contract shall be obliged to take all reasonable measures to mitigate the loss or damage which has occurred or may occur.

Foreseen Damages

42.6 Where either the Employer or the Contractor is liable in damages to the other these shall not exceed the damage which the party in default could reasonably have foreseen at the date of the Contract.

Insurance

The Works

43.1 The Contractor shall insure the Works in the joint names of the Contractor and the Employer to their full replacement value with deductible limits not exceeding those stated in the Preamble.

(a) from the Commencement Date until the Risk Transfer Date against any loss or damage caused by any of the Contractor's Risks and any other risks specified in the Preamble, and

(b) during the Defects Liability period against any loss or damage which is caused either:

(i) by the Contractor in completing any outstanding work or complying with his obligations under Clause 30, or

(ii) by any of the Contractor's Risks which occurred prior to the Risk Transfer Date.

Contractor's
Equipment

43.2 The Contractor shall insure Contractor's Equipment for its full replacement value whilst in transit to the Site, from commencement of loading until completion of unloading at the Site and while on the Site against all loss or damage caused by any of the Contractor's Risks.

Third Party Liability

43.3 The Contractor shall insure against liability to third parties for any death or personal injury and loss of or damage to any physical property arising out of the performance of the Contract and occurring before the issue of the last Defects Liability Certificate.

Such insurance shall be effected before the Contractor begins any work on the Site. The insurance shall be for not less than the amount specified in the Preamble.

Employees

43.4 The contractor shall insure and maintain insurance against his liability under Sub-Clause 41.1.

General
Requirements of
Insurance Policies

43.5 The Contractor shall:

(a) whenever required by the Employer produce the policies or certificates of any insurance which he is required to effect under the Contract together with receipts for the premiums,

(b) effect all insurances for which he is responsible with an insurer and in terms approved by the Employer, and

(c) make no material alterations to the terms of any insurance without the Employer's approval. If an insurer makes any material alteration to the terms the Contractor shall forthwith notify the Employer, and

(d) in all respects comply with any conditions stipulated in the insurance policies which he is required to place under the Contract.

Permitted Exclusions from Insurance Policies	43.6	<p>The insurance cover effected by the Contractor may exclude any of the following:</p> <p>(a) the cost of making good any part of the Works which is defective or otherwise does not comply with the Contract provided that it does not exclude the cost of making good any loss or damage to any other part of the Works attributable to such defect or non-compliance,</p> <p>(b) indirect or consequential loss or damage including any reductions in the Contract Price for delay,</p> <p>(c) wear and tear, shortages and theft,</p> <p>(d) risks relating to vehicles for which third party or other insurance is required by law.</p>
Remedies on the Contractor's Failure to Insure	43.7	<p>If the Contractor fails to produce evidence of insurance cover as stated in Sub-Clause 43.5. (a) then the Employer may effect and keep in force such insurance. Premiums paid by the Employer for this purpose shall be deducted from the Contract Price.</p>
Amounts not Recovered	43.8	<p>Any amounts not recovered from the insurers shall be borne by the Employer or Contractor in accordance with their responsibilities under Clause 37.</p>

Force Majeure

Definition of Force Majeure	44.1	<p>Force Majeure means any circumstances beyond the control of the parties, including but not limited to:</p> <p>(a) war and other hostilities, (whether war be declared or not), invasion, act of foreign enemies, mobilisation, requisition or embargo;</p> <p>(b) ionising radiation or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosives, or other hazardous properties of any explosive nuclear assembly or nuclear components thereof;</p> <p>(c) rebellion, revolution, insurrection, military or usurped power and civil war;</p> <p>(d) riot, commotion or disorder, except where solely restricted to employees of the Contractor.</p>
Effect of Force Majeure	44.2	<p>Neither party shall be considered to be in default or in breach of his obligations under the Contract to the extent that performance of such obligations is prevented by any circumstances of Force Majeure which arise after the date of the Letter of Acceptance or the date when the Contract becomes effective, whichever is the earlier.</p>
Notice of Occurrence	44.3	<p>If either party considers that any circumstances of Force Majeure have occurred which may affect performance of his obligations he shall promptly notify the other party and the Engineer thereof.</p>
Performance to Continue	44.4	<p>Upon the occurrence of any circumstances of Force Majeure the Contractor shall endeavour to continue to perform his obligations under the Contract so far as reasonably practicable. The Contractor shall notify the Engineer of the steps he proposes to take including any reasonable alternative means for performance which is not prevented by Force Majeure. The Contractor shall not take any such steps unless directed so to do by the Engineer.</p>
Additional Costs caused by Force Majeure	44.5	<p>If the Contractor incurs additional costs in complying with the Engineer's directions under Sub-Clause 44.4, the amount thereof shall be certified by the Engineer and added to the Contract Price.</p>

Force Majeure

If circumstances of Force Majeure the works shall suffer loss or damage the Contractor shall be entitled to have the value of the work done, without regard to the loss or damage that has occurred, included in a Certificate of Payment.

Termination in Consequence of Force Majeure

- 44.7 If circumstances of Force Majeure have occurred and shall continue for a period of 182 days then, notwithstanding that the Contractor may by reason thereof have been granted an extension of Time for Completion of the Works, either party shall be entitled to serve upon the other 28 days' notice to terminate the Contract. If at the expiry of the period of 28 days Force Majeure shall still continue the Contract shall terminate.

Payment on Termination for Force Majeure

- 44.8 If the Contract is terminated under Sub-Clause 44.7 the contractor shall be paid the value of the work done.

