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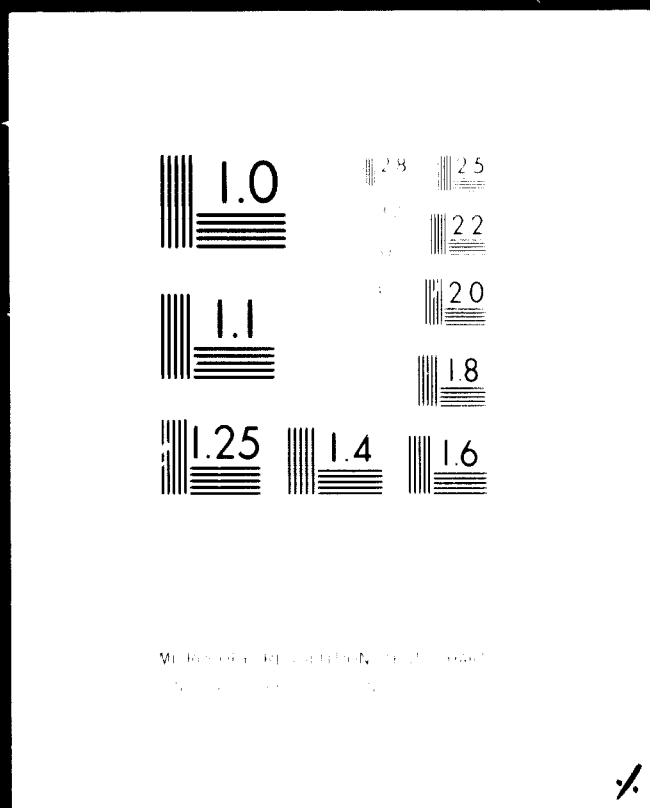
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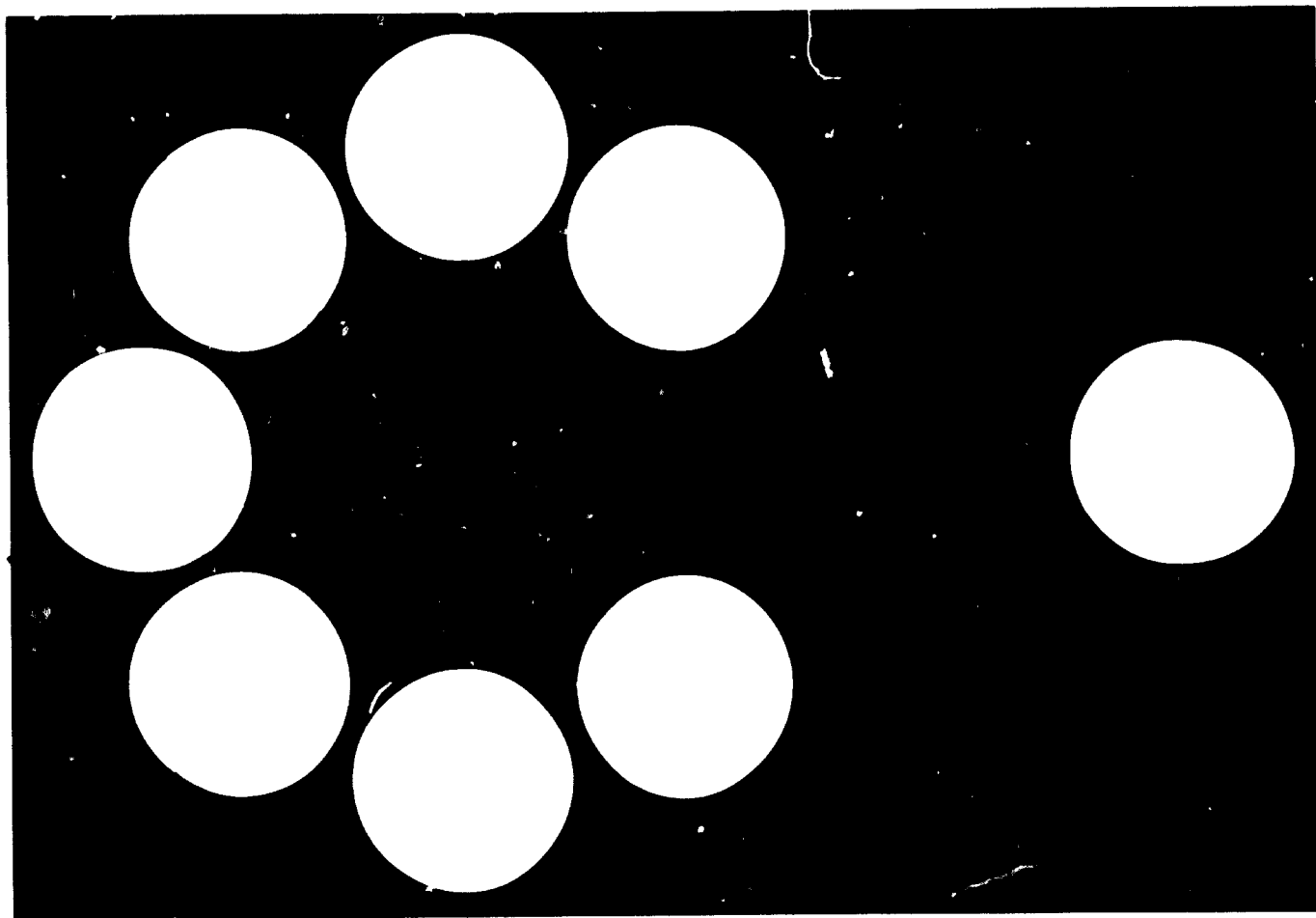


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UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

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# Guidelines for Contracting for Industrial Projects in Developing Countries



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CORRIGENDUM

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April 1976  
New York

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**GUIDELINES FOR CONTRACTING FOR INDUSTRIAL PROJECTS  
IN DEVELOPING COUNTRIES**

*Corrigendum*

*Delete pages 99 and 100*

UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION  
Vienna

**GUIDELINES FOR CONTRACTING  
FOR INDUSTRIAL PROJECTS  
IN DEVELOPING COUNTRIES**



UNITED NATIONS  
New York, 1975

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## *Preface*

This study is intended to serve public and private organizations in developing countries as a guide in preparing contracts concerned with industrial investment projects. It can be used as a source of reference when various types of contracts are to be drawn up.

The various stages involved in the preparation of an industrial project are examined and the basic types of contracts are discussed—contracts with financial institutions, with consultants and with contractors. For each type of contract, the most relevant issues of procedure and contract conditions are discussed. To some extent, existing standard contract clauses and general conditions have been included. Many international and national associations and organizations contributed to this study by supplying their standard contracts and rules and by giving comments and suggestions for the final draft. Their co-operation is greatly appreciated.

The study was prepared by Friedrich Giersig and Stuart R. Matthews in co-operation with the United Nations Industrial Development Organization (UNIDO) secretariat. A member of the Legal Department of the International Bank for Reconstruction and Development (IBRD) reviewed the final draft.

## Acknowledgements

Acknowledgement is gratefully extended to the following organizations for permission to reprint some of their rules, regulations, standard contracts and check lists:

Federation Internationale des Ingenieurs-Conseils (FIDIC), The Hague, Netherlands  
Conditions of Contract (International) for Works of Civil Engineering Construction (annex I)

International Model Form of Agreement Between Client and Consulting Engineer, and International General Rules for Agreement Between Client and Consulting Engineer (IGRA 1963) (annex VI)

International Chamber of Commerce, Paris, France

Rules of Conciliation and Arbitration (annex XV)

Uniform Customs and Practice for Documentary Credits (annex XX)

Incoterms 1953: International Rules for the Interpretation of Trade Terms (annex XXI)

Organisme de Liaison des Industries Métalliques Européenes (ORGALIME), Brussels, Belgium

Conditions for the Provision of Technical Personnel Abroad (annex XXV)

Gower Press, London, United Kingdom of Great Britain and Northern Ireland

Check list from P. D. V. Marsh, *Contracting for Engineering and Construction Projects*, pp. 52-57 (annex XIII)



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## *EXPLANATORY NOTES*

Reference to dollars (\$) indicates United States dollars.

The following abbreviations are used:

ESCAP	Economic and Social Commission for Asia and the Pacific
FIDIC	Fédération internationale des ingénieurs-conseils
IBRD	International Bank for Reconstruction and Development
ICC	International Chamber of Commerce
c.i.f.	cost, insurance, freight
f.a.s.	free alongside
f.o.b.	free on board

## Introduction

A number of studies concerned with industrial project implementation have been focused on the techniques used and the problems encountered in developing countries [1-3].<sup>1</sup>

Many of the problems connected with the implementation of projects in developing countries can be traced to the contractual arrangements made for these projects. Three United Nations publications give guidance to managers, administrators and engineers in developing countries on specific issues arising in contracting. The *Manual on the Use of Consultants in Developing Countries* [4] deals with various aspects of contracts with consultants. The *Manual on the Establishment of Industrial Joint-Venture Agreements in Developing Countries* [5] discusses the negotiation of joint-venture agreements and presents sample clauses that are usually included in such agreements. *Contract Planning and Organization* [6] deals with the organizational aspects of contracting.

The aims of this study are to familiarize relevant staff in developing countries with general contractual procedures and to make them aware of some of the problems and pitfalls they may encounter.

An industrial project passes through three typical stages of preparation [7]. For each stage the owner—defined in this study as the private or public entity in charge of the project—may and often does employ the services of other parties. These parties should be bound by contracts to ensure that they shall carry out their respective tasks in accordance with the project specifications, with due diligence and efficiency and in conformity with sound business practices. These three stages are:

(a) *The opportunity stage.* In the opportunity stage, the project idea is identified and formulated. The goals and basic parameters of the investment are established, and it is determined whether the project is sufficiently promising to justify more detailed consideration and further studies;

(b) *The feasibility stage.* During the feasibility stage, the technical and economic feasibility of the project is studied in detail. The services of a consultant may be required for this task. On the basis of the feasibility study, the owner decides whether to undertake the project;

(c) *The implementation stage.* The implementation stage begins with the decision to invest in the project and includes the construction, the installation of equipment and the initial operation of the project. The parties normally involved in carrying out the project are:

- (i) The owner, who may establish an implementing agency to manage the project;
- (ii) Financial institutions (national or international), which finance the materials, equipment and services required for the project;

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<sup>1</sup> Figures in square brackets refer to references listed at the end of this study.

- (iii) Consultants, who perform the detailed engineering of the project, including the preparation of designs, specifications and contract documents, the analysis of bids and recommendations thereon and supervise the execution of the project, including, sometimes, its initial operation;
- (iv) Contractors, who execute civil works and supply, deliver, install and set into operation the mechanical and electrical equipment required for the project.

This study covers the three stages mentioned above and deals with agreements between the owner and other parties involved in the project that are directly bound to him by a contract. Subcontracts are not treated here, on the assumption that the prime contractor is fully responsible for any portions of the project works or services he has undertaken to perform. Nevertheless, the owner may, as a matter of caution, wish to ensure that only technically competent subcontractors shall be engaged on the project. This concern of the owner can be met through a suitable provision in the prime contract (e.g. annex I, clause 4).

The annexes to this study present some standard forms for the various types of contracts normally involved in industrial projects. Obviously, standard forms cannot cover all circumstances or conditions prevailing in a particular case. It may therefore be necessary to adjust these models to actual requirements either by altering one or more clauses or by adding new clauses to meet specific situations. In each case special attention must certainly be paid to avoid discrepancies and inconsistencies between the meaning of the altered or new clauses and the other clauses of the contract.

Another important issue is to make sure that contracts do not conflict with local laws and regulations. Certain exceptions to local rules may, of course, be possible (e.g. exemption from taxes or customs); but such matters should be examined before concluding the contract, and express agreement on any such exception should be incorporated in it.

The references and bibliography list publications on contracts sponsored by or generally acceptable to international organizations and widely used when the parties executing the contract are of different nationality, a condition prevailing in most developing countries. Only the most relevant of the many publications in this field have been included.

## I. General remarks on contracts

The following remarks are based primarily on common law concepts [8-11]. Civil law principles in the field of contracts are generally similar but not necessarily identical in every case.

### Elements of contracts

A contract is an agreement (expressed or implied) enforceable by law between two or more competent parties to do or not to do a particular thing. For a contract to be valid, a few preconditions must be satisfied. Of these, the most important are:

- Two or more competent parties
- Legal subject matter
- Consideration
- Consent of the parties.

When one of these preconditions is missing, no valid contract is created. Although contracts can arise through words or actions, the ones considered here will and should be reduced to writing. The basic contents of a contract are briefly described below.

A written contract usually begins with a statement of the date, the names of the parties and their place of residence. In many written contracts the parties are referred to as "party of the first part", "party of the second part" according to the order in which their names first appear. Note, however, that there is no legal significance to this order, and it is immaterial which of the parties' names is written first.

Next, there often appears a statement of the consideration. Consideration is the substantial cause or reason inducing the parties to enter into an agreement. The statement of the consideration is usually followed by a full statement of all that the first party agrees to do and all that the second party agrees to do, including events excusing performance, e.g. *force majeure*.

Then there may be provisions concerning the consequences of default and the remedies, penalties or forfeitures in case either party does not faithfully and fully perform or offer to perform his part of the agreement. Often these provisions will be followed by others dealing with settlement of disputes, e.g. arbitration or exclusive jurisdiction of the courts of a particular country or with the law governing the contract according to which it and the rights and obligations of the parties thereunder will be interpreted in case of dispute.

The contract may also call for some security to ensure performance, e.g. performance bonds or bank guarantees, retention money, letters of credit. The contract ends with the signatures of the parties (whose authority to make the commitments in the contract should be checked) and the signatures of witnesses. (See annex I.)

Some basic legal concepts should be noted at this point.

(a) Errors in grammar or spelling do not affect the legality of the agreement;

(b) If the language is obscure on certain points, the arbitrator or court will try to determine the intent of the parties when they entered into the agreement. It is therefore of the utmost importance that the terms of the contract be specifically and explicitly stated, and every effort should be made to avoid ambiguity and uncertainty. In the event of ambiguity, the contract will normally be interpreted against the party drafting it;

(c) When an agreement is written, it must be complete in its written form. It should not and often cannot be partly oral. The agreement may, however, be contained in more than one written document, e.g. in specifications and drawings attached to the agreement or in general and particular sets of conditions, all or some of which may be bidding documents. Where the contract comprises various documents, every effort to avoid inconsistencies between them should be made; if contradictions between the documents nevertheless remain, the order in which the contradictory clauses will prevail should be stipulated;

(d) An intentional alteration of a contract in a material part, by one party without the consent of the other, after its execution generally constitutes a breach that will discharge the other party from his obligations under the contract;

(e) An offer or proposal that includes the essential parts of a contract becomes a contract as soon as it is accepted. If not expressly otherwise stated, the acceptance must be at the time the offer is received. The offer may be withdrawn at any time before it has been accepted; but where contracts are awarded on the basis of invitations to bid, it is frequently customary for the owner to require a bid bond, or similar guarantee, to prevent withdrawal of the offer during the bidding period;<sup>2</sup>

(f) A contract binding in the place where it is made is normally binding everywhere, but courts of one country will not enforce contracts made in another country if this would violate the statutes or public policy of their own country;

(g) A contract must be binding on both parties. This element of mutual obligation or consent is the very essence of a contract.

### Scope of contracts

The planning and implementation of industrial projects involves the owner in contracts with consultants, suppliers of equipment and civil works contractors. With regard to these parties at least three combinations of contracts are possible:

(a) Separate contracts (e.g. between owner and consultant, owner and suppliers, owner and civil works contractor);

(b) Joint contracts, where the consultants are linked with the equipment supplier or the civil works contractor (e.g. between owner and consultant, supplier; owner and consultant, civil works contractor);<sup>3</sup>

<sup>2</sup> For a model form of bid bond, see annex II.

<sup>3</sup> This practice is generally undesirable and a project with such an arrangement would not be eligible for financing by international lending institutions.

(c) Comprehensive, or turn-key, contracts, where all the elements are tied together in one contract (e.g. between owner and consultant, supplier, civil works contractor).

Each of these combinations has its own merits and drawbacks, issues largely beyond the scope of this study. For a full discussion of the subject, see "Guide on drawing up contracts for large industrial works", prepared by The Economic Commission for Europe [6, 12].

In this study, each area of contracting—with consultants, suppliers, civil works contractors—has been treated separately. However, most of the subjects discussed in this document are relevant for each aspect of the work under a joint or comprehensive contract.



## II. Contracts between owner and financial institutions

Most projects are not financed by the owner alone. Generally, one or more financial institutions—private, national or international—will participate in the financing.

Since the circumstances and conditions vary widely from project to project and since each financial institution has its own procedure, often confidential, for granting loans, only a general outline of the conditions under which loans are made can be presented here.

Loans from international financial institutions to developing countries are granted to the owner of the project (frequently with a government guarantee) either directly or indirectly through a local development finance bank or by means of a subsidiary loan agreement from the Government through which the proceeds of the international loan are re-lent to the owner of the project, who normally assumes the foreign exchange risk.

Where this latter procedure is followed, the conditions on which the ultimate project borrowers receive loans will be adapted to the economic characteristics of the project involved, while more favourable conditions may be granted to the Government so as to reduce the impact of the loans in question on the balance of payments of the country.

To comply with their own charters and operating procedures and to ensure that the loans shall be used for the intended purpose and in the agreed upon form, the international banks often place conditions (implemented through review and approval procedures contained in the bank's loan agreements) on how the owner must proceed on matters such as [13-23]:

- Selection and use of consultants
- Preparation of tender documents
- Evaluation of bids (including preferences for domestic and regional suppliers or contractors, if any)
- Conditions of contract
- Award of contracts
- Supervision and taking over of works
- Maintenance period.

To see that these conditions are met and the project is carried out efficiently, the banks often insist that the owner engage the services of a consulting firm to act as a *controleur technique*.

Beside these technical conditions, the loan agreement normally contains provisions on matters such as:

- (a) Equity funds to be invested in the project from the owner's own resources;
- (b) Assignment of loan;

- (c) Interest and other charges;
- (d) Repayment period;
- (e) Completion schedule;
- (f) Guarantees and other security, including debt limitation and insurance provisions and conditions such as:
  - (i) Loan to be used exclusively for the purposes of the project under consideration (this is often a *sine qua non* of financing);
  - (ii) Reports to be made to the bank on progress of work, exchange of information, auditing and management provisions, suspension, default and settlement of disputes.

### **III. Contracts between owner and consultants**

#### **Types of consulting services**

As mentioned in the introduction, each project passes through three typical stages: the opportunity stage, the feasibility stage and the implementation stage.

During each stage, investigations have to be made, studies prepared and planning and supervision work carried out. In detail, the following activities may become necessary:

#### *Opportunity stage*

- Survey of existing economic factors
- Survey of industrial activities that developed under similar conditions in other countries
- Projections of economic structure
- Analysis of the technical-economic potentials of specific industrial branches
- Regional plan
- The opportunity study summarizing results and conclusions of the individual surveys and projections

#### *Feasibility stage*

- Market study
- Technological requirement study
- Financial study (capital structure, source of funds)
- Regional economic study
- Location study
- Timing alternatives
- Comprehensive feasibility report
- Preparation of post-investment audit report, i.e. the final analysis of actual cost and production data as compared with planned data

#### *Implementation stage*

- Preparation of the implementation programme
- Preparation of general layout and design
- Cost estimates
- Estimate of time necessary for project implementation
- Detailed engineering of project, including preparation of designs, specifications and contract documents
- Tendering for machinery and construction work
- Supervision of the execution of the project, reception and commissioning of the plant and its operation for an initial period

These activities may be performed in part by the owner. However, it often becomes necessary for the owner to employ consultants to facilitate the implementation of the project.

Industrial consultants provide different types and forms of services, which may be classified as follows [24]:

(a) *Design and engineering services.* Design and engineering services are the "classical" consulting services for the establishment of an industrial plant and may include opportunity and feasibility studies, plant design, preparation of tender documents for equipment and civil engineering, evaluation of bids, supervision of erection and start-up as well as assistance in the initial operation;<sup>4</sup>

(b) *Technological services.* Technological services are concerned with the exploration and examination of natural resources and raw materials, evaluation and improvement of production methods, establishment of industrial plant regulations and codes, including construction standards and safety facilities;

(c) *Economic services.* The economic services of consultants may cover surveys of specific industries, formulation of investment opportunities, project analyses and identification of sources of financing;

(d) *Management services.* Management services include the review and evaluation of the objectives and goals of a particular project, management surveys, production planning and control schemes at the plant level, management and personnel planning and electronic data processing;

(e) *Training programmes.* Consultants frequently train the local labour force so that the latter may take over and operate the plant when the consultants' assignments are completed. The consultants may set up and administer the local training centres and in-plant training programmes for engineers and technicians and give advice on a long-term training plan;

(f) *Co-ordination services.* Co-ordination services include bringing together the various functions involved in a project—financial, managerial, marketing and technical functions.

#### Scope of consultants' contracts<sup>5</sup>

A question is frequently raised as to whether the consultant who is responsible for a sector or feasibility study should also be retained for the detailed design, engineering and supervision of a project. This question results from a suspicion that consultants may slant their feasibility studies so as to enhance the likelihood that a project will be carried out and they will get the additional work. It should be recognized that this danger exists. It must also be realized, however, that changing consultants between the feasibility stage and the implementation stage has several disadvantages. First, the design consultants have to familiarize themselves with the project: they should review all the work, including field surveys, soil investigations and calculations the feasibility consultants have already done if they are to take full responsibility for their task. Secondly, the best and most suitable engineers may

<sup>4</sup> A list of documents to be prepared by the consultant for design and engineering services is given in annex VIII.

<sup>5</sup> See reference [25].

prefer to exclude themselves from the feasibility studies if they know this task will exclude them from the more lucrative design and supervision assignments. For the above reasons, IBRD considers the disadvantages of changing consultants midstream to be greater than the advantages. This position is strongly influenced by the fact that IBRD has its own qualified staff, which means that there is less possibility that the consultants will slant their recommendations.

Even if the intention is to use the same consultants for various stages of the work, there is no need to engage them under one contract. Preparing separate contracts for major phases of the work permits the owner to remain flexible in his relationship with the consultants.

A first break in the consultant's services occurs at the completion of the feasibility studies, since these form the basis of an owner's decision whether to proceed with a project and of a decision by lending agencies whether the economic and financial return of a project justifies its financing. It would be both unwise and undesirable to proceed with the much more expensive phase of detailed design and engineering and the bidding unless funds for financing of the project are assured. A second break in the consultant's activities may come at the completion of the tender procedure, making the supervision of the contract a separate undertaking by the consultant.

Consultants frequently claim that it would be more efficient if their services for all stages were covered by one contract because this procedure would reduce the cost of travel of staff and would relieve the consultants of the problem of holding the staff available for the following stages. Although at first sight this may seem to be a strong argument, the advantages would be only limited. In the first place, the professional expertise to be provided in the various stages is not the same. In the earlier stages, when the need for and justification of a project is still to be established and proved, the emphasis is much more on financial and operational considerations and less on the engineering aspects. It is only after the decision to proceed with a project has been taken that the engineers assume the responsibility for detailed design and engineering, tendering and supervision of implementation.

It may be expected even then that different types of engineers will be used in the various stages. The design engineers usually do not have the same kind of expertise as the field engineers who supervise construction and who deal with contractors. Consultants frequently also use different engineers for preparing tender documents and cost estimates. Therefore, the advantage of continuity of staff is largely hypothetical.

Moreover, in practice, the decision-making and arranging the financing of a project will take many months, and sometimes years. Also, the time needed for the bidding, including evaluation of bids and award of contracts, may run over six months. In both cases this is much too long for a consultant to keep his staff available and fully occupied.

### **Independent consultants**

Of the various kinds of consultants that owners may use, firms of consulting engineers are the ones most frequently needed. In general, such firms fall into one of the following three categories:

- (a) Firms of independent consulting engineers;

(b) Firms that combine the functions of consulting with those of contractors or that are associated with, affiliates of, or owned by contractors;<sup>6</sup>

(c) Consulting engineering affiliates of manufacturers, or manufacturers with departments or design offices offering services as consulting engineers.<sup>6</sup>

The employment of consulting firms should be based on their qualifications for the work in question and on their previous exercise of professional judgement in a demonstrably impartial manner. Therefore, independent firms in category (a) are to be preferred. In some areas of engineering, consulting firms with sufficient depth of experience and capability may fall into categories (b) and (c) in that they have some financial interest, either direct or indirect, in the industry concerned. In a highly exceptional case of this sort, rather than bypass the best consultants, firms in categories (b) and (c) may be acceptable provided they agree to limit their role to that of an independent consulting engineer and disqualify themselves and their associates from work in any other capacity on the same project. If firms in these categories are used, it may be desirable to retain independent opinion in specialist areas as a check on their impartiality.

### Selection of consultants<sup>7</sup>

#### *Preparing terms of reference*

Terms of reference describe what the owner expects the consultant to do. Preparing them is both an important and difficult task for the owner. On the one hand, terms of reference should be sufficiently detailed so as to ensure that the required task shall be performed; and on the other hand, they should be sufficiently flexible so as not to restrict the professional judgement of the consultants unnecessarily.

It is not particularly difficult to describe the professional task of consultants in straightforward engineering work, such as the detailed design and engineering of the civil works for an industrial project. It is more difficult to describe their task in a feasibility study. In such studies, an analysis of financial benefits is required; and assumptions must be made as to operational needs, achievable efficiency and various technical alternatives. It is frequently difficult to determine in advance how many alternatives need to be studied and to what degree of accuracy. For similar reasons, describing the work to be done for sector studies in the opportunity stage is even more difficult. The depth of analysis needed or justified is a matter of judgement, which consultants can form only after they have worked on the study for some time. Availability and reliability of data are often unknown when the terms of reference are prepared.

The technical and administrative support the owner is to provide should be clearly defined in the terms of reference.

Because it is difficult to draft sound terms of reference, international and bilateral lending agencies are usually willing to assist owners in developing countries in this work. If the studies are likely to result in projects for which foreign lending is to be sought, the owner would be well advised to ask for approval of the consultants he

<sup>6</sup> See section on scope of contracts and foot-note 3.

<sup>7</sup> See references [24] and [25].

proposes to hire as well as for comments on, and approval of, the terms of reference by the lending agency likely to be asked for financing. In particularly difficult cases, the owner may retain the services of an independent individual to assist in drafting the terms of reference. Or, he may ask for proposals based on only a broad description of the study the owner wishes undertaken and ask the consultants to include in their proposal refined terms of reference based thereon.

#### *Long list, short list*

On the basis of the definition of the problem in the terms of reference, the owner should assemble a "long list" of firms claiming expertise in the field.

The long list may be prepared in various ways. The owner may:

- (a) List those firms with which he has already had good experience;
- (b) Examine the experience records of firms that have shown interest in carrying out the studies. In particular, the owner should check whether a firm has carried out similar studies or engineering work in countries with conditions similar to those prevailing in the country for which the job is to be done;
- (c) Ask embassies to recommend firms in their countries;
- (d) Consult heads of comparable departments or technical agencies and other owners in neighbouring countries;
- (e) Contact associations of consulting firms in developed countries.

On the basis of the information received, and after a first rough screening, the long list should be limited to 8-12 firms. These firms may then be asked, on the basis of only a broad indication of the type of work to be done, to present their credentials and experience records if they would be interested and in a position to undertake the job.

The long list must then be reduced to the "short list" by examining the qualifications and experience records of the firms. To simplify the evaluation of proposals, and because of the high cost involved for consultants in submitting proposals (which clients eventually have to pay through overheads), the number of firms on the short list should be limited to three or four, at most five, for more comprehensive studies. If the number becomes too large, some of the best firms may not wish to make the effort or to incur the cost of submitting a serious proposal.

#### *Invitation for proposals*

A letter inviting proposals, with the terms of reference attached, is sent to the firms on the short list. Usually 45 days should be sufficient to allow the consultants to prepare and submit their proposals. However, some flexibility may be allowed if a firm asks for more time. The letter of invitation should include information that may be of interest to the consultants, e.g. the number of firms that have been invited, the type of contract (in particular, basis of payment such as man-month), the number of man-months the owner has estimated the job will take (without being binding on the consultants), and the manpower and facilities the owner intends to make available. Unless a firm is already fully familiar with conditions in the country and knows the owner who is requesting proposals, the consultants should be required to inform themselves of local conditions by visiting the country and the inviting owner.

Consultants should also be asked for comments on the terms of reference, since such comments frequently indicate whether the consultants have a good understanding and grasp of the task they are to perform. Factors of importance for evaluating the proposals should be mentioned, such as the firm's experience in the field of study, the adequacy of the proposed work plan and approach, and the *curriculum vitae* of key personnel to be assigned to the study (with an indication whether they belong to the permanent staff of the firm, knowledge of the language by the staff etc.). The consultant should be asked to attach to his proposal a bar-chart, showing the over-all work plan and timing thereof, time to be spent on the job by each staff member and partner, and thus the total man-months he estimates the job will take.

#### *Unpriced proposals*

When retaining the services of consultants, the owner should consider their qualifications to be the major consideration rather than the cost. Although consultants' fees may be high, they are only a fraction of the cost of projects that result from their studies and engineering work. A good consultant may, through his sound recommendations, save an amount many times his fee. Therefore, the usual practice is to select consultants on the basis of unpriced proposals and then to attempt to negotiate satisfactory financial terms with them.

This procedure is sometimes criticized as leading to inflated fees because of the better bargaining position of the firm with the superior technical proposal and perhaps the client's lack of knowledge about suitable fees. The "two-envelope" system used by some owners attempts to overcome this situation by requiring each firm to submit a schedule of fees with its technical proposal. The fees are quoted in separate, sealed envelopes and only the envelope of the successful technical offer is opened. The other schedules of fees are returned unopened. This system is not particularly effective if only one fee envelope is opened, and it degenerates into priced bidding if more than one is opened. The best protection for the owner is experience, and the owner should not hesitate to seek the advice of experienced owners and institutions (such as lender agencies) when negotiating consultants' fees. Schedules of fees are published for certain consulting services in many developed countries [24, 26, 27]. These schedules, however, are for work performed in that country and may not be completely applicable for work in other countries, particularly in developing countries.

#### *Evaluation of proposals*

After all proposals have been received, their evaluation begins. Often, evaluation is very much a matter of personal judgement, since there are few objective yardsticks or figures. But the fact that the proposals are unpriced should help to keep the judgement objective and based exclusively on considerations of quality and not of cost. A simple method of evaluation is to have the proposals examined and listed in order of quality independently by several owner officials; this may lead either directly to a consensus as to which firm is the best or at least reduce the choice to only a few. IBRD has developed a grading system whereby each evaluation factor and each proposed member of the key project staff is given a rating between 0 and 100. These ratings are multiplied by a weight factor reflecting the importance of each evaluation factor and the function each of the key members of the project staff is to perform. It should be taken into account that if the over-all grading is heavily



affected by the low grading of only one or two particular staff members, it is always possible, and fully acceptable, during negotiations to ask for a replacement. More details of the IBRD procedures are given in annexes III and IIIa.

To avoid difficulty and delay in the financing stages of a project, it is desirable to seek at an early date the acceptance by the principal financing authority of the major consultants proposed.

### *Contract negotiations<sup>8</sup>*

#### *Terms of reference and work programme*

The firm whose proposal is selected as the best is invited for contract negotiations. During these negotiations it should first of all be ascertained that the owner and the firm mutually understand and agree on the terms of reference and the work programme, which may be modified. Key personnel should also be discussed. It is fully acceptable for the owner to ask for replacements if he feels that the *curriculum vitae* of any of the proposed staff does not meet what is considered minimum standards. On the other hand, the owner should recognize that, under certain circumstances, the consultant should have the right to replace some staff either before or during the job. For example, if it takes a long time to reach a decision on selection (as frequently is the case) it may be impossible for the consultants to have the same staff as initially proposed still available when the work is to start. Agreement should be reached on the bar-chart that is the basis for the employment of the various categories of staff.

#### *Counterparts and supporting staff*

Other items to agree upon are the counterparts and supporting staff the owner is to provide. The strength of the counterpart staff and the quality of the support services the owner furnishes to the consultant's team in the field play a significant role in the conduct of the work; they affect not only the cost of the consultant's service but also the results and, in most cases, the usefulness of the entire exercise.

A distinction should always be made between the functions of the counterpart staff and those of the supporting staff. Owner counterparts are to work with (not "for") the consultants; ideally, there should be at least one full-time counterpart for each member of the consultant's team. The counterparts' functions are:

- (a) To provide liaison between the consultants and the owner and to direct the consultants to all available sources of data;
- (b) To receive training in the field of the survey or study, through day-to-day exposure to the work of foreign specialists;
- (c) To discuss and review with the consultants all findings and recommendations before they are presented to the owner in the form of a report.

The third function is particularly important. While it is not necessary for each counterpart to agree with all the consultant's recommendations, each should have a clear understanding of the reasoning behind them and of the manner in which they

<sup>8</sup> See annexes IV-VII and XXV.

were reached. After the departure of the consultants, the counterparts should, wherever possible, carry major responsibilities in implementing the recommendations.

On the other hand, the supporting staff the owner is to provide (such as draftsmen, surveyors, clerical personnel and drivers) should work for the consultants and should operate under the direction of members of the team. While their functions are not at the same professional level as those of the counterparts, the performance of supporting staff is of major importance to the success of the consultants' work.

The Fédération internationale des ingénieurs-conseils (FIDIC) has issued recommendations for the remuneration of consultants. These recommendations, which are frequently followed in international consulting contracts, are listed in annex XXIV as a guide for the negotiation of consultants' fees [25]. It should, however, be noted that considerable flexibility exists in this matter.

In negotiating contracts for design and engineering services, the owner is cautioned to make sure the consultant (and/or the contractor who will perform the work on the basis of the consultant's design and engineering specifications) will be liable for any damage resulting from faulty design. Consultants sometimes attempt to limit their liability to the amount of their fee. (See annex VI, clause 4.2, for example.) Since comprehensive insurance policies covering the consultant are available, there is no need to accept unreasonably low levels of liability on the consultant's part.

#### *Association between foreign and local consultants*

Consultants provide the skills, knowledge and expertise unavailable in the organization of the owner. Developing countries frequently lack some of the expertise required, and it is therefore quite common for the owner to engage foreign consultants.

To generate indigenous skills, knowledge and expertise, the Government often prescribes that the foreign consultants the owner engages must have a local representative or establish a temporary partnership with a local consulting firm and/or individual consultants. If the foreign consultant engages a local representative, he bears the responsibility for fulfilling the contract. If he enters into a partnership, however, the responsibility lies with the partnership. Another possible combination of foreign and local consultants is the association of a local consultant with the foreign consultant. The local consultant lends his staff to the foreign consultant and thereby increases his skill and knowledge and builds up his own capacity. Here the responsibility for the contract lies with the foreign consultant. The legal aspects of forming such partnerships and the transfer of know-how do not touch the owner directly, but he should pay attention to these matters to ensure that responsibility shall be clearly established.

The Government may also prescribe that the foreign consultant—alone, in partnership or with an associate—should employ a certain number of local personnel, such as junior engineers, draftsmen, helpers and labour. All such conditions should be made known to the consultant upon invitation to offer his services so as to enable him to select a local representative or to choose a local partner or associate. It should be noted, however, that if the foreign consultant is to be responsible, he must have the authority to hire and fire local personnel even if they are seconded by the owner.

## IV. Contracts between owner and contractors

After the opportunity and feasibility stages, the project enters the implementation stage. This stage begins with the decision to invest in the project.

On the basis of the data resulting from the feasibility study, the owner negotiates with financial institutions for the financing of the project. When the financing sources have been secured, or during negotiations for them and the prospects for financing are good, the procurement stage of the project can begin.<sup>9</sup>

The procurement stage may be subdivided into the following steps:

Preparation of tender documents

Prequalification (where appropriate), advertisement and distribution of tender documents; preparation and submission of bids (tendering stage)

Comparison and evaluation of bids

Award and signing of the contract. A full list of the documents to be prepared with respect to the procurement stage is given in annex VIII.

### Preparation of tender documents

Tender documents set out the legal, technical and financial conditions on which the owner intends to evaluate the bids and to award the contract. The tender documents include conditions of contract, specifications, drawings, bills of quantity, bond forms, instructions to bidders and other supplementary information necessary for the bidder to calculate costs and to arrive at a reasonable bid.

#### *Clarity of documents and drawings*

When preparing tender documents, one should bear in mind that they must be as clear and as unambiguous as possible. This minimizes misunderstandings and possible disputes. Clarity and simplicity of expression facilitate the translation of documents into other languages, as is sometimes necessary.

The need for clarity also applies to the drawings. They are a form of written language and can often express the idea of the engineer more clearly than many pages of written explanations. All drawings should therefore consistently fit together and should not show discrepancies with regard to measures or materials. If possible, the

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<sup>9</sup> In most cases in developing countries procurement will be for public-sector industrial projects and will be based on competitive bidding instead of on the basis of negotiated contracts. The text in this section therefore assumes that procurement will proceed and contracts will be awarded on the basis of bidding.

size of drawings should be uniform or limited to a few dimensions. It is most effective to have small drawings bound together by a well-conceived system of key plans and references.

#### *Language*

The documentation of the entire project should be governed by preferably one internationally used language. This means that all tender and contract documents and correspondence should be in the same language. This language should be used during negotiations on site during erection and start-up and for all written and spoken directions. If more than one language must be used, a ruling language should be designated.

#### *System of measurement*

The project should also be governed by one system of measurement (preferably the metric system). The mixture of different systems of measurement may well cause trouble during bidding, erection and operation of the plant.

#### *Standards*

The entire plant, or at least the functional units of the equipment, should, if possible, comply with the same standards. Specifications should state that if equipment and materials are used that do not meet the specified standards, only those will be accepted that ensure a higher or at least an equal quality. The International Organization for Standardization and its affiliate, the International Electrotechnical Commission, have prepared internationally acceptable standards that should be used where appropriate.

#### *Technical specifications*

Specifications should set forth as clearly and as precisely as possible the work to be accomplished, the goods and services to be supplied, the maintenance required and the place of delivery and installation. They should be specific enough to establish clearly the owner's minimum requirements, so that all bidders will be bidding on the same items, and yet broad enough to include all competitive products that meet the minimum requirements.

Specifications should describe the characteristics of equipment and material as neutrally as possible. This is done by basing specifications on performance (end-use) standards.

Specifications should not prescribe brand names, catalogue numbers or the products of a particular manufacturer except for limited situations where detailed specifications are otherwise unavailable (and the product of a particular manufacturer establishes the essential features that meet the needs of the owner), spare parts are required or standardization is essential. In these cases, all known acceptable brands should be referenced. The phrase "or equal" is sometimes suggested as a means of avoiding the restrictive character of brand-name specifications. This practice should generally be avoided because of the problem, for both owner and supplier, of determining whether a certain product is in fact equal to the brand-name product.

## The tendering phase

### *Prequalification of bidders*

For large or complex civil works or turn-key contracts where open, competitive bidding is contemplated, prequalification of bidders ensures in advance of bidding that the contract shall be carried out by capable contractors. Prequalification is generally not required for suppliers of equipment because their reputation is usually well known.

Prequalification should take into account the firm's experience in similar work in developing countries, capacity with respect to personnel and financial position.

Prequalification notices should be well advertised in the appropriate newspapers and journals. They should be forwarded to embassies of countries with potential bidders and direct to major firms. A check list for use in preparing documents for the invitation for prequalification of contractors is shown in annex X.

### *Invitation to bid*

If prequalification is not resorted to, initial contact is made with potential bidders through invitations to bid. An invitation to bid should be as widely advertised as a prequalification notice and sent direct to well-known firms.

Annex X provides a check list and annex XI a model for an invitation to bid.

### *Instructions to bidders, currency of bid*

Bidding documents should be accompanied by instructions to bidders in order to regulate the making and the submission of bids. A model for these instructions is shown in annex XII. Such a model obviously cannot cover all situations, and appropriate adjustments must be made for particular cases.

Instructions with regard to currency matters in the bidding are an important issue in international contracting. In this regard, the IBRD guidelines [13] provide an acceptable procedure:

#### *3.8 Pricing of Bids*

Since bids will be invited from prospective bidders in a number of countries, bidding documents should clearly state the currencies in which bid prices may be expressed and the contract price will be paid. To that end:

(a) normally bidding documents should require the bidder to state the bid price in his own currency or in another currency widely used in international trade and specified in the bidding documents, except for the portion of his price which the bidder expects to spend in the borrower's country, which he should be required to state in the borrower's currency;

(b) if a substantial portion of the bidder's expenditure under the contract is expected to be in countries other than those of the bidder and of the borrower, the bidding documents should permit the bidder to state a corresponding portion of the price in the currencies of those other countries;

(c) if, under the law, bid price must be stated and the contract price must be paid wholly in the borrower's currency, appropriate provisions in the bidding documents should ensure that the incidence of a decline in the value of the currency of the borrower will not fall on the contractor or supplier with respect to the portion of the contract price that is not required to meet expenditures in the borrower's country. Adequate arrangements should also be made to enable the contractor or supplier to transfer that portion of the contract price to his own country. The bidding documents should draw attention to any rules governing such transfers.

### **Bid opening, evaluation and award of contract**

With regard to bid opening, evaluation and award of contract, the IBRD guidelines [13] provide generally recognized procedures:

#### *4.1 Time Interval Between Invitation and Submission of Bids*

The time allowed for preparation of bids will depend to a large extent upon the magnitude and complexity of the contract. Generally not less than 45 days should be allowed for international bidding. Where large civil works are involved, generally not less than 90 days should be allowed to enable prospective bidders to conduct investigations at the site before submitting their bids. The time allowed, however, should be governed by the circumstances relating to each project.

#### *4.2 Bid Opening Procedures*

The date, hour and place for latest receipt of bids and for the bid opening should be announced in the invitations to bid and all bids should be opened publicly at the stipulated time. Bids received after this time should be returned unopened. The name of the bidder and total amount of each bid and of any alternative bids if they have been requested or permitted should be read aloud and recorded.

#### *4.3 Clarifications or Alterations of Bids*

No bidder should be permitted to alter his bid after the bids have been opened. Only clarifications not changing the substance of the bid may be accepted. The borrower may ask any bidder for a clarification of his bid but should not ask any bidder to change the substance or price of his bid.

#### *4.4 Procedures to be Confidential*

Except as may be required by law, no information relating to the examination, clarification and evaluation of bids and recommendations concerning awards should be communicated after the public opening of bids to any persons not officially concerned with these procedures until the award of a contract to the successful bidder is announced.

#### *4.5 Examination of Bids*

Following the opening, it should be ascertained whether material errors in computation have been made in the bids, whether the bids are fully responsive to the bidding documents, whether the required sureties have been provided, whether documents have been properly signed and whether the bids are otherwise generally in order. If a bid does not substantially conform to the specifications, or contains inadmissible reservations or is not otherwise substantially responsive to the bidding documents, it should be rejected. A technical analysis should then be made to evaluate each responsive bid and to enable bids to be compared.

#### *4.6 Postqualification of Bidders*

In the absence of prequalification, the borrower should determine whether the bidder whose bid has been evaluated the lowest has the capability and financial resources to effectively carry out the contract concerned. If the bidder does not meet that test, his bid should be rejected.

#### *4.7 Evaluation and Comparison of Bids*

Bid evaluation has the purpose of determining the value to the borrower of each bid in a manner that will provide a meaningful comparison among responsive bids and the determination of the lowest evaluation bid.

Bid evaluation must be consistent with the terms and conditions set forth in the bidding documents. In addition to the bid price, adjusted to correct arithmetical errors, other factors such as the time of completion of construction or the efficiency and compatibility of the equipment, the availability of service and spare parts, and the reliability of construction methods proposed should be taken into consideration. To the extent practicable these factors should be expressed in monetary terms according to criteria

specified in the bidding documents. The amount of escalation for price adjustments, if any, included in the bids should not be taken into consideration.

The currency or currencies in which the price offered in each bid would be paid by the borrower if that bid were accepted should be valued in terms of a single currency selected by the borrower for comparison of all bids and stated in the bidding documents. The rates of exchange to be used in such valuation should be the selling rates published by an official source, and applicable to similar transactions on the day bids are opened unless there should be a change in the value of the currencies before the award is made. In such cases the exchange rates at the time of the decision to notify the award to the successful bidder should be used.

A detailed report on the evaluation and comparison of bids setting forth the specific reasons on which the determination of the lowest evaluated bid is based should be prepared by the borrower or by its consultants.

#### 4.8 Preference for Domestic Manufacturers

The Bank may, in suitable cases, permit a margin of preference for domestic manufacturers of goods when comparing domestic bids with those from foreign manufacturers. When a preference is agreed upon, bidding documents should refer to it and specify the manner in which it will be applied. For civil works, the Bank does not allow a margin of preference to domestic contractors competing with foreign contractors.<sup>10</sup>

#### 4.9 Rejection of Bids

Bidding documents usually provide that borrowers may reject all bids. However, all bids should not be rejected and new bids invited on the same specifications solely for the purpose of obtaining lower prices in the new bids, except in cases where the lowest evaluated bid exceeds the cost estimates by a substantial amount. Rejection of all bids may also be justified when (a) bids are not responsive to the intent of the bidding documents, or (b) there is a lack of competition. If all bids are rejected, the borrower should review the cause or causes justifying the rejection and either consider revisions of the specifications or modifications in the project (or amounts of work on items called for in the original invitation to bid), or both. In special circumstances, after consultation with the Bank, the borrower may negotiate with one or two of the lowest bidders to try to obtain a satisfactory contract.

#### 4.10 Award of Contract

The award of a contract should be made to the bidder whose bid has been determined to be the lowest evaluated bid and who meets the appropriate standards of capability and financial resources. Such a bidder should not be required, as a condition of award, to undertake responsibilities or work not stipulated in the specifications or to modify his bid.

Annex XIII gives a check list on the procedure of evaluating bids, as shown in *Contracting for Engineering and Construction Projects*, by P. D. V. Marsh [28].

### Conditions of contract

#### *General and special conditions of contract*<sup>11</sup>

The legal relationship between the owner and the contractor is expressed in the conditions of contract. The conditions of contract are sometimes divided into "general conditions" and "special conditions" in order to facilitate the use of standard forms. The general conditions cover matters that are common to all

<sup>10</sup> The Bank in January 1974 approved a 7.5 per cent preference for local contractors in countries with *per capita* incomes below \$200 for a one-year trial period.

<sup>11</sup> See annex I. These conditions can serve as a comprehensive check list for contract terms in civil work contracts.

contracts, e.g. *force majeure*, settlement of disputes, while the special conditions cover matters unique to a particular contract, e.g. terms of payment.

Conditions of contract have been prepared by many national and international associations. The most common in international use are those prepared:

(a) For the supply and erection of plant and equipment under the auspices of the United Nations Economic Commission for Europe;<sup>1 2</sup>

(b) For works of civil engineering and supply and erection of plant by the International Federation of Consulting Engineers;<sup>1 3</sup>

(c) For works of civil engineering and supply and erection of plant by national associations of consulting engineers [36-44]. These conditions form the basic framework of all contracts, and any alteration of one clause will affect at least one other clause and often the conditions as a whole—an important point to note. Therefore, the owner should always check to see whether the conditions reflect his intentions and what the effects will be if one or the other clause is altered. National trade associations or large contracting firms often slightly alter these international conditions in order to adjust them to their own necessities. Such conditions should be studied with the utmost care in order to avoid later surprises. The owner should be warned in particular against clauses in the contract that might diminish the powers of the engineer.

It is also important to discourage bidders from qualifying their bids by altering the contract conditions.

#### *Civil works conditions*

##### *Performance securities*

The owner should require performance securities in the form of bonds or guarantees to ensure that the contractor shall perform and fulfil all his obligations under the contract. Such bonds or guarantees usually cover a percentage of the payment due to the contractor and should be sufficient to protect the owner if the contractor should default. When performance securities are issued in the form of bonds, they frequently amount to 100 per cent of the contract price. Bank guarantees are seldom issued for amounts over 25 per cent of the contract price. Bonds should be preferred over guarantees when obtainable. (For a sample form of performance bond, see annex XIV.)

##### *Retention money*

Civil works contracts regularly contain provisions for retention money. Under those provisions the owner holds a percentage of each payment due the contractor until the work is satisfactorily completed. Retention money is a ready source of funds the owner can use for necessary repairs and related matters if the contractor fails to perform in accordance with the agreement. Retention funds are usually limited to 5-10 per cent of the contract amount and may be released either in whole

<sup>1 2</sup> See references [29-34] and annexes XVII-XIX.

<sup>1 3</sup> See reference [35] and annexes I and VI.



or in part when the work has been substantially completed or when the maintenance period has expired. The owner frequently holds retention money in addition to the performance securities described above.

#### *Deduction for late performance*

Late completion of civil works projects is a frequent problem for owners in developing countries. In industrial projects, delays in civil works disrupt schedules for installing equipment and starting up the project, with resulting losses and additional expenses for the owner. To encourage civil works contractors to perform on schedule, liquidated damages or penalty provisions, where permitted under the law, are regularly included in their contracts. These provisions permit the owner to deduct a stipulated amount from the sums due to the contractor because of his late performance. Liquidated damages differ from penalties in that the former is intended to be a genuine pre-estimate of the damage the owner will incur through a delay, while the latter is a fine imposed on the contractor for his late performance. Penalties are not enforceable in common-law countries.

The rate of deduction for late performance varies with the size, complexity and importance of the project. As a general guide, the rate is frequently between .0001-.001 per cent of the contract price per day. An upper limit is not generally specified, but if one is desired, 5-10 per cent would be reasonable.

#### *Warranties, maintenance period*

Warranties are commitments by the contractor that the work will meet the contractual specification as to quality and will be free of defects. In civil works projects, warranties are usually expressed in terms of a "maintenance period" following the completion of the works (i.e. one year) during which time the contractor will repair all defects and imperfections that develop. Errors in design are usually not covered by the contractor's warranty. They are the responsibility of the engineer or architect, and the owner's contract with these parties should ensure that they shall assume responsibility for damage resulting from faulty design.

#### *Inspection, tests*

The contract should specify that all materials and workmanship should from time to time be subjected to inspection and tests by the project engineer. It should also provide for the allocation of costs and the repair of faulty work and removal of materials.

#### *Currency of payment*

If the contractor will incur expenses in both local and foreign currency in executing the works, the owner should be prepared to pay the contractor the sums due him in both local and foreign currency in a proportion similar to that prevailing for the contractor's expenditures.

#### *Conversion risks*

When a payment to be made to a contractor involves a conversion of local currency to foreign currency, the owner should assume the risks resulting from the conversion or be credited with any exchange benefits.

### *Price adjustment*

Contracts extending over lengthy periods (one year or more) are frequently subject to inflationary pressures. The contract may, therefore, provide for the allocation of additional costs incurred during implementation of the project because of price increases.

Provisions for price adjustment take three general forms—invoice adjustment, formula adjustment (see annex XVII—Price revision) and statutory adjustment.

In invoice adjustment, payments to the contractor are adjusted pursuant to documentary proof of the actual cost of labour and materials as against the prices set out in the bid. In formula adjustment, a formula specified in the contract is applied to each payment due the contractor. These formulae allow the amount paid to the contractor to be adjusted on the basis of changes in the costs of labour, materials etc. as given by official indices. Formula adjustment is generally preferred to invoice adjustment.

In statutory adjustment, the cost increases that the contractor incurs as a result of statutory changes (e.g. taxes are raised) by government authorities are reflected in the price paid to him. Provisions of this sort, where appropriate, should be limited to actions of the owner's Government and may be balanced by provisions for downward adjustments in the contractor's Government. The contract usually provides for statutory adjustment in addition to either formula or invoice adjustment.

### *Force majeure*

The contract should include a list of exceptional events beyond the control of the parties, the occurrence of any one of which would directly interfere with the performance of the contract. (See annex I, clauses 20 and 65, for example.) The consequences of that occurrence should be spelled out and cover *inter alia*: extensions of time for completion, obligations and costs of repairs to the works, damage to the contractor's property and injury to persons. The occurrence of all *force majeure* events that are intended to serve as the basis of a claim by the contractor should be reported promptly to the owner so that the event and its alleged consequences can be verified.

### *Variations in the work*

As the work proceeds, it may become necessary for technical or other reasons to vary the work called for in the specifications. The owner should reserve the right to order such variations, and provisions should be made for payments for variations in the work. The payment scheme should build on the basic contract prices, as supplemented by agreed lists of prices for additional work that are negotiated at the time the contract is signed.

### *Local labour*

The obligations of the contractor with respect to hiring of local labour should be stipulated in the contract. The number of workers and classes of labour, pay scales and the efforts the contractor will undertake to recruit skilled labour should be specified. (See annex XVI.)

### *Termination*

The contract should specify the circumstances under which the owner or contractor can terminate it. The owner should reserve the right to terminate for major damage or disruption owing to *force majeure*, bankruptcy of the contractor, failure of the contractor to commence and proceed with the work as ordered by the engineer and for the convenience of the owner (if it is a public entity). The contractor may want to reserve the right to terminate in the event the owner goes bankrupt or fails to make payments as they come due.

### *Insurance*

The contract should state precisely the types of insurance to be provided by the contractor and by the owner. Such insurance should cover:

The works and the temporary works

Materials, constructional plant and other items brought to the site by the contractor

Accidents or injuries to workers

Damage to third-party property and personal injury

### *Settlement of disputes*

When disputes arise between owners and civil works contractors, the objective should be to resolve them quickly, economically, impartially, on the basis of sound information and without poisoning business relationships or compromising the public interest (if a public owner is involved).

Although procedures for settling disputes vary, certain generally acceptable patterns can be identified. The scheme adopted in the FIDIC civil works contract may serve as an example. (See annex I, clause 67.)

In this scheme, disputes arising between the owner and the contractor are initially referred to the engineer for settlement. Acting as a neutral and informed technical expert, the engineer renders a prompt decision, which, with few exceptions (withholding of payment certificates, withholding of retention money, major economic dislocations), is binding on the parties until the contract is completed. If either party is dissatisfied with the engineer's decision, it may reserve the right to proceed to arbitration at the completion of the contract pursuant to the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC). (See annex XV.)

The FIDIC scheme places great authority in the engineer. Owners in developing countries have frequently amended the FIDIC provisions to limit that authority. In this regard, disputes with respect to local labour laws, safety standards, and related matters of a particularly non-engineering and/or local character are taken out of the engineer's jurisdiction and placed in local administrative forums.

The FIDIC provision for international arbitration pursuant to ICC procedures is also frequently modified by owners in developing countries where laws and practices require local rather than international arbitration. FIDIC leaves open the choice of the governing law for the contract. Owners in developing countries will normally specify that the law of their country will govern the contract.

The Rules for Conciliation and Arbitration [45] of the Economic and Social Council for Asia and the Pacific (ESCAP) provide regional arbitral machinery for Asia and merit the increased attention of owners in that region.

When foreign contractors are involved, they may be greatly opposed to settling disputes through the local courts because of fear of time-consuming procedures and other difficulties.

*Contractual conditions for the supply and erection  
of plant and equipment*

The conditions discussed above for civil works contracts are, with appropriate modifications, also applicable to contracts for the supply and erection of plant and equipment. (See annexes XVII-XIX.) In addition, several other provisions of particular importance should be included in plant-and-equipment contracts, as described below.

*Inspection and tests during manufacture*

The specifications should clearly establish the technical parameters of all tests and inspections that are to take place during manufacture. Such tests can be carried out by the manufacturer, by the owner directly, or through a representative of the owner, such as an inspection company. For major items, independent inspection by the owner or his representative is highly recommended. In international contracts, inspection companies are of particular value to owners in developing countries. These firms offer inspection, testing, expediting and other services that owners are not able to undertake economically on their own behalf.

*Taking-over tests*

After the plant is erected and commissioned, taking-over tests must be conducted. The technical requirements for these tests should also be clearly described in the contract specifications. The tests should be conducted in the presence of both parties. Responsibility for providing the necessary labour, materials and utilities should be specified. A certificate should be promptly issued upon successful completion of the tests. In the event the plant fails to pass the test, provisions should be made for retesting and/or the payment of damages for failure to meet the required performance standards.

*Warranty*

The contractor should be required to warrant for a period specified in the technical specifications ("period of warranty") that the plant and all parts thereof that he will furnish under the contract shall be of the kind and quality described in the contract and shall be free from defective design (other than a design made, furnished or specified by the owner and for which the contractor has disclaimed responsibility), workmanship and materials and shall be suitable for the intended use of the owner.

Should any plant or part thereof prove defective during the period of warranty, the contractor should at his own expense repair or replace all defects in design, workmanship and materials, for which he is responsible, that may develop under the normal use of the plant upon written notice of such defect given by the owner to the contractor. If the contractor fails to remedy the defect within a reasonable time, the owner should be able to proceed to do the work at the contractor's risk and expense. When defects are repaired, a new period of warranty for repairs should begin.

### *Progress payments*

The schedule of progress payments for plant and machinery will vary with the nature of the work and the financing arrangements. As a general guide, the dates at which progress payments might be made are signing of contract, approval of drawings, completion of taking-over tests and expiration of the warranty period. The owner should obtain from the contractor a guarantee of repayment of progress payments and a security interest in the plant and materials. Retention money is not usually provided for in-plant-and-equipment contracts.

### *Currency of payment*

The points made in the discussion of civil works contracts, that is, payment to the contractor in the currency (or currencies) and proportions in which his costs are incurred, also apply to plant-and-equipment contracts. This means that most of the expenses associated with the contractor's erection and commissioning personnel should be paid in local currency. (See annex XIX for further information on installation personnel.)

### *Letters of credit*

Payment to suppliers is often arranged through documentary letters of credit, which may involve the project lender as well as commercial banks. The owner should have some familiarity with the rules governing these credits to enable him to evaluate the various options that may be open to him. (See annex XX.)

### *Force majeure*

In addition to the points covered in the earlier paragraph on *force majeure*, events such as delays in delivery of materials to the contractor and failure of major parts during manufacture should be included (or excluded) from the list of exceptional events.

### *Trade terms*

Trade terms such as f.o.b. and c.i.f. normally appear in contracts for plant and equipment for the purpose of defining (a) the method and place of delivery, i.e. the moment when the risk in the goods transfers from the seller to the buyer; and (b) the allocation of costs (primarily forwarding, freight, insurance and handling charges).

Because these terms are subject to differing interpretations under national legal systems, owners and contractors should be sure that they use these terms on a common basis. The preferred method for accomplishing this objective is for the contract to specify that trade terms shall be used pursuant to an accepted definition, e.g. *Incoterms 1953* (annex XXI), a publication of the International Chamber of Commerce that provides detailed definitions for f.o.b., c.i.f., f.a.s. and eight other trade terms. Owners in developing countries who are contracting for the supply and erection of equipment should pay particular attention to the term "Delivered . . . (named place of destination in the country of importation) duty paid", which can be used to extend the seller's responsibility for the equipment up to and until it is delivered at the project site.

*Insurance*

It is customary to purchase protection against loss or damage to plant and equipment from the manufacturing works up to the site, including loading and unloading and intermediate storage. The contract should specify which of the parties is responsible for procuring the insurance and the risks against which they are being insured. At the site, the insurance should cover loss or damage to the plant, workers and third parties.

**Operation and maintenance of the plant***Transfer of know-how*

The supply and erection of an industrial plant does not usually enable the owner to start up production and to operate the works without further assistance in handling the system of machinery properly, which requires the transfer of know-how.

Know-how can be defined as: (a) "manufacturing processes or knowledge concerning the use and application of industrial techniques"; or (b) "knowledge and experience acquired for the practical application of a technique" [46]. Know-how can consist, for a given product or category of products, of the whole or part of the technical information needed for designing, manufacturing, using, maintaining or possibly marketing the product or products or some elements thereof, or for any combination of these operations. For techniques or processes, know-how can consist of the whole or part of the technical information needed for designing and using them.<sup>14</sup>

*Maintenance and spare parts*

The problem of maintenance and obtaining the spare parts necessary for industrial equipment should receive due attention at the contracting stage [6]. During the lifetime of industrial equipment in industrialized countries, total cost of maintenance will amount to 50-200 per cent of the initial cost of the equipment. In developing countries the costs will probably be higher (or should be higher) owing to climatic conditions, higher costs of spare parts, lack of industrial environment etc.

Complete maintenance manuals and instruction should be provided with all plant and equipment. The owner's personnel should be appropriately instructed in maintenance procedures by the contractor. If the maintenance programme is to be adequate, maintenance needs should be a prime consideration at the design stage, where future maintenance requirements are often neglected. An adequate supply of spare parts should be purchased. Annex XXII shows a check list for contract specifications covering spare parts, maintenance and training programmes. Annex XXIII gives an extract from a procurement check list showing maintenance and product support questions.

Maintenance considerations will thus affect not only contracts between the owner and the contractor but also contracts between consultants. Ideally, the financing plan for an industrial project should provide for an annual amount to be set

<sup>14</sup> See references [46-50] for literature dealing with the transfer of know-how.

aside for financing spare parts during the first 10 years of the plant. When the initial, relatively small stock of spare parts is used up, it is often discovered that no reserves have been foreseen for further financing of spare parts, particularly in terms of foreign currency.

In the contract between the owner and consultants, maintenance should be taken into due account when the various components of the production equipment are designed and selected.

When a contract for supply of equipment is prepared, it should also be considered to what extent after-sales service will have to be included. Maintenance service for a long period will in most cases benefit the owner, but he must realize that this service has to be paid for and he must take this into account when comparing alternatives.

## V. Conclusions and recommendations

### **Basic difficulties faced by developing countries in contracting**

The task of the contracting officer in a developing country is more difficult than that of his colleague in an industrialized country. The contracting officer in an industrialized country buys the bulk of his goods and services in his own country, where conditions and trading practices are fully familiar to him. The contracting officer in a developing country, in contrast, must buy a very large part of his requirements abroad—a basic difficulty. Thus he has to reconcile financial and legal conditions and business practices in his own country with those of the various countries in which he buys.

He must be familiar with foreign and international rules and procedures governing issues such as transportation, insurance, documentary credits and arbitration. He must frequently buy in currencies other than his own, which confronts him with matters such as exchange rate risks and currency controls. The long lead times necessary for international purchases add special problems with regard to delays, cost increases, liquidated damages, interest payments, supply of spare parts and maintenance.

Purchasing in the international market, the developing country contracting officer must be familiar with goods, quantities and prices in many countries. His specifications must, on the one hand, be sufficiently specific to ensure that offers shall be comparable and meet his needs yet be sufficiently flexible so as not to eliminate offers from countries where standards are different. In addition, foreign suppliers and consultants are often unaware of the particular character, procedures, customs and needs of the purchasing country. Thus, technical, administrative, financial, legal and cultural barriers must be overcome in order to contract for and implement industrial projects successfully.

Another factor that makes contracting difficult in developing countries is that goods and services are frequently financed in whole or in part by foreign lending institutions. These institutions usually have their own special rules and regulations that must be taken into account and co-ordinated with practices in the purchasing country.

Other difficulties in contracting in developing countries are due to the very problems that development is trying to overcome. Trained personnel are scarce and frequently lack access to and training in the latest techniques with regard to a broad range of matters, including markets, prices, new products, financial analysis, technical data, legal concepts and contract administration. Banking facilities and insurance companies are in the early stages of development. Legal systems do not yet provide guidance on the full range of contractual and commercial issues. Government administration is often overburdened and slow, with the result that the owner often fails to fulfil on time his obligations under the contract, such as providing support services and technical trainees, issuing approvals, accepting work and making payments.



### Deficiencies in contracts

Because of the difficulties described above, contracts for industrial development projects frequently contain legal and technical defects.

#### *Legal defects*

The contractual obligations of the parties may not be adequately defined. Contracts often fail to create an equitable balance of obligations and interests, a balance that in the long run is essential if disputes and the delays and disruptions arising therefrom are to be avoided. Furthermore, contracts are incomplete when they do not adequately forecast the major contingencies that may arise and thus do not provide a mutually agreed upon procedure for dealing with these contingencies. This defect, too, leads to disputes and strained relations with suppliers and contractors. In addition, contracts may fail to meet the requirements of lenders, which slows down implementation and jeopardizes financing.

If contracts fail to provide for the use of local services, contracting will not assist in developing local experts and establishing a foundation of local contracting practices and principles. Two examples will help illustrate these points:

(a) *Failure to establish an equitable balance of interests and obligations.* In a period of rapid inflation, particular attention must be given to the need for and terms of price-adjustment clauses. While contractors, suppliers and even consultants need to be protected against price rises, the full burden thereof should be shared by all the parties. If the seller is required to quote a fixed price for future deliveries of over one year, he may quote too high a price; or, in the opposite case, he may perform poorly. On the other hand, a seller operating under a price-adjustment clause that passes all increases to the owner is not apt to be as careful about his cost as he should be. In either event, there is the distinct possibility of disagreement and delay if either party feels he is getting an unfair deal when prices are adjusted.

The way out of this situation is to include in the contract a clause that balances the interests of the parties as discussed in the section on price adjustment in chapter IV.

(b) *Incomplete contract provisions.* As discussed earlier, trade terms such as f.o.b., c.i.f., f.a.s. are intended to establish a substantial body of rights between the parties. Those terms are, however, interpreted differently by various national courts as well as by international practice. Therefore, contract provisions that simply state "c.i.f. local port" are incomplete in that they fail to identify specifically which definition of c.i.f. is intended. While the governing law provision, if included, may help to specify the definition of c.i.f., it is still recommended that the definitions of trade terms as established by *Incoterms* ("c.i.f. local port as defined by *Incoterms 1953*") be incorporated in the contract.

#### *Technical defects*

From a technical standpoint, contracts may not obtain for the owner what he wants and needs at the lowest cost and in good time. A common result of this type of defect is that technical changes must be frequently made during implementation, which increases costs and delays completion of the project.

### Recommendations

The following recommendations to the owner should be emphasized:

(a) As a general approach, make the contract specific, complete, equitable, consistent with applicable laws; and be aware of precedents when drafting or executing any documents;

(b) Take advantage of existing sets of contract terms issued by national and international organizations and institutions;

(c) Pay special attention to the international character of industrial development contracts and projects and the consequences resulting therefrom as discussed throughout this text;

(d) Encourage the development, training and co-ordination of local contracting experts in many fields—engineers, managers, commercial experts, lawyers and financial controllers;

(e) Maintain dialogues and contacts with international lenders and foreign suppliers in the interest of improving and harmonizing contracting policies, objectives and procedures.

Certain more specific recommendations follow hereafter in the form of a check list of things the owner should or should not do.

#### *Opportunity stage*

During the opportunity stage, the owner should:

(a) Identify the project idea;

(b) Select the best consultants available according to their experience, capacity and grasp of the project idea;

(c) Conclude contracts with consultants, defining *inter alia*:

(i) Obligations of the owner:

Payments of remuneration to consultants

Delivery of documents and other supporting data

Appointment of counterpart staff

(ii) Duties the consultant will perform:

Surveys of existing economic factors

Surveys of industrial activities that developed under similar conditions in other countries

Projections of economic structures

Analysis of the techno-economic potential of specific industrial branches

Regional planning

The opportunity study (which summarizes the results and conclusions of the partial studies);

(d) Evaluate findings of opportunity studies;

(e) Perform additional studies or investigations if the results of the studies are not clear enough to draw conclusions;

(f) Decide on further procedure (i.e. to proceed with studies or to abstain from further investigations).

The owner should not:

- (a) Use so-called consultants who are not able to establish their experience record;
- (b) Think "I can do this by myself". Consultants are independent; they have experience, and they should be objective when drawing conclusions;
- (c) Be superficial. The findings of the studies form the basis of the further project, and those findings should be well grounded in objective evidence.

#### *Feasibility stage*

During the feasibility stage, the owner should:

- (a) Study and verify the technical and economical feasibility of the project;
- (b) Select consultants as mentioned above;
- (c) Conclude contracts with consultants, defining:
  - (i) Subject of contract
  - (ii) Duties of the owner:
    - Payment of remuneration
    - Delivery of documents (opportunity study and foregoing investigations)
    - Delivery of other supporting data
  - (iii) Duties of the consultant:
    - Study of market situation
    - Study of technology and technical requirements
    - Study of regional economics
    - Study of locations of project
    - Performance of complete feasibility study.
- (d) Evaluate findings of the feasibility study;
- (e) Perform additional investigations, if a result is not clear as it should be;
- (f) Conduct negotiations with financing institutions;
- (g) Remember that the feasibility study is the last important step before implementation of the project begins. At this point, the cost for studies and investigations have been relatively low compared with the costs for implementation of the project;
- (b) Decide to invest in the project only on the basis of clear technical and economic facts.

The owner should not be sentimental when making decisions. All prestige projects, both private and public, lose money if they are not based on sound technical and economical considerations.