The Contractor shall also be entitled to receive:

- (a) the amounts payable in respect of any preliminary items so far as the work or service comprised therein has been carried out and a proper proportion of any such item in which the work or service comprised has only been partially carried out,
- (b) the cost of materials or goods ordered for the Works or for use in connection with the Works which have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery. Such materials or goods shall become the property of and be at the risk of the Employer when paid for by the Employer and the Contract shall place the same at the Employer's disposal,
- (c) the amount of any other expenditure which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the whole of the Works,
- (d) the reasonable cost of removal of Contractor's Equipment from the Site and the return thereof to the Contractor's works in his country or to any other destination at no greater cost, and
- (e) the reasonable cost of repatriation of the Contractor's staff and workmen employed wholly in connection with the Works at the date of such termination.

Release from Performance

- 44.9 If circumstances of Force Majeure occur and in consequence thereof under the law governing the Contract the parties are released from further performance of the Contract, the sum payable by the Employer to the Contractor shall be the same as that which would have been payable under Sub-Clause 44.8 if the Contract had been terminated under Sub-Clause 44.7.

Force Majeure Affecting Engineer's Duties

- 44.10 The provisions of Clause 44 shall also apply in circumstances where the Engineer is prevented from performing any of his duties under the Contract by reason of Force Majeure.

Default

Notice of Default

- 45.1 If the Contractor is not executing the Works in accordance with the Contract or is neglecting to perform his obligations thereunder so as seriously to affect the carrying out of the Works, the Engineer may give notice to the Contractor requiring him to make good such failure or neglect.

Contractor's Default

- 45.2 If the Contractor:
- (a) has failed to comply within a reasonable time with a notice under Sub-Clause 45.1, or
 - (b) assigns the Contract or subcontracts the whole of the Works without the Employer's written consent, or

(c) becomes bankrupt or insolvent, has a receiving order made against him or compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors or goes into liquidation,

the Employer may, after having given 7 days notice to the Contractor, terminate the Contract and expel the Contractor from the Site.

Any such expulsion and termination shall be without prejudice to any other rights or powers of the Employer, the Engineer or the Contractor under the Contract.

The Employer may upon such termination complete the Works himself or by any other contractor.

Valuation at Date of Termination	45.3	The Engineer shall, as soon as possible after such termination, certify the value of the Works and all sums then due to the Contractor as at the date of termination in accordance with Clause 33.
Payment after Termination	45.4	The Employer shall not be liable to make any further payments to the Contractor until the Works have been completed. When the Works are so complete, the Employers shall be entitled to recover from the Contractor the extra costs, if any, of completing the Works after allowing for any sum due to the Contractor under Sub-Clause 45.3. If there is no such extra cost the Employer shall pay any balance due to the Contractor.
Effect on Liability for Delay	45.5	The Contractor's liability under Clause 27 shall immediately cease when the Employer expels him from the Site without prejudice to any liability thereunder that may have already occurred.
Employer's Default	46.1	<p>The Contractor may, by giving 14 days notice to the Employer and the Engineer, terminate the Contract if the Employer:</p> <ul style="list-style-type: none">(a) fails to pay the Contractor the amount due under any certificate of the Engineer within 28 days after the amount became payable, or(b) interferes with or obstructs the issue of any certificate of the Engineer, or(c) becomes bankrupt or insolvent, has a receiving order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors or goes into liquidation, or(d) consistently fails to meet his contractual obligations, or(e) appoints a person to act with or in replacement of the Engineer without the Contractor's consent. <p>Any such termination shall be without prejudice to any other rights of the Contractor under the Contract.</p>
Removal of Contractor's Equipment	46.2	On such termination, the Contractor shall be entitled to remove immediately all Contractor's Equipment which is on the Site.
Payment on Termination for Employer's Default	46.3	<p>In the event of such termination the Employer shall pay the Contractor an amount calculated in accordance with Sub-Clause 44.8.</p> <p>The Employer shall pay in addition the amount of any loss or damage, including loss of profit which the Contractor may have suffered in consequence of termination. The additional amount shall, however, not exceed the limit specified in the Preamble.</p>

Changes in Cost and Legislation

Labour, Materials and Transport	47.1	Where the Contract Price is to be adjusted for changes in the cost of labour, materials, transport or other costs of execution of the Works, the method for calculating such adjustment shall be specified in the Preamble.
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which results from the Contractor's default or negligence.

Statutory and Other Regulations

- 47.2 The Contract Price shall be adjusted to take account of any increase or decrease in cost resulting from changes in legislation of the country where the Site is located or in its generally accepted interpretation.

Legislation means any law, order, regulation or bye-law having the force of law, which affects the Contractor in the performance of his obligations under the Contract, made after the date 28 days prior to the latest date for submission of tenders for the Works.

The Engineer shall certify the amount of the resulting increase or decrease in cost, which shall be added to or deducted from the Contract Price.

Customs

Customs and Import Duties

- 48.1 Unless otherwise stated in Part II the Employer shall pay all customs, import duties and taxes in consequence of the importation of Plant. If the Contractor is required to pay such customs, import duties and taxes, the Employer shall reimburse the amount thereof.

Clearance through Customs

- 48.2 The Employer shall assist the Contractor in obtaining clearance through the customs of all Plant and Contractor's Equipment and in procuring any necessary government consent to the re-export of Contractor's Equipment when it is removed from the Site.

Notices

Notices to Contractor

- 49.1 All certificates, notices or written orders to be given to the Contractor by the Employer or the Engineer under these Conditions shall be sent by airmail post, cable, telex or facsimile transmission to or left at the Contractor's principal place of business or such other address as the Contractor shall nominate for that purpose, or may be handed over to the Contractor's representative.

Notices to Employer and Engineer

- 49.2 Any notice to be given to the Employer or to the Engineer under these Conditions shall be sent by airmail post, cable, telex or facsimile transmission to or left at the respective addresses nominated for that purpose in the Preamble, or handed over to the Engineer's or the Employer's representative authorised to receive it.

Minutes of Meetings

- 49.3 Instructions or notices to the Contractor and notices from the Contractor to the Engineer or the Employer recorded in a minute of protocol signed by the authorized representatives of the giver and recipient of such notice or instruction shall be valid notice or instruction for the purposes of the Contract.

Disputes and Arbitration

Disputes concerning Engineer's Decisions

- 50.1 If either party is dissatisfied with a decision or instruction of the Engineer as confirmed, reversed or varied in accordance with Clause 2 he may refer the matter to arbitration pursuant to Sub-Clause 50.2.

Unless the dissatisfied party has notified the other party and the Engineer within 56 days of such decision or instruction of his intention to refer the matter to arbitration, he shall be deemed to have accepted the decision as final.

Reference to arbitration shall not relieve the Contractor of his obligation to proceed with the Works in accordance with the Engineer's decision or instruction, nor relieve the Employer of any of his obligations under the Contract.

additional to the reasons stated in the notice given under Sub-Clause 2.7.

Arbitration 50.2 If at any time any question, dispute or difference shall arise between the Employer and the Contractor in connection with or arising out of the Contract or the carrying out of the Works either party shall be entitled to refer the matter to be finally settled by arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with those Rules, or by arbitration in accordance with such other rules as are specified in Part II.

The Arbitrator(s) shall have full power to open up, review and revise:

(a) any decision or instruction of the Engineer referred to arbitration pursuant to Sub-Clause 50.1, and

(b) any certificate of the Engineer related to the dispute.

Works to Continue 50.3 Performance of the Contract shall continue during arbitration proceedings unless the Employer shall order suspension. If any such suspension is ordered the reasonable costs incurred by the Contractor and occasioned thereby shall be added to the Contract Price.

No payments due or payable by the Employer shall be withheld on account of pending reference to arbitration.

Time Limit for Arbitration 50.4 Formal notice of arbitration must be given to the other party, and where required to the appropriate arbitration body, no later than 84 days after the issue of the Final Certificate of Payment.

Law and Procedure

Applicable Law 51.1 The law which is to apply to the Contract and under which the Contract is to be construed is stated in the Preamble.

Procedural Law 51.2 The law governing the procedure and administration of any arbitration instituted pursuant to Clause 50 is stated in the Preamble.

Language 51.3 The language and place of the arbitration are stated in the Preamble.

(The Clauses referred to in Part II — Section A are those where the provision in the General Conditions (Part I) refer to an alternative solution to be stated in Part II. The provisions in the General Conditions will apply unless an alternative solution is given in Part II — Section A. The clauses in this section need therefore not be completed, but must be completed if alternative solutions to the relevant Part I provisions are necessary.)

Section A

Conditions
Precedent to
Commencement

Sub-Clause 1.1.1.

The following financial and administrative requirements are conditions precedent to commencement:

Defects Liability
Period

Sub-Clause 1.1.11.

The Defects Liability Period is _____ days.

Engineer's Duties

Sub-Clause 2.1.

The Engineer requires the consent of the Employer before exercising the following duties:

Operation and
Maintenance
Manuals

Sub-Clause 6.6.

Operation and Maintenance Manuals shall be in the _____ language.

Manufacturing
Drawings

Sub-Clause 6.9.

The Contractor is required to disclose to the Engineer or the Employer confidential information as follows:

General Obligations

Sub-Clause 8.1.

The following facilities will be provided by the Employer:

The facilities will be provided at the following rates:

Performance
Security

Sub-Clause 10.1.

The Contractor shall obtain a Performance Security of an amount of _____.

**Contractor's
Equipment**

Sub-Clause 14.1.

The following items of Contractor's Equipment will be provided free of charge by the Employer for the Contractor's use:

**Retention of Defects
Liability Period**

Sub-Clause 30.4.

In the event of suspension the Defects Liability Period shall not last more than ____ days after the date the Plant would have been delivered but for the suspension.

**Method of
Application**

Sub-Clause 33.2.

Application for payment shall be made as follows:

Payment

Sub-Clause 33.5.

The period for payment shall be:

The place for payment shall be:

Delayed Payment

Sub-Clause 33.6.

The interest rate for delayed payment is ____ %.

**Payment by
Measurement**

Sub-Clause 33.8.

The provisions for measurement are:

**Customs and
Import Duties**

Sub-Clause 48.1.

The Contractor shall pay and be reimbursed by the Employer for the following customs, import duties and taxes in consequence of the importation of the Plant:

Arbitration

Sub-Clause 50.2.

The rules of arbitration shall be those of:

Section B

Add further Special Conditions as may be required for the particular project.