#### *Implementation stage*

During the implementation stage, the owner should:

- (a) Install an implementing agency (if appropriate);
- (b) Set financing conditions;
- (c) Define exact location of site;

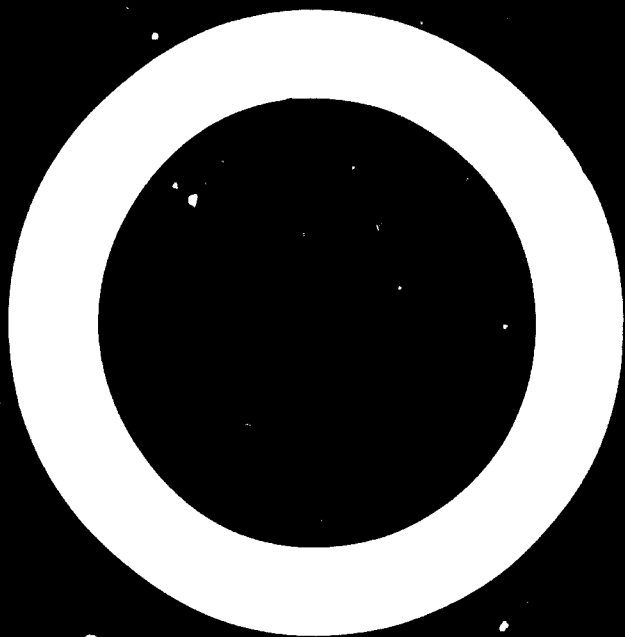
- (d) Define capacity of plant and type of product;
- (e) Invite consultants to submit proposals for:
  - Design and engineering services
  - Technological services
  - Economic services
  - Management services
  - Training services;
- (f) Supervise consultants and contractors with respect to:
  - Progress
  - Quantity
  - Quality
  - Costs of work as agreed upon in the contracts;
- (g) Pay all remunerations and bills on time;
- (h) Show flexibility in small and less important matters but be firm and constant if important problems are touched. Inflexibility results in unnecessary wear and tear of nerves and losses in time and money.

The owner should not make changes unless they are necessary, but should also not hesitate to make changes as soon as possible if the necessity to do so appears. (Note that the latest reasonable point to change the layout of a plant with respect to product quality and quantity is before the placing of contracts. Cancelling or renegotiation of contracts results in substantial costs and loss of time.)

#### *In using contractors*

In using contractors, the owner should establish a contracting policy, but remember that each project has a best pattern of contracts depending upon the work to be done, the speed with which it is to be accomplished, and the availability of personnel within the owner's organization. Contracting policies that were good five years ago may no longer be valid. The technique of contracting is progressing, and the owner should take advantage of the latest and best ways of utilizing outside services.

The owner should not expect something for nothing. Engineering, training, maintenance or any other service that appears to cost nothing is in fact being paid for in the over-all price.



## *Annex I*

# CONDITIONS OF CONTRACT (INTERNATIONAL) FOR WORKS OF CIVIL ENGINEERING CONSTRUCTION

*with Forms of Tender and Agreement*

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These documents have been prepared by the Fédération Internationale des Ingénieurs-Conseils (F.I.D.I.C.) jointly with the Fédération Internationale du Bâtiment et des Travaux Publics (F.I.B.T.P.) and are recommended by those bodies for general use.

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or

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Fédération Internationale du Bâtiment et des Travaux Publics, 9, Rue La Perouse, Paris,  
XVI<sup>e</sup>, France.

## CONDITIONS OF CONTRACT

### PART I—GENERAL CONDITIONS

#### Definitions and Interpretation

Definitions.

1. (1) In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

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

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

(c) "Engineer" means the Engineer designated as such in Part II or other the Engineer appointed from time to time by the Employer and notified in writing to the Contractor to act as Engineer for the purposes of the Contract in place of the Engineer so designated.

(d) "Engineer's Representative" means any resident engineer or assistant of the Engineer or any clerk of works appointed from time to time by the Employer or the Engineer to perform the duties set forth in Clause 2 hereof whose authority shall be notified in writing to the Contractor by the Engineer.

- (e) "Works" means the works to be executed in accordance with the Contract.
- (f) "Contract" means the Conditions of Contract Specification Drawings priced Bill of Quantities Schedule of Rates and Prices (if any) Tender and the Contract Agreement.
- (g) "Contract Price" means the sum named in the Tender subject to such additions thereto or deductions therefrom as may be made under the provisions hereinafter contained.
- (h) "Constructional Plant" means all appliances or things of whatsoever nature required in or about the execution completion or maintenance of the Works or Temporary Works (as hereinafter defined) but does not include materials or other things intended to form or forming part of the permanent work.
- (i) "Temporary Works" means all temporary works of every kind required in or about the execution completion or maintenance of the Works.
- (j) "Drawings" means the drawings referred to in the Specification and any modification of such drawings approved in writing by the Engineer and such other drawings as may from time to time be furnished or approved in writing by the Engineer.
- (k) "Site" means the lands and other places on under in or through which the Works are to be executed or carried out and any other lands or places provided by the Employer for the purposes of the Contract together with such other places as may be specifically designated in the Contract as forming part of the Site.
- (l) "Approved" means approved in writing including subsequent written confirmation of previous verbal approval and "approval" means approval in writing including as aforesaid.

Singular and Plural.

(2) Words importing the singular only also include the plural and *vice versa* where the context requires.

Marginal Headings or Notes.

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

#### Engineer's Representative

Duties and Powers of Engineer's Representative.

2. The duties of the Engineer's Representative are to watch and supervise the Works and to test and examine any materials to be used or workmanship employed in connection with the Works. He shall have no authority to relieve the Contractor of any of his duties or obligations under the Contract nor except as expressly provided hereunder or elsewhere in the Contract to order any work involving delay or any extra payment by the Employer nor to make any variation of or in the Works.

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

(a) Failure of the Engineer's Representative to disapprove any work or materials shall not prejudice the power of the Engineer thereafter to disapprove such work or materials and to order the pulling down removal or breaking up thereof.

(b) If the Contractor shall be dissatisfied by reason of any decision of the Engineer's Representative he shall be entitled to refer the matter to the Engineer who shall thereupon confirm, reverse or vary such decision.

#### Assignment and Sub-letting

Assignment.

3. The Contractor shall not assign the Contract or any part thereof or any benefit or interest therein or thereunder (otherwise than by a charge in favour of the Contractor's Bankers of any monies due or to become due under this Contract) without the prior written consent of the Employer.

Sub-letting.

4. The Contractor shall not sub-let the whole of the Works. Except where otherwise provided by the Contract the Contractor shall not sub-let any part of the Works without the prior written consent of the Engineer (which shall not be unreasonably withheld) and such consent if given shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts defaults and neglects of any sub-contractor, his agents servants or workmen as fully as if they were the acts defaults or neglects of the Contractor his agents servants or workmen. Provided always that the provision of labour on a piecework basis shall not be deemed to be a sub-letting under this clause.

#### Extent of contract

Extent of Contract.

5. The Contract comprises the construction completion and maintenance of the Works and except in so far as the Contract otherwise provides the provision of all labour materials Constructional Plant Temporary Works and everything whether of a temporary or permanent nature required in and for such construction completion and maintenance so far as the necessity for providing the same is specified in or reasonably to be inferred from the Contract.

#### Contract Documents

Language/s.

6. (1) The language or languages in which the Contract documents shall be drawn up shall be set out in Part II, and if the said documents are written in more than one language the language according to which the Contract is to be construed and interpreted shall also be designated in Part II being therein designated the "Ruling Language".

Documents Mutually Explanatory.

(2) Except if and to the extent otherwise provided by the Contract the provisions of the General Conditions and Conditions of Particular Application shall prevail over those of any other document forming part of the Contract. Subject to the foregoing the several documents forming the Contract are to be taken as mutually explanatory of one another but in case of ambiguities or discrepancies the same shall be explained and adjusted by the Engineer who shall thereupon issue to the Contractor instructions directing in what manner the work is to be carried out. Provided always that if in the opinion of the Engineer compliance with any such instructions shall involve the Contractor in any expense which by reason of any such ambiguity or discrepancy the Contractor did not and had reason not to anticipate the Engineer shall certify and the Employer shall pay such additional sum as may be reasonable to cover such expense.

Custody of Drawings.

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

The Contractor shall give adequate notice in writing to the Engineer or the Engineer's Representative of any further drawing or specification that may be required for the execution of the Works or otherwise under the Contract.

One Copy of Drawings to be kept on Site.

(2) One copy of the Drawings furnished to the Contractor as aforesaid shall be kept by the Contractor on the Site and the same shall at all reasonable times be available for inspection and use by the Engineer and the Engineer's Representative and by any other person authorised by the Engineer in writing.

Further Drawings and Instructions.

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



### General Obligations

#### Contract Agreement.

9. The Contractor shall when called upon so to do enter into and execute a contract agreement (to be prepared at the cost of the Employer) in the form annexed with such modifications as may be necessary.

#### Performance Bond.

10. If the Tender shall contain an undertaking by the Contractor to obtain when required the guarantee of an Insurance Company or Bank or alternatively to provide two good and sufficient sureties to be jointly and severally bound with the Contractor to the Employer in a sum not exceeding 10 per cent of the tender sum for the due performance of the Contract under the terms of a Bond the said Insurance Company or Bank or sureties and the terms of the said Bond shall be such as shall be approved by the Employer and the obtaining of such guarantee or the provision of such sureties and the cost of the Bond to be so entered into shall be at the expense in all respects of the Contractor unless the Contract otherwise provides.

#### Inspection of Site.

11. The Tender shall be deemed to have been based on such data regarding hydrological climatic and physical conditions as shall have been supplied by the Employer in the documents furnished to the Contractor by the Employer for the purpose of tendering. The Contractor shall nevertheless inspect and examine the Site and its surroundings and shall satisfy himself (so far as is practicable) before submitting his Tender as to the form and nature of the Site the quantities and nature of the work and materials necessary for the completion of the Works and the means of access to the Site the accommodation he may require and in general shall himself obtain all necessary information (subject as above-mentioned) as to risks contingencies and other circumstances which may influence or affect his Tender.

#### Sufficiency of Tender.

##### Adverse Physical Conditions and Artificial Obstructions.

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

(a) of complying with any instruction which the Engineer may issue to the Contractor in connection therewith and

(b) of any proper reasonable measures approved by the Engineer which the Contractor may take in the absence of specific instructions from the Engineer as a result of such conditions or obstructions being encountered.

#### Work to be to Satisfaction of Engineer.

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

#### Programme to be Furnished.

14. As soon as practicable after the acceptance of his Tender the Contractor shall if required submit to the Engineer for his approval a programme showing the order of procedure and method in which he proposes to carry out the Works and shall whenever required by the Engineer or

Engineer's Representative furnish for his information particulars in writing of the Contractor's arrangements for the carrying out of the Works and of the Constructional Plant and Temporary Works which the Contractor intends to supply use or construct as the case may be. The submission to and approval by the Engineer or Engineer's Representative of such programme or the furnishing of such particulars shall not relieve the Contractor of any of his duties or responsibilities under the Contract.

Contractor's Superintendence.

15. The Contractor shall give or provide all necessary superintendence during the execution of the Works and as long thereafter as the Engineer may consider necessary for the proper fulfilling of the Contractor's obligations under the Contract. The Contractor or a competent and authorised agent or representative approved of in writing by the Engineer (which approval may at any time be withdrawn), is to be constantly on the Works and shall give his whole time to the superintendence of the same. If such approval shall be withdrawn by the Engineer the Contractor shall as soon as is practicable (having regard to the requirement of replacing him as hereinafter mentioned) after receiving written notice of such withdrawal remove the agent from the Site and shall not thereafter employ him again on the Site in any capacity and shall replace him by another agent approved by the Engineer. Such authorised agent or representative shall receive on behalf of the Contractor directions and instructions from the Engineer or (subject to the limitations of Clause 2 hereof) the Engineer's Representative.

Contractor's Employees.

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

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

and

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

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

Setting-Out.

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

Boreholes and Exploratory Excavation.

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

Watching and Lighting.

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

Care of Works.

20. (1) From the commencement to the completion of the Works the Contractor shall take full responsibility for the care thereof and of all Temporary Works and in case any damage loss or injury shall happen to the Works or to any part thereof or to any Temporary Works from any cause whatsoever (save and except the excepted risks as defined in sub-clause (2) of this clause) shall at his own cost repair and make good the same so that at completion the Works shall be in good order and condition and in conformity in every respect with the requirements of the Contract and the Engineer's instructions. In the event of any such damage loss or injury happening from any of the excepted risks the Contractor shall if and to the extent required by the Engineer and subject always to the provisions of Clause 65 hereof repair and make good the same as aforesaid at the cost of the Employer. The Contractor shall also be liable for any damage to the Works occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations under Clause 49 hereof.

Excepted Risks.

(2) The "excepted risks" are war hostilities (whether war be declared or not) invasion act of foreign enemies rebellion revolution insurrection or military or usurped power civil war or (otherwise than among the Contractor's own employees) riot commotion or disorder or use or occupation by the Employer of any portion of the Works in respect of which a Certificate of Completion has been issued or a cause solely due to the Engineer's design of the Works or any such operation of the forces of nature as reasonable foresight and ability on the part of the Contractor could not foresee or reasonably provide against (all of which are herein collectively referred to as "the excepted risks").

Insurance of Works, etc.

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

(a) The Works and the Temporary Works to the full value of such works executed from time to time.

(b) The materials Constructional Plant and other things brought on to the Site by the Contractor to the full value of such materials Constructional Plant and other things.

Such insurances shall be effected with an insurer and in terms approved by the Employer (which approval shall not be unreasonably withheld) and the Contractor shall whenever required produce to the Engineer or the Engineer's Representative the policy or policies of insurance and the receipts for payment of the current premiums. Provided always that without limiting his obligations and responsibilities as aforesaid nothing in this clause contained shall render the Contractor liable to insure against the necessity for the repair or reconstruction of any work constructed with materials or workmanship not in accordance with the requirements of the Contract.

Damage to Persons and Property.

22. (1) The Contractor shall (except if and so far as the Specification provides otherwise) indemnify and keep indemnified the Employer against all losses and claims for injuries or damage to any person or any property whatsoever (other than surface or other damage to land being or crops being on the Site suffered by tenants or occupiers) which may arise out of or in consequence of the construction and maintenance of the Works and against all claims demands proceedings damages costs charges and expenses whatsoever in respect of or in relation thereto.

Provided always that nothing herein contained shall be deemed to render the Contractor liable for or in respect of or to indemnify the Employer against any compensation or damages for or with respect to:

(a) The permanent use or occupation of land by the Works or any part thereof or (save as hereinafter provided) surface or other damage as aforesaid.

(b) The right of the Employer to construct the Works or any part thereof on over under in or through any land

(c) Interference whether temporary or permanent with any right of light air way or water or other easement or quasi-easement which is the unavoidable result of the construction of the Works in accordance with the Contract

(d) Injuries or damage to persons or property resulting from any act or neglect done or committed during the currency of the contract of the Employer his agents servants or other contractors (not being employed by the Contractor) or for or in respect of any claims demands proceedings damages costs charges and expenses in respect thereof or in relation thereto.

Provided further that for the purposes of this clause the expression "the Site" shall be deemed to be limited to the area defined in the specification or shown on the drawings in which land and crops will be disturbed or damaged as an inevitable consequence of the carrying out of the Works.

Indemnity by Employer.

(2) The Employer will save harmless and indemnify the Contractor from and against all claims demands proceedings damages costs charges and expenses in respect of the matters referred to in the proviso to sub-clause (1) of this clause.

Third Party Insurance.

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

Minimum Amount of Third Party Insurance.

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

Accident or Injury to Workmen.

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

Insurance against Accident, etc., to Workmen.

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

Remedy on Contractor's Failure to Insure.

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

Giving of Notices and Payment of Fees.

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

Compliance with Statutes, Regulations, etc.

The Contractor shall conform in all respects with the provisions of any such Statute Ordinance or Law as aforesaid and the Regulations or Bye-laws of any local or other duly constituted authority which may be applicable to the Works or to any Temporary Works and with such rules and regulations of public bodies and companies as aforesaid and shall keep the Employer indemnified against all penalties and liability of every kind for breach of any such Statute Ordinance or Law Regulation or Bye-law. Provided always that the Employer will repay or allow to the Contractor all such sums as the Engineer shall certify to have been properly payable and paid by the Contractor in respect of such fees.

Fossils, etc.

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

Patents Rights and Royalties.

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

Interference with Traffic and Adjoining Properties.

29. All operations necessary for the execution of the Works and for the construction of any Temporary Works shall so far as compliance with the requirements of the Contract permits be carried on so as not to interfere unnecessarily or improperly with the public convenience or the access to use and occupation of public or private roads and footpaths or to or of properties whether in the possession of the Employer or of any other person and the Contractor shall save harmless and indemnify the Employer in respect of all claims demands proceedings damages costs charges and expenses whatsoever arising out of or in relation to any such matters in so far as the Contractor is responsible therefor.

Extraordinary Traffic.

30. (1) The Contractor shall use every reasonable means to prevent any of the highways or bridges communicating with or on the routes to the Site from being damaged or injured by any traffic of the Contractor or any of his sub-contractors and in particular shall select routes choose and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will

inevitably arise from the moving of plant and material from and to the Site shall be limited as far as reasonably possible and so that no unnecessary damage or injury may be occasioned to such highways and bridges.

Special Loads.

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

Settlement of Extraordinary Traffic Claims.

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

Waterborne Traffic.

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

Opportunities for Other Contractors.

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

Supply of Plant Materials and Labour.

32. Except where otherwise specified the Contractor shall at his own expense supply and provide all the Constructional Plant Temporary Works materials both for temporary and for permanent works labour (including the supervision thereof) transport to or from the site and in and about the Works and other things of every kind required for the construction completion and maintenance of the Works.

Clearance of Site on Completion.

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

### Labour

Engagement of Labour.

34. (1) The Contractor shall make his own arrangements for the engagement of all labour, local or otherwise, and save in so far as the Contract otherwise provides for the transport housing feeding and payment thereof.

Supply of Water.

(2) The Contractor shall so far as is reasonably practicable having regard to local conditions provide on the Site to the satisfaction of the Engineer's Representative an adequate supply of drinking and other water for the use of the Contractor's Staff and workpeople.

Alcoholic Liquor or Drugs.

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

Arms and Ammunition.

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

Festivals and Religious Customs.

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

Epidemics.

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

Disorderly Conduct, etc.

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

Observance by Sub-Contractors.

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

(9) *Any other conditions affecting labour and wages shall be as set out in Part II in sub-clauses numbered 34 (9) (10) etc. as may be necessary.*

Returns of Labour, etc.

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

### Materials and workmanship

Quality of Materials and Workmanship and Tests.

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

Cost of Samples.

(2) All samples shall be supplied by the Contractor at his own cost if the supply thereof is clearly intended by or provided for in the Specification or Bill of Quantities but if not then at the cost of the Employer.

Cost of Tests.

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

Costs of Tests not provided for, etc.

(4) If any test is ordered by the Engineer which is either

(a) not so intended by or provided for or

(b) (in the cases above mentioned) is not so particularised or

(c) though so intended or provided for is ordered by the Engineer to be carried out by an independent person at any place other than the Site or the place of manufacture or fabrication of the materials tested

then the cost of such test shall be borne by the Contractor if the test shows the workmanship or materials not to be in accordance with the provisions of the Contract or the Engineer's instructions but otherwise by the Employer.

Access to Site.

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

Examination of Work before Covering up.

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

Uncovering and Making Openings.

(2) The Contractor shall uncover any part or parts of the Works or make openings in or through the same as the Engineer may from time to time direct and shall reinstate and make good such part or parts to the satisfaction of the Engineer. If any such part or parts have been covered up or put out of view after compliance with the requirements of sub-clause (1) of this Clause and are found to be executed in accordance with the Contract the expenses of uncovering making openings in or through reinstating and making good the same shall be borne by the Employer but in any other case all such expenses shall be borne by the Contractor and shall be recoverable from him by the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor.

Removal of Improper Work and Materials.

39. (1) The Engineer shall during the progress of the Works have power to order in writing from time to time

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

(b) The substitution of proper and suitable materials and

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



Default of Contractor in Compliance.

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

Suspension of Work.

40. (1) The Contractor shall on the written order of the Engineer suspend the progress of the Works or any part thereof for such time or times and in such manner as the Engineer may consider necessary and shall during such suspension properly protect and secure the work so far as is necessary in the opinion of the Engineer. The extra cost including all running wages to be paid on the Site salaries depreciation and maintenance of plant Site on-costs and general overhead costs of the Contract incurred by the Contractor in giving effect to the Engineer's instructions under this Clause shall be borne and paid by the Employer unless such suspension is

- (a) otherwise provided for in the Contract or
- (b) necessary for the proper execution of the work or by reason of weather conditions affecting the safety or quality of the Works or by some default on the part of the Contractor or
- (c) necessary for the safety of the Works or any part thereof.

Provided that the Contractor shall not be entitled to recover any such extra cost unless he gives notice in writing of his intention to claim to the Engineer within 28 days of the Engineer's order. The Engineer shall settle and determine such extra payment to be made to the Contractor in respect of such claim as shall in the opinion of the Engineer be fair and reasonable.

Suspension Lasting more than 90 days.

(2) If on the written order of the Engineer (in this sub-clause referred to as a "Suspension Order") the progress of the Works or any part thereof shall be suspended for a period or consecutive periods amounting in all to 90 days or if the Engineer having previously issued a Suspension Order for a period which has lasted less than 90 days shall within less than 90 days from the expiration of that period of suspension issue a further Suspension Order either in respect of the whole of the Works or (where the previous Suspension Order has affected only a part) affecting or including that part then and in any such case the Contractor may serve a written notice on the Engineer requiring permission within 28 days from the receipt thereof to proceed with the Works or that part thereof in regard to which progress is suspended and if such permission is not granted within that time the Contractor by a further written notice so served may (but is not bound to) elect to treat the suspension where it affects part only of the Works as an omission of such part under Clause 51 hereof or where it affects the whole Works as an abandonment of the Contract by the Employer.

### Commencement Time and Delays

Commencement of Works.

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

Possession of Site.

42. (1) Save in so far as the Contract may prescribe the extent of portions of the Site of which the Contractor is to be given possession from time to time and the order in which such portions shall be made available to him and subject to any requirement in the Contract as to the order in which the Works shall be executed the Employer will with the Engineer's written order to commence the Works give to the Contractor possession of so much of the Site as may be required to enable the Contractor to commence and proceed with the construction of the Works in accordance with the programme referred to in Clause 14 hereof (if any) and otherwise in accordance with such reasonable proposals of the Contractor as he shall by notice in writing to the Engineer make and will from time to time as the Works proceed give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to proceed with the construction of the Works with due despatch in accordance with the said

programme or proposals (as the case may be). If the Contractor suffers delay or incurs expense from failure on the part of the Employer to give possession in accordance with the terms of this clause the Engineer shall grant an extension of time for the completion of the Works and certify such sum as in his opinion shall be fair to cover the expense incurred which sum shall be paid by the Employer.

Wayleaves, etc.

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

Time for Completion.

43. Subject to any requirement in the Specification as to completion of any portion of the Works before completion of the whole the whole of the Works shall be completed within the time stated in the Tender calculated from the last day of the period named in the Tender as that within which the Works are to be commenced or such extended time as may be allowed under Clause 44 hereof.

Extension of Time for Completion.

44. Should the amount of extra or additional work of any kind or other special circumstances of any kind whatsoever which may occur be such as fairly to entitle the Contractor to an extension of time for the completion of the work the Engineer shall determine the amount of such extension. Provided that the Engineer is not bound to take into account any extra or additional work or other special circumstances unless the Contractor has within 28 days after such work has been commenced or such circumstances have arisen or as soon thereafter as is practicable delivered to the Engineer's Representative full and detailed particulars of any claim to extension of time to which he may consider himself entitled in order that such claim may be investigated at the time.

No Night or Sunday Work.

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

Rate of Progress.

46. The whole of the materials plant and labour to be provided by the Contractor under Clause 5 hereof and the mode manner and speed of execution and maintenance of the Works are to be of a kind and conducted in a manner to the satisfaction of the Engineer. Should the rate of progress of the Works or any part thereof be at any time in the opinion of the Engineer too slow to ensure the completion of the Works by the prescribed time or extended time for completion the Engineer shall so notify the Contractor in writing and the Contractor shall thereupon take such steps as the Contractor may think necessary and the Engineer may approve to expedite progress so as to complete the Works by the prescribed time or extended time for completion. If the work is not being carried on by day and by night and the Contractor shall request permission to work by night as well as by day then if the Engineer shall grant such permission the Contractor shall not be entitled to any additional payment for so doing but if such permission shall be refused and there shall be no equivalent practicable method of expediting the progress of the work the time for completion shall be extended by such period as is solely attributable to such refusal. All work at night shall be carried out without unreasonable noise and disturbance. The Contractor shall indemnify the Employer from and against any liability for damages on account of noise or other disturbance created while or in carrying out the work and from and against all claims demands proceedings costs charges and expenses whatsoever in regard or in relation to such liability.

Liquidated Damages for Delay.

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

Reduction of Liquidated Damages.

(2) If before the completion of the whole of the Works any part of the Works has been certified by the Engineer as completed pursuant to Clause 48 hereof and occupied or used by the Employer the liquidated damages for delay shall for any period of delay after such certification be reduced in the proportion which the value of the part so certified bears to the value of the whole of the Works.

Bonus for Early Completion.

(3) If it is desired to provide in the Contract for the payment of a bonus for early completion of the Works or of any part thereof this shall be prescribed in the Clause numbered 47 (3) in Part II.

Certificate of Completion of Works.

48. As soon as in the opinion of the Engineer the Works shall have been substantially completed and shall have satisfactorily passed any final test that may be prescribed by the Contract the Engineer shall on receiving a written undertaking by the Contractor to finish any outstanding work during the Period of Maintenance issue a Certificate of Completion in respect of the Works and the Period of Maintenance of the Works shall commence from the date of such certificate. Provided that the Engineer may give such a certificate with respect to any part of the Works before the completion of the whole of the Works and shall upon the written application of the Contractor give such certificate with respect to any substantial part of the Works which has been both completed to the satisfaction of the Engineer and occupied or used by the Employer and when any such certificate is given in respect of a part of the Works such part shall be considered as completed and the Period of Maintenance of such part shall commence from the date of such certificate. Provided also that a Certificate of Completion given in accordance with the foregoing provisions of any part of the Works occupied and used as aforesaid shall not be deemed to certify completion of any ground or surfaces requiring reinstatement unless such certificate shall expressly so state.

### Maintenance and Defects

Definition of 'Period of Maintenance'.

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

Execution of Work of Repair, etc.

(2) To the intent that the Works shall at or as soon as practicable after the expiration of the Period of Maintenance be delivered up to the Employer in as good and perfect a condition (fair wear and tear excepted) to the satisfaction of the Engineer as that in which they were at the commencement of the Period of Maintenance the Contractor shall execute all such work of repair amendment reconstruction rectification and making good of defects imperfections shrinkages or other faults as may be required of the Contractor in writing by the Engineer during the Period of Maintenance or within fourteen days after its expiration as a result of an inspection made by or on behalf of the Engineer prior to its expiration.

Cost of Execution of Work of Repair, etc.

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

Remedy on Contractor's Failure to Carry out Work Required.

(4) If the Contractor shall fail to do any such work as aforesaid required by the Engineer the Employer shall be entitled to carry out such work by his own workmen or by other contractors and if such work is work which the Contractor should have carried out at the Contractor's own cost shall be entitled to recover from the Contractor the cost thereof or may deduct the same from any monies due or that become due to the Contractor.

Contractor to Search.

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

#### Alterations Additions and Omissions

Variations.

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

- (a) increase or decrease the quantity of any work included in the Contract
- (b) omit any such work
- (c) change the character or quality or kind of any such work
- (d) change the levels lines position and dimensions of any part of the Works and
- (e) execute additional work of any kind necessary for the completion of the Works

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

Orders for Variations to be in Writing.

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

Valuation of Variations.

52. (1) The Engineer shall determine the amount (if any) which in his opinion should be added to or deducted from the sum named in the Tender in respect of any extra or additional work done or work omitted by his order. All such work shall be valued at the rates set out in the Contract if in the opinion of the Engineer the same shall be applicable. If the Contract shall not

contain any rates applicable to the extra or additional work then suitable prices shall be agreed upon between the Engineer and the Contractor. In the event of disagreement the Engineer shall fix such prices as shall in his opinion be reasonable and proper.

Power of Engineer to fix Rates.

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

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

(a) by the Contractor to the Engineer of his intention to claim extra payment or a varied rate or

(b) by the Engineer to the Contractor of his intention to vary a rate or price as the case may be.

Variations exceeding 15 per cent.

(3) If the net effect of all variations (other than those arising by reason of any clause relating to variations in price of materials and/or labour) shall be found on completion of the whole of the Works to result in a reduction or an addition greater than 15 per cent of the sum named in the Tender the amount of the Contract Price shall be amended by such sum as shall be agreed upon between the Engineer and the Contractor. In the event of disagreement the Engineer shall fix such sum as shall in his opinion be reasonable and proper regard being had to all material and relevant factors including the Contractor's oncosts and overheads.

Daywork.

(4) The Engineer may if in his opinion it is necessary or desirable order in writing that any additional or substituted work shall be executed on a daywork basis. The Contractor shall then be paid for such work under the conditions set out in the Daywork Schedule included in the Bill of Quantities and at the rates and prices affixed thereto by him in his Tender.

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

In respect of all work executed on a daywork basis the Contractor shall during the continuance of such work deliver each day to the Engineer's Representative an exact list in duplicate of the names occupation and time of all workmen employed on such work and a statement also in duplicate showing the description and quantity of all materials and plant used thereon or therefor (other than plant which is included in the percentage addition in accordance with the Schedule hereinbefore referred to). One copy of each list and statement will if correct or when agreed be signed by the Engineer's Representative and returned to the Contractor. At the end of each month the Contractor shall deliver to the Engineer's Representative a priced statement of the labour material and plant (except as aforesaid) used and the Contractor shall not be entitled to any payment unless such lists and statements have been fully and punctually rendered. Provided always that if the Engineer shall consider that for any reason the sending of such list or statement by the Contractor in accordance with the foregoing provision was impracticable he shall nevertheless be entitled to authorise payment for such work either as daywork (on being satisfied as to the time employed and plant and materials used on such work) or at such value therefor as shall in his opinion be fair and reasonable.

Claims.

(5) The Contractor shall send to the Engineer's Representative once in every month an account giving particulars (as full and detailed as possible) of all claims for any additional expense to which the Contractor may consider himself entitled and of all extra or additional work ordered by the Engineer which he has executed during the preceding month and no claim for payment for any such work will be considered which has not been included in such particulars.

Provided always that the Engineer shall be entitled to authorise payment to be made for any such work notwithstanding the Contractor's failure to comply with this condition if the Contractor has at the earliest practicable opportunity notified the Engineer that he intends to make a claim for such work.

#### Plant Temporary Works and Materials

Plant, etc., Exclusive Use for the Works.

53. (1) All constructional Plant Temporary Works and materials provided by the Contractor shall when brought on to the Site be deemed to be exclusively intended for the construction and completion of the Works and the Contractor shall not remove the same or any part thereof (save for the purpose of moving it from one part of the Site to another) without the consent in writing of the Engineer which shall not be unreasonably withheld.

Removal of Plant, etc.

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

Employer not liable for Damage to Plant, etc.

(3) The Employer shall not at any time be liable for the loss of or injury to any of the said Constructional Plant Temporary Works or materials save as mentioned in Clauses 20 and 65 hereof.

Re-export of Plant.

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

Customs Clearance.

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

(6) Any other conditions affecting Plant, Temporary Works and Materials including conditions regarding payment of or relief from Customs or other import duties harbour and port dues wharfage landing pilotage and any other charges or dues are set out in Part II in sub-clauses numbered 53 (6) (7) etc., as may be necessary.

Approval of Materials, etc. not implied.

54. The operation of Clause 53 hereof shall not be deemed to imply any approval by the Engineer of the materials or other matters referred to therein nor shall it prevent the rejection of any such materials at any time by the Engineer.

#### Measurement

Quantities.

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

Works to be Measured.

56. The Engineer shall except as otherwise stated ascertain and determine by admeasurement the value in accordance with the Contract of work done in accordance with the Contract. He shall when he requires any part or parts of the Works to be measured give notice to the Contractor's authorised agent or representative who shall forthwith attend or send a qualified agent to assist the Engineer or the Engineer's Representative in making such measurement and shall furnish all particulars required by either of them. Should the Contractor not attend or neglect or omit to send such agent then the measurement made by the Engineer or approved by him shall be taken to be the correct measurement of the work. For the purpose of measuring

such permanent work as is to be measured by records and drawings the Engineer's Representative shall prepare records and drawings month by month of such work and the Contractor as and when called upon to do so in writing shall within 14 days attend to examine and agree such records and drawings with the Engineer's Representative and shall sign the same when so agreed and if the Contractor does not so attend to examine and agree any such records and drawings they shall be taken to be correct. If after examination of such records and drawings the Contractor does not agree the same or does not sign the same as agreed they shall nevertheless be taken to be correct unless the Contractor shall within 14 days of such examination lodge with the Engineer's Representative for decision by the Engineer notice in writing of the respects in which such records and drawings are claimed by him to be incorrect.

Method of Measurement.

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

#### Provisional and Prime Cost Sums

Provisional Sums.

58. (1) Every provisional sum (other than P.C. prices under sub-clause (2) of this clause) set out in the Bill of Quantities (whether for work to be executed by the Contractor which has not been specified in detail when the Contract is entered into or for work to be executed by a nominated Sub-Contractor as hereinafter defined) together with the charges and profits (if any) which the Contractor shall have added to such sums shall be deducted from the Contract Price and in lieu thereof there shall be added to the Contract Price:

(a) where work to which the provisional sum relates has been ordered by the Engineer and executed by the Contractor the value of the work so executed valued in accordance with Clause 52 hereof and

(b) where work to which the provisional sum relates has been ordered by the Engineer and executed by a nominated Sub-Contractor (as hereinafter defined) the sum or sums actually paid (subject however to the provisions of sub-clause (5) hereof) by the Contractor to such Sub-Contractor on the direction of the Engineer and (if the Contractor shall have added to the provisional sum to which the work relates any sums in respect of charges and profits) a sum in the same proportion to the sum so actually paid as the said charges and profits bear to the said provisional sum.

Prime Cost Items.

(2) Every sum in the Bill of Quantities which contains (either as the whole or part of the sum) a prime cost (P.C.) price for goods or materials to be supplied for or for incorporation into the Works shall be varied by the substitution for the prime cost price of the actual price (subject however to the provisions of sub-clause (5) hereof) paid by the Contractor for the goods or materials on the direction of the Engineer and the Contract Price shall be increased or decreased (as the case may be) by the amount by which the sum in the Bill of Quantities is increased or decreased by such substitution. No variation shall be made to or in respect of any sum added for labours to the prime cost price on account of the said actual price being greater or less than the prime cost price but in respect of all other charges and profit there shall be added or deducted as the case may be a sum representing such percentage as is provided in the Bill of Quantities in relation to the particular item of prime cost concerned or (if none) as is inserted by the Contractor in the form of Tender as the percentage for the adjustment of prime cost sums.

Use of Provisional and Contingency Items.

(3) All sums set out in the Bill of Quantities which shall be stated to be provisional or for contingencies shall be used only at the direction and discretion of the Engineer and if not used either wholly or in part shall as to the amount not used be deducted from the Contract Price.