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NAME OF CONTRACT: _____

TENDER

TO: _____

1. Having examined the Tender Documents including the Instructions to Tenderers, Conditions of Contract, Specification, Employer's Drawings and Schedule of Prices for the execution of the above-named Contract, we, the undersigned, hereby offer to execute, complete and remedy defects in the whole of the Works in conformity with the said documents for the sum of

(_____)

2. We undertake, if our Tender is accepted, to complete and deliver the whole of the Works comprised in the Contract within the time or times stated in the Contract, subject to the said Conditions.
3. We agree to abide by this Tender for a period of _____ days from the date fixed for receiving the same and it shall remain binding upon us and may be accepted by you at any time before the expiration of that period.
4. This Tender is submitted under our covering letter reference _____ dated _____ and the completed tender documents and other information, required by the Instructions to Tenderers, which are enclosed therewith all of which shall be read and construed as forming a part hereof.
5. This Tender, together with your written acceptance thereof shall constitute a binding Contract between us, valid from the date of your written Letter of Acceptance.
6. We understand that you are not bound to accept the lowest or any Tender you may receive.

Dated this _____ day of _____ 19 ____

Signature _____ in the capacity of _____

duly authorised to sign tenders for and on behalf of:

Witness _____

Address _____

Occupation _____

Contract agreement

This Agreement made the _____ day of _____ 19 ____

Between _____

_____ (hereinafter called "the Employer) and

_____ (hereinafter called the "Contractor")

Whereas the Employer requires that certain Works should be provided and executed, by the Contractor, namely _____

and has appointed _____ as
the Engineer for the purposes thereof and has accepted a Tender by the Contractor for the provision and execution of such Works in the sum of _____

_____ (hereinafter called the "Contract Price").

Now it is agreed as follows:

1. In this Agreement words and expressions shall have the meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form this Agreement:
 - (a) The Letter of Acceptance
 - (b) The Preamble
 - (c) The Conditions of Contract Part II
 - (d) The Conditions of Contract Part I
 - (e) The Specification
 - (f) The Schedules
 - (g) The Employer's Drawings
 - (h) The Contractor's Drawings
 - (i) The Tender.
3. The Contractor shall provide execute and complete the Works and remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer shall pay the Contractor in consideration of the provision execution and completion of the Works and the remedying of defect therein the Contract Price or such other sum as may be come payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

This Agreement made the _____ day of _____ 19 ____
Between _____

_____ (hereinafter called "the Employer) and
_____ (hereinafter called the "Contractor")

Whereas the Employer requires that certain Works should be provided and executed, by
the Contractor, namely _____

and has appointed _____ as
the Engineer for the purposes thereof and has accepted a Tender by the Contractor for
the provision and execution of such Works in the sum of _____
_____ (hereinafter called the "Contract Price").

Now it is agreed as follows:

1. In this Agreement words and expressions shall have the meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form this Agreement:
 - (a) The Letter of Acceptance
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 - (d) The Conditions of Contract Part I
 - (e) The Specification
 - (f) The Schedules
 - (g) The Employer's Drawings
 - (h) The Contractor's Drawings
 - (i) The Tender.
3. The Contractor shall provide execute and complete the Works and remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer shall pay the Contractor in consideration of the provision execution and completion of the Works and the remedying of defect therein the Contract Price or such other sum as may be come payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

5. The parties have entered into this Agreement in accordance with their respective laws on the date hereof.

The Common Seal of _____

was hereunto affixed in the presence of:

or

Signed Sealed and Delivered by the
said _____

in the presence of:

Binding Signature of Employer _____

Binding Signature of Contractor _____

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Section 1C – Conditions of Particular Application

CONDITIONS OF CONTRACT

PART II - CONDITIONS OF PARTICULAR APPLICATION

Notes on the Conditions of Particular Application

(The Clause referred to in Part II are those where the provision in the General Conditions (Part I i.e Section 1B) refer to an alternative solution to be stated in Part II. The provisions in the General Conditions will apply unless an alternative solution is given in Part II. The clauses in this section need therefore not be completed, but must be completed if alternative solutions to the relevant Part I provision are necessary).

Section A

Sub Clause 1.1.1 Conditions Precedent to Commencement

Item ii) to v) are not applicable.

Sub Clause 1.1.5 Contract Price

“Contract Price” means the sum stated in the Letter of Acceptance as payable to the Contractor for the execution and completion of the works and the remedying of any defects therein in accordance with the provisions of the contract.

Sub Clause 1.1.11 Defects Liability Period

The defects liability period shall be one year from the date of proper taking over of the Works and not from the date of commissioning of the substation.

Sub-Clause 5.3 Priority of Contract Documents

Delete the documents listed 1 –5 and substitute :

1. The Contract Agreement;
2. The Letter of Acceptance;
3. The Preamble
4. Amendments
5. The Conditions of Contract Part II (Section 1C);
6. The Conditions of Contract Part I (Section 1B)
7. The specifications.

In case of conflict, if any, in Clauses of 1 to 6 above, the decision and interpretation of the contract by the Employer shall be final.

Sub Clause 6.6 Operation & Maintenance Manuals

Operation and Maintenance manuals shall be in English language.

Sub Clause 6.9 Manufacturing Drawings

The Contractor is required to disclose to the Engineer or the Employer confidential information such as manufacturing defects noticed in the equipment after installation at other Works site, decisions such as termination of product within ten (10) years of supply of the product etc.

Sub-Clause 7.2 Errors by Employer or Engineer

Clause is not applicable. The contractor to make the assessment of the drawings and any errors, omissions and discrepancies need to be immediately brought to the notice of the BPC during the time of bidding only. The drawings and designs enclosed with the Bidding document are for Bid purpose only.

Sub-Clause 8.1 Contractor's General

The Employer shall not provide any facilities to the Contractor at the Work site. The Contractor shall make his own arrangements with respect to the same. The Employer

Responsibilities

shall provide assistance for obtaining necessary clearances etc. However, all the related expenses shall be borne by the Contractor.

**Sub-Clause 10.1
Performance
Security**

Replace the text of Sub-Clause 10.1 with the following :

"The Contractor shall provide security for his proper performance of the Contract to the Employer within 28 days after the receipt of the Letter of Acceptance. The performance security shall be for 10% of the Contract Amount and shall be in the form of a bank guarantee, issued either (a) by a bank located in Bhutan or a foreign bank through a correspondent bank located in Bhutan or (b) directly by a foreign bank acceptable to the Employer. When providing such security to the Employer, the Contractor shall also notify the Engineer.

Without limitation to the provisions of the preceding paragraph, whenever the Engineer determines an addition to the Contract Price as a result of a change in cost and/or legislation or as a result of a variation amounting to more than 25 percent of the portion of the Contract Price payable in a specific currency, the Contractor, at the Engineer's written request, shall promptly increase the value of the performance security in that currency by an equal percentage.

The cost of complying with the requirements of this Clause shall be borne by the Contractor."

**Sub-Clause 12.1
Program to be
Furnished**

"The time within which the program shall be submitted shall be twenty eight (28) days."

**Sub Clause 14.1
Contractor's Equipment**

The Contractor shall provide all the equipment necessary to complete the works.

**Sub-Clause 18.3
Working Hours**

The second para. shall be modified as follows:

"Subject to any provision contained in the Contract, the Contractor shall have the option to work by day and by night after obtaining prior permission of the Employer, Ministry of Home Affairs, Police and Ministry of Labour. However, under any circumstances extra claim(s) towards the same will not be entertained."

**Sub-Clause 20.4
Facilities for Testing**

Following shall be added at the end of para.

'The Contractor shall also bear the cost towards conveyance (to & fro) of the Employer's/Engineer's representative from

the nearest railway station / airport to manufacturer's works and local transport during the inspection trips and meetings in India.'

Sub-Clause 22.1
Permission to Delivery

'Engineer' shall be replaced by 'Employer'

Sub-Clause 25.1
Time for Completion

Time for completion shall be 7 months from the date of handing over of the site.

Sub-Clause 26.1 Extension
of Time for Completion

Following shall be added as:

'Contractors shall not be entitled for claims of establishment charges, day to day operation cost, hiring of vehicle, salaries of employees etc. for the extended period of stay and ideal labour charges arising out off any circumstances. Such expenses are deemed to be included in Contractor's Risks.'

Sub-Clause 27.1
Delay in
Completion

Add / modify as follows:

"If the Contractor does not complete the Works as per completion period stated in the Contract Agreement, then the damages for delay shall become payable by the Contractor. The Liquidated Damages shall be levied @ 0.1% for every day of delay or the part thereof for unfinished portion of work subjected to a maximum of 10% of Contract Value."

Sub-Clause 30.4
Extension of Defects
Liability

The last para. of the Sub- Clause shall be deleted and modified as follows:

"When progress in respect of Plant has been suspended under Sub-Clause 23.1, the Contractor's obligations under this Clause shall not apply to any defects occurring more than one year after the Time for Completion established on the date of the Letter of Acceptance."

Sub Clause 30.9
Defects in Employer's and
Engineer's Designs

Clause is not applicable and is deleted.

Sub-Clause 31.3
Adjustment of the
Contract Price

Delete the Clause and add the following:

"If the Contractor and the Engineer are unable to agree on the adjustment of the Contract price, the adjustment shall be determined in accordance with the rates specified in the Schedule of Prices.

If the rates contained in the Schedules are not directly applicable to the specific work in question, suitable rates

shall be established by the Engineer reflecting the level of pricing in the Schedule of Prices.

Where the rates are not contained in the said Schedule, the amount shall be such as is in all the circumstances reasonable. Else the rates shall be derived based on joint observation of cost shall be recorded and payment shall be made on the basis of quotation or the actual invoices from the manufacturer, actual taxes and duties, transportation charges and 20% on ex-works towards Contractors overheads .

Clause 33

Clause 33 of the General Conditions shall be deleted and the following Sub- Clauses 33.1 to 33.16 are substituted therefore:

Sub-Clause 33.1 Terms of Payment Equipment

Payment for supply of equipment will be made as under:

- a) 10 % advance pursuant to Sub Clause 33.9 below.
- b) 80% Payment against delivery of equipment/materials as covered in Bill of Quantities of the Contract. The invoice for claiming 80% payment should be accompanied by the following documents.
 - i. Proof of delivery: Submission of entry proof in Bhutan duly certified by the Revenue & Customs Department.
 - ii. Contractor's detailed invoice giving full particulars of the equipment/material, status of supplies, payment received (format shall be obtained from ED).
 - iii. Detailed packing list.
 - iv. Inspection reports and Test Certificates.
 - v. Certificates of BST/Taxes paid in Bhutan and India.
 - vi. Certification of excise duty payment in India.
 - vii. Physical verification and certification by Engineer
 - viii. Submission of Monthly Progress report
 - ix. BST shall be reimbursed separately based on the submission of original receipts (refer sub clause 48.1 and 52.3)
 - x. Three copies of invoices and above document shall be submitted for the claims.
- c) Balance 10% Payment: After the "Taking over" of the Works and issue of Performance Certificate by the Employer's representative and submission of Bank Guarantee by the Contractor of equivalent amount to cover defect liability period.