Production of Vouchers, etc.

(4) The Contractor shall when required by the Engineer produce all quotations invoices vouchers and accounts or receipts in connection with expenditure in respect of provisional or prime cost items.

Cash Discount.

(5) In so far as any sum is paid by the Contractor to a nominated Sub-Contractor (as hereinafter defined) by direction of the Engineer under sub-clause (1) (b) or (2) of this Clause before the Contractor shall have received payment of that sum from the Employer there shall for the purpose of adjusting the Contract Price under sub-clause (1) or (2) hereof (as the case may be) be added to the actual sum paid by the Contractor as aforesaid 2½ per cent of the amount of such actual payment and the benefit of any cash discount allowed in respect thereof shall be passed to the Employer.

Assignment of Sub-Contractor's obligations.

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

Nominated Sub-Contractors.

59. (1) All specialists merchants tradesmen and others executing any work or supplying any goods for which provisional or prime cost sums are included in the Bill of Quantities who may have been or be nominated or selected or approved by the Employer or the Engineer and all persons to whom by virtue of the provisions of the Bill of Quantities or Specification the Contractor is required to sub-let any work shall in the execution of such work or the supply of such goods be deemed to be Sub-Contractors employed by the Contractor and are hereinafter referred to as "nominated Sub-Contractors." Provided always that the Contractor shall not be required by the Employer or the Engineer or be deemed to be under any obligation to employ any nominated Sub-Contractor who shall decline to enter into a sub-contract with the Contractor containing provisions:

(a) That in respect of the work or goods the subject of the sub-contract the nominated Sub-Contractor will undertake towards the Contractor the like obligations and liabilities as are imposed upon the Contractor towards the Employer by the terms of the Contract and will save harmless and indemnify the Contractor from and against the same and from all claims demands proceedings damages costs charges and expenses whatsoever arising out of or in connection therewith or arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities and

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

Payments to Nominated Sub-Contractors.

(2) Before issuing under Clause 60 hereof any certificate which includes any payment in respect of work done or goods supplied by any nominated Sub-Contractor the Engineer shall be entitled to demand from the Contractor reasonable proof that all payments (less retentions) included in previous certificates in respect of the work or goods of such nominated Sub-Contractor have been paid or discharged by the Contractor in default whereof unless the Contractor shall

(a) inform the Engineer in writing that he has reasonable cause for withholding or refusing to make such payment and

(b) produce to the Engineer reasonable proof that he has so informed such nominated Sub-Contractor in writing

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

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



### Certificates and Payment

Certificates and Payment.

60. (1) Unless otherwise provided payments shall be made at monthly intervals in accordance with the conditions set out in Part II in the Clause numbered 60.

Advances on Constructional Plant and Material.

(2) Where advances are to be made by the Employer to the Contractor in respect of Constructional Plant and materials the conditions of payment and repayment will be as set out in Part II in the Clause numbered 60.

Payment in Foreign Currencies.

(3) If the execution of the Works shall necessitate the importation of materials plant or equipment from a country other than that in which the Works are being executed or if the Works or any part thereof are to be executed by labour imported from any other such country or if any other circumstance shall render it necessary or desirable a proportion of the payments to be made under the Contract shall be made in the appropriate foreign currencies and the said proportions and the rate of exchange applicable thereto and the conditions under which such payments are to be made shall be as set out in Part II in the Clause numbered 60.

Approval only by Maintenance Certificate.

61. No certificate other than the Maintenance Certificate referred to in Clause 62 hereof shall be deemed to constitute approval of any work or other matter in respect of which it is issued or shall be taken as an admission of the due performance of the Contract or any part thereof or of the accuracy of any claim or demand made by the Contractor or of additional or varied work having been ordered by the Engineer nor shall any other certificate conclude or prejudice any of the powers of the Engineer.

Maintenance Certificate.

62. (1) The Contract shall not be considered as completed until a Maintenance Certificate shall have been signed by the Engineer and delivered to the Employer stating that the Works have been completed and maintained to his satisfaction. The Maintenance Certificate shall be given by the Engineer twenty-eight days after the expiration of the Period of Maintenance (or if different Periods of Maintenance shall become applicable to different parts of the Works the expiration of the latest such period) or as soon thereafter as any works ordered during such period pursuant to Clauses 49 and 50 hereof shall have been completed to the satisfaction of the Engineer and full effect shall be given to this Clause notwithstanding any previous entry on the Works or the taking possession working or using thereof or any part thereof by the Employer. Provided always that the issue of the Maintenance Certificate shall not be a condition precedent to payment to the Contractor of the second portion of the retention money in accordance with the conditions set out in Part II in the Clause numbered 60.

Cessation of Employer's Liability.

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

Unfulfilled Obligations.

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

### Remedies and Powers

Forfeiture.

63. (1) If the Contractor shall become bankrupt or have a receiving order made against him or shall present his petition in bankruptcy or shall make an arrangement with or assignment in

favour of his creditors or shall agree to carry out the Contract under a committee of inspection of his creditors or (being a corporation) shall go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction) or if the Contractor shall assign the Contract without the consent in writing of the Employer first obtained or shall have an execution levied on his goods or if the Engineer shall certify in writing to the Employer that in his opinion the Contractor:

- (a) has abandoned the Contract or
- (b) without reasonable excuse has failed to commence the Works or has suspended the progress of the Works for 28 days after receiving from the Engineer written notice to proceed or
- (c) has failed to remove materials from the Site or to pull down and replace work for 28 days after receiving from the Engineer written notice that the said materials or work had been condemned and rejected by the Engineer under these conditions or
- (d) is not executing the Works in accordance with the Contract or is persistently or flagrantly neglecting to carry out his obligations under the Contract or
- (e) has to the detriment of good workmanship or in defiance of the Engineer's instructions to the contrary sub-let any part of the Contract

then the Employer may after giving 14 days' notice in writing to the Contractor enter upon the Site and the Works and expel the Contractor therefrom without thereby avoiding the Contract or releasing the Contractor from any of his obligations or liabilities under the Contract or affecting the rights and powers conferred on the Employer or the Engineer by the Contract and may himself complete the Works or may employ any other contractor to complete the Works and the Employer or such other contractor may use for such completion so much of the Constructional Plant Temporary Works and materials which have been deemed to be reserved exclusively for the construction and completion of the Works under the provisions of the Contract as he or they may think proper and the Employer may at any time sell any of the said Constructional Plant Temporary Works and unused materials and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to him from the Contractor under the Contract.

Valuation at Date of Forfeiture.

(2) The Engineer shall as soon as may be practicable after any such entry and expulsion by the Employer fix and determine *ex parte* or by or after reference to the parties or after such investigation or enquiries as he may think fit to make or institute and shall certify what amount (if any) had at the time of such entry and expulsion been reasonably earned by or would reasonably accrue to the Contractor in respect of work then actually done by him under the Contract and what was the value of any of the said unused or partially used materials any Constructional Plant and any Temporary Works.

Payment after Forfeiture.

(3) If the Employer shall enter and expel the Contractor under this clause he shall not be liable to pay to the Contractor any money on account of the Contract until the expiration of the Period of Maintenance and thereafter until the costs of completion and maintenance damages for delay in completion (if any) and all other expenses incurred by the Employer have been ascertained and the amount thereof certified by the Engineer. The Contractor shall then be entitled to receive only such sum or sums (if any) as the Engineer may certify would have been due to him upon due completion by him after deducting the said amount. But if such amount shall exceed the sum which would have been payable to the Contractor on due completion by him then the Contractor shall upon demand pay to the Employer the amount of such excess and it shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly.

Urgent Repairs.

64. If by reason of any accident or failure or other event occurring to in or in connection with the Works or any part thereof either during the execution of the Works or during the Period of Maintenance any remedial or other work or repair shall in the opinion of the Engineer or the Engineer's Representative be urgently necessary for security and the Contractor is unable or unwilling at once to do such work or repair the Employer may by his own or other workmen do such work or repair as the Engineer or the Engineer's Representative may consider necessary. If the work or repair so done by the Employer is work which in the opinion of the Engineer the

Contractor was liable to do at his own expense under the Contract all costs and charges properly incurred by the Employer in so doing shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor. Provided always that the Engineer or the Engineer's Representative (as the case may be) shall as soon after the occurrence of any such emergency as may be reasonably practicable notify the Contractor thereof in writing.

### Special Risks

#### 65. Notwithstanding anything in the Contract contained.

No Liability for War, etc., Risks.

(1) The Contractor shall be under no liability whatsoever whether by way of indemnity or otherwise for or in respect of destruction of or damage to the Works (save to work condemned under the provisions of Clause 39 hereof prior to the occurrence of any special risk hereinafter mentioned) or Temporary Works or to property whether of the Employer or third parties or for or in respect of injury or loss of life which is the consequence whether direct or indirect of war hostilities (whether war be declared or not) invasion act of foreign enemies rebellion revolution insurrection or military or usurped power civil war or (otherwise than among the Contractor's own employees) riot commotion or disorder (hereinafter comprehensively referred to as "the said special risks") and the Employer shall indemnify and save harmless the Contractor against and from the same and against and from all claims demands proceedings damages costs charges and expenses whatsoever arising thereout or in connection therewith and shall compensate the Contractor for any loss of or damage to property of the Contractor used or intended to be used for the purposes of the Works (including property in transit to the Site) and occasioned either directly or indirectly by said special risks.

Damage to Works, etc., by Special Risks.

(2) If the Works or Temporary Works or any materials (whether for the former or the latter) on or near or in transit to the Site shall sustain destruction or damage by reason of any of the said special risks the Contractor shall nevertheless be entitled to payment for any permanent work and for any materials so destroyed or damaged and the Contractor shall be entitled to be paid by the Employer the cost of making good any such destruction or damage whether to the Works or the Temporary Works and of replacing or making good such materials so far as may be required by the Engineer or as may be necessary for the completion of the Works on a prime costs basis plus such profit as the Engineer may certify to be reasonable.

Projectile Missile, etc.

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

Increased Costs arising from Special Risks.

(4) The Employer shall repay to the Contractor any increased cost of or incidental to the execution of the Works (other than such as may be attributable to the cost of reconstructing work condemned under the provisions of Clause 39 hereof prior to the occurrence of any special risk) which is howsoever attributable to or consequent on or the result of or in any way whatsoever connected with the said special risks (subject however to the provisions in this clause hereinafter contained in regard to outbreak of war) but the Contractor shall as soon as any such increase of cost shall come to his knowledge forthwith notify the Engineer thereof in writing.

Outbreak of War.

(5) If during the currency of the Contract there shall be an outbreak of war (whether war is declared or not) in any part of the world which whether financially or otherwise materially affects the execution of the Works the Contractor shall unless and until the Contract is terminated under the provisions in this clause contained use his best endeavours to complete the execution of the Works provided always that the Employer shall be entitled at any time after such outbreak of war to terminate this Contract by giving notice in writing to the Contractor and upon such notice being given this Contract shall (save as to the rights of the parties under this clause and to the operation of Clause 67 hereof) terminate but without prejudice to the rights of either party in respect of any antecedent breach thereof.

Removal of Plant on Termination.

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

Payment if Contract Terminated.

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

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

(b) The cost of materials or goods reasonably ordered for the Works or Temporary Works which shall have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery (such materials or goods becoming the property of the Employer upon such payment being made by him).

(c) A sum to be certified by the Engineer being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works in so far as such expenditure shall not have been covered by the payments in this sub-clause before mentioned.

(d) Any additional sum payable under the provisions of sub-clauses (1) (2) and (4) of this clause.

(e) The reasonable cost of removal under sub-clause (6) of this clause and (if required by the Contractor) return thereof to the Contractor's main plant yard in his country of registration or to any other destination at no greater cost.

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

Provided always that against any payments due from the Employer under this sub-clause the Employer shall be entitled to be credited with any outstanding balances due from the Contractor for advances in respect of plant and materials and any sum previously paid by the Employer to the Contractor in respect of the execution of the Works.

#### Frustration

Payment in Event of Frustration.

66. In the event of the Contract being frustrated whether by war or otherwise howsoever the sum payable by the Employer to the Contractor in respect of the work executed shall be the same as that which would have been payable under Clause 65 hereof if the Contract had been terminated under the provisions of Clause 65 hereof.

#### Settlement of Disputes

Settlement of Disputes—Arbitration.

67. If any dispute or difference of any kind whatsoever shall arise between the Employer or the Engineer and the Contractor in connection with or arising out of the Contract or the carrying out of the Works (whether during the progress of the Works or after their completion and whether before or after the termination abandonment or breach of the Contract) it shall in the first place be referred to and settled by the Engineer who within a period of 90 days after being requested by either party to do so shall give written notice of his decision to the Employer and the Contractor. Save as hereinafter provided such decision in respect of every matter so referred shall be final and binding upon the Employer and the Contractor until the completion of the work and shall forthwith be given effect to by the Contractor who shall proceed with the Works with all due diligence whether he or the Employer requires arbitration as hereinafter provided or not. If the Engineer has given written notice of his decision to the Employer and the Contractor and no claim to arbitration has been communicated to him by either the Employer or the Contractor

within a period of 90 days from receipt of such notice the said decision shall remain final and binding upon the Employer and the Contractor. If the Engineer shall fail to give notice of his decision as aforesaid within a period of 90 days after being requested as aforesaid or if either the Employer or the Contractor be dissatisfied with any such decision then and in any such case either the Employer or the Contractor may within 90 days after receiving notice of such decision or within 90 days after the expiration of the first named period of 90 days (as the case may be) require that the matter or matters in dispute be referred to arbitration as hereinafter provided. All disputes or differences in respect of which the decision (if any) of the Engineer has not become final and binding as aforesaid shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The said arbitrator/s shall have full power to open up review and revise any decision opinion direction certificate or valuation of the Engineer and neither party shall be limited in the proceedings before such arbitrator/s to the evidence or arguments put before the Engineer for the purpose of obtaining his said decision. No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator/s on any matter whatsoever relevant to the dispute or difference referred to the arbitrator/s as aforesaid. The arbitrator/s shall not enter on the reference until after the completion or alleged completion of the Works unless with the written consent of the Employer and the Contractor provided always

- (i) that such reference may be opened before such completion or alleged completion in respect of the withholding by the Engineer of any certificate or the withholding of any portion of the retention money to which the Contractor claims in accordance with the conditions set out in Part II in the Clause numbered 60 to be entitled or in respect of the exercise of the Engineer's power to give a certificate under Clause 63 (1) hereof or in respect of a dispute arising under Clause 71 hereof
- (ii) that the giving of a Certificate of Completion under Clause 48 hereof shall not be a condition precedent to the opening of any such reference.

#### Notices

Service of Notices on Contractor.

68. (1) Any notice to be given to the Contractor under the terms of the Contract shall be served by sending the same by post to or leaving the same at the Contractor's principal place of business (or in the event of the Contractor being a Company to or at its registered office).

Service of Notices on Employer.

(2) Any notice to be given to the Employer under the terms of the Contract shall be served by sending the same by post to or leaving the same at the Employer's last known address (or in the event of the Employer being a Company to or at its registered office).

#### Default of Employer

Default of Employer.

69. (1) In the event of the Employer:

- (a) Failing to pay to the Contractor the amount due under any certificate of the Engineer within 30 days after the same shall have become due under the terms of the Contract; or
- (b) Interfering with or obstructing the issue of any such certificate; or
- (c) Becoming bankrupt or (being a company) going into liquidation other than for the purposes of a scheme of reconstruction or amalgamation

the Contractor shall be entitled without prejudice to any other rights or remedies to terminate the employment of the Contractor under the Contract by giving notice in writing to the Employer.

(2) Upon the giving of such notice the Contractor shall (notwithstanding the provisions of Clause 53 (1) hereof) with all reasonable despatch remove from the Site all Constructional Plant brought by him thereon.

(3) In the event of such termination the Employer shall be under the same obligations to the Contractor in regard to payment as if the Contract had been terminated under the provisions of Clause 65 hereof but in addition to the payments specified in Clause 65 (7) the Employer shall pay to the Contractor the amount of any loss or damage to the Contractor arising out of or in connection with or by consequence of such termination.

(4) Nothing in this Clause contained shall prejudice the right of the Contractor to exercise either in lieu of or in addition to the rights and remedies in this clause specified any other rights or remedies to which the Contractor may be entitled.

Increase or Decrease in Costs.

70. Where adjustments are to be made in respect of rise or fall in the costs of labour and for materials or any other matters affecting the cost of execution of the Works these are as set out in Part II in the Clause numbered 70.

Major Economic Dislocation.

71. In the event of there being subsequent to the date of Tender such a major economic dislocation within the country in which the Works are being or are to be constructed as to result in the imposition by the Government of that country of currency restrictions or in devaluation of the currency of that country the Employer shall pay to the Contractor any increased costs of or incidental to the execution of the Works which is howsoever attributable to or consequent on or the result of or in any way whatever connected with such economic dislocation provided always that nothing in this Clause contained shall prejudice the right of the Contractor to exercise any other rights or remedies to which the Contractor may be entitled in such event.

Note.

For Conditions of Particular Application—see Part II.

CONDITIONS OF CONTRACT

PART II—CONDITIONS OF PARTICULAR APPLICATION

The following notes are intended as an aide-memoire in the preparation of clauses (some of which are dealt with but not exhaustively in Part I) which will vary as necessary to take account of the circumstances and locality of the Works. These variable clauses which must be specially prepared to suit each particular contract should cover such of the undermentioned matters and any others as are applicable.

Clause 1—Definitions

Employer: The Employer is . . . . .

Engineer: The Engineer is . . . . .

Any further definitions required.

Clause 6—Documents Mutually Explanatory

Language: The language/s is/are . . . . .

The Ruling Language is . . . . .

**Clause 34—Labour**

(9) (10) etc. Permits for imported labour, control, health, hours and conditions, rates of pay, compliance with labour legislation.

**Clause 47 (3)—Bonus**

Bonus (if any) for early completion. If none, insert "Nil" in appendix to Form of Tender.

**Clause 49—Temporary Reinstatement**

In appropriate cases, where the permanent reinstatement is not being carried out by the Contractor, an additional sub-clause should be added to Clause 49 to cover making good all subsidence etc. in the temporary reinstatement of any highway broken into for the purposes of the execution of the Works and the liability for damage and injury resulting therefrom up to the end of the Period of Maintenance or until possession of the site has been taken for the purpose of carrying out permanent reinstatement (whichever is the earlier).

**Clause 53—Plant etc., Exclusive Use for the Works, etc.**

(6) (7) etc. Hire of Plant; sale or disposal of Plant; payment of or relief from Customs or other import duties, harbour and port dues, wharfage, landing, pilotage and any other charges or dues, any other conditions affecting Plant.

**Clause 60—Certificates and Payment**

Advances on Plant and Materials where made; conditions covering such advances and their repayment; monthly claims for work executed and certificates of Engineer as to amount due to Contractor for permanent work executed in the month and for temporary works included in the Bill of Quantities and also, if there are no advances for materials and plant amounts as certified by the Engineer for any materials for permanent work on the site; times of payment of retention monies; correction and withholding of certificates; place of payment; times of payment. Foreign currencies in which payment to be made, proportions, rate of exchange and conditions applicable thereto.

**Clause 70—Increase or Decrease of Costs**

In appropriate cases this clause should cover such matters as:

Adjustment of contract price by reason of alteration in rates of wages and allowances payable to labour and local staff; change in conditions of employment of labour and local staff; change in cost of materials for permanent or temporary works, or in consumable stores, fuel and power; variation in freight and insurance rates; Customs or other import duties; the operation of any law, statute, etc.

**Clause 72—Taxation**

Payment of or exemption from local income or other taxes both as regards the Contractor and his staff.

**Clause 73, etc.—Miscellaneous**

In certain cases it may be desirable to insert clauses to cover (and number accordingly) such matters as:

- (a) regulations governing importation and use of explosives for blasting;
- (b) bribery and corruption;
- (c) photographs of the Works and advertising;

- (d) undertakings regarding non-disclosure of secret information;
- (e) any other matters special to the contract.

**Final Clause—Law Governing Contract**

This clause should state the country to the law of which the contract is subject and in accordance with which it will be construed.

*N.B.* This would normally be put at the end of Part II (and numbered accordingly).

*NOTE. The specially prepared clauses should be substituted for this Aide-Memoire which is to be detached when inviting tenders.*

**SHORT DESCRIPTION OF WORKS**

**Form of Tender**

*(Notes:—The Appendix forms part of the Tender.*

*Tenderers are required to fill up all the blank spaces in this Tender Form and Appendix.)*

To: .....

Gentlemen,

Having examined the Drawings, Conditions of Contract, Specification and Bill of Quantities for the construction of the above-named Works, we, the undersigned, offer to construct complete and maintain the whole of the said Works in conformity with the said Drawings, Conditions of Contract, Specification and Bill of Quantities for the sum of ..... (€.....) or such other sum as may be ascertained in accordance with the said Conditions.

2. We undertake if our Tender is accepted to commence the Works within . . . days of receipt of the Engineer's order to commence, and to complete and deliver the whole of the Works comprised in the Contract within . . . . . days calculated from the last day of the aforesaid period in which the Works are to be commenced.

3. If our tender is accepted we will, if required, obtain the guarantee of an Insurance Company or Bank or alternatively provide two good and sufficient sureties (to be approved by you) to be jointly and severally bound with us in a sum not exceeding 10 per cent. of the above-named sum for the due performance of the Contract under the terms of a Bond to be approved by you.

4. We agree to abide by this Tender for the period of . . . . . days from the date fixed for receiving the same and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

5. Unless and until a formal Agreement is prepared and executed this Tender, together with your written acceptance thereof, shall constitute a binding Contract between us.

6. We understand that you are not bound to accept the lowest or any tender you may receive.



## Appendix

	<i>Clause</i>	
Amount of Bond or Guarantee (if any) . . . . .	10	£ . . . . .
Minimum Amount of Third Party Insurance . . . . .	23 (2)	£ . . . . .
Period for commencement, from Engineer's order to commence . . . . .	41	. . . . . days
Time for completion . . . . .	43	. . . . . days
Amount of Liquidated Damages . . . . .	47 (1)	£ . . . . per day
Amount of Bonus (if any) . . . . .	47 (3)	. . . . .
Period of Maintenance . . . . .	49	. . . . . days
Percentage for Adjustment of P.C. Sums . . . . .	58 (2)	. . . . per cent.
Percentage of Retention . . . . .	.60 ( )	. . . . per cent.
Limit of Retention Money . . . . .	.60 ( )	£ . . . . .
Minimum Amount of Interim Certificates . . . . .	(60) ( )	£ . . . . .
Time within which payment to be made after Certificate . . . . .	(60) ( )	. . . . days

Dated this . . . . . day of . . . . . 19 . . . . .

Signature . . . . . in the capacity of . . . . .

duly authorised to sign tenders for and on behalf of . . . . .

. . . . .  
(in block capitals)

Witness . . . . . Address . . . . .

Address . . . . .

Occupation . . . . .

## Form of Agreement

THIS AGREEMENT made the . . . . . day of . . . . .  
19 . . . . . Between . . . . .  
of . . . . .  
. . . . . (hereinafter called "the Employer") of the one part and . . . . .  
of . . . . .  
. . . . . (hereinafter called "the Contractor" of the other part)

WHEREAS the Employer is desirous that certain Works should be constructed, viz . . . . .  
. . . . . and has accepted a  
Tender by the Contractor for the construction completion and maintenance of such Works NOW

THIS AGREEMENT WITNESSETH as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:

- (a) The said Tender.
- (b) The Drawings.
- (c) The Conditions of Contract (Parts I and II).
- (d) The Specification.
- (e) The Bill of Quantities.
- (f) The Schedule of Rates and Prices (if any).

3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned the Contractor hereby covenants with the Employer to construct complete and maintain the Works in conformity in all respects with the provisions of the Contract.

4. The Employer hereby covenants to pay the Contractor in consideration of the construction completion and maintenance of the Works the Contract Price at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused their respective Common Seals to be hereunto affixed (or have hereunto set their respective hands and seals) the day and year first above written

The Common Seal of .....  
..... Limited  
was hereunto affixed in the presence of:

or

SIGNED SEALED AND DELIVERED by the said .....  
.....  
.....  
in the presence of:

*Annex II*

FORM OF BID BOND

Bond No. \_\_\_\_\_ Date Bond Executed \_\_\_\_\_  
KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_

\_\_\_\_\_ as Principals, hereinafter called "the Contractor", and \_\_\_\_\_  
\_\_\_\_\_ of the country of \_\_\_\_\_ authorized to transact business in the country  
of \_\_\_\_\_, hereinafter called "the Surety", are held and firmly bound unto

\_\_\_\_\_ as Obligee, hereinafter called "the owner", in the full and just sum of \_\_\_\_\_  
\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), lawful money of the United States  
of America for the payment of which sum, well and truly to be made, the Contractor and the  
Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and  
severally, firmly by these presents.

WHEREAS, the Contractor has submitted a written tender to the Owner, dated the \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_\_\_, for \_\_\_\_\_

NOW, THEREFORE, if the said tender is accepted within ninety days from the closing date of  
the tender call, the condition of this obligation is such that if the Contractor shall, within the  
time required, furnish a performance bond, in the form supplied to the tenderer by the Owner, in  
the amount of twenty-five per cent of the Contractor Price and, if required, execute within the  
time required a form of contract, then this obligation shall be void; otherwise to remain in full  
force and effect.

PROVIDED, HOWEVER, that the Surety shall not be

- (a) Liable for a greater sum than the specified penalty of this bond, nor
- (b) Liable for a greater sum than the difference between the amount of the said Contractor's  
tender and the amount of the tender that is accepted by the Owner

Each Surety executing this instrument hereby agrees that its obligation shall not be impaired by  
any extension(s) of the time for acceptance of the bid that the Principal may grant to the  
Government, notice of which extension(s) to the Surety(ies) being hereby waived; provided that  
such waiver of notice shall apply only with respect to extensions aggregating not more than sixty  
(60) calendar days in addition to the period originally allowed for acceptance of the bid.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this bid bond and have  
affixed their seals on the date set forth above.

Principal \_\_\_\_\_

Signature(s)

Name(s) and Title(s)

Surety \_\_\_\_\_

Signature(s)

Name(s)

*Annex III*

**CONSULTANTS' PROPOSALS: SUMMARY EVALUATION SHEET (IBRD)**

Project: *X Y Z study (transportation survey)*

Proposals received: \_\_\_\_\_ No. \_\_\_\_\_  
 Date of evaluation: \_\_\_\_\_  
 Evaluation by: \_\_\_\_\_

Item	A.B.C. Co.		D.E.F. Co.		G.H.I. Co.		Weight X rating	Rating	Weight X rating	Rating	Weight X rating	Rating
	Weight Rating (on 100)	Weight X rating	Weight Rating (on 100)	Weight X rating	Weight Rating (on 100)	Weight X rating						
1. Firm's general experience in field of project	15	60	9.0	80	12.0	100	15.0					
2. Adequacy of proposed work plan and approach	25	60	15.0	70	17.5	80	20.0					
3. Personnel												
(a) Head of team	15	80	12.0	73	10.9	85	12.7					
(b) Economics	15	50	7.5	90	13.5	82	12.3					
(c) Engineering (highways)	10	80	8.0	70	7.0	74*	7.4					
(d) Engineering (railroads)	5	61	3.0	75	3.7	70	3.5					
(e) Engineering (ports)	5	74	3.7	81	4.0	83	4.1					
(f) Financial analysts	10	87	8.7	65	6.5	70	7.0					
<b>Total</b>	<b>100</b>	<b>-</b>	<b>66.9</b>	<b>-</b>	<b>75.1</b>	<b>-</b>	<b>82.0</b>					
Man-months:												
In field	55		60		70							
In home office	35		20		25							
<b>Total</b>	<b>90</b>		<b>80</b>		<b>95</b>							

\*The detailed analysis behind this rating is shown in "Personnel Evaluation Sheet", annex IIIa.

**Annex IIIa**  
**CONSULTANTS' PROPOSALS: PERSONNEL EVALUATION SHEET (IBRD)**

*Project: X Y Z study (transportation survey)*

Firm: G.H.I. Co.

Highway Engineer: \_\_\_\_\_ No. \_\_\_\_\_  
 Sheet No. \_\_\_\_\_  
 Date: \_\_\_\_\_

Group	Position	Name	Age	General qualifications		Adequacy for project		Language and experience in region		Personnel rating <sup>a</sup>		Group rating <sup>a</sup> (K)X(L)
				Rating <sup>a</sup> (E)X40%	Rating <sup>a</sup> (F)	Rating <sup>a</sup> (G)X40%	Rating <sup>a</sup> (H)	Rating <sup>a</sup> (I)X20%	Rating <sup>a</sup> (J)	Rating <sup>a</sup> (K)X(L)		
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)
Highway engineers	Senior highway engineer	A. Jones	45	90	36	80	32	60	12	80	40	40%
	Traffic engineer	B. Smith	35	80	32	60	24	70	14	70	20	20%
	Bridge engineer	C. Jones	47	70	28	80	32	50	10	70	20	20%
	Junior highway engineer	D. Smith	29	70	28	75	30	70	14	72	20	20%
<b>74<sup>b</sup></b>												

<sup>a</sup>All ratings on basis of 100.

<sup>b</sup>This figure is transferred to summary evaluation sheet, annex III, line 3 (c).

## *Annex IV*

### CHECK LIST OF CONTRACT PROVISIONS FOR CONSULTANTS' CONTRACTS

(Note: This is a general list. Not all provisions may apply in all cases.)

- (1) Date of agreement
- (2) Identification of client and consultant, including transfer of responsibility to successors; if the client is a public body, the authority under which it acts and the source of available funds should be specified
- (3) Review of the background and brief definition of the project
- (4) Scope of the assignment, including reference to any detailed description incorporated in appendices
- (5) Effective date of commencement of works, when different from (1), and estimated or stipulated time for completion
- (6) Designation of individuals in client and consulting organizations responsible for policy decisions

#### Responsibilities of the consultant:

- (7) Providing professional help, services, and information
- (8) Maintaining work schedule
- (9) Supplying personnel (may be detailed in appendix)
- (10) Availability for conference with the client
- (11) Reporting, including the schedule, nature and language of reports
- (12) Ownership of designs, blueprints, reports, etc. to be specified in the contract
- (13) Safeguarding of information supplied by client
- (14) Guarantee of performance; liability for errors

#### Responsibilities of the client:

- (15) Providing information, services, personnel and facilities
- (16) Availability for conference with the consultant

#### Duration of contract:

- (17) Date of completion, either by stating a specific date or by indicating the duration of the operation from the execution of the contract
- (18) Provision and mechanism for the modification of the specified date by mutual agreement
- (19) Provision for extension or renewal
- (20) Provision and mechanism for early termination by either party
- (21) Termination by reason of events beyond control of either party
- (22) Provision against delays
- (23) Penalty clauses

#### Financial provisions:

- (24) Total financial commitment by the client
- (25) Method and schedule of billing by the consultant
- (26) Method of payment
- (27) Currency or currencies of payment and conversion rates
- (28) Guarantee of payment by the client
- (29) Payment of interest on delayed payments

**General provisions:**

- (30) Legal jurisdiction for the interpretation of the contract
- (31) Insurance provisions
- (32) Best efforts pledged by both consultant and client
- (33) Handling of disagreement through arbitration
- (34) Obligations for visas, permits, licence fees and taxes
- (35) Interpretation of the contract

*Annex V*

CHECK LIST OF CONTRACT PROVISIONS  
FOR USE OF FOREIGN CONSULTANTS

General conditions	Reminder
1. Definition . . . . .	Review definition of salary costs
2. Duration of engagement	
3. Ownership of documents etc.	
4. Settlement of disputes	
5. Language	
6. Law governing agreement	
Obligations of consulting engineer	
7. Care and diligence	
8. Normal Services . . . . .	Spell out the extent and character of services to be provided in as much detail as possible
9. Additional services . . . . .	Extra site visits by consulting engineer. Provisions for training client's staff in consulting engineer's offices, including responsibility for paying travel expenses and salaries
10. Supervision on site . . . . .	Proportions and qualifications of foreign and local staff
Obligations of client	
11. Providing information, and personnel	
12. Payment for normal services . . . . .	Review scales of charges
13. Payment for additional services . . . . .	Review scale of charges
14. Payment for use of Computer or other special Equipment	
15. Payment for site supervision	
Service agreement for site staff . . . . .	See appendix
Travel to and from the country . . . . .	Responsibility for obtaining visas and work permits
Travel within the country	
Baggage	
Import facilities for baggage and cars	
Housing	
Subsistence allowances	
Cars	
Medical and dental	
Repatriation in event of <i>force majeure</i>	
Accommodation for visitors	
Office accommodation	
Exemption from local taxes and custom duties	
16. Reimbursable cost . . . . .	Communication expenses, overseas postal and air freight charges, and customs duties in respect thereof; overseas telephone calls, outside services such as soil and material tests; reproduction costs (blue-printing etc.).



17. Payment for changes in the work	
18. Payment when works are damaged or destroyed	
19. Payment following termination or suspension by the client	
20. Payment following termination by the consulting engineer	
22. Payment of accounts	
Currencies . . . . .	For each of the payment clauses definition of the proportions payable in currency of consultant's state and in local currency
Method of payment . . . . .	Letters of credit and accounts in consultant's country and locally
Interim payments . . . . .	Initial payment on signing Agreement to cover consulting engineer's mobilization expenses
Convertibility of local currency . . . .	Extent to which this is permitted
Taxation . . . . .	Any exemption allowed on income of the consulting engineer arising out of the Agreement
Changes of rate of exchange	

#### Appendix

**Example of list of clauses for a foreign site staff service agreement:**

**Definitions**  
**Period of service**  
**Variation of period of service**  
**Salary and subsistence allowance**  
**Method of payment of salary and allowances**  
**Promotion**  
**Leave (terminal, annual, sick)**  
**Gratuity in lieu of leave**  
**Passages**  
**Baggage**  
**Import duties**  
**Taxation**  
**Accommodation: (a) family or (b) single man**  
**Children's education allowances**  
**Cars or car allowance**  
**Medical attention**  
**Pension and life insurance**  
**Ill-health**  
**Dismissal**  
**Notices**  
**Law governing Agreement**

*Annex VI*

INTERNATIONAL MODEL FORM OF AGREEMENT BETWEEN CLIENT AND  
CONSULTING ENGINEER

and

INTERNATIONAL GENERAL RULES FOR AGREEMENT BETWEEN CLIENT  
AND CONSULTING ENGINEER (IGRA 1963)

---

This document has been prepared by the International Federation of Consulting Engineers  
(F.I.D.I.C.).