Sub-Clause 33.2
Terms of payment
Erection & Civil Works

Payment for Erection of Equipment and Civil Works will be made as under:

- a) 10 % advance pursuant to Sub Clause 33.9 below.
- b) 80% Payment upto an extent of 80% of contract value would be made periodically in each quarter on presentation of erection or civil works invoice giving full details of the work done and joint measurements during the quarter along with updated statement showing the status of payments due and received against receipt of monthly progress reports. Three copies of invoices and joint measurements sheets shall be submitted for the claims.
- c) Balance: 10%: Payment would be released on successful commissioning and "Taking Over" of the works and issue of Performance Certificate by the Employer's Representative and submission of Bank Guarantee by the Contractor of an equivalent amount to cover the defect liability period.

Sub-Clause 33.3
Quarterly Statement

The Contractor shall submit a statement in three (3) copies to the Engineer at the end of each quarter, in a tabulated form approved by the Engineer, showing the amounts to which the Contractor considers himself to be entitled. The statement shall include the following items, as applicable, which shall be taken into account in the sequence listed:

- a) the estimated contract value of the Temporary and Permanent Works executed up to the end of the quarter in question, at base unit rates and prices and in bid currency;
- b) the actual value certified for payment for the Temporary and Permanent Works executed up to the end of the previous quarter, at base unit rates and prices and in bid currency;
- c) the estimated contract value at base unit rates and prices of the Temporary and Permanent Works for the quarter in question, in bid currency, obtained by deducting (b) from (a);
- d) the value of any variations executed up to the end of the quarter in question, less the amount certified in the previous Interim Payment Certificate, pursuant to Clause 31.3;

- e) any amount to be withheld under the retention provisions of Sub-Clause 33.7, determined by applying the percentage set forth in Sub-Clause 33.7 due under paragraphs 33.3 (d).
- f) any amounts to be deducted as repayment of the Advance under the provisions of Sub-Clause 33.9; and
- g) Any other sum, to which the Contractor may be entitled under the Contract.

**Sub-Clause 33.4
Quarterly Payment**

- a) The said statement shall be approved or amended by the Engineer in such a way that, in his opinion, it reflects the amounts due to the Contractor in accordance with the Contract, after deduction, other than pursuant to Clause 27.1, of any sums which may have become due and payable by the Contractor to the Employer. In cases where there is a difference of opinion as to the value of any item, the Engineer's view shall prevail. Within 28 days of receipt of the quarterly statement referred to in Sub - Clause 33.3, Engineer shall determine the amounts due to the Contractor and shall issue to the Employer and the Contractor a certificate herein called "Interim Payment Certificate", certifying the amounts due to the Contractor.

Notwithstanding the terms of this Clause or any other Clause of the Contract, no amount will be certified by the Engineer for payment, until the performance security has been provided by the Contractor and approved by the Employer.

**Sub-Clause 33.6
Place of Payment**

Payments to the Contractor by the Employer shall be made in Indian Rupees/Bhutanese Ngultrum into a bank account or accounts nominated by the Contractor. If the payment has to be made by bank draft/cheque, the charges for preparation of draft/cheques, etc. shall be to the Contractor's account.

**Sub-Clause 33.7 Retention
Money**

A retention amounting to 10 percent of the amounts due in each currency, determined in accordance with the procedure set out in Sub-Clause 33.3 (f) shall be made by the Engineer in the first and following Interim Payment Certificates.

**Sub-Clause 33.8
Payment of
Retention Money**

Upon the expiration of the Defects Liability Period for the Works the Retention Money shall be certified by the Engineer for payment to the Contractor (or return

of the bank guarantee, as the case may be.). Provided that, in the event of different Defects Liability Periods being applicable to different Sections or parts of the Permanent Works pursuant to Clause 29.2, the expression “expiration of the Defects Liability Period” shall, for the purposes of this Sub-Clause, be deemed to mean the expiration of the latest of such periods.

Provided also that if at such time, there shall remain to be executed by the Contractor any work instructed, pursuant to Clauses 30.1 and 30.10, in respect of the Works, the Engineer shall be entitled to withhold certification until completion of such work of so much of the balance of the Retention Money as shall, in the opinion of the Engineer, represent the cost of the work remaining to be executed.

Sub-Clause 33.9
Advance
Payment

- a) The Employer will make an interest-free advance payment to the Contractor exclusively for the costs of mobilization in respect of the Works in an amount equivalent to 10 percent of the Contract Price named in the Letter of Acceptance. Payment of such advance amount will be due under separate certification by the Engineer after (i) execution of the Form of Agreement by the parties hereto; (ii) provision by the Contractor of the performance security in accordance with Sub-Clause 10.1; and (iii) provision by the Contractor of an unconditional bank guarantee in a form and by a bank acceptable to the Employer in amount equal to the advance payment. Such bank guarantee shall remain effective until the advance payment has been repaid pursuant to paragraph (b) below, but the amount thereof shall be progressively reduced by the amount repaid by the Contractor as indicated in Interim Payment Certificates issued in accordance with this Clause.

The payment shall be released only after following conditions are met:

- a. Site office setup with a provision of Guesthouse.
 - b. Appointment of Project Manager and his presence at site.
 - c. Mobilization of construction equipment.
 - d. Mobilization of adequate labourers for immediate activities.
- b) The advance payment shall be repaid through percentage deductions from the interim payments certified by the Engineer in accordance with the Clause. Deductions shall commence in the first Interim Payment Certificate, and shall be made at the

rate of 10 percent of the amount of all Interim Payment Certificates in the currency of the advance payment until such time as the advance payment has been repaid; always provided that the advance payment shall be completely repaid prior to the time when 80 percent of the Contract Price has been certified for payment.

**Sub-Clause 33.10
Time of Payment
and Interest**

The amount due to the Contractor under any Interim Payment Certificate issued by the Engineer pursuant to this Clause, or to any other term of the Contract, shall subject to Clause 27.1, be paid by the Employer to the Contractor within 45 days after the receipt of bill and invoices along with joint measurement sheets and Contractor's quarterly statement by the Engineer for certification or, in the case of the Final Certificate pursuant to Sub-Clause 33.13, within 84 days after the agreed Final Statement and written discharge have been submitted to the Engineer for certification.

**Sub-Clause 33.11
Correction of
Certificates**

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

**Sub-Clause 33.12
Statement of
Completion**

Not later than 84 days after the issue of the Taking-Over Certification in respect of the whole of the Works, the Contractor shall submit to the Engineer six copies of Statement of Completion with supporting documents showing in detail, in the form approved by the Engineer.

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

The estimated amounts shall be shown separately in such Statement of Completion. The Engineer shall certify payment in accordance with Sub-Clause 33.4.

**Sub-Clause 33.13
Final Statement**

Not later than 56 days after the issue of the Defects Liability Certificate pursuant to Sub-Clause 30.11, the Contractor

shall submit to the Engineer for consideration six copies of a draft final statement with supporting documents showing in detail, in the form approved by the Engineer,

- a) The value of all work done in accordance with the Contract; and
- b) Any further sums which the Contractor considers to be due to him under the Contract or otherwise.

If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Engineer the final statement as agreed (for the purposes of these Conditions referred to as the "Final Statement").

If, following discussions between the Engineer and the Contractor and any changes to the draft final statement which may be agreed between them, it becomes evident that a dispute exists, the Engineer shall issue to the Employer an Interim Payment Certificate for those parts of the draft final statement which are not in dispute. The dispute shall then be settled in accordance with Clause 50. The Final Statement shall bear agreed upon settlement of the dispute.

**Sub-Clause 33.14
Discharge**

Upon submission of the Final Statement, the Contractor shall give to the Employer, with a copy to the Engineer, a written discharge confirming that the total of the Final Statement represents full and final settlement of all money due to the Contractor arising out of or in respect of the Contract. Provided that such discharge shall become effective only after payment due under the Final Payment Certificate issued pursuant to Sub-Clause 33.15 has been made and the performance security referred to in Sub-Clause 10.1 has been returned to the Contractor.

**Sub-Clause 33.15
Final Payment
Certificate**

Within 40 days after receipt of the Final Statement and the written discharge, the Engineer shall issue to the Employer (with a copy to the Contractor) a Final Payment Certificate stating

- a) the amount which, in the opinion of the Engineer, is finally due under the Contract or otherwise, and
- b) After giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled, other than Clause 27.1, the balance, if any, due from the Employer to the

Contractor or from the Contractor to the Employer as the case may be.

**Sub-Clause 33.16
Cessation of
Employer's
Liability**

The Employer shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or execution of the Works, unless the Contractor shall have included a claim in respect thereof in his Final Statement and (except in respect of matters or things arising after the issue of the Taking-Over Certificate in respect of the whole of the Works) in the Statement of Completion referred to in Sub-Clause 33.12.

**Sub-Clause 37.2
Employer's Risks**

Sub-Clause 37.2 g) shall be deleted.

**Sub-Clause 40.1
Contractor's Liability**

Add the following words at the end of sub-Clause 40.1:
Any damages caused due to contract works should be reinstated to its normal condition after the completion of the work.

**Sub-Clause 43.1 and 43.2
Insurance
The Works and
Contractor's
Equipment**

Add the following words at the end of Sub-Clause 43.1 and 43.2:

", it being understood that such insurance shall provide for compensation to be payable in currency of bid required to rectify the loss or damage incurred." The Contractor shall ensure that insurance coverage for the Project is made through one of the insurance companies in Bhutan."

**Sub-Clause 43.6
Permitted Exclusions
from Insurance Policies**

Sub-clause 43.6 is amended to read as follows :

"There shall be no obligation for the insurances in Sub-Clause 43.1 to include loss or damage caused by the risks listed under Sub-Clause 43.6 paras. a) to d)".

**Sub Clause 46.1
Employer's Default**

Sub Clause 46.1 e) is deleted.

**Sub-Clause 48.1
Taxes and Duty**

Delete the Clause and add the following:
'The Contractor shall be responsible for payment of all taxes, duties, levies, royalties, etc., as applicable in Bhutan & India and shall be included in FAS price.'

Additional Clauses

Clause 52 Taxation

Sub-Clause 52.1 Foreign Taxation

The prices bid by the Contractor shall include all taxes, duties and other charges imposed outside the Employer's country on the production, manufacture, sale and transport of the Contractor's Equipment, Plant, materials and supplies to be used on or furnished under the Contract, and on the services performed under the Contract.

Sub-Clause 52.2 Local Taxation

The prices bid by the Contractor shall include all duties, import duties, business taxes, income and other taxes that may be levied in accordance to the laws and regulations in being as of the date 28 days prior to the closing date for submission of bids in the Employer's country on the Contractor's Equipment, Plant, materials and supplies (permanent, temporary and consumable) acquired for the purpose of the Contract and on the services performed under the Contract. Nothing in the Contract shall relieve the Contractor from his responsibility to pay any tax that may be levied in the Employer's country on profits made by him in respect of the Contract.