---

*May 1963*  
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*Prints may be obtained from:*

*Fédération Internationale des Ingénieurs-Conseils (FIDIC)*  
*Secretariat: Jan van Nassaustraet 91, The Hague (The Netherlands)*

INTERNATIONAL MODEL FORM OF AGREEMENT BETWEEN CLIENT AND  
CONSULTING ENGINEER

THIS AGREEMENT made in duplicate the \_\_\_\_\_ day  
of \_\_\_\_\_ in the year Nineteen Hundred and \_\_\_\_\_

between

---

hereinafter called "the Client", of the one part  
and

---

Consulting Engineer(s) hereinafter called "the Consulting Engineer" of the other part.

WHEREAS the Client is desirous that engineering services be rendered for the following project:  
*(description of the reference)*

NOW THESE PRESENTS WITNESS and it is hereby agreed and declared by and between the  
parties hereto as follows:

**Art. 1. Appointment of Consulting Engineer(s)**

The Client hereby appoints the Consulting Engineer(s) and the Consulting Engineer(s) accept(s)  
the appointment on the conditions as laid down in the annexed "International General Rules for  
Agreement between Client and Consulting Engineer" (IGRA 1963) and on the terms and  
conditions hereinafter set forth.

Art. 2. } Art. 3. } etc. }	<i>(Here fill in the Special Conditions, such as applicable law, method of Remuneration etc.; see the Articles of the annexed Rules marked with*)</i>
----------------------------------	---

In witness whereof the parties sign:

the Client:

the Consulting Engineer:

**INTERNATIONAL GENERAL RULES FOR AGREEMENT BETWEEN CLIENT AND CONSULTING ENGINEER (IGRA 1963)**

**1. General provisions**

- 1.1. These rules concern the professional relationship between an individual person, corporate body or public authority (hereinafter called "the Client"), who wishes to engage the services of a Consulting Engineer, Partnership of Consulting Engineers or legal entity of Consulting Engineers (hereinafter called "the Consulting Engineer") to advise on engineering matters or to design and supervise the construction of engineering works and the Consulting Engineer so engaged.
- 1.2. Words importing the singular only also include the plural and vice-versa without in either case altering the meaning of the context.
- 1.3. The headings shall not limit, alter or affect the meaning of these rules or the Agreement.
- \* 1.4. If the Agreement is written in more than one language it shall be stated in the Agreement which of these languages shall be the "Ruling Language".
- \* 1.5. In the Agreement it shall be stated under the legal provisions of which country the Agreement has been concluded.
- 1.6. The Client shall safeguard the Consulting Engineer against the consequences of any incompatibility between the provisions of these rules and/or the Agreement and the legal provisions under which the Agreement is concluded.
- 1.7. These rules shall be referred to as "IGRA 1963".

**2. Rights and duties of the Client and the Consulting Engineer**

- 2.1. The Consulting Engineer shall in all professional matters act as a faithful adviser to the Client, and, in so far as any of his duties are discretionary, act fairly as between the Client and the Contractor.
- 2.2. The Consulting Engineer shall exercise all reasonable skill, care and diligence in the discharge of his duties under the Agreement.
- 2.3. The Client shall furnish all pertinent data and information available to him and shall give such assistance as shall reasonably be required by the Consulting Engineer for the carrying out of his duties under the Agreement.
- 2.4. The remuneration of the Consulting Engineer charged to the Client according to clause 6 shall constitute his only remuneration in connection with the Agreement, which inter alia implies that he shall not accept any trade commission, discount, allowance or indirect payment or other consideration in connection with the reference.
- 2.5. The Consulting Engineer shall not have the benefit, whether directly or indirectly, of any royalty on or of any gratuity or commission in respect of any patented or protected article or process used on or for the purpose of the Agreement unless it is mutually agreed that he may.
- 2.6. The Consulting Engineer, when in charge of supervision of Works under construction shall have authority to make minor alterations to design as may be necessary or expedient, but he shall obtain the prior approval of the Client to any more substantial modification of the design and

costs of the said Works and to any instruction to a Contractor which constitutes a major variation, omission or addition to the Contract. In the event of any emergency however which in the opinion of the Consulting Engineer requires immediate action in the Client's interests the Consulting Engineer shall have authority to issue such orders as required on behalf of and at the expense of the Client.

2.7. The Consulting Engineer shall not be the medium of payments made on behalf of the Client to Contractors and/or Suppliers, unless specifically so requested by the Client. He will however issue certificates for such payments.

2.8. The Client shall give his decision on all sketches, drawings, reports, recommendations and tender documents laid before him by the Consulting Engineer in such reasonable time as not to delay the work of the Consulting Engineer.

2.9. The Consulting Engineer may call in the assistance of other Consultants or Experts. He shall be entitled to charge the ensuing costs to the Client when prior approval in writing has been obtained.

2.10. The copyright of all documents prepared by the Consulting Engineer in connection with the Agreement rests with the Consulting Engineer. The Client shall not be entitled either directly or indirectly to make use of these documents for the carrying out of the work other than under the supervision of the Consulting Engineer and/or of any additional or similar work without prior approval of the Consulting Engineer and without additional remuneration.

2.11. The Consulting Engineer shall have the right, subject to the Client's approval, which shall not be withheld unduly, to publish descriptive articles with or without illustrations, relevant to the references either on his own account or in conjunction with other parties concerned.

### **3. Preparation, conclusion, alteration and termination of the Agreement**

3.1. The agreement is considered to have come into force immediately upon the signature of the Form of Agreement or alternatively upon the signature of other documents clearly indicating the intention of both parties to collaborate on the basis of these Rules.

3.2. Should circumstances arise which call for modifications of the Agreement these may be made by mutual consent given in writing. Proposals in this respect from one party shall be given due consideration by the other party.

3.3. The Consulting Engineer shall not have the right to assign or transfer the benefit or obligation of the Agreement or any part thereof. However the Consulting Engineer shall be entitled at any time to take into partnership another partner or partners (or directors) and he or they shall thence be deemed to be included in the expression "the Consulting Engineer".

3.4. The Agreement shall not be dissolved by the death of the Client. His rights and obligations shall pass to his Successors.

3.5. Should the Consulting Engineer, being an individual, die or be prevented by illness or any other circumstance beyond his control from performing the obligations implied by the Agreement or having it performed entirely, the Agreement comes to an end without prejudice to the accrued rights of either party against the other.

The Client shall in that case owe the Consulting Engineer or his Successors and Assigns against surrender of the documents necessary for the continuation of the work in so far as they are available, such part of the remuneration as corresponds to the state of the work of the Consulting Engineer under the Agreement, including any reimbursable costs and those costs (if any) ensuing for the Consulting Engineer or his Successors or Assigns from contracts already entered into in respect of the reference, in so far as they are not yet reimbursed by the Client.

3.6. Should the Consulting Engineer be a partnership or legal entity the Agreement shall not be dissolved by the death or retirement of a member of the partnership or a director of the legal entity.

3.7. Should the Consulting Engineer be unable to fulfil his obligations under the Agreement owing to circumstances beyond his control or owing to some unreasonable action of the Client towards him or because the Client does not meet his obligations under the Agreement, he is entitled to suspend his activities and/or to cancel the Agreement, in which latter case the

provisions referred to under 3.5 apply, without prejudice to his right to claim damages from the Client if there are grounds to.

3.8. In the event of the whole or any part of the Works being postponed or abandoned or if for any reason whatsoever the Client cancels the Agreement as a whole or a part of it the same amounts are due to the Consulting Engineer as referred to under 3.5, increased by one quarter of the remuneration agreed upon for that part of the Works which due to the aforesaid circumstances will not be completed by the Consulting Engineer. If the remuneration is on a time-salary basis in accordance with 6.1 under A the Consulting Engineer shall be entitled to payment during a reasonable time for those of his staff who have been working on the reference and who have to be transferred to other jobs in addition to the amounts due to him as referred to under 3.5.

3.9. If, within two years, the postponed Works or any part thereof shall again proceed, any relevant payments made under 3.8 shall rank as payments on account towards the total fee actually payable, it being understood that the extra time spent by the Consulting Engineer in connection with the resumption of the postponed Works and the actual costs of the additional work will be subject to an additional charge.

#### 4. Liability of the Consulting Engineer

\* 4.1. The Consulting Engineer is liable for the consequences of errors and omissions on his part or on the part of his employees in so far as specified in the Agreement and to the extent mentioned therein and with the limitations referred to hereunder.

4.2. If according to the Agreement the Consulting Engineer has certain liabilities for errors and omissions the indemnification to be paid by the Consulting Engineer shall only be based on the seriousness in character thereof and shall be determined in relation to the Consulting Engineer's fee for the Works and shall never be in excess of that fee.

4.3. The liability of the Consulting Engineer does not cover costs other than those for the reinstatement of the Works. All liability for consequential damages is excluded.

4.4. The liability of the Consulting Engineer (if any) expires after two years from the date of completion of the relevant part of the Works.

4.5. The Consulting Engineer has no liability whatsoever for any part of the Works not designed by him or under his responsibility or which have not been constructed under his supervision.

4.6. The Consulting Engineer has no liability whatsoever for any part of the Works for which the liability rests with the Contractor or the Supplier.

4.7. The Consulting Engineer has no liability whatsoever for any damage resulting from any act of Contractors or Suppliers which is not in accordance with the contract documents or the Consulting Engineer's instructions.

4.8. The Consulting Engineer has no liability whatsoever for any violation of legal provisions or rights of third parties unless these provisions or rights have been specifically brought to the notice of the Consulting Engineer by the Client in writing.

#### 5. Settlement of disputes

5.1. Any dispute or difference arising out of the Agreement and/or the provisions of these Rules, including those considered as such by only one of the parties, shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris by one or more arbitrators appointed in accordance with the said Rules.

#### 6. Remuneration of the Consulting Engineer

\* 6.1. The remuneration of the Consulting Engineer may be agreed upon according to one or more of the following systems:

A. on a time-salary basis plus reimbursable costs as defined in 6.9;

- B. as a percentage of the cost of the Works as defined in 6.6 plus reimbursable costs as defined in 6.9;
- C. as a lump sum plus reimbursable costs as defined in 6.9.

6.2. If the Agreement concerns construction of Works the remuneration payable to the Consulting Engineer covers, unless otherwise agreed upon:

- I. The preparation of such preliminary drawings, estimates and other engineering documents to enable the proposals for the construction of the Works to be submitted for approval by the Client, including as may be necessary:
  - a. a survey or surveys of the site;
  - b. investigation of available data or information relating to the Works;
  - c. advice to the Client as to the necessity for special investigations of conditions of subsoil, tide or weather, and arranging on the Client's behalf for boring tests, trial pits, test piling, models or other investigations agreed to be necessary;
  - d. consultation with any architect appointed by the Client regarding any architectural matters related to the Works and with any other Consultant appointed by the Client in regard to specialized advice;
  - e. the making of such modifications in the outline drawings and estimates of the Works in connection with the aforesaid consultations as may be approved by the Client.
- II. The preparation of the drawings, engineering documents and calculations required for the formal approval of any appropriate Government Department or Public Authority to the construction of the Works and the preparation of all drawings and other documents concerning Works to be tendered for, including as may be necessary in the particular case:
  - a. the making of designs, drawings, specifications and preparing schedules or bills of quantities;
  - b. the making or adapting of conditions of contract, forms of tender and invitations to tender and submitting the same for approval and decision of the Client;
- III. The supervision of and the performance of other services in connection with the carrying out of the Works including as may be necessary in the particular case:
  - a. advising the Client as to tenders, tenderers, prices and estimates for the carrying out of the Works provided that no tender shall be accepted or order be placed by the Consulting Engineer except on behalf of the Client and with his authority in writing;
  - b. advising as to the preparation of the contract to accepted tenders;
  - c. preparing any further plans, designs and drawings necessary for the carrying out of the Works;
  - d. examining and approving detailed drawings submitted by the Contractor;
  - e. making arrangements on behalf of the Client for the inspection and testing during the manufacture of such materials and plant as are usually inspected and tested;
  - f. issuing instructions to Contractor(s) and generally supervising the execution of the Works, including such site visits as the Consulting Engineer considers necessary;
  - g. issuing all certificates for payments to the Contractor(s) and other certificates as required by the Client;
  - h. supervising acceptance tests on site;
  - i. assisting in settling disputes of differences that may arise between the Client and (a) Contractor(s) excepting litigation and arbitration;
  - j. on completion of the Works revise his drawings in accordance with alterations agreed during the execution.

\* 6.3. If the remuneration is agreed on a time-salary basis according to 6.1 under A, the Agreement shall state the per diem charge for the Consulting Engineer or the principals of the firm and the charge to be added thereto and to the pay-roll costs to cover general overhead expenses and profit, this charge being given as a percentage of these basic costs. Time spent in travelling in connection with the Works is chargeable.

6.4. In the case referred to under 6.3 time spent by clerical staff in the head-office of the Consulting Engineer shall not be chargeable unless otherwise agreed upon.

\* 6.5. If the remuneration is agreed upon as a percentage of the cost of the Works plus reimbursable costs according to 6.1 under B that percentage shall be mentioned in the Agreement.

6.6. If in the case referred to under 6.5 the Works are carried out, as cost of the Works shall be considered unless otherwise agreed upon:

- a. the amount certified to the Contractor, or the amount certified as cost of the Works if carried out by direct labour of Works designed, specified or supervised by the Consulting Engineer, before deduction of liquidated damages or penalties (if any);
- b. a fair valuation of any labour, materials, manufactured goods or machinery, provided by the Client and of the use and waste (including all cost of repairs) of constructional plant and equipment belonging to the Client which he shall require to be used in the carrying out of the Works;
- c. the market value as though they were purchased new, of any second-hand materials, manufactured goods and machinery incorporated in the Works.

The cost of the Works shall *not* include the following items:

- [i] administrative expenses incurred by the Client;
- [ii] payments made to the Consulting Engineer;
- [iii] salaries, travelling, out-of-pocket and office expenses of resident site staff;
- [iv] interest on capital during construction and the cost of raising moneys required for carrying out the construction of the Works;
- [v] cost of land and wayleaves.

6.7. If in the case referred to under 6.5 the Works are not carried out, as cost of the Works shall be considered the lowest acceptable tender received for the execution of the Works or for lack of such the Consulting Engineer's estimate of costs submitted to the Client.

\* 6.8. If the remuneration is agreed upon as a lump sum plus reimbursable costs according to 6.1 under C the lump sum shall be mentioned in the Agreement.

6.9. The following costs shall be regarded as reimbursable:

- a. the costs of all available documents needed in connection with the Agreement such as cadastral documents, maps, drawings, aerial photographs, records, reports, etc.;
- b. all costs of site surveys such as terrestrial and aerial surveys, soil mechanical surveys and laboratory investigations, borings, test piles etc.;
- c. the costs of such specialized professional advice and laboratory investigations as may be obtained by agreement with the Client;
- d. the costs of instruments mentioned in the Agreement or afterwards agreed upon with the Client;
- e. rents of instruments made available by the Consulting Engineer for the carrying out of the Agreement and investigations mentioned above and during the execution of the Agreement;
- f. the travelling, transport, board and lodging and other such expenses of the Consulting Engineer and his staff;
- g. the costs of reproduction, multiplication and dispatch of all documents, reports, drawings, maps etc.;
- h. the costs of postage, telephones and telegrams in so far as they are not local;
- i. the costs of advertising for tenders.

\*The following costs will equally be regarded as reimbursable subject to overhead charges as agreed upon:

- j. the costs of shopdrawings in the case of steel work and detailed drawings of reinforced cement steel in the case of reinforced or prestressed concrete designs except in the case of remuneration on a time-salary basis;
- k. the costs of the Consulting Engineer's staff on site necessary for field investigations and for the supervision of the construction and administration of the Works by the Resident Staff;
- l. the costs of testing of materials and of the inspection and testing during manufacture and/or after delivery of such materials and plant as are usually inspected and tested by Consulting Engineers;
- m. the fees and expenses in connection with lawsuits, arbitration proceedings etc. against or by third parties in so far as the assistance of the Consulting Engineer in this respect is required by the Client.

6.10. In case of excessive delay on the part of the Client or of any Contractor or the taking by the Client of the Works or any part thereof out of the hands of any Contractor due to his failure properly to perform the relevant Contract, the Consulting Engineer shall be entitled to additional remuneration.

6.11. In the event of circumstances arising which could not have been reasonably foreseen, or in the event of the Client ordering modifications to completed designs or alterations to designs and/or investigations in progress, which require the alteration or remaking of any specification, drawing or other documents prepared in whole or in part by the Consulting Engineer, the whole of the cost of revising, amending or reproducing documents to bring the work of the Consulting Engineer up to the stage at which it was modified shall be the subject of additional payment, computed on a time basis together with all reimbursable costs incurred.

### 7. Payments

\* 7.1. The Client shall pay to the Consulting Engineer advance payments to be mentioned in the Agreement as imprest accounts. These advance payments will be taken into account when the final payment is made.

\* 7.2. If the Agreement concerns construction of Works, the Client shall pay to the Consulting Engineer unless otherwise agreed instalments at about the following stages of the Works, the proportions being stated in the Agreement:

- a. on submission of the preliminary design;
- b. on submission of the proposal for the definite design;
- c. on submission of the tender documents;
- d. on completion of the Works.

Provisions should also be made for payment of instalments during the construction period.

7.3. If the remuneration is agreed on a time-salary basis according to 6.1 under A it will be payable monthly.

7.4. If the remuneration is agreed as a percentage of the cost of the Works according to 6.1 under B, the percentages mentioned under 7.2 will be taken from the Consulting Engineer's estimates of cost of the Works.

7.5. No matter how the remuneration is agreed upon the reimbursable costs shall be payable monthly.

7.6. Remunerations shall be paid to the Consulting Engineer within one month after submission of the invoices by the Consulting Engineer. If the Client fails to pay the Consulting Engineer within three months after the date of submission of the invoice the Consulting Engineer is entitled to claim interest as from the date of the invoice.

7.7. Unless otherwise agreed all payments to the Consulting Engineer shall be made into the Bank Account of the Consulting Engineer in his own country.

### 8. Currency

8.1. Unless otherwise agreed, payments to the Consulting Engineer shall be made in the currency of his own country.

\* 8.2. If payments are agreed in currency other than that of the Consulting Engineer's country the rate of exchange shall be stated in the Agreement.

### 9. Damage

9.1. If at any time before the completion of the Works under the Agreement any part of the Works or the equipment thereof shall be damaged or destroyed as a consequence of operations of war, political disturbance or other cause beyond the control of the Consulting Engineer the Client shall pay to the Consulting Engineer the appropriate remuneration for any additional work which may be required to be designed and/or supervised by him as a result of such damage or destruction and a compensation for the damage resulting from such operation or cause.



*Annex VII*

CONTRACT FOR CONSULTANTS' SERVICES (IBRD)

CONTRACT (hereinafter, together with all Appendices<sup>4</sup> attached hereto and forming an integral part hereof, called the "Contract") dated the \_\_\_\_\_ day of \_\_\_\_\_

between the *International Bank for Reconstruction and Development* (hereinafter called the "Bank") acting solely as Participating and Executing Agency of the United Nations Development Programme/Special Fund (hereinafter called the "Special Fund") and

(hereinafter called the "Consultants"):

WHEREAS the Government of \_\_\_\_\_ (hereinafter called the "Government") has applied to the Special Fund for assistance in \_\_\_\_\_

WHEREAS a Plan of Operation for such assistance and for the financing thereof, substantially in the form heretofore furnished to the Consultants, will be/has been signed among the Government, the Special Fund and the Bank; and

WHEREAS the Consultants are consultants retained pursuant to said Plan of Operation; NOW THEREFORE it is hereby agreed by and between the parties hereto as follows:

*Article I*

Special Definitions

*Section 1.01.* Unless the context otherwise requires, the following terms wherever used in this Contract have the following meanings:

- (a) "foreign currency" means any currency other than the currency of the Government;
- (b) "local currency" means the currency of the Government;
- (c) "dollars" and the sign "\$" mean dollars in the currency of the United States of America;

(d) "Starting Date" means the date from which the periods specified for the submission of reports are measured, as set forth in the Time Schedule included in Appendix A hereto, and after which the Consultants may receive payments hereunder. Unless otherwise agreed between the Bank and the Consultants, the Starting Date shall be the thirtieth day following the date of effectiveness of this Contract.

*Article II*

The Services

*Section 2.01.* The work to be performed by the Consultants under this Contract (hereinafter called the "Services") is described in the Terms of Reference set forth in Appendix A hereto.

*Section 2.02.* The Consultants shall carry out the Services with due diligence and efficiency, in a practical manner designed to promote the purposes of the Plan of Operation and with due regard to the obligations of the parties thereto.

*Section 2.03.* (a) Except as the Bank shall otherwise agree, the Services shall be completed within \_\_\_\_\_ months after the Starting Date.

<sup>4</sup>For reasons of space, these appendices have been omitted.

(b) The Consultants shall promptly inform the Bank of the date of arrival of their senior personnel in the territories of the Government.

*Section 2.04.* (a) The Services shall be carried out by the personnel of the Consultants set forth in Appendix B and for the periods of time indicated therein. Substitutions for such personnel shall not be made without the prior approval of the Bank.

(b) Minor adjustment with respect to the time allocated for the personnel set forth in Appendix B may be made by the Consultants if required to comply with the provisions of Section 2.02 above, upon written advance notice to the Bank. For the purposes of this Section, minor adjustment means such changes in working schedules as shall not alter the time allocated for any one individual by more than twenty per cent (20%) or one week, whichever is the longer; provided, however, that the aggregate of such adjustments does not cause payments under this Contract with respect to foreign-currency costs and local-currency costs to exceed the maximum amounts stated in Sections 3.01 and 3.03 hereof, respectively. Other adjustments will be made only after the written approval of the Bank has been obtained.

*Section 2.05.* Upon request by the Bank, the Consultants shall submit for prior approval by the Bank the text of any proposed sub-contracts between the Consultants and others relating to the Services, and any proposed amendment thereof, in such detail as the Bank shall specify.

*Section 2.06.* The Consultants shall keep accurate and systematic accounts and records in respect of the Services in such form and detail as is customary in their profession and shall permit the Bank or its designated representative periodically to inspect the same and make copies thereof.

*Section 2.07.* The Consultants shall furnish to the Bank such information related to the Services as the Bank may from time to time request.

*Section 2.08.* The Consultants shall submit to the Government and the Bank the reports specified in Appendix A in the language(s), number of copies and within the time periods set forth in said Appendix.

*Section 2.09.* (a) The Consultants shall take out and maintain insurance against loss of or damage to equipment purchased in whole or in part with funds provided under this Contract and against loss of or damage to their property, including papers and documents, necessary to the Services.

(b) The Consultants shall take out and maintain full insurance against claims by third parties resulting from acts performed in carrying out the Services.

### Article III

#### Costs and Payments

*Section 3.01.* The Bank shall pay the Consultants for the items specified in this Section, in \_\_\_\_\_ or in such other freely convertible currency or currencies as the Bank shall elect from time to time, an amount not to exceed the equivalent of

(a) Amounts at the applicable rates set forth in Appendices C-1 and C-2, calculated on the basis of the periods of time actually spent by the personnel of the Consultants in performing the Services, including necessary travel time. In all cases where it shall be necessary to compute rates for work of less than one month, such computation shall be made on a calendar-day basis for work performed away from the Consultants' home offices or for travel time (one calendar-day being equal to 1/30th of a month) and on an hourly basis for work performed in the Consultants' home offices;

(b) Cost of transportation by the most direct route to and from the Consultants' home offices or other normal duty station for purposes of the Services by personnel of the Consultants (see estimate in Appendix C-3);

(c) Cost of economy-class transportation by the most direct route for one round trip of the wives, and children under 18 years of age, of personnel of the Consultants assigned away from the Consultants' home offices or other normal duty station for purposes of the Services for periods of six consecutive months or longer, provided that such dependents' stay in the territories of the Government shall have been for not less than 60 consecutive days' duration (see estimate in Appendix C-3);

(d) Cost of acquisition and shipment of data, equipment and reports and of production of reports (see estimate in Appendix C-4);

(e) Cost of any sub-contract authorized by the Bank as required for the Services (see estimate in Appendix C-4); and

(f) Cost of items not covered in the foregoing but required for purposes of the Services, subject to prior authorization by the Bank.

*Section 3.02.* (a) The Bank shall pay the Consultants for the items referred to in Section 3.01 above as follows:

(i) Not later than 15 days after the end of the calendar month containing the Starting Date or of the calendar month in which this contract becomes effective, whichever is later, an amount estimated to be the requirements for the Services performed through the end of said month, calculated on the basis of the Schedule of Payments set forth in Appendix C-6; and

(ii) Not later than the 15th day of each succeeding month, except the last, during the performance of the Services, the amount set forth in such Schedule of Payments as the next monthly payment, adjusted in accordance with paragraph (b) below.

(b) Not later than 20 days after the end of each calendar month in which expenditures for the Services are made or Services are performed and of each subsequent calendar month, the Consultants shall submit to the Government for its approval an itemized statement of the foreign-currency costs described in Section 3.01 and actually incurred to the end of such month, supported where appropriate by receipted invoices. The approval of the Government shall be evidenced by the signature of the person or persons identified to the Bank for the purpose. Such approved statements shall be forwarded with all supporting invoices to the Bank by the Government. The difference between the amount of the statement for any month approved by the Government and the Bank and the amount paid or payable for the same month pursuant to this Section shall be added to or subtracted from the next scheduled payment to be made pursuant to paragraph (a) (ii) above.

(c) In the event of major delay in the work of the Consultants hereunder, they shall notify the Bank. Payments pursuant to paragraph (a) above may then be suspended, in which case the Consultants shall prepare a modified Schedule of Payments, which shall take effect after approval by the Bank, and payments under this Section shall then be resumed in accordance therewith.

(d) The final payment under this Section shall be made only after the final statement submitted by the Consultants as provided in paragraph (b) above and identified as such shall have been approved by the Government and the Bank, and the amount of such payment shall be subject to the maximum established in Section 3.01 hereof. Any amount paid by the Bank in accordance with this Section in excess of the costs actually approved by the Government and the Bank shall be reimbursed by the Consultants to the Bank within 30 days after receipt by the Consultants of notice thereof.

*Section 3.03.* The Bank shall also pay the Consultants for the local-currency costs specified in this Section, not exceeding, however, the sum of

(a) Subsistence allowance for the Consultants' personnel at the per diem rates set forth in Appendix D-1;

(b) Cost of local transportation, services, supplies and other local expenses of the Consultants required for purposes of the Services (see estimates in Appendix D-1); and

(c) Cost of items not covered in the foregoing but required for purposes of the Services, subject to prior authorization by the Bank.

*Section 3.04.* (a) To cover payments due under Section 3.03, the Bank shall establish a revolving fund in an account to be designated by the Consultants, and shall deposit into said account amounts in local currency as follows:

(i) Not later than 15 days following the date of effectiveness of this Contract or the Starting Date, whichever is later, an amount estimated to be the requirements for the Services performed through the calendar month in which the deposit is made plus two months' advance estimated requirements, calculated on the basis of the applicable monthly estimates set forth in Appendix D-2; and

(ii) Not later than the 15th day of each succeeding month, the amount set forth in Appendix D-2 as the next monthly estimate, adjusted in accordance with paragraph (b) below.

(b) The Consultants may make withdrawals from such account as necessary to cover the expenditures described in Section 3.03 hereof. Not later than 20 days after the end of the calendar month containing the Starting Date and of each calendar month thereafter until the month of termination of the Services in the territories of the Government, the Consultants shall

submit to the Government for transmittal to the Bank an itemized statement of the charges in local currency incurred in the previous calendar month, supported, where appropriate, by receipted invoices. Upon approval by the Government and the Bank of the statement, the difference between such statement and the amount deposited in such account for the same month shall be added to or deducted from the amount which shall be deposited in the subsequent month in accordance with paragraph (a) (ii) above.

*Section 3.05.* Upon completion of the Services the Consultants shall promptly render a final accounting of local and foreign-currency costs to the Government and the Bank, in such detail as the Bank shall request.

*Section 3.06.* The Bank shall not be obligated to make any payment under this Contract except to the extent it shall have received funds for the purpose from the Special Fund pursuant to the Plan of Operation.

*Section 3.07.* Whenever it shall be necessary for the purposes of this Contract to evaluate one currency in terms of another, the conversion shall be made at the rate legally applicable at the time and place of, and to the currency utilized in, the underlying expenditure or transaction.

#### Article IV

##### Undertakings of the Government

*Section 4.01.* The Plan of Operation will provide that the Government agree to:

(a) exempt the Consultants and their personnel from or bear the cost of any taxes, duties, fees, levies and other impositions imposed under its laws and regulations or the laws and regulations in effect in its territories or of any political subdivision or agency thereof on the Consultants and their personnel (other than personnel who are citizens or permanent residents of the territories of the Government) in respect of:

- (i) any payments made to the Consultants or to such personnel in connection with the carrying out of the Services;
- (ii) any equipment, materials and supplies brought into the territories of the Government for the purpose of carrying out the Services and which, after having been brought into such territories, will subsequently be withdrawn therefrom; and
- (iii) any property brought into such territories by the personnel of the Consultants and their dependents for their personal use and which, after having been brought into such territories will subsequently be withdrawn therefrom upon departure of such personnel;

(b) facilitate prompt clearance through customs of any equipment, material and supplies required for the Services and of the personal effects of the Consultants' personnel;

(c) ensure that the Consultants' personnel and their dependents are promptly provided with any necessary entry and exit visas, residence permits, exchange permits and travel documents required for their stay in the territories of the Government;

(d) issue all necessary permits and authorizations for the carrying out of the Services; and

(e) provide the Consultants free of charge with such data, local services, equipment and facilities as are necessary for the Services, all as more specifically set forth in Appendix A to this Contract.

#### Article V

##### Ownership of Reports and Equipment

*Section 5.01.* Final versions of the reports submitted to the Government, and all relevant data such as maps, diagrams, plans, statistics and supporting materials compiled in performing the Services, shall be the property of the Government. Such material shall be sorted and indexed by the Consultants prior to transmittal to the Government, and the Consultants shall be permitted to retain copies thereof; provided, however, that such material shall not be used by the Consultants for purposes unrelated to this Contract without the prior written approval of the Government and the Bank.

*Section 5.02.* (a) Equipment purchased for the Services and paid for in whole or in part out of funds allocated by the Special Fund shall be deemed to be the property of the Special Fund.

(b) At the end of each calendar year, and upon the completion of the Services or any termination or suspension thereof, the Consultants shall furnish to the Government and the Bank

information in the form of inventories certified by the Consultants, in respect of the equipment referred to in paragraph (a) of this Section.

(c) The equipment referred to in paragraph (a) of this Section shall, insofar as practical, be marked as being the property of the Special Fund, and such markings should be clearly and readably visible.

(d) Upon completion of the Service in the territories of the Government, the disposition of such equipment by the Consultants shall be in accordance with the instructions of the Bank.

#### *Article VI*

##### **Settlement of Disputes; Suspension and Termination**

*Section 6.01.* Any dispute or difference arising out of this Contract or in connection therewith which cannot be amicably settled between the parties shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce/American Arbitration Association by one or more arbitrators appointed in accordance with the said Rules. The arbitration shall take place in Geneva/New York. The resulting award shall be final and binding on the parties and shall be in lieu of any other remedy.

*Section 6.02.* The Bank shall be entitled by notice to the Consultants to suspend in whole or in part the disbursement of funds hereunder if the Consultants shall have failed to carry out any obligation of the Consultants under this Contract, or if any other condition arises which interferes, or threatens to interfere, with the successful carrying out of the Services or the accomplishment of the purpose thereof.

*Section 6.03.* (a) If any condition referred to in Section 6.02 shall continue for a period of fourteen days following such notice of suspension, then the Bank at its option may terminate this Contract.

(b) The Bank may terminate this Contract upon not less than sixty days' written notice to the Consultants.

(c) Upon receipt of such notice, the Consultants shall take immediate steps to bring the Services to a close in a prompt and orderly manner, and reduce expenditures for the purpose to a minimum.

*Section 6.04.* (a) The Consultants shall promptly notify the Bank in writing of any situation or of the occurrence of any event beyond the reasonable control of the Consultants which makes it impossible for the Consultants to carry out their obligations hereunder. Upon confirmation in writing by the Bank of the existence of any such situation or event or upon failure of the Bank to respond to such notice within 15 days, the Consultants shall be relieved from all liability for failure to carry out such obligations. In case of disagreement between the parties as to the existence of such situation or event, the matter shall be submitted to arbitration in accordance with Section 6.01 hereof.

(b) Upon such confirmation or failure to respond by the Bank or award by the arbitrators in favor of the existence of such situation or event, the Consultants may terminate this Contract by not less than thirty days' notice thereof in writing to the Bank.

(c) Upon giving such notice of termination to the Bank, the Consultants shall proceed in the same manner as set forth in Section 6.03 (c) hereof.

(d) In the event of termination of the Plan of Operation pursuant to Article IX thereof, this Contract shall terminate forthwith.

*Section 6.05.* In the event the Consultants do not receive payments as provided in Article III hereof within thirty days following the due dates, the Consultants shall promptly notify the Bank, and if not received within thirty days after such notice, the Consultants may, without liability, terminate this Contract and the Services and recall their personnel.

*Section 6.06.* Upon termination of this Contract pursuant to the provisions of Sections 6.03, 6.04 or 6.05 hereof, no payment shall be due to the Consultants except for Services satisfactorily performed, for expenditures incurred hereunder prior to the date of such termination, for those incident to the prompt and orderly termination of the Services and for the return travel of the Consultants' personnel and their eligible dependents.

*Section 6.07.* The Bank shall not be liable for any consequence of, or claim based upon, any failure on the part of any other party to the Plan of Operation to carry out any obligation of such party under said Plan of Operation.

Article VII

Authorized Representatives; Notices and Requests

Section 7.01. Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract may be taken or executed on behalf of the Consultants by or his designated representative.

Section 7.02. Any notice or request required or permitted to be given or made in this Contract shall be in writing. Such notice or request shall be deemed to be duly given or made when it shall have been delivered by hand, mail or cable to the party to which it is required to be given or made, at such party's address specified below or at such other address as the party shall have specified in writing to the party giving such notice, or making such request.

For the Bank:

Projects Department
International Bank for Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Alternative address for cables:

Intbafrad
Washington, D.C.

For the Consultants:

Alternative address for cables:

This Contract shall become effective upon signature by both parties or on the date when the Plan of Operation enters into force, whichever is later. In the latter case, notice of effectiveness shall be given promptly by the Bank to the Consultants.

If this Contract shall not have become effective within six months following the date thereof, this Contract and all obligations of the parties thereunder shall terminate, unless the parties agree to continue this Contract on mutually satisfactory terms and conditions.

IN WITNESS WHEREOF, the Bank and the Consultants have caused this Contract to be signed in their respective names in Washington, D.C. and in respectively, as of the day and year first above written.

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By .....
Authorized Representative

By .....
Authorized Representative

*Annex VIII*

**LIST OF DOCUMENTS**

To be prepared by the consultant for design and engineering services (civil works, mechanical and electrical equipment) with respect to the formation of contracts:

Invitation for prequalification

Report to owner upon results of checking of prequalification

Invitation to tender

Instructions to tenderers

Tender documents, comprising

General conditions of contract

Conditions of particular application

Drawings

Specifications

Schedules

Schedule of rates and prices

Time schedules

Payment schedules

Other schedules as required by type of contract

Form of tender

Form of agreement

Form of guarantee

Report to owner upon results of evaluation of bids and post-qualification of bidders together with recommendations on award of contracts.

Letter of acceptance.

*Annex IX*

**CHECK LIST FOR THE PREPARATION OF DOCUMENTS FOR THE INVITATION  
FOR PREQUALIFICATION OF CONTRACTORS**

In detail the documents for invitation for prequalification should comprise:

- (1) A description of the location of project
- (2) A general description of the work to be performed as to quality and quantity
- (3) A time schedule showing:
  - Date of issue of bid documents
  - Time for preparation of bids
  - Projected start of work
  - Projected date of completion
- (4) General notes on contractual requirements, such as:
  - Type of contract (lump sum or unit, quantity and rate type)
  - Financial conditions
  - Bonds (bid bond, performance bond etc.)
  - System of measurement
  - Language
  - Other information concerning the duties of the bidder
- (5) Site information
  - Location and access
  - Accommodation
  - Climate
  - Geology
  - Hydrology
  - Supply with electrical power and materials
  - Use of local resources, if desired
- (6) Instructions for prequalification
  - Contractors interested in being qualified and invited to bid for the works described should be requested to furnish the following data and information:
    - (a) A profile of the company (companies in case of joint-venture prequalification) consisting of:
      - (i) Name of company
        - Address
        - Telephone
        - Telex
      - (ii) Management
        - Names and titles of members of board of directors
        - Names and titles of executives/officers
      - (iii) Company structure
        - Type of company
        - Name and address of main office
        - Specialization
        - No. of employees                      Capital employed
        - Group turnover                      Net profit
        - Subsidiary companies
        - Employees
        - Floor space
        - Year incorporated



## (iv) Financial

Summary showing capital turnover, capital employed and net profit before tax over past . . . . . years

Bankers

Accountants and auditors

## (v) Brief history of the company

## (vi) Plant and communications

## (vii) Products and services

## (viii) Main customers

## (ix) Export market objectives

## (x) Facilities

## (xi) Product support

- (b) Certified copies of the documents referring to the constitution and bylaws of the company (and if applicable articles of incorporation), with the names of individuals authorized to act for it.

In the case of joint ventures of two or more firms, these documents must be submitted for each firm forming the joint venture. In addition, a document of intent to form a joint venture, in which is defined the sponsor and address for correspondence of the joint venture and the participation of the several firms forming the joint venture, must be submitted. Contractors are to be advised that the joint-venture agreement must include a clause stating that the members of the joint venture are severally and jointly bound or in the case of some other form of association a clause of similar or otherwise approved commitment.

- (c) Evidence of financial standing, consisting of a certified copy of the most recent balance sheet. In the case of joint ventures, balance sheets of all firms in the joint venture will be required.

Evidence of technical qualifications consisting of documentation indicating that the contractor has satisfactorily completed works of such nature and magnitude that may permit judgement to be made of his capacity to carry out the work. Particular reference should be made to any works carried out in the Owner's country or neighbouring regions. The information should be supplied on a separate sheet for each project which the contractor has executed or has participated in and shall include:

- (i) Name of project and location
- (ii) Owner or sponsoring agency
- (iii) Brief description of project, with details of the principal quantities involved, methods and type of equipment used, the dates of commencement and completion
- (iv) The extent of the contractor's participation in the project and the degree of responsibility
- (v) Cost of the project indicating the value of the contractor's participation
- (vi) Names and addresses of responsible officials and entities familiar with the work undertaken by the contractor, who would be able to supply appropriate references and information.

- (d) List of works in progress indicating the magnitude and cost of such works, the extent of the contractor's participation and the probable dates of completion of the works.

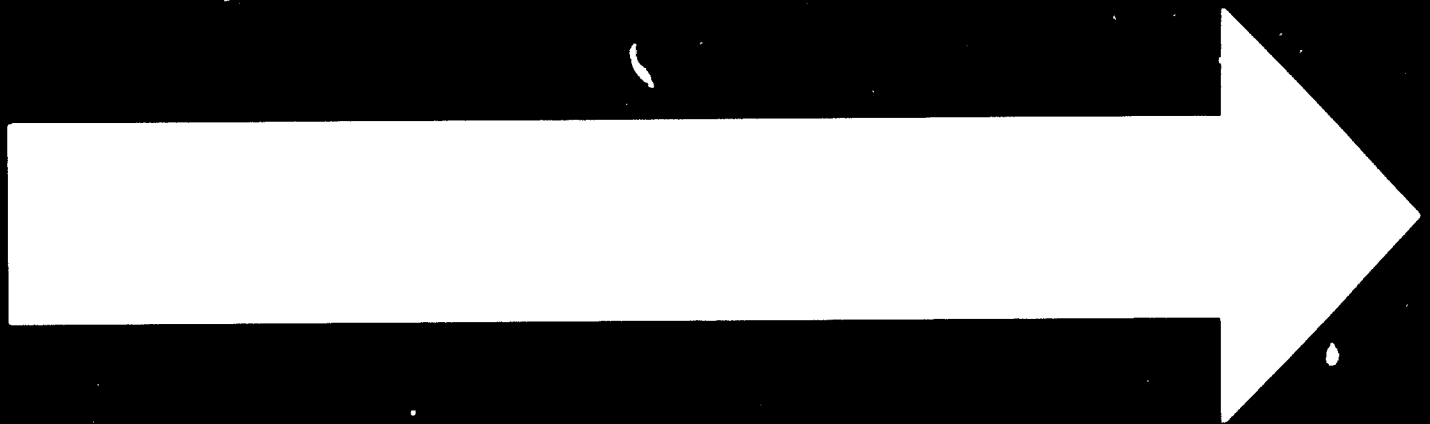
Contractors are to be invited to submit with the above information photographs, brochures, articles, references and any other documentary evidence of their experience and capacity to undertake the works.

Only contractors and joint ventures which furnish the data and information described above and which are subsequently considered satisfactorily qualified shall be invited to submit tenders for the works.

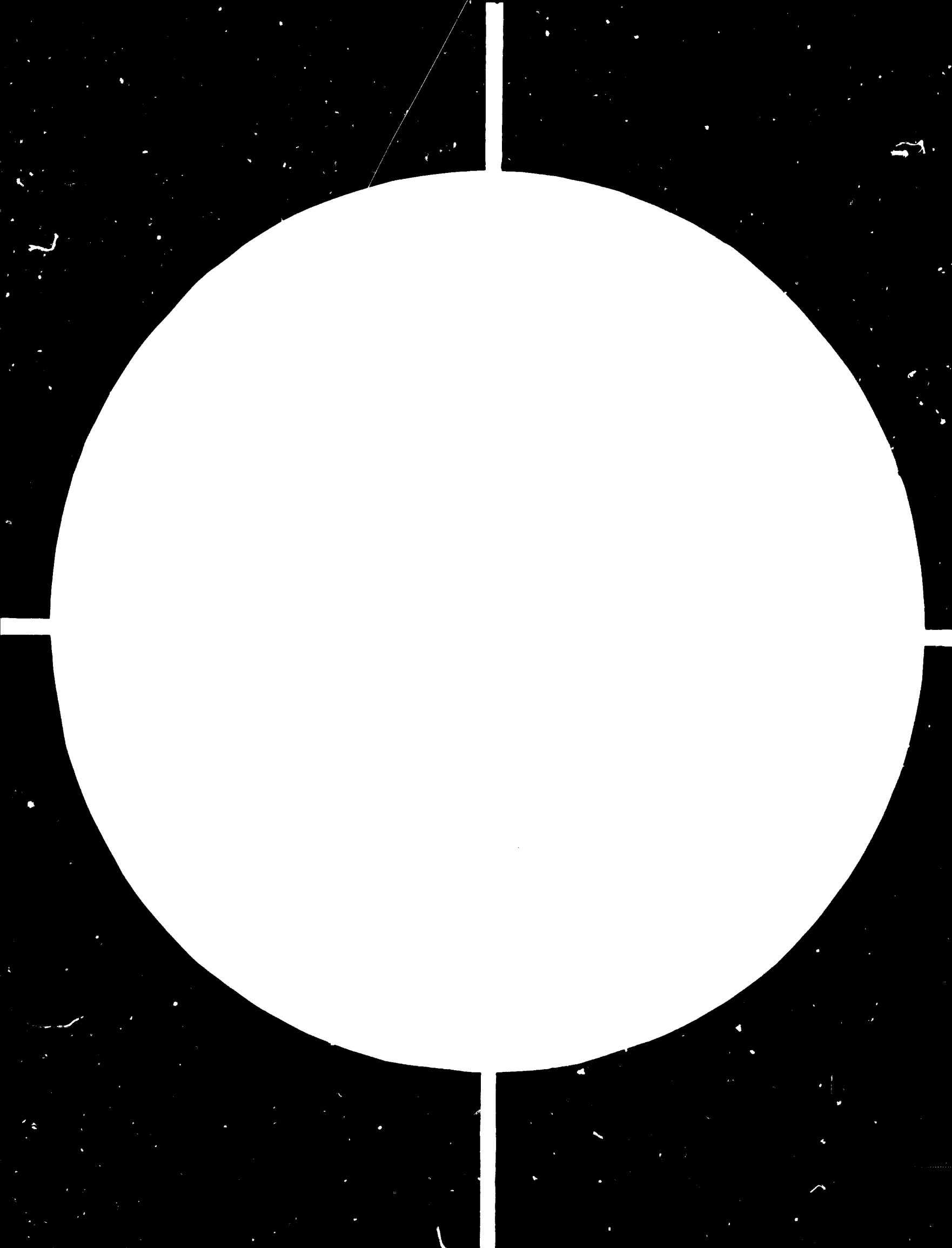
Prequalified contractors may subsequently form joint ventures with other contractors whether previously qualified or not, or reorganize a joint venture previously qualified, subject to prior approval before the date set for the receipt of tenders, provided that:

- (i) The joint venture is sponsored by one of the contractors prequalified;
- (ii) The prime responsibility for carrying out the works remains with the contractor sponsoring the joint venture;

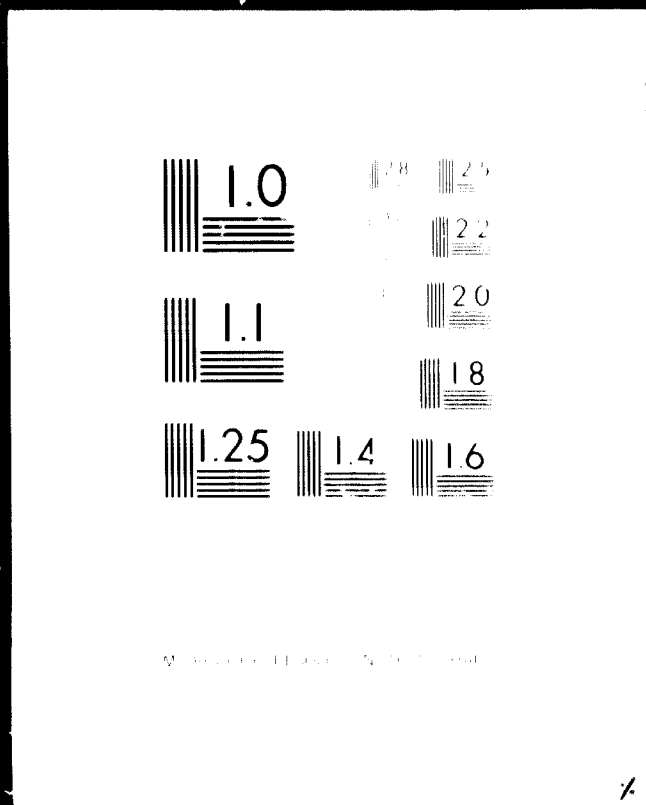
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- (iii) All contractors in the joint venture are reliable and competent;
  - (iv) The capabilities of the new group equal or exceed the capabilities of the original contractor or joint venture.
- (e) Information on submission of documents
- Where to submit
  - When to submit (latest date and hour)
  - Language
  - Number of copies
- (f) It may be useful to add a note as follows:
- All information and instructions of these documents for prequalification are preliminary only and will not form part of the bid documents or contract documents.

***Annex X***

**CHECK LIST FOR INVITATION TO BID**

**An invitation to bid should comprise:**

- Name of the owner calling for bids**
- A short, informative description of the scope of work to be performed by the successful bidder**
- Location of site**
- Main chronological dates of project**
- Where and when bid documents can be purchased**
- Price of bid documents**
- Latest date, hour and place(s) where bids are accepted**
- Date and hour of opening of bids (if public opening has been provided)**
- Amount of bid guarantee, if any**
- Source of project financing**

**Annex XI**

**MODEL FOR INVITATION TO BID**

Republic of .....  
Grey Dust Cement Company Limited (GDC)  
Blue River Factory

The GDC intends to install a cement factory with an annual capacity of 200,000 t portland cement near Yellow-town on the banks of the Blue River and herewith invites interested firms to submit bids for:

**A: Civil works, comprising**  
All foundation work  
Approx. \_\_\_\_ m<sup>3</sup> earthmoving and excavation  
Approx. \_\_\_\_ m<sup>3</sup> concrete  
Reinforced concrete silos with a capacity of \_\_\_\_ m<sup>3</sup> for storage of raw mix and cement  
Structural steel work for structures covering approx \_\_\_\_ m<sup>2</sup>  
Approx. \_\_\_\_ m<sup>2</sup> of roads  
\_\_\_\_ Housing units for staff and labour

**B: Mechanical and electrical equipment, including**  
Equipment for limestone quarry, clay pit, and complete plant  
Capacity: \_\_\_\_ (200,000 t/a) portland cement, dry process

Construction period: (1975-1978)

Bid documents will be issued from \_\_\_\_\_ till \_\_\_\_\_ at the following places:

- 1)
- 2)
- 3)

Date and place of opening of bids

Price of bid documents

This project will be financed by

*Annex XII*

MODEL FOR INSTRUCTIONS TO BIDDERS

Instructions to bidders should comprise the following clauses, which may be adjusted to cover the particular conditions of individual contracts:

(1) *Receipt of bids*

After receipt of the invitation to bid, interested firms are to submit sealed offers in duplicate (triplicate) for performing the work to

\_\_\_\_\_  
\_\_\_\_\_  
(name and address of owner)

hereinafter referred to as the owner.

The original bid shall be clearly designated as "Original", the copy of the bid shall be clearly designated as "Copy, for information only".

The copy shall in no case have any legal force or effect. In case of discrepancies between the original and the copy, the text of the original shall govern.

Bids should conform to the requirements in these instructions and other contract documents and any amendments or addenda thereto, issued in advance of the date for receiving bids.

Bids not received by the owner by the time specified in the invitation to bid will not be considered.

(2) *Preparation of contract documents*

The contract documents have been prepared by

\_\_\_\_\_  
\_\_\_\_\_  
(name and address of consultant)

hereinafter referred to as the engineer.

(3) *Explanation of contract documents to bidders*

Should the bidder find discrepancies or omissions in the specifications, drawings or other contract documents, or should the intent or meaning appear to him to be obscure or ambiguous, he shall at once forward to the engineer a written request for interpretation, clarification or correction thereof before submitting his bid. The bidder making such request will be solely responsible for its timely receipt. All such requests must be received not later than \_\_\_\_\_ (say 28) calendar days before the specified bid opening date.

Replies will be made by the engineer only in the form of addenda and the owner and/or engineer shall not be bound by any oral explanations or interpretations made by any of their employees or agents.

Addenda to the contract documents may be issued prior to the date of opening the bids to revise, amend or modify any part of the contract documents. Each addendum issued will be distributed to each organization to which the contract documents have been issued.

One copy of each addendum, properly signed by the bidder, certifying that his bid takes the addendum into consideration, shall be bound into and made part of the original bid.



**(4) Preparation and submission of bids**

The original bid shall be properly signed and executed on behalf of the bidder, all blank spaces filled in, and interlineations, alterations, or erasures, if any, shall be initialled by the signatory.

The bid forms and any addenda thereto must be entirely completed.

The unit and amounts for each item in the schedule of quantities and prices must be set out opposite the respective items and the amounts totalled on the appropriate page of the schedule. In case of discrepancy between the unit price and corresponding amount for any item, the unit price shall govern. All blank spaces in the bid forms must be filled in legibly in ink or type. All prices shall be quoted in \_\_\_\_\_, or any other fully convertible currency.

Each bid must give the full business address of the bidder and be signed by him with his usual signature and dated. Bids by partnerships shall list the full names and addresses of all partners and shall be signed with the partnership name followed by the signatures of one or more of the general partners authorized to bind the partnership. Bids by corporations must be signed with the legal name of the corporation, followed by the signature and designation of the president or other person authorized to bind the corporation in this matter, the name of the country and/or state of incorporation, and the corporate seal applied and authenticated as may be effective. The name of each signatory shall be typed or clearly printed below the signature. When requested by the owner and/or engineer satisfactory evidence of the authority of any signatory on behalf of a partnership or corporation shall be furnished.

No bid will be considered complete unless accompanied by all items specified in these instructions. All items and data shall be in the \_\_\_\_\_ language.

Bids must be submitted by hand against written receipt, or sent by registered mail and posted early enough to ensure their delivery at the time stated in the "Invitation to bid".

The bids shall be contained in large sealed envelopes, clearly marked as follows:

Messrs.

\_\_\_\_\_

(name and address of owner)

" \_\_\_\_\_ (name of project)

Bid opening on \_\_\_\_\_

The bidder may, without prejudice to himself, withdraw, modify or correct his bid after it has been deposited as above, provided that the withdrawal, modification or correction is filed with the engineer in writing or by telegram before the time set for opening of the bids. No oral or telephonic requests will be considered. The original bid as modified by such written or telegraphic communication will be considered as the bid submitted by bidder. No bidder may withdraw his bid after the end of the period set for the receipt of bids unless acceptance of the bid is not made within \_\_\_\_\_ (say 90) calendar days from the date of opening.

**(5) Right to reject bids**

Any bid which does not conform with these instructions may be rejected. Without limiting the generality of the foregoing, the owner does not undertake to accept the lowest or any other bid. The owner expressly reserves the unconditional right to reject any or all bids, to waive any informality or requirement in bids received and to accept any bid or sections thereof considered advantageous to the owner, whether or not it is the lowest bid submitted.

No bid shall be deemed to have been accepted unless such acceptance has been notified to the bidder by notice in writing from the owner.

**(6) Bid guarantee**

Note: Bid bonds or other bidding guarantees are a usual requirement, but they should not be set so high as to discourage suitable bidders. Bid bonds or guarantees should be released to unsuccessful bidders as soon as possible after the bids have been opened.

All offers shall be accompanied by a bid bond or a certified cheque upon a bank, acceptable to the owner, drawn and made payable to the order of the owner. The amount of the bid guarantee shall be equivalent to \_\_\_\_\_ (say 5) per cent of the contract amount.

Bid guarantees of unsuccessful bidders will be returned to them within \_\_\_\_\_ (say 28) days after the acceptance of another bid or within \_\_\_\_\_ (say 90) days of the time fixed for the receipt of bids, whichever is earlier.

(7) *Inspection of site*

The bidder shall inspect and examine the site and its surroundings and shall satisfy himself fully before submitting his bid as to the form and nature of the site, the subsoil conditions, the quantities and nature of the work and materials necessary for the completion of the works, the means of access to the site, the loading and unloading facilities at ports and railway stations, the accommodation he may require, the laws and regulations of the country which may influence in general and detail the transportation and erection of equipment and the running of the plant and in general shall himself obtain all necessary information as to risks, contingencies and other circumstances which may influence or affect his bid.

It is especially emphasized that it shall be the responsibility of the bidder to have familiarized himself with the prevailing conditions and that no claims relating thereto for additional payment or adjustment of a contract price will be accepted after the submittal of the bid.

The contract price is the price for the satisfactory execution of the contract as specified in the documents.

(8) *Sufficiency of bid*

The bidder shall be deemed to have satisfied himself before bidding as to the correctness and sufficiency of his bid for the works and of the rates and prices stated in the priced schedule of quantities and prices which rates and prices shall cover all his obligations under the contract and all things necessary for the proper completion and running of the works.

(9) *Alterations and Alternatives*

No alteration shall be made in the form of offer or any documents attached hereto. If any alteration is made, except as provided hereunder, the bid will not be considered.

However, if a bidder deems it necessary to submit qualifying conditions or exceptions with his bid, all such additional information shall be given as an alternative proposition and stated in a covering letter submitted with the bid documents.

It is expressly stated that in any case the form of offer and the documents attached thereto must be completely filled in by the bidder. Alternatives only without the filled in form of offer and the bid documents will not be considered.

To all alterations and/or alternatives a detailed description shall be given, showing all advantages and disadvantages.

(10) *Postponement of date for presenting and opening offers*

The owner reserves the right to postpone the date for presentation and opening of offers and will give telegraphic or written notice of any such postponement to each prospective bidder.

(11) *Character of information*

The bidder shall treat the details of the contract documents as private and confidential.

### Annex XIII

#### CHECK LIST FOR EVALUATION OF BIDS<sup>a</sup>

The tenders having been prepared and submitted, the purchaser now has the task of tender analysis. The appraisal of offers submitted by competing tenderers is not easy; nor is it something which can be carried out wholly by any one section or department in the purchaser's organisation. It must be treated as a joint technical and commercial exercise, and on the technical side must embrace all the technical functions involved in the work concerned. Nor is it simply a matter of assessing capital costs; operating and maintenance charges must also be considered. Further, the effect of financial factors such as terms of payment, the financial consequences of earlier or late completion, and the effect on the purchaser's cash flow position of paying increases in capital costs to secure reductions in operating and maintenance cost, may need to be assessed by the accountants.

The purchaser's over-all objective should be to select that offer which he considers will prove to be the most economic when assessed over a reasonable pay-off period, provided always that the capital costs of this offer are such that they can currently be afforded.

It is suggested that in making that assessment it is worth while to systematise the approach, both to establish uniformity and to reduce any bias which they may be towards or against any particular tenderer. The aim should be to make the appraisal as objective as possible. One possible system could be on the following lines:

1. Check arithmetical accuracy of all tenders.
2. Correct any arithmetical errors found and obtain confirmation from the tenderer that he agrees the correction. Depending on the nature of the apparent error, it may be necessary to ask the tenderer to make the correction.
3. Consider initial capital costs and eliminate from further consideration any offer more than, say, 20 per cent over the average of the lowest two. The actual percentage to be used may need adjustment depending on the value of the contract, but it should be settled before the bids are opened, again to reduce bias.
4. Examine the tenders against a technical and commercial checklist previously prepared. Eliminate any offers which do not comply with requirements listed as essential. Adjust each bid by a financial bonus or penalty according to whether it is above or below the minimum standard called for or would involve the purchaser in lesser or greater ancillary expense. As far as possible the basis for these bonuses or penalties should be settled before the bids are opened.
5. Reassess the corrected bids and select the two most favourable for discussion.
6. Call in the two most favoured bidders, raise a preselected list of questions and obtain confirmation of any points in doubt. If there is any point which cannot be settled at the time insist on written confirmation to be submitted by the tenderer within, say, forty-eight hours.
7. On the basis of the adjusted bids and the interviews make the final selection. At this point all queries on the tender should have been answered and set down by the tenderer in writing, so that there is no subsequent dispute and the contract can be placed as soon as any necessary financial authorisation is given.

A possible check list might be as set out below. It should be drawn up in tabular form with either boxes to be ticked or crossed, or the answer "yes/no" to be deleted, according to whether essential requirements have been fulfilled or not. There would be a second column in which would be noted adjustments to be made to the contract price according to whether the offer was

<sup>a</sup> P. D. V. Marsh, *Contracting for Engineering and Construction Projects* (London, Gower Press, 1971), pp. 52-57.

financially more or less favourable than the norm. With a major contract this operation of the appraisal might be split into two stages. In stage one the tenders are examined only to check compliance with essential requirements. This is basically a clerical operation. Any tender not complying with an essential requirement is then put on one side and not considered any further, unless no acceptable offer is forthcoming. In that event, offers previously rejected are re-examined. Stage two is then to assess the over-all financial merits of those offers which have satisfied stage one. In this way a large number of tenders can be considered which it would otherwise be difficult to handle. Against this it may be argued that this is rather a mechanical, even soulless way of dealing with tender appraisal. This is possibly true, but it is also a most effective way of ensuring that tenders are submitted in accordance with the purchaser's requirements and that their appraisal is carried out in an objective, as opposed to a subjective, manner.

#### Suggested checklist

<i>Completion date</i>	<u>Tender price</u>
	<u>Add Deduct</u>
1.1 Tenderer has met the completion date specified	yes/no
1.2 If not, is completion offered earlier than last acceptable date?	yes/no
1.3 Penalty to be applied if late completion offered but still within acceptable limit £ _____ per week for _____ weeks	
1.4 Bonus to be applied if earlier completion offered £ _____ per week for _____ weeks	

*Note.* If answer to 1.1 and 1.2 is no, the tender must be rejected from further consideration if time for completion is an essential requirement.

The sums to be added to the contract price under 1.3 or deducted from it in 1.4 should be the real value or detriment to the employer of earlier or late completion, not the scaled down amounts included in the contract for liquidated damages. Obviously under 1.4 the bonus will only be allowed for that period which will be of true benefit to the employer.

#### Contract price

<i>Supply and delivery</i>	<u>Tender price</u>
	<u>Add Deduct</u>
1.5 Effect on contract price of alternatives offered, adjusted as necessary for alterations to programme.	
(a)                    [Insert here the items which would be	
(b)                    affected—for example, foundations,	
(c)                    structural steelwork.]	
1.6 Effect of the design offered on the cost of the work to be carried out by the employer.	
1.7 Where tender is submitted on a price variation basis, extra to the contract price for assessed effect of the price escalation clause over the contract period.	
1.8 Extra to the contract price for the assessed effect of amendments offered by the tenderer to the proposed conditions of contract, for example a proposal to amend the terms of payment by asking for 5 per cent with order.	
1.9 Assessed effect of additions required to be made to the specification submitted by the tenderer to bring it up to the standard required. Alternatively, deductions which may be allowed on account of items included, the standard of which could be reduced.	

Tender priceAdd Deduct

- 2.0 Additions to, or deductions from, the contract price on account of the items listed in the schedule of exclusions which depart from the norm.
- 2.1 Capitalised effect of additions to, or deductions from, the stated norm for operating labour. Effect to be assessed over, say, a ten-year period.
- 2.2 Capitalised effect of any additions to, or deductions from, the norm of maintenance costs due to equipment or other work standard offered by the tenderer as part of his specification—for example use of pumps with low initial but high operating costs, painting of steelwork to reduced standards. The effect to be assessed over, say, ten years.

*Erection*

- 2.3 Additions to, or deductions from, the contract price on account of allowance made by the tenderer for working overtime as compared with the basis adopted for comparison purposes.
- 2.4 Additions to contract price, assessed to take account of any inadequacy which it is considered exists in the tenderer's offer as regards allowances to be paid for subsistence, working conditions, etc.
- 2.5 Additions to contract price to cover any services which the tenderer has asked to be provided, in excess of those allowed for by the employer when inviting tenders.

*Performance*

- 2.6 Does the tender meet the minimum performance standards specified by the employer in his inquiry? yes/no
- 2.7 If the answer to 2.6 is yes, does the tender guarantee any financial benefit to the employer over the minimum standard specified? yes/no  
If so, state the assessed benefit capitalised over, say, ten years, taking into account any additional expense to which the employer would be put to earn such benefit.
- 2.8 Has the tenderer accepted the liquidated damages specified for failure to meet guaranteed performance? yes/no
- 2.9 If not, state the capitalised detriment the employer would suffer by acceptance of the tenderer's proposals for a given loss in efficiency.

When the above exercise has been completed it will be possible to assess the adjusted values of the respective tenders.

*Annex XIV*

**FORM OF PERFORMANCE GUARANTEE**

Date Guarantee Executed  
(must be same or later than  
date of contract)

<i>Principal (Legal name and business address)</i> <i>Contractor</i>	Type of organization ("X" one) Individual                  Partnership Joint venture                  Corporation
State of Incorporation	
<i>Surety(ies) (Name(s) and business address(es))</i>	Penal Sum of Guarantee <hr/> Million(s)   Thousands   Hundreds   Cents
Contract Date                  Contract No.	

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal and Surety(ies) hereto, are firmly bound to the \_\_\_\_\_ \* (hereinafter called the Government) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally: Provided, That, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into the contract identified above;

NOW, THEREFORE, if the Principal shall:

(a) Perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety(ies) being hereby waived; and

(b) Pay to the Government the full amount of the taxes imposed by the Government which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contract with respect to which this guarantee is furnished; then the above obligation shall be void and of no effect.

IN WITNESS WHEREOF, the Principals and Surety(ies) have executed this performance guarantee and have affixed their seals on the date set forth above.

---

 PRINCIPAL
 

---

Signature(s)	1.	2.	Corporate Seal
		(seal)	(seal)

Name(s) & Title(s) (typed)	1.	2.
----------------------------	----	----

---

 INDIVIDUAL SURETY(IES)
 

---

Signature(s)	1.	2.
		(seal)

Name(s) (typed)	1.	2.
-----------------	----	----

---

 CORPORATE SURETY(IES)
 

---

Name & Address	<i>State of inc.</i>	<i>Liability limit</i>	Corporate Seal
Signature(s)	1.	2.	

Name(s) & Title(s) (typed)	1.	2.
----------------------------	----	----

On page 1\* – insert name of borrower – it may be inappropriate to call borrower the Government.

## Annex XV

### RULES OF CONCILIATION AND ARBITRATION (INTERNATIONAL CHAMBER OF COMMERCE)

*These rules have been approved by the Executive Committee of the ICC on 18 March 1975. Copies in English, French, German, Spanish and Arabic may be obtained from ICC Headquarters, 38 Cours Albert 1<sup>er</sup>, 75008 Paris, France, as Publication No. 291. ICC holds the copyright of the text.*

The International Chamber of Commerce recommends that all parties wishing to make reference to ICC arbitration in their foreign contracts use the following standard clause:

#### RECOMMENDATIONS

##### I

#### ICC CLAUSE

*"All disputes arising in connection with the present contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the Rules."*

#### French

*"Tous différends découlant du présent contrat seront tranchés définitivement suivant le Règlement de conciliation et d'arbitrage de la Chambre de commerce internationale par un ou plusieurs arbitres nommés conformément à ce Règlement."*

#### German

*"Alle aus dem gegenwärtigen Vertrage sich ergebenden Streitigkeiten werden nach der Vergleichs- und Schiedsgerichtsordnung der Internationalen Handelskammer von einem oder mehreren gemäss dieser Ordnung ernannten Schiedsrichtern endgültig entschieden."*

#### Italian

*"Tutte le controversie eventualmente derivanti dal presente contratto saranno risolte in via definitiva, secondo il Regolamento di Conciliazione e d'Arbitrato della Camera di Commercio Internazionale, da uno o più arbitri nominati in conformità a detto Regolamento."*

#### Spanish

*"Todas las desavenencias que deriven de este contrato serán resueltas definitivamente de acuerdo con el Reglamento de Conciliación y Arbitraje de la Cámara de Comercio Internacional por uno o más árbitros nombrados conforme a este Reglamento."*

NOTE: The laws of certain countries require that parties to contracts expressly accept arbitration clauses. The parties may—if they so desire—stipulate, in the arbitration clause itself, the national law applicable to the contract.



## II

## JOINT CLAUSE ICC-AAA

If one party resides in the United States of America or is an American citizen, the parties who do not agree in advance on the place of arbitration are recommended to draw up the arbitration clause in the following manner:

*"All disputes arising in connection with the present contract shall be finally settled by arbitration. Arbitration to be held outside the United States of America shall be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce, unless by written agreement the parties adopt the Rules of the American Arbitration Association. Arbitration to be held in the United States of America shall be conducted in accordance with the Rules of the American Arbitration Association, unless by written agreement the parties adopt the Rules of Arbitration of the International Chamber of Commerce."*

*"Judgment upon the award rendered may be entered in any Court having jurisdiction or application may be made to such Court for a judicial acceptance of the award and an order of enforcement, as the case may be."*

When the parties have stipulated in advance where the arbitration is to be held, the following clause is suggested:

*"All disputes arising in connection with the present contract shall be finally settled by arbitration.*

*"The arbitration shall be held at \_\_\_\_\_, and conducted in accordance with the Rules of the American Arbitration Association\* International Chamber of Commerce\*."*

*"Judgment upon the award rendered may be entered in any Court having jurisdiction or application may be made to such Court for a judicial acceptance of the award and an order of enforcement, as the case may be."*

When the parties have not indicated in the clause where the arbitration is to be held or have not agreed on this point in writing, the decision shall be taken by a joint Arbitration Committee set up by the International Chamber of Commerce and the American Arbitration Association.

When arbitration takes place in accordance with the Rules of the American Arbitration Association, the parties may select the arbitrators from panels published in advance by the International Chamber of Commerce and the American Arbitration Association and put at their disposal; the arbitrator selected may be of another nationality than that of the parties.

When arbitration takes place according to the Rules of the International Chamber of Commerce, which empower the Court of Arbitration to appoint the arbitrator or arbitrators, a similar panel is nevertheless made available to the parties, should they wish to select their arbitrators themselves.

These panels together with the Rules of the American Arbitration Association may be obtained at International Headquarters of the International Chamber of Commerce 38, Cours Albert-1<sup>er</sup>, Paris, or from National Committees of the International Chamber of Commerce, the list of which appears on the back of the present Rules.

## III

## JOINT CLAUSE ICC-IACAC

If one party resides in any of the Republics of Latin America or is a national of one of these countries, the parties who do not agree in advance on the place of arbitration are recommended to draw up the arbitration clause in the following manner:

*"All disputes arising in connection with the present contract shall be finally settled by arbitration. Arbitration to be held outside the Latin American Republics shall be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce, unless by written agreement the parties adopt the Rules of the Inter-American Commercial Arbitration Commission. Arbitration to be held in one of the Latin American Republics*

(\*) Delete the name of the Institution the Rules of which do not apply.

shall be conducted in accordance with the Rules of the Inter-American Commercial Arbitration Commission unless by written agreement the parties adopt the Rules of Arbitration of the International Chamber of Commerce.

"Judgment upon the award rendered may be entered in any Court having jurisdiction or application may be made to such Court for a judicial acceptance of the award and an order of enforcement, as the case may be."

When the parties have stipulated in advance where the arbitration is to be held, the following clause is suggested:

"All disputes arising in connection with the present Contract shall be finally settled by arbitration.