Sub-Clause 52.3 Custom Duty & Bhutan Sales Tax

The Contractor shall be responsible for payment of all levies, royalty, taxes, etc. as applicable in Bhutan. Bhutan Sales Tax and Custom Duty are applicable at the entry check post.

It is the responsibility of the bidders to make themselves conversant with the relevant rules and regulations on taxation policy of Bhutan from the RRCO (Regional Revenue and Customs Office at Thimphu or Phuentsholing). As far as possible, the Contractor shall procure the materials required for the construction works such as cement, steel rods, etc. within Bhutan. BST shall not be reimbursed for items of schedule C (civil works supply materials).

The contractor will have to pay BST and Custom Duty at the entry check post and submit the following documents for reimbursement claims to Employer's representative.

- a) Original money receipt of Revenue and Customs Divisions
- b) Original Source vendor invoice/bill/cash memo of materials for which BST & Customs Duty is paid as reflected in the above receipt duly stamped by Custom authorities of Bhutan

Employer will refund the claim after getting the refund from Revenue and Custom Department. The payment towards such taxes/duties in Bhutan will be subject to the ceiling of amount obtained by using applicable rate on the quoted ex-works

prices. The reimbursement of BST however will not be applicable for goods/materials procured within Bhutan.

In case of misuse of the permit/material, suitable penal deduction shall be made from the Contractor's bill up to 5 times the BST levy able on such materials.

On completion of the works, if it is observed that excess goods/materials have been procured by the Contractor, the BST/Custom Duty reimbursed by the contractor in case of these materials will have to be refunded to the Employer by the Contractor. These excess goods/materials will be assessed based on the consumption statement entered in the Measurement Books (MBs).

The provisions as above do not apply to the supply items under the contract, which have separate unit rates in the contract along with applicable BST and CD rates, as quoted at the time of Bid. For these items, the payment for BST / CD will be based on the actual payment made by the Contractor, subject to the ceiling derived based on the rate (in %) of BST/CD assumed by the Contractor at the time of Bid for each of the items. However, in the event there is change in the applicable BST / CD rates (in %) after 28 days prior to the due date for submission of the Bid, the applicable differential rate shall be based on the difference between the quoted rate (in %) and the new rate (in %), subject to such differential being lower than the difference in correct rates (in %) prior to 28 days before scheduled date for submission of Bids and the new rates (in %).

**Sub-Clause 52.4
Business Income Tax &
Foreign Contractor Tax**

The Contractor will have to pay Business Income Tax in Bhutan. Presently, the applicable Contractor Tax (FCT) is 3% for non-nationals and 2% for Bhutanese Contractors. This will be deducted from the gross amount of the bills/ invoices.

**Sub-Clause 52.5
Income Tax on Staff**

The Contractor's staff, personnel and labour will be liable to pay Personal Income Tax in Bhutan in respect of such of their salaries and wages as are chargeable under the laws and regulations for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such laws and regulations.

**Clause 53
Bribes**

If the Contractor, or any of his Subcontractors, agents or servants gives or offers to give to any person any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any action in relation to the Contract or any other contract with the Employer, or for showing or forbearing to show favor or disfavor to any person in relation to the Contract or to any other contract with the Employer, then the Employer may enter upon the Site and the Works and expel the Contractor and the provisions of Clause 45.4 hereof shall apply as if such entry and expulsion had been made pursuant to that Clause.

**Clause 54
Termination of
Contract for Employer's
Convenience**

54.1 The Employer shall be entitled to terminate this Contract at any time for the Employer's convenience after giving 56 days prior notice to the Contractor, with a copy to the Engineer. In the event of such termination, the Contractor

- a) shall proceed as provided in Sub-Clause 46.2; and
- b) shall be paid by the Employer as provided in Sub-Clause 45.3

54.2 The employer shall have the right at its sole discretion to terminate or cancel the contract in whole or in-part of the following events by giving 30 days prior notice:

- a) If employer deems that the work or a part of the work thereof cannot be completed by the contractor within the period or extended period provided by the contract on account of any reason which is attributable to the contractor.
- b) The contractor, without reasonable excuse has failed to commence the work according to the agreed work schedule specified in the contract.
- c) The contractor is not executing the work in accordance with the orders and/or instructions of BPC and is persistently and flagrantly neglecting to carryout his obligations under the contract, or
- d) The contractor has acted unlawfully in the performance of the contract, or

- e) The contractor has become bankrupt or insolvent.

In the event BPC terminates or cancels the contract in whole or in part, BPC may after giving 14 days prior notice in writing enter the site of the work and the contractor shall not obstruct BPC's action.

In the event BPC shall make entrance or cause the contractor to withdraw from the work site in accordance with the contract, BPC shall have no responsibility under the contract for payment to the contractor until the work is completed and the expenses incurred for completion of the works, the amount of damages for delay in completion and any other expenses borne by BPC have been ascertained.

The contractor shall be obligated to pay to BPC the amount required by BPC or other contractors for additional costs of installation and administration resulting from non-fulfillment of the contract by the contractor and the damages for breach of contract by the contractor.

Clause 55
Joint and Several
Liability

If the Contractor is a joint venture of two or more persons, all such persons shall be jointly and severally liable to the Employer for the fulfillment of the terms of the Contract and shall designate one of such persons to act as a leader with authority to bind the joint venture. The composition or the constitution of the joint venture shall not be altered without the prior consent of the Employer.

Clause 56
Details to be
Confidential

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