"The arbitration shall be held at \_\_\_\_\_ and conducted in accordance with the Rules of the Inter-American Commercial Arbitration Commission\* International Chamber of Commerce\*.

"Judgment upon the award rendered may be entered in any Court having jurisdiction or application may be made to such Court for a judicial acceptance of the award and an order of enforcement, as the case may be."

When the parties have not indicated in the clause where the arbitration is to be held, or have not agreed on this point in writing, the decision shall be taken by a joint Arbitration Committee set up by the International Chamber of Commerce and the Inter-American Commercial Arbitration Commission.

When arbitration takes place in accordance with the Rules of the Inter-American Commercial Arbitration Commission, the parties may select the arbitrators from panels published in advance by the International Chamber of Commerce and the Inter-American Commercial Arbitration Commission and put at their disposal; the arbitrator selected may be of another nationality than that of the parties.

When arbitration takes place according to the Rules of the International Chamber of Commerce which empower the Court of Arbitration to appoint the arbitrator or arbitrators, a similar panel is nevertheless made available to the parties, should they wish to select their arbitrators themselves.

These panels together with the Rules of the Inter-American Commercial Arbitration Commission, may be obtained at International Headquarters of the International Chamber of Commerce 38, Cours Albert-I<sup>er</sup>, Paris, or from National Committees of the International Chamber of Commerce, the list of which appears on the back of the present Rules.

#### IV

##### SPECIAL RECOMMENDATIONS

Attention is called to the fact that under the laws of certain countries it is necessary that parties to contracts should expressly accept arbitration clauses sometimes in a precise and particular manner.

The parties may, if they so desire, stipulate, in the arbitration clause itself, the national law applicable to the contract.

##### RULES OF CONCILIATION AND ARBITRATION

The advantages to the business world of an international organisation for the settlement of business disputes of an international character, without recourse to the formalities of court proceedings, are such that the International Chamber of Commerce feels in duty bound to do everything in its power to encourage conciliation and arbitration. The Chamber therefore places its services at the disposal of all businessmen whenever its good offices are likely to conduce to the settlement of such business disputes.

(\*) Delete the name of the Institution the Rules of which do not apply.

SECTION A

Optional Conciliation

Article 1

Administrative Commission for Conciliation.—Conciliation Committees.

1. Any business dispute of an international character may be the subject of a request for settlement by amicable arrangement through the medium of the Administrative Commission for Conciliation established at the International Chamber of Commerce.

Each National Committee may nominate from one to three members to the Commission, from among its nationals resident in Paris; they shall be appointed for a term of two years by the President of the International Chamber of Commerce.

2. For each dispute, a Conciliation Committee of three members shall be set up by the President of the International Chamber of Commerce.

The Committee shall be composed of two conciliators, who shall be as far as possible of the nationalities of the applicant and of the other party, and of a Chairman of a nationality other than that of the parties involved, chosen in principle from the Administrative Commission for Conciliation.

Article 2

Request for conciliation.

The party making a request for conciliation shall apply to International Headquarters of the International Chamber of Commerce through his National Committee or direct; in the latter case, the Secretary General shall inform the National Committee concerned of the application.

The request shall consist of a statement of the case from the point of view of the said party and shall be accompanied by copies of relevant papers and documents as well as by the deposit laid down in the appended schedule for the expenses incurred by International Headquarters in the conciliation proceedings.

Article 3

Steps to be taken by the Conciliation Committee.

1. Upon receipt of any such request and of the relevant papers and documents and of the deposit, the Secretary General of the International Chamber of Commerce shall inform the other party or parties to the dispute direct or through his or their National Committee or Committees and shall invite him or them to accept an attempt at conciliation and in that event to submit to the Conciliation Committee a statement of the case in writing with copies of relevant papers and documents as well as the deposit laid down in the appended schedule for expenses incurred by International Headquarters in the conciliation proceedings.

2. The Committee shall acquaint itself with the details of the case and procure any information required for this purpose by communicating with the parties to the dispute direct or through their National Committees, and shall hear the parties if possible.

3. The parties may appear in person before the Committee or be represented by duly accredited agents. They may also be assisted by counsel or solicitors.

Article 4

Terms of settlement.

1. After having examined the case and having heard the parties if possible, the Conciliation Committee shall submit terms of settlement to the parties.

2. Should a settlement result, the Conciliation Committee shall draw up and sign a record of the settlement.

3. When the parties do not appear in person or are not represented by duly accredited agents, the Committee shall communicate the terms of settlement to the Chairmen of the National Committees concerned and shall request them to endeavour to persuade the parties to accept the settlement proposed by the Committee.

*Article 5*

Rights of the parties when settlement is not reached.

1. Should a settlement not result, the parties shall be at liberty to refer their dispute to arbitration or to bring an action at law should they so desire, unless they are bound by an arbitration clause.

2. Nothing that has transpired in connection with the proceedings before the Conciliation Commission shall in any way affect the legal rights of any of the parties to the dispute whether in an arbitration or in a Court of law.

No person having sat on a Conciliation Committee for the settlement of a dispute may be appointed arbitrator for the same dispute.

*SECTION B**Arbitration**Article 1*

Court of Arbitration.

1. The Court of Arbitration of the International Chamber of Commerce is the international arbitration body attached to the International Chamber of Commerce. Members of the Court are appointed by the Council of the International Chamber of Commerce. The function of the Court is to provide for the settlement by arbitration of business disputes of an international character in accordance with these Rules.

2. In principle, the Court meets once a month. It draws up its own internal regulations.

3. The Chairman of the Court of Arbitration or his deputy shall have power to take urgent decisions on behalf of the Court, provided that any such decision shall be reported to the Court at its next session.

4. The Court may, in the manner provided for in its internal regulations, delegate to one or more groups of its members the power to take certain decisions provided that any such decision shall be reported to the Court at its next session.

5. The Secretariat of the Court of Arbitration shall be at the Headquarters of the International Chamber of Commerce.

*Article 2*

Choice of Arbitrators.

1. The Court of Arbitration does not itself settle disputes. Insofar as the parties shall not have provided otherwise, it appoints, or confirms the appointment of, arbitrators in accordance with the provisions of this Article. In making or confirming such appointment, the Court shall have regard to the proposed arbitrator's nationality, residence and other relationships with the countries of which the parties or the other arbitrators are nationals.

2. The disputes may be settled by a sole arbitrator or by three arbitrators. In the following Articles the word "arbitrator" denotes a single arbitrator or three arbitrators as the case may be.

3. Where the parties have agreed that the disputes shall be settled by a sole arbitrator, they may, by agreement, nominate him for confirmation by the Court. If the parties fail so to nominate a sole arbitrator within 30 days from the date when the Claimant's Request for Arbitration has been communicated to the other party, the sole arbitrator shall be appointed by the Court.

4. Where the dispute is to be referred to three arbitrators, each party shall nominate in the Request for Arbitration and the Answer thereto respectively one arbitrator for confirmation by the Court. Such person shall be independent of the party nominating him. If a party fails to nominate an arbitrator, the appointment shall be made by the Court.

The third arbitrator, who will act as chairman of the arbitral tribunal, shall be appointed by the Court, unless the parties have provided that the arbitrators nominated by them shall agree on the third arbitrator within a fixed time limit. In such a case the Court shall confirm the appointment of such third arbitrator. Should the two arbitrators fail, within the time limit fixed by the parties or the Court, to reach agreement on the third arbitrator, he shall be appointed by the Court.

5. Where the parties have not agreed upon the number of arbitrators, the Court shall appoint a sole arbitrator, save where it appears to the Court that the dispute is such as to warrant the appointment of three arbitrators. In such a case the parties shall each have a period of 15 days within which to nominate an arbitrator.

6. Where the Court is to appoint a sole arbitrator or the chairman of an arbitral tribunal, it shall choose a National Committee of the International Chamber of Commerce from which it shall request a proposal. The sole arbitrator or the chairman of an arbitral tribunal shall be chosen from a country other than those of which the parties are nationals. However, in suitable circumstances and provided that neither of the parties objects, the sole arbitrator or the chairman of the arbitral tribunal may be chosen from a country of which any one of the parties is a national.

Where the Court appoints an arbitrator on behalf of a party which has failed so to do, it shall request a proposal from the National Committee of the country of which that party is a national. If the country of which such party is a national has no National Committee, the Court is at liberty to choose any person whom it regards as suitable.

7. Should an arbitrator be challenged by one of the parties, the Court, as sole judge of the grounds of challenge, shall make a decision which shall be final.

8. If an arbitrator dies or is prevented from carrying out his functions or has to resign consequent upon a challenge or for any other reason, or if the Court, after having considered the arbitrator's observations, decides that the arbitrator is not fulfilling his functions in accordance with the Rules or within the prescribed time limits, he shall be replaced. In all such cases the procedure indicated in the preceding paragraphs 3, 4 and 6 shall be followed.

### *Article 3*

Request for Arbitration.

1. A party wishing to have recourse to arbitration by the International Chamber of Commerce shall submit its Request for Arbitration to the Secretariat of the Court, through its National Committee or directly. In this latter case the Secretariat shall bring the Request to the notice of the National Committee concerned.

The date when the Request is received by the Secretariat of the Court shall, for all purposes, be deemed to be the date of commencement of the arbitral proceedings.

2. The Request for Arbitration shall inter alia contain the following information:

- a) Names in full, description, and addresses of the parties.
- b) A statement of the Claimant's case.
- c) The relevant agreements, and in particular the agreement to arbitrate, and such documentation or information as will serve clearly to establish the circumstances of the case.
- d) All relevant particulars concerning the number of arbitrators and their choice in accordance with the provisions of Article 2 above.

3. The Secretariat shall send a copy of the Request and the documents annexed thereto to the Defendant for his Answer.

### *Article 4*

Answer to the Request.

1. The Defendant shall within 30 days from the receipt of the documents referred to in paragraph 3 of Article 3 comment on the proposals made concerning the number of arbitrators and their choice and, where appropriate, nominate an arbitrator. He shall at the same time set out his defence and supply relevant documents. In exceptional circumstances the Defendant may

apply to the Secretariat for an extension of time for the filing of his defence and his documents. The application must, however, include the Defendant's comments on the proposals made with regard to the number of arbitrators and their choice and also, where appropriate, the nomination of an arbitrator. If the Defendant fails so to do, the Secretariat shall report to the Court, which shall proceed with the arbitration in accordance with these Rules.

2. A copy of the Answer and of the documents annexed thereto, if any, shall be communicated to the Claimant for his information.

#### *Article 5*

Counter-claim.

1. If the Defendant wishes to make a counter-claim, he shall file the same with the Secretariat, at the same time as his Answer as provided for in Article 4.

2. It shall be open to the Claimant to file a Reply with the Secretariat within 30 days from the date when the Counter-claim was communicated to him.

#### *Article 6*

Pleadings and Written Statements, notifications or communications.

All pleadings and written statements submitted by the parties, as well as all documents annexed thereto, shall be supplied in a number of copies sufficient to provide one copy for each party, plus one for each arbitrator, and one for the Secretariat.

All notifications or communications from the Secretariat and the arbitrator shall be validly made if they are delivered against receipt or forwarded by registered post to the address or last known address of the party for whom the same are intended as notified by the party in question or by the other party as appropriate.

Notification or communication shall be deemed to have been effected on the day when it was received, or should, if made in accordance with the preceding paragraph, have been received by the party itself or by its representative.

#### *Article 7*

Absence of Agreement to Arbitrate.

Where there is no prima facie agreement between the parties to arbitrate or where there is an agreement but it does not specify the International Chamber of Commerce, and if the Defendant does not file an Answer within the period of 30 days provided by paragraph 1 of Article 4 or refuses arbitration by the International Chamber of Commerce, the Claimant shall be informed that the arbitration cannot proceed.

#### *Article 8*

Effect of the Agreement to Arbitrate.

1. Where the parties have agreed to submit to arbitration by the International Chamber of Commerce, they shall be deemed thereby to have submitted *ipso facto* to the present Rules.

2. If one of the parties refuses or fails to take part in the arbitration, the arbitration shall proceed notwithstanding such refusal or failure.

3. Should one of the parties raise one or more pleas concerning the existence or validity of the agreement to arbitrate, and should the Court be satisfied of the prima facie existence of such an agreement, the Court may, without prejudice to the admissibility or merits of the plea or pleas, decide that the arbitration shall proceed. In such a case any decision as to the arbitrator's jurisdiction shall be taken by the arbitrator himself.

4. Unless otherwise provided, the arbitrator shall not cease to have jurisdiction by reason of any claim that the contract is null and void or allegation that it is inexistent provided that he upholds the validity of the agreement to arbitrate. He shall continue to have jurisdiction, even though the contract itself may be inexistent or null and void, to determine the respective rights of the parties and to adjudicate upon their claims and pleas.

5. Before the file is transmitted to the arbitrator, and in exceptional circumstances even thereafter, the parties shall be at liberty to apply to any competent judicial authority for interim or conservatory measures, and they shall not by so doing be held to infringe the agreement to arbitrate or to affect the relevant powers reserved to the arbitrator.

Any such application and any measures taken by the judicial authority must be notified without delay to the Secretariat of the Court of Arbitration. The Secretariat shall inform the arbitrator thereof.

#### *Article 9*

Deposit to cover the Costs of Arbitration.

1. The Court shall fix the amount of the deposit in a sum likely to cover the costs of arbitration of the claims which have been referred to it.

Where, apart from the principal claim, one or more counter-claims are submitted, the Court may fix separate deposits for the principal claim and the counter-claim or counter-claims.

2. As a general rule, the deposits shall be paid in equal shares by the Claimant or Claimants and the Defendant or Defendants. However, any one party shall be free to pay the whole deposit in respect of the claim or the counter-claim should the other party fail to pay a share.

3. The Secretariat may make the transmission of the file to the arbitrator conditional upon the payment by the parties or one of them of the whole or part of the deposit to the International Chamber of Commerce.

4. When the Terms of Reference are communicated to the Court in accordance with the provisions of Article 13, the Court shall verify whether the requests for deposit have been complied with.

The Terms of Reference shall only become operative and the arbitrator shall only proceed in respect of those claims for which the deposit has been duly paid to the International Chamber of Commerce.

#### *Article 10*

Transmission of the File to the Arbitrator.

Subject to the provisions of Article 9, the Secretariat shall transmit the file to the arbitrator as soon as it has received the Defendant's Answer to the Request for Arbitration, at the latest upon the expiry of the time limits fixed in Articles 4 and 5 above for the filing of these documents.

#### *Article 11*

Rules Governing the Proceedings.

The rules governing the proceedings before the arbitrator shall be those resulting from these Rules and, where these Rules are silent, any rules which the parties (or, failing them, the arbitrator) may settle, and whether or not reference is thereby made to a municipal procedural law to be applied to the arbitration.

#### *Article 12*

Place of Arbitration.

The place of arbitration shall be fixed by the Court, unless agreed upon by the parties.

*Article 13*

## Terms of Reference.

1. Before proceeding with the preparation of the case, the arbitrator shall draw up, on the basis of the documents or in the presence of the parties and in the light of their most recent submissions, a document defining his Terms of Reference. This document shall include the following particulars:

- a) The full names and description of the parties.
- b) The addresses of the parties to which notifications or communications arising in the course of the arbitration may validly be made.
- c) A summary of the parties' respective claims.
- d) Definition of the issues to be determined.
- e) The arbitrator's full name, description and address.
- f) The place of arbitration.
- g) Particulars of the applicable procedural rules and, if such is the case, reference to the power conferred upon the arbitrator to act as amiable compositeur.
- b) Such other particulars as may be required to make the arbitral award enforceable in law, or may be regarded as helpful by the Court of Arbitration or the arbitrator.

2. The document mentioned in paragraph 1 of this Article shall be signed by the parties and the arbitrator. Within two months of the date when the file has been transmitted to him, the arbitrator shall transmit to the Court the said document signed by himself and by the parties. Upon the arbitrator's request, the Court may, in exceptional circumstances, extend this time limit.

Should one of the parties refuse to take part in the drawing up of the said document or to sign the same, the Court, if it is satisfied that the case is one of those mentioned in paragraphs 2 and 3 of Article 8, shall take such action as is necessary for its approval. Thereafter the Court shall set a time limit for the signature of the statement by the defaulting party and on expiry of that time limit the arbitration shall proceed and the award shall be made.

3. The parties shall be free to determine the law to be applied by the arbitrator to the merits of the dispute. In the absence of any indication by the parties as to the applicable law, the arbitrator shall apply the law designated as the proper law by the rule of conflict which he deems applicable.

4. The arbitrator shall assume the powers of an amiable compositeur if the parties are agreed to give him such powers.

5. In all cases the arbitrator shall take account of the provisions of the contract and the relevant trade usages.

*Article 14*

## The Arbitral Proceedings.

1. The arbitrator shall proceed within as short a time as possible to establish the facts of the case by all appropriate means. After study of the written submissions of the parties and of all documents relied upon, the arbitrator shall hear the parties together in person if one of them so requests; and failing such a request he may of his own motion decide to hear them.

In addition, the arbitrator may decide to hear any other person in the presence of the parties or in their absence provided they have been duly summoned.

2. The arbitrator may appoint one or more experts, define their terms of reference, receive their reports and/or hear them in person.

3. The arbitrator may decide the case on the relevant documents alone if the parties so request or agree.

*Article 15*

1. At the request of one of the parties or if necessary on his own initiative, the arbitrator, giving reasonable notice, shall summon the parties to appear before him on the day and at the place appointed by him and shall so inform the Secretariat of the Court.



2. If one of the parties, although duly summoned, fails to appear, the arbitrator, if he is satisfied that the summons was duly received and the party is absent without valid excuse, shall have power to proceed with the arbitration, and such proceedings shall be deemed to have been conducted in the presence of all parties.

3. The arbitrator shall determine the language or languages of the arbitration due regard being paid to all the relevant circumstances and in particular to the language of the contract.

4. The arbitrator shall be in full charge of the hearings, at which all the parties shall be entitled to be present. Save with the approval of the arbitrator and of the parties, persons not involved in the proceedings shall not be admitted.

5. The parties may appear in person or through duly accredited agents. In addition, they may be assisted by advisers.

*Article 16*

The parties may make new claims or counter-claims before the arbitrator on condition that these remain within the limits fixed by the Terms of Reference provided for in Article 13 or that they are specified in a rider to that document, signed by the parties and communicated to the Court.

*Article 17*

Award by Consent.

If the parties reach a settlement after the file has been transmitted to the arbitrator in accordance with Article 10, the same shall be recorded in the form of an arbitral award made by consent of the parties.

*Article 18*

Time-limit for Awards.

1. The arbitrator shall make his award within six months of the date of signing the document mentioned in Article 13.

2. The Court may, in exceptional circumstances and pursuant to a reasoned request from the arbitrator, or if need be on its own initiative extend this time limit if it decides that it is necessary so to do.

3. Where no such extension is granted and, if appropriate, after application of the provisions of Article 2(8), the Court shall determine the manner in which the dispute is to be resolved.

*Article 19*

Awards by Three Arbitrators.

When three arbitrators have been appointed, the award is given by a majority decision. If there be no majority, the award shall be made by the Chairman of the arbitral tribunal alone.

*Article 20*

Decision as to the Costs of the Arbitration.

1. The arbitrator's award shall, in addition to dealing with the merits of the case, fix the costs of the arbitration and decide which of the parties shall bear the costs or in what proportions the costs shall be borne by the parties.

2. The costs of the arbitration shall include the arbitrator's fees and the administrative costs fixed by the Court in accordance with the scale annexed to the present Rules, the expenses, if any, of the arbitrator, the fees and expenses of any experts, and the normal legal costs incurred by the parties.

3. The Court may fix the arbitrator's fees at a figure higher or lower than that which would result from the application of the annexed scale if in the exceptional circumstances of the case this appears to be necessary.

*Article 21*

Scrutiny of the Award by the Court of Arbitration.

Before signing an award, whether partial or definitive, the arbitrator shall submit it in draft form to the Court. The Court may lay down modifications as to the form of the award and, without affecting the arbitrator's liberty of decision, may also draw his attention to points of substance. No award shall be signed until it has been approved by the Court as to its form.

*Article 22*

Making of the Award.

The arbitral award shall be deemed to be made at the place of the arbitration proceedings and on the date when it is signed by the arbitrator.

*Article 23*

Notification of the Award to the Parties.

1. Once an award has been made, the Secretariat shall notify to the parties the text signed by the arbitrator; provided always that the costs of the arbitration have been fully paid to the International Chamber of Commerce by the parties or by one of them.

2. Additional copies certified true by the Secretary-General of the Court shall be made available, on request and at any time, to the parties but to no one else.

3. By virtue of the notification made in accordance with paragraph 1 of this article, the parties waive any other form of notification or deposit on the part of the arbitrator.

*Article 24*

Finality and Enforceability of the Award.

1. The arbitral award shall be final.

2. By submitting the dispute to arbitration by the International Chamber of Commerce, the parties shall be deemed to have undertaken to carry out the resulting award without delay and to have waived their right to any form of appeal insofar as such waiver can validly be made.

*Article 25*

Deposit of the Award.

An original of each award made in accordance with the present Rules shall be deposited with the Secretariat of the Court.

The arbitrator and the Secretariat of the Court shall assist the parties in complying with whatever further formalities may be necessary.

*Article 26*

General Rule.

In all matters not expressly provided for in these Rules, the Court of Arbitration and the arbitrator shall act in the spirit of these Rules and shall make every effort to make sure that the award is enforceable at law.

*Annex XVI*

**CHECK LIST OF CONTRACT PROVISIONS FOR THE USE OF LOCAL STAFF,  
LABOUR, MATERIALS AND EQUIPMENT**

1. *Use of local staff and labour*

Stipulate:

Type of staff and labour to be engaged by the contractor

Number (as fixed number or as a percentage of total number of staff and/or labour engaged by the contractor)

Conditions of engagement, wages

Housing, supply of water, transportation facilities, etc. to be paid by the contractor

Responsibility of contractor for supervision of worksmen

2. *Use of local material*

Stipulate (as applicable):

Type of material

Availability as to quality and quantity

Price

Distance of site from location of production plant and/or point of origin

3. *Use of local equipment*

Stipulate (as applicable):

Type of equipment to be used

Availability as to quality and quantity

Detailed technical data

Price

Point of origin of equipment.

## *Annex XVII*

### **GENERAL CONDITIONS FOR THE SUPPLY AND ERECTION OF PLANT AND MACHINERY FOR IMPORT AND EXPORT No. 188A\***

*Prepared under the auspices of the United Nations Economic Commission  
for Europe, Geneva, March 1957*

#### **1. Preamble**

1.1. These general conditions shall apply, save as varied by express agreement accepted in writing by both parties.

#### **2. Formation of Contract**

2.1. The Contract shall be deemed to have been entered into when, upon receipt of an order, the Contractor has sent an acceptance in writing within the time-limit (if any) fixed by the Purchaser.

2.2. If the Contractor, in drawing up his tender, has fixed a time-limit for acceptance, the Contract shall be deemed to have been entered into when the Purchaser has sent an acceptance in writing before the expiration of such time-limit, provided that there shall be no binding Contract unless the acceptance reaches the Contractor not later than one week after the expiration of such time-limit.

#### **3. Drawings and Descriptive Documents**

3.1. The weights, dimensions, capacities, prices, performance ratings and other data included in catalogues, prospectuses, circulars, advertisements, illustrated matter and price lists constitute an approximate guide. These data shall not be binding save to the extent that they are by reference expressly included in the Contract.

3.2. Any drawings or technical documents intended for use in the construction or erection of the Works<sup>a</sup> or of part thereof and submitted to the Purchaser prior or subsequent to the formation of the Contract remain the exclusive property of the Contractor. They may not, without the Contractor's consent, be utilized by the Purchaser or copied, reproduced, transmitted or communicated to a third party. Provided, however, that the said plans and documents shall be the property of the Purchaser:

- (a) if it is expressly so agreed, or
- (b) if they are referable to a separate preliminary development contract on which no actual construction was to be performed and in which the property of the Contractor in the said plans and documents was not reserved.

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\*These Conditions may be used, at the option of the parties, as an alternative to the General Conditions for the Supply and Erection of Plant and Machinery for Import and Export prepared at Geneva, in March 1957 (No. 574 A).

The English, French and Russian texts are equally authentic.

<sup>a</sup>In these General Conditions, "Plant" means all machinery, apparatus, materials and articles to be supplied by the Contractor under the Contract and "the Works" means all Plant to be supplied and work to be done by the Contractor under the Contract.

3.3. Any drawings or technical documents intended for use in the construction or erection of the Works or of part thereof and submitted to the Contractor by the Purchaser prior or subsequent to the formation of the Contract remain the exclusive property of the Purchaser. They may not, without his consent, be utilized by the Contractor or copied, reproduced, transmitted or communicated to a third party.

3.4. The Contractor shall, if required by the Purchaser, furnish free of charge to the Purchaser at the commencement of the Guarantee Period, as defined in Clause 23, information and drawings other than manufacturing drawings of the Works in sufficient detail to enable the Purchaser to carry out the operation and maintenance (including running repairs) of all parts of the Works and (except where under the Contract the Contractor is responsible for commissioning the Works) the commissioning thereof. Such information and drawings shall be the property of the Purchaser and the restrictions on their use set out in paragraph 2 hereof shall not apply thereto. Provided that if the Contractor so stipulates, they shall remain confidential.

#### 4. Packing

4.1. Unless otherwise specified:

- (a) prices shown in price lists and catalogues shall be deemed to apply to unpacked Plant;
- (b) prices quoted in tenders and in the Contract shall include the cost of packing or protection required under normal transport conditions to prevent damage to or deterioration of the Plant before it reaches its destination as stated in the Contract.

#### 5. Local Laws and Regulations

5.1. The Purchaser shall, at the request of the Contractor and to the best of his ability, assist the Contractor to obtain the necessary information concerning the local laws and regulations applicable to the Works and to taxes and dues connected therewith.

5.2. If, by reason of any change in such laws and regulations occurring after the date of the tender, the cost of erection is increased or reduced, the amount of such increase or reduction shall be added to or deducted from the price, as the case may be.

#### 6. Working Conditions

6.1. The price shall be on the understanding that the following conditions are fulfilled, except so far as the Purchaser has informed the Contractor to the contrary:

- (a) the Works shall not be carried out in unhealthy or dangerous surroundings;
- (b) the Contractor's employees shall be able to obtain suitable and convenient board and lodging in the neighbourhood of the site and shall have access to adequate medical services;
- (c) such equipment, consumable-stores, water and power as are specified in the Contract shall be available to the Contractor on the site in good time, and, unless otherwise agreed, free of charge to the Contractor;
- (d) the Purchaser shall provide the Contractor (free of charge, unless otherwise agreed) with closed or guarded premises on or near the site as a protection against theft and deterioration of the Plant to be erected, of the tools and equipment required therefor, and of the clothing of the Contractor's employees;
- (e) the Contractor shall not be required to undertake any works of construction or demolition or to take any other unusual measures to enable the Plant to be brought from the point where it has been unloaded to the point on the site where it is to be erected, unless the Contractor has agreed to deliver the Plant to the last mentioned point.

Any departure from the conditions mentioned in this paragraph shall attract an extra charge.

6.2. If the circumstances resulting from such departure are such that it would be unreasonable to require the Contractor to proceed with the Works, the Contractor may, without prejudice to his rights under the Contract, refuse to do so.

## 7. Erection on a Time Basis and Lump-sum Erection

- 7.1. When erection is carried out on a time basis the following items shall be separately charged:
- (a) all travelling expenses incurred by the Contractor in respect of his employees and the transport of their equipment and personal effects (within reasonable limits) in accordance with the specified method and class of travel where these are specified in the Contract;
  - (b) the living expenses, including any appropriate allowances, of the Contractor's employees for each day's absence from their homes, including non-working days and holidays;
  - (c) the time worked, which shall be calculated by reference to the number of hours certified as worked in the time-sheets signed by the Purchaser. Overtime and work on Sundays, holidays and at night will be charged at the special rates mentioned in the Contract. Save as otherwise provided, the hourly rates cover the wear and tear and depreciation of the Contractor's tools and light equipment;
  - (d) time necessarily spent on:
    - (i) preparation and formalities incidental to the outward and homeward journeys;
    - (ii) the outward and homeward journeys;
    - (iii) daily travel morning and evening between lodgings and the site if it exceeds half an hour and there are no suitable lodgings closer to the site;
    - (iv) waiting when work is prevented by circumstances for which the Contractor is not responsible under the Contract;
  - (e) any expenses incurred by the Contractor in accordance with the Contract, in connexion with the provision of equipment by him, including where appropriate a charge for the use of the Contractor's own heavy equipment;
  - (f) any taxes or dues levied on the invoice and paid by the Contractor in the country where erection takes place.

7.2. When erection is carried out for a lump sum, the quoted price includes all the items above mentioned. Provided that if the erection is prolonged for any cause for which the Purchaser or any of his contractors other than the Contractor is responsible and if as a result the work of the Contractor's employees is suspended or added to, a charge will be made for any idle time, any extra work, any extra living expenses of the Contractor's employees and the cost of any extra journey.

## 8. Inspection and Tests of the Plant

### *Inspection*

8.1. If expressly agreed in the Contract, the Purchaser shall be entitled to have the quality of the materials used and the parts of the Plant, both during manufacture and when completed, inspected and checked by his authorized representatives. Such inspection and checking shall be carried out at the place of manufacture during normal working hours after agreement with the Contractor as to date and time.

8.2. If as a result of such inspection and checking the Purchaser shall be of the opinion that any materials or parts are defective or not in accordance with the Contract, he shall state in writing his objections and the reason therefor.

### *Tests*

8.3. Tests provided for in the Contract other than taking-over tests will be carried out, unless otherwise agreed, at the Contractor's works and during normal working hours. If the technical requirements of the tests are not specified in the Contract, the tests will be carried out in accordance with the general practice obtaining in the appropriate branch of the industry in the country where the Plant is manufactured.

8.4. The Contractor shall give to the Purchaser sufficient notice of the tests to permit the Purchaser's representatives to attend. If the Purchaser is not represented at the tests, the test report shall be communicated by the Contractor to the Purchaser and shall be accepted as accurate by the Purchaser.

8.5. If on any test (other than a taking-over test as provided for in Clause 21) the Plant shall be found to be defective or not in accordance with the Contract, the Contractor shall with all speed make good the defect or ensure that the Plant complies with the Contract. Thereafter, if the Purchaser so requires, the test shall be repeated.

8.6 Unless otherwise agreed, the Contractor shall bear all the expenses of tests carried out in his works, except the personal expenses of the Purchaser's representatives.

#### 9. Passing of Risk

9.1. Save as provided in paragraph 10.1, the time at which the risk shall pass shall be fixed in accordance with the International Rules for the Interpretation of Trade Terms (Incoterms) of the International Chamber of Commerce in force at the date of the formation of the Contract.

Where no indication is given in the Contract of the form of sale, the Plant shall be deemed to be sold "ex works".

9.2. In the case of a sale "ex works", the Contractor must give notice in writing to the Purchaser of the date on which the Purchaser must take delivery of the Plant. The notice of the Contractor must be given in sufficient time to allow the Purchaser to take such measures as are normally necessary for the purpose of taking delivery.

#### 10. Delayed Acceptance of Delivery

10.1. If the Purchaser fails to accept delivery of the Plant on due date, he shall nevertheless make any payment conditional on delivery as if the Plant had been delivered. The Contractor shall arrange for the storage of the Plant at the risk and cost of the Purchaser. If required by the Purchaser, the Contractor shall insure the Plant at the cost of the Purchaser. Provided that if the delay in accepting delivery is due to one of the circumstances mentioned in Clause 25 and the Contractor is in a position to store it in his premises without prejudice to his business, the cost of storing the Plant shall not be borne by the Purchaser.

10.2. Unless the failure of the Purchaser is due to any of the circumstances mentioned in Clause 25, the Contractor may require the Purchaser by notice in writing to accept delivery within a reasonable time.

If the Purchaser fails for any reason whatever to do so within such time, the Contractor shall be entitled by notice in writing to the Purchaser, and without requiring the consent of any Court, to terminate the Contract in respect of such portion of the Plant as is by reason of the failure of the Purchaser aforesaid not delivered and thereupon to recover from the purchaser any loss suffered by reason of such failure up to an amount not exceeding the sum named in paragraph A of the Appendix or, if no sum be named, that part of the price payable under the Contract which is properly attributable to such portion of the Plant.

#### 11. Payment

11.1. Payment shall be made in the manner and at the time or times agreed by the parties.

11.2. Any advance payments made by the Purchaser are payments on account and do not constitute a deposit, the abandonment of which would entitle either party to terminate the Contract.

11.3. If delivery has been made before payment of the whole sum payable under Contract, Plant delivered shall, to the extent permitted by the law of the country where the Plant is situated after delivery, remain the property of the Contractor until such payment has been effected. If such law does not permit the Contractor to retain the property in the Plant, the Contractor shall be entitled to the benefit of such other rights in respect thereof as such law permits him to retain. The Purchaser shall give the Contractor every assistance in taking any measures required to protect the Contractor's right of property or such other rights as aforesaid.

11.4. A payment conditional on the fulfilment of an obligation by the Contractor shall not be due until such obligation has been fulfilled, unless the failure of the Contractor is due to an act or omission of the Purchaser.

11.5. If the Purchaser delays in making any payment, the Contractor may postpone the fulfilment of his own obligations until such payment is made, unless the failure of the Purchaser is due to an act or omission of the Contractor.

11.6. If delay by the Purchaser in making any payment is due to one of the circumstances mentioned in Clause 25, the Contractor shall not be entitled to any interest on the sum due.

11.7. Save as aforesaid, if the Purchaser delays in making any payment, the Contractor shall on giving to the Purchaser within a reasonable time notice in writing be entitled to the payment of interest on the sum due at the rate fixed in paragraph B of the Appendix from the date on which such sum became due. If at the end of the period fixed in paragraph C of the Appendix, the Purchaser shall still have failed to pay the sum due, the Contractor shall be entitled by notice in writing to the Purchaser, and without requiring the consent of any Court, to terminate the Contract and thereupon to recover from the Purchaser the amount of his loss up to the sum mentioned in paragraph A of the Appendix.

## 12. Preparatory Work

12.1. The Contractor shall in good time provide drawings showing the manner in which the Plant is to be affixed together with all information relating, unless otherwise agreed, only to the Works, required for preparing suitable foundations, for providing suitable access for the Plant and any necessary equipment to the point on the site where the Plant is to be erected and for making all necessary connexions to the Plant (whether such connexions are to be made by the Contractor under the Contract or not).

12.2. The preparatory work shall be executed by the Purchaser in accordance with the drawings and information provided by the Contractor and mentioned in paragraph 1 hereof. It shall be completed in good time and the foundations shall be capable of taking the Plant at the proper time. Where the Purchaser is responsible for transporting the Plant, it shall be on the site in good time.

12.3 Any expenses resulting from an error or omission in the drawings or information mentioned in paragraph 1 hereof which appears before taking over shall be borne by the Contractor. Any such error or omission which appears after taking over shall be deemed faulty design for purposes of Clause 23.

## 13. Liaison Agents

13.1. The Contractor and Purchaser shall each designate in writing a competent representative to be his channel of communication with the other party on the day-to-day execution of the Works on the site.

13.2. Each such representative shall be present on or near the site during working hours.

## 14. Additional Labour

14.1. If the Contractor so requires in good time the Purchaser shall make available to the Contractor free of charge such skilled and unskilled labour as is provided for in the Contract and such further reasonable amount of unskilled labour as may be found to be necessary even if not provided for in the Contract.

## 15. Safety Regulations

15.1. The Purchaser shall notify the Contractor in full of the safety regulations which the Purchaser imposes on his own employees and the Contractor shall secure the observance by his employees of such safety regulations.

15.2. If breaches of these regulations come to the notice of the Purchaser, he must inform the Contractor in writing forthwith, and may forbid persons guilty of such breaches entry to the site.

15.3. The Contractor shall inform the Purchaser in full of any special dangers which the execution of the Works may entail.



#### 16. Overtime

16.1. Any overtime and the conditions thereof shall, within the limits of the laws and regulations of the Contractor's country and of the country where erection is carried out, be as agreed between the parties.

#### 17. Work Outside the Contract

17.1. The Purchaser shall not be entitled to use the Contractor's employees on any work unconnected with the subject-matter of the Contract without the previous consent of the Contractor. Where the Contractor so consents, he shall not be under any liability in respect of such work, and the Purchaser shall be responsible for the safety of the Contractor's employees while employed on such work.

#### 18. Contractor's Right of Inspection

18.1. Until the Works are taken over and during any work resulting from the operation of the guarantee the Contractor shall have the right at any time during the hours of work on the site to inspect the Works at his own expense. In proceeding to the site, the inspectors shall observe the regulations as to movement in force at the Purchaser's premises.

#### 19. Instruction of the Purchaser's Employees

19.1. In appropriate cases the Contract may provide on the terms and conditions therein set out for instruction to be given by the Contractor to the Purchaser's employees who will run the Plant.

#### 20. Time for Completion

20.1. Unless otherwise agreed the completion period shall run from the latest of the following dates:

- (a) the date of the formation of the Contract as defined in Clause 2;
- (b) the date on which the Contractor receives notice of the issue of a valid import licence where such is necessary for the execution of the Contract;
- (c) the date of the receipt by the Contractor of such payment in advance of manufacture as is stipulated in the Contract.

20.2. Should delay in completion be caused by any of the circumstances mentioned in Clause 25 or by an act or omission of the Purchaser and whether such cause occur before or after the time or extended time for completion, there shall be granted subject to the provisions of paragraph 5 hereof such extension of the completion period as is reasonable having regard to all the circumstances of the case.

20.3. If a fixed time for completion is provided for in the Contract, and the Contractor fails to complete the Works within such time or any extension thereof granted under paragraph 2 hereof, the Purchaser shall be entitled, on giving to the Contractor within a reasonable time notice in writing, to claim a reduction of the price payable under the Contract, unless it can be reasonably concluded from the circumstances of the particular case that the Purchaser has suffered no loss. Such reduction shall equal the percentage named in paragraph D of the Appendix of that part of the price payable under the Contract which is properly attributable to such portion of the Works cannot in consequence of the said failure be put to the use intended for each complete week of delay commencing on the due date of completion but shall not exceed the maximum percentage named in paragraph E of the Appendix. Such reduction shall be allowed when a payment becomes due on or after completion. Save as provided in paragraph 5 hereof, such reduction of price shall be to the exclusion of any other remedy of the Purchaser in respect of the Contractor's failure to complete as aforesaid.

20.4. If the time for completion mentioned in the Contract is an estimate only, either party may after the expiration of two thirds of such estimated time require the other party in writing to agree a fixed time.

Where no time for completion is mentioned in the Contract, this course shall be open to either party after the expiration of nine months from the formation of the Contract.

If in either case the parties fail to agree, either party may have recourse to arbitration, in accordance with the provisions of Clause 28, to determine a reasonable time for completion and the time so determined shall be deemed to be the fixed time for completion provided for in the Contract and paragraph 3 hereof shall apply accordingly.

20.5. If any portion of the Works in respect of which the Purchaser has become entitled to the maximum reduction provided for by paragraph 3 hereof, or in respect of which he would have been so entitled had he given the notice referred to therein, remains uncompleted, the Purchaser may by notice in writing to the Contractor require him to complete and by such last mentioned notice fix a final time for completion which shall be reasonable taking into account such delay as has already occurred. If for any cause other than one for which the Purchaser or some other Contractor employed by him is responsible, the Contractor fails to complete within such time, the Purchaser shall be entitled by notice in writing to the Contractor, and without requiring the consent of any Court, to terminate the Contract in respect of such portion of the Works and thereupon to recover from the Contractor any loss suffered by the Purchaser by reason of the failure of the Contractor as aforesaid up to an amount not exceeding the sum named in paragraph F of the Appendix, or, if no sum be named, that part of the price payable under the Contract which is properly attributable to such portion of the Works as could not in consequence of the Contractor's failure be put to the use intended.

#### 21. Taking-over Tests

21.1. Unless otherwise agreed, taking-over tests shall be carried out. If such tests are to be carried out, the Contractor shall notify the Purchaser in writing when the Works will be ready, and such notification shall be in sufficient time to enable the Purchaser to make any necessary arrangements. The tests shall take place in the presence of both parties. The technical requirements shall be as specified in the Contract or, if not so specified, in accordance with the general practice existing in the appropriate branch of the industry in the country where the Plant is manufactured.

21.2. If as a result of such tests the Works are found to be defective or not in accordance with the Contract, the Contractor shall with all speed and at his own expense make good the defect or ensure that the Works comply with the contract, and thereafter, if the Purchaser so requires, the test shall be repeated at the expense of the Contractor.

21.3. Subject to the provisions of paragraph 2 hereof the Purchaser shall free of charge provide any power, lubricants, water, fuel and materials of all kinds reasonably required for final adjustments and for taking-over tests. He shall also install free of charge any apparatus necessary for the above mentioned operations.

#### 22. Taking Over

22.1. As soon as the Works have been completed in accordance with the Contract and have passed all the taking over tests to be made on completion of erection, the Purchaser shall be deemed to have taken over the Works and the Guarantee Period shall start to run. The Purchaser shall thereupon issue to the Contractor a certificate, called a "Taking-over Certificate", in which he shall certify the date on which the Works have been completed and have passed the tests.

22.2. If the Purchaser is unwilling to have the taking over tests carried out, the Works shall be deemed to have been taken over and the Guarantee Period shall start to run on a written notice to that effect being given by the Contractor.

22.3. If by reason of difficulties encountered by the Purchaser (whether or not covered by Clause 25) it becomes impossible to proceed to the taking-over tests, these shall be postponed for a period not exceeding six months, or such other period as the parties agree, and the following provisions shall apply:

- (a) The Purchaser shall make payments as if the taking-over had taken place, provided that, in the case of a difficulty due to any of the circumstances falling within paragraph 25.1, the Purchaser shall not, unless otherwise agreed, be required to pay at the due time of taking-over the cost of uncompleted work or, before the expiration of the Guarantee Period fixed in accordance with sub-paragraph (d) hereof, any sum retained by way of guarantee.

- (b) At the appropriate time, the Purchaser shall give notice in writing to the Contractor stating the earliest date on which the tests can be carried out and requesting him to fix a new date for the tests. Such new date shall be within the period stated in paragraph G of the Appendix after the date mentioned in such notice.
- (c) The Contractor may, at the cost of the Purchaser, examine the Works before making the tests and make good any defect or deterioration therein that may have developed, or loss thereof that may have occurred, after the date when the Works were first ready for testing in accordance with the Contract.
- (d) The Guarantee Period shall run from the date when the postponed tests have been successfully carried out.
- (e) If the Purchaser so requires, the Contractor shall, subject to the provisions of the Contract in respect of the passing of risk, protect and preserve the Works until the tests are carried out or for one month from the time when the Works were first ready for testing in accordance with the Contract, whichever is the shorter period. The Contractor shall be entitled to recover from the Purchaser the cost of any measures actually taken by the Contractor to protect and preserve the Works. Unless otherwise agreed, the liability of the Contractor for protecting and preserving the Works shall cease on the expiry of such month.  
If by reason of other commitments the Contractor is unable to leave his employees on the site, he shall give the Purchaser any directions required to enable the Purchaser to make satisfactory arrangements for protecting and preserving the Works.
- (f) If at the end of six months or such other period as the parties may have agreed the tests have not taken place the provisions of paragraph 22.2 shall apply unless the provisions of Clause 25 are applicable.

### 23. Guarantee

23.1. Subject as hereinafter set out, the Contractor undertakes to remedy any defect resulting from faulty design, materials or workmanship.

23.2. This liability is limited to defects which appear during the period (called "the Guarantee Period") specified in paragraph H of the Appendix and commencing on taking over.

23.3. In respect of such parts (whether of the Contractor's own manufacture or not) of the Works as are expressly mentioned in the Contract, the Guarantee Period shall be such other period (if any) as is specified in respect of each of such parts.

23.4. The daily use of the works and the amount by which the Guarantee Period shall be reduced if the Works are used more intensively are stated in paragraph J of the Appendix.

23.5. A fresh Guarantee Period equal to that stated in paragraph H of the Appendix shall apply, under the same terms and conditions as those applicable to the original Works, to parts supplied in replacement of the defective parts or to parts renewed in pursuance of this Clause. This provision shall not apply to the remaining parts of the Works, the Guarantee Period of which shall be extended only by a period equal to the period during which the Works are out of action as a result of a defect covered by this Clause.

23.6. In order to be able to avail himself of his rights under this Clause the Purchaser shall notify the Contractor in writing without delay of any defects that have appeared and shall give him every opportunity of inspecting and remedying them.

23.7. On receipt of such notification the Contractor shall remedy the defect forthwith and, save as mentioned in paragraph 8 hereof, at his own expense. Save where the nature of the defect is such that it is appropriate to effect repairs on site, the Purchaser shall return to the Contractor any part in which a defect covered by this clause has appeared, for repair or replacement by the Contractor, and in such case the delivery to the Purchaser of such part properly repaired or a part in replacement thereof shall be deemed to be a fulfilment by the Contractor of his obligations under this paragraph in respect of such defective part.

23.8. Unless otherwise agreed, the Purchaser shall bear the cost and risk of transport of defective parts and of repaired parts or parts supplied in replacement of such defective parts between the place where the Works are situated and one of the following points:

- (i) The Contractor's works if the Contract is "ex works" or FOR;
- (ii) the port from which the Contractor dispatched the Plant if the Contract is FOB, FAS, CIF, or C & F;

- (iii) in all other cases the frontier of the country from which the Contractor dispatched the Plant.

23.9. Where, in pursuance of paragraph 7 hereof, repairs are required to be effected on site, the incidence of any travelling or living expenses of the Contractor's employees and the cost and risk of transporting any necessary material or equipment shall be settled, in default of agreement between the parties, in such manner as the arbitrator shall determine to be fair and reasonable.

23.10. Defective parts replaced in accordance with this Clause shall be placed at the disposal of the Contractor.

23.11. If the Contractor refuses to fulfil his obligations under this Clause or fails to proceed with due diligence after being required to do so, the Purchaser may proceed to do the necessary work at the Contractor's risk and expense, provided that he does so in a reasonable manner.

23.12. The Contractor's liability does not apply to defects arising out of materials provided, or out of a design stipulated, by the Purchaser.

23.13. The Contractor's liability shall apply only to defects that appear under the conditions of operation provided for by the Contract and under proper use. It does not cover defects due to causes arising after taking over. In particular it does not cover defects arising from the Purchaser's faulty maintenance or from alterations carried out without the Contractor's consent in writing, or from repairs carried out improperly by the Purchaser, nor does it cover normal deterioration.

23.14. After taking over and save as in this Clause expressed, the Contractor shall be under no liability even in respect of defects due to causes existing before taking over. It is expressly agreed that the Purchaser shall have no claim in respect of personal injury or of damage to property not the subject-matter of the Contract arising after taking over nor for loss of profit unless it is shown from the circumstances of the case that the Contractor has been guilty of gross misconduct.

23.15. "Gross misconduct" does not comprise any and every lack of proper care or skill, but means an act or omission on the part of the Contractor implying either a failure to pay due regard to serious consequences which a conscientious Contractor would normally foresee as likely to ensue, or a deliberate disregard of any consequences of such act or omission.

#### 24. Liability for Personal Injury and Damage to Property

24.1. In the event of personal injury or damage to property occurring before all the Works have been taken over, the liabilities shall be apportioned as follows:

- (a)
  - (i) The Contractor shall at his own expense make good any loss or damage to the Plant or Works occurring before the risk therein has passed and arising from any cause whatsoever other than an act or omission of the Purchaser;
  - (ii) the Contractor shall at his own expense make good any loss or damage to the Plant or Works occurring after the risk therein has passed, if such loss or damage is caused by an act or omission of the Contractor;
  - (iii) if any proportion of the Plant or Works is lost or damaged from a cause for which the Contractor is not responsible by virtue of sub-paragraphs (a) (i) or (a) (ii) hereof, the loss or damage shall, if required by the Purchaser, be made good by the Contractor at the expense of the Purchaser.
- (b) In respect of damage to the Purchaser's property other than the Works, the Contractor shall indemnify the Purchaser to the extent that such damage was caused by the Contractor, or by the failure of equipment or tools provided by the Contractor for the purpose of the erection, if the circumstances show that the Contractor failed to use proper skill and care.
- (c)
  - (i) In respect of personal injury, the respective liabilities of the Purchaser and of the Contractor towards the injured person shall be governed by the law of the country where the injury occurred;
  - (ii) if the injured person brings a claim against the Purchaser, the Contractor shall indemnify the Purchaser against such claim to the extent that the injury was due to any of the causes mentioned in sub-paragraph (b) hereof;
  - (iii) if the injured person brings a claim against the Contractor, the Purchaser shall, to the extent permitted by the law of the country where the injury occurred, indemnify the Contractor against such claim save to the extent that, by the

operation of sub-paragraph (c) (ii) hereof, the Contractor would have been liable to indemnify the Purchaser had the claim been brought against the Purchaser.

- (d) In respect of damage to property of third parties, the provisions of sub-paragraph (c) hereof shall apply *mutatis mutandis*.
  - (e) The provisions of this paragraph shall apply to the acts or omissions of the respective servants of the parties as they apply to the acts or omissions of the parties themselves. Provided always that as respects acts or omissions of the additional labour provided by the Purchaser in accordance with paragraph 14.1 the Contractor shall be liable for the consequences of such orders and instructions as have been incorrectly given, inadequately expressed or given to a person not purporting to possess the necessary qualifications.
- 24.2. In order to avail himself of his rights under sub-paragraphs (c) and (d) of paragraph 24.1 the party against whom a claim is made must notify the other of such claim and must permit the other, if the other so wishes, to conduct all negotiations for the settlement of such claim and to act in his stead or, to the extent permitted by the law of the country where the action is brought, to join in such litigation.
- 24.3. Any limitation of the indemnities payable by either party by virtue of this clause shall be as stated in paragraph I of the Appendix.
- 24.4. The provisions of this Clause shall apply equally while the Contractor is on the site in fulfilment of an obligation under Clause 23.

## 25. Reliefs

25.1. The following shall be considered as cases of relief if they intervene after the formation of the Contract and impede its performance: industrial disputes and any other circumstances (e.g. fire, mobilization, requisition, embargo, currency restrictions, insurrection, shortage of transport, general shortage of materials and restrictions in the use of power) when such other circumstances are beyond the control of the parties.

25.2. The party wishing to claim relief by reason of any of the said circumstances shall notify the other party in writing without delay on the intervention and on the cessation thereof.

25.3. The effects of the said circumstances, so far as they affect the timely performance of their obligations by the parties, are defined in Clauses 10, 11, 20 and 22. Save as provided in paragraphs 10.2, 11.7 and 20.5, if, by reason of any of the said circumstances, the performance of the Contract within a reasonable time becomes impossible, either party shall be entitled to terminate the Contract by notice in writing to the other party without requiring the consent of any Court.

25.4. If the Contract is terminated in accordance with paragraph 3 hereof, the division of the expenses incurred in respect of the Contract shall be determined by agreement between the parties.

25.5. In default of agreement it shall be determined by the arbitrator which Party has been prevented from performing his obligations and that Party shall refund to the other the amount of the said expenses incurred by the other less any amount to be credited in accordance with paragraph 7 hereof, or, where the amount to be so credited exceeds the amount of such expenses, shall be entitled to recover the excess.

If the arbitrator determines that both parties have been prevented from performing their obligations, he shall apportion the said expenses between the parties in such manner as to him seems fair and reasonable, having regard to all the circumstances of the case.

25.6. For the purposes of this Clause "expenses" means actual out-of-pocket expenses reasonably incurred after both parties shall have mitigated their losses as far as possible. Provided that as respects Plant delivered to the Purchaser the Contractor's expenses shall be deemed to be that part of the price payable under the Contract which is properly attributable thereto, due account being taken of any work done in the erection of such Plant.

25.7. There shall be credited to the Purchaser against the Contractor's expenses all sums paid or payable under the Contract by the Purchaser to the Contractor.

There shall be credited to the Contractor against the Purchaser's expenses that part of the price payable under the Contract which is properly attributable to Plant delivered to the

Purchaser or, in the case of an incomplete unit, the value of such Plant having regard to its incomplete state. In either case due account shall be taken of any work done in the erection of such Plant.

#### 26. Limitation of Damages

26.1. Where either party is liable in damages to the other, these shall not exceed the damage which the party in default could reasonably have foreseen at the time of the formation of the Contract.

26.2. The party who sets up a breach of Contract shall be under a duty to take all necessary measures to mitigate the loss which has occurred provided that he can do so without unreasonable inconvenience or cost. Should he fail to do so, the party guilty of the breach may claim a reduction in the damages.

#### 27. Rights at Termination

27.1. Termination of the Contract, from whatever cause arising, shall be without prejudice to the rights of the parties accrued under the Contract up to the time of termination.

#### 28. Arbitration and Law Applicable

28.1. Any dispute arising out of the Contract shall be finally settled, in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by one or more arbitrators designated in conformity with those Rules.

28.2. Unless otherwise agreed, the Contract shall, so far as is permissible under the law of the country where the Works are carried out, be governed by the law of the Contractor's country.

28.3. If the parties expressly so agree, but not otherwise, the arbitrators shall, in giving their ruling, act as *amiables compositeurs*.

#### Appendix

(To be completed by parties to the Contract)

	<i>Clause</i>	
A. Maximum amount recoverable on termination by Contractor for failure to take delivery or make payment	10.2 & 11.7	(in the agreed currency)
B. Rate of interest on overdue payments	11.7	..... per cent per annum
C. Period of delay in payment authorizing termination by Contractor	11.7	..... months
D. Percentage to be deducted for each week's delay	20.3	..... %
E. Maximum percentage which the deductions above may not exceed	20.3	..... %
F. Maximum amount recoverable for non-completion	20.5	(in the agreed currency)
G. Maximum postponement of taking-over tests by Contractor	22.3	..... weeks
H. Guarantee Period for original Works and parts replaced or renewed	23.2 & 23.5	..... months
I. Maximum indemnities for personal injury or damage	24.3	(in the agreed currency)
J. (1) Daily use of Plant	23.4	..... hours/day
(2) Reduction of Guarantee Period for more intensive use	23.4	

## SUPPLEMENTARY CLAUSE

## Price Revision

Should any change occur in the cost of the relevant materials and/or wages during the period of execution of the contract, the agreed prices shall be subject to revision on the basis of the following formula:

$$P1 = \frac{Po}{100} (a + b \frac{M1}{M0} + c \frac{S1}{S0})$$

where:

- P1 = final price for invoicing  
 Po = initial price of goods, as stipulated in the contract and as prevailing at the date of . . . . . (1)  
 M1 = mean (2) of the prices (or price indices) for (type of materials concerned) . . . . . over the period . . . . . (3)  
 M0 = prices (or price indices) for the same materials at the date stipulated above for Po.  
 S1 = mean (2) of the wages (including social charges) or relevant indices (4) in respect of . . . . . (specify categories of labour and social charges) over the period . . . . . (3)  
 S0 = wages (including social charges) or relevant indices (4) in respect of the same categories at the date stipulated above for Po.

a, b, c, represent the contractually agreed percentage of the individual elements of the initial price, which add up to 100.

$$(a + b + c = 100)$$

- a = fixed proportion = . . . . .  
 b = percentage proportion of materials = . . . . .  
 c = percentage proportion of wages (including social charges) = . . . . .

Where necessary, b (and if need be, c) can be broken down into as many partial percentages (b1, b2, b3 . . . . .) as there are variables taken into account (b1 + b2 . . . . . + bn = b).

**DOCUMENTATION**—For the purpose of determining the values of materials and wages, the parties agree to use the following documents as sources of reference:

1. Materials: prices . . . . . (type of materials)  
 (or price indices)  
 published by . . . . .  
 under the headings . . . . .  
 2. Wages: wages (including related social charges)  
 (or relevant indices)  
 published by . . . . .  
 under the headings . . . . . (5)

**Rules for applying the Clause.** In the case of partial deliveries which are invoiced separately, the final price shall be calculated separately for each such delivery.

- (1) It is recommended that the parties should, as far as possible, adopt as the initial price the price prevailing at the date of the contract and not at an earlier date. This is normally the contract price less cost of packing, transport and insurance.  
 (2) Arithmetical or weighted.  
 (3) Specify the datum period, which may be defined as part or the whole of the delivery period.  
 (4) If legal social charges are covered by the index, they need not be taken into account again.  
 (5) Indices relating specifically to the engineering and electrical industries should be used as far as possible.

**Period of application of the Clause.** The revision clause shall cover the delivery period fixed in the contract, together with any extension thereof granted under Clause 20.2, but shall in no case apply after the date on which the work is completed.

**Tolerances.** Prices shall not be revised unless the application of the formula produces a plus or minus variation of . . . . . (6)

**Saving Clause.** If the parties wish the revision formula to be adjusted or replaced by a more accurate method of calculation when the plus or minus variation exceeds a certain percentage, they shall expressly so agree.

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(6) State the percentage plus or minus variation which must be exceeded before the formula is applied.



## **Annex XVIII**

### **ADDITIONAL CLAUSES FOR SUPERVISION OF ERECTION OF PLANT AND MACHINERY ABROAD No. 188B\***

*Prepared under the auspices of the United Nations Economic Commission for Europe, Geneva,  
April 1964*

#### **1. Preamble**

These Additional Clauses shall be read in conjunction with General Conditions for supply of plant and machinery for export No 188, of which clauses 1, 2, 8, 10, 11, 12 and 13 cover relations between the parties as regards the supervision of erection.

#### **2. Scope of the Contract**

- 2.1. Erection will be carried out by the Purchaser, who shall, at his own expense, provide the skilled and unskilled labour, all equipment and everything necessary for the erection of the Plant.
- 2.2. The Vendor shall provide the services of one or more competent engineers
- (a) to give to the Purchaser or his representative mentioned in paragraph 6.1 of these Additional Clauses the necessary instructions for the erection of the Plant by the Purchaser and, if provided in the contract, for its commissioning by him; and
  - (b) to supervise the manner in which the Vendor's instructions have been carried out.
- 2.3. The number and qualifications of the Vendor's staff, and the estimated duration of erection, shall be as specified in the Contract.
- 2.4. The date on which the Vendor's staff should arrive on site shall be as provided in the Contract; if not so provided, the Purchaser shall give the Vendor not less than one month's notice requiring such arrival.

#### **3. Local Laws and Regulations**

- 3.1. The Purchaser shall give to the Vendor in due time any information concerning local laws and regulations which is necessary for the proper execution of the Contract.

#### **4. Charges Payable by the Purchaser**

- 4.1. Supervision of erection is carried out on a time basis. The following items shall be separately charged:
- (a) The travelling expenses incurred by the Vendor in respect of his employees and the transport of their instruments and personal effects (within reasonable limits) in accordance with the specified method and class of travel where these are specified in the Contract;
  - (b) the living expenses, including any appropriate allowance, of the Vendor's employees for each day's absence from their homes including non-working days and holidays;
  - (c) time worked at the agreed rate, it being understood that overtime and work on holidays and at night will be charged at the special rates mentioned in the Contract;

\*These Additional Clauses may be used, at the option of the parties, as an alternative to the Additional Clauses for Supervision of Erection of Plant and Machinery Abroad No. 574 B.  
The French, English and Russian texts are equally authentic.

- (d) time necessarily spent on:
  - (i) preparation and formalities incidental to the outward and homeward journeys;
  - (ii) the outward and homeward journeys;
  - (iii) daily travel morning and evening between lodgings and the site if it exceeds half an hour and there are no suitable lodgings closer to the site;
  - (iv) waiting when work is prevented by circumstances for which the Vendor is not responsible under the Contract;
- (e) any taxes or dues levied on the invoice and paid by the Vendor in the country where erection takes place.

#### 5. Working Conditions

5.1. The price agreed for the supervision of erection shall be on the understanding that the following conditions are fulfilled, except so far as the Purchaser has informed the Vendor to the contrary:

- (a) the erection shall not be carried out in unhealthy or dangerous surroundings;
- (b) the Vendor's employees shall be able to obtain suitable and convenient board and lodging in the neighbourhood of the site and shall have access to adequate medical services.

Any departure from the conditions mentioned in this paragraph shall attract an extra charge.

#### 6. Liaison Agent

6.1. The Purchaser shall designate in writing a competent representative to be his channel of communication with the Vendor's staff.

#### 7. Safety Regulations

7.1. The Purchaser shall notify the Vendor in full of the safety regulations which the Purchaser imposes on his own employees and the Vendor shall secure the observance of such safety regulations by his own employees.

7.2. If breaches of these regulations by the Vendor's staff come to the notice of the Purchaser, he must inform the Vendor in writing forthwith.

7.3. The Vendor shall inform the Purchaser in full of any special dangers which the execution of the erection may entail.

#### 8. Overtime

8.1. Any overtime and the conditions thereof shall, within the limits of the laws and regulations of the Vendor's country and of the country where erection is carried out, be as agreed between the parties.

#### 9. Work Outside the Contract

9.1. The Purchaser shall not be entitled to use the Vendor's employees on any work unconnected with the subject matter of the Contract without the previous consent of the Vendor. Where the Vendor so consents, he shall not be under any liability in respect of such work, and the Purchaser shall be responsible for the safety of the Vendor's employees while employed on such work.

#### 10. Instruction of the Purchaser's Employees

10.1. In appropriate cases the Contract may provide on the terms and conditions therein set out for instruction to be given by the Vendor to the Purchaser's employees who will run the Plant.

#### 11. Interruption of Work

11.1. If the work is interrupted for a cause for which the Vendor is not responsible:

- (a) the Purchaser is entitled to send home the Vendor's staff, but in this case the Purchaser shall pay the expenses resulting therefrom;
- (b) the Vendor is entitled to recall his staff at the expense of the Purchaser if the interruption of erection exceeds the period fixed in paragraph J of the Appendix.
- (c) if the Vendor's staff is sent home or recalled, the contract is not terminated and its performance is merely suspended until the Purchaser has required the return of the Vendor's staff to the site by giving at least one month's notice or as may be agreed.

#### 12. Vendor's Liability

12.1. If it is shown that the Vendor or his staff have failed, otherwise than by reason of the circumstances mentioned in paragraph 10.1 of the General Conditions No. 188, to observe their obligations in accordance with clause 2 of these Additional Clauses, or that they have failed to use proper skill, care and diligence in carrying out the said obligations, and that the cost of erection to the Purchaser has thereby been increased, the Purchaser shall be entitled to claim repayment of the extra cost provided that he shall without delay have given written notice to the Vendor of his intention to make such a claim.

12.2. In the event of personal injury or damage to property occurring during erection and before supervision thereof and of commissioning of the Plant (where the contract provides for supervision of commissioning) has been completed, the liabilities shall be apportioned as follows:

- (a) The Vendor shall at his own expense make good any damage to the Plant or to any other property of the Purchaser to the extent that such damage was caused by a failure on the part of the Vendor or on that of his staff to use proper skill and care in fulfilling their functions as defined in paragraph 2.2 of these Additional Clauses.
- (b)
  - (i) In respect of personal injury, or of damage to the property of a third party, the respective liabilities of the Purchaser and of the Vendor towards the person injured or to the third party whose property has been damaged shall be governed by the law of the country where the injury or damage took place;
  - (ii) if the injured person or the said third party brings a claim against the Purchaser, the Vendor shall indemnify the Purchaser against such claim to the extent that the injury or damage was due to a failure of the Vendor or his staff as mentioned in sub-paragraph (a) hereof;
  - (iii) if the injured person or said third party brings a claim against the Vendor, the Purchaser shall, to the extent permitted by the law of the country where the injury or damage occurred, indemnify the Vendor against such a claim save to the extent that, by the operation of sub-paragraph (b) (ii) hereof, the Vendor would have been liable to indemnify the Purchaser had the claim been brought against the Purchaser.

12.3. In order to avail himself of his rights under sub-paragraph (b) of paragraph 12.2 of these Additional Clauses the party against whom a claim is made must notify the other of such claim and must permit the other, if the other so wishes, to conduct all negotiations for the settlement of such claim and to act in his stead or, to the extent permitted by the law of the country where the action is brought, to join in such litigation.

12.4. Any limitation of the indemnities payable by either party by virtue of this clause shall be as stated in paragraph K of the Appendix.

12.5. Save as provided in this clause the Purchaser shall have no claim against the Vendor in respect of personal injury or damage to property or any losses, damages or expenses suffered by the Purchaser resulting from the erection operations or any delay therein unless it is shown from the circumstances of the case that the Vendor has been guilty of "gross misconduct" as defined in paragraph 9.17 of General Conditions No. 188.

**Appendix**

(to be completed by parties to the Contract)

*Paragraph of  
Additional Clauses*

- |   |                                     |
|---|-------------------------------------|
| J. Duration of interruption in erection at the expiry of which the Vendor is authorized to recall his supervising engineers | 11.1 . . . . . months               |
| K. Maximum indemnities payable by the parties   | 12.4 . . . . . (in agreed currency) |

## *Annex XIX*

### GENERAL CONDITIONS FOR THE ERECTION OF PLANT AND MACHINERY ABROAD, No. 188 D\*

*Prepared by The Secretariat of the United Nations Economic Commission for Europe, Geneva,  
August 1963*

#### 1. Preamble

1.1. These general conditions shall apply if the parties refer to them in their contract, save as varied by express agreement accepted in writing by both parties.

1.2. In these general conditions the expression "erection of plant and machinery abroad" relates to the following cases:

- (a) the case of contract whereby an undertaking or consortium of undertakings (referred to in these general conditions as the "client"), having entered into a comprehensive agreement for the supply and erection of plant and machinery, sub-contracts the erection or part of the erection to another undertaking (referred to in these general conditions as the "erector");
- (b) the case of a contract by which a works owner (referred to in these general conditions as the "client") wishes to have plant and machinery which he has bought elsewhere erected by an erector;
- (c) the case of a contract whereby an erection undertaking contracts to erect plant and machinery manufactured by the client himself.

1.3. These general conditions shall not apply to erection contracts other than those referred to in paragraph 2 hereof or to operations connected with the erection contract, such as surveying contracts or contracts for the management or supervision of the work.

#### 2. Formation of Contract

2.1. The contract shall be deemed to have been entered into when, upon receipt of a firm offer from one of the parties, the other party has sent an acceptance in writing within the time limit (if any) fixed by the first party.

#### 3. Drawings and Descriptive Documents

3.1. The client shall furnish free of charge to the erector, before the commencement of the work, any information, plans or drawings required for erection. Such plans, drawings and documents may not be reproduced or copied, nor may they be transmitted or communicated to third parties.

3.2. If the information, plans or drawings required for the erection have not been furnished to the erector, or, if they do not contain the necessary details, the erector shall himself prepare such plans or drawings and shall submit them to the client for approval. The plans and drawings so approved shall become the specifications for the erection of the plant.

\*These general conditions are applicable at the option of the parties on the same basis as the General Conditions for the erection of plant and machinery abroad No. 574 D.  
The French, English and Russian texts are equally authentic.

#### 4. Local Laws and Regulations

4.1. Unless the erector is an undertaking established in the country in which the erection is to take place, the client shall inform the erector fully, and not later than at the time of the conclusion of the contract, of the local laws and regulations applicable to the erection and to the taxes and dues chargeable in connexion therewith.

4.2. If, in consequence of any change in the said laws and regulations which occur after the date of the formation of the contract, the cost of the erection is increased or reduced, the amount of the increase or reduction shall be added to or deducted from the price, as the case may be.

#### 5. Working Conditions

5.1. Unless the client has informed the erector to the contrary, the price for the erection shall be deemed to have been agreed upon on the assumption that the following conditions are fulfilled:

- (a) the erection will not be carried out in unhealthy or dangerous sites;
- (b) the erector's employees will be able to obtain suitable and convenient board and lodging in the neighbourhood of the site and have access to adequate medical services;
- (c) such equipment, consumable stores, water and power as are specified in the contract will be available to the erector on the site in good time and, except as otherwise agreed, free of charge to the erector;
- (d) the client will provide the erector (free of charge, unless otherwise agreed) with closed or guarded premises on or near the site as a protection against the theft and deterioration of the plant to be erected, of the tools and equipment required therefor, and of the clothing of the erector's employees;
- (e) the erector will not be required to undertake any construction or demolition work, or to take any other unusual measures for moving the plant from the point of unloading to the point on the site where it is to be erected.

Any departure from the conditions mentioned in this paragraph shall attract an extra charge.

#### 6. Erection on a Time Basis and Lump-sum Erection

6.1. If the erection is carried out on a time basis, the following items shall be charged separately:

- (a) all travelling expenses incurred by the erector in respect of his employees and the transport of their equipment and personal effects (within reasonable limits) in accordance with the specified method and class of travel where these are specified in the contract;
- (b) the living expenses, including any appropriate allowances, of the erector's employees for each day's absence from their homes, including non-working days and holidays;
- (c) the time worked, which shall be calculated by reference to the number of hours certified as worked in the time-sheets signed by the client. Overtime and work on Sundays, holidays and at night will be charged at the special rates mentioned in the contract. Save as otherwise provided, the hourly rates cover the wear and tear and depreciation of the erector's tools and light equipment;
- (d) time necessarily spent on:
  - (i) preparation and formalities incidental to the outward and homeward journeys;
  - (ii) the outward and homeward journeys;
  - (iii) daily travel morning and evening between lodgings and the site if it exceeds half an hour and there are no suitable lodgings closer to the site;
  - (iv) waiting when work is prevented by circumstances for which the erector is not responsible under the contract;
- (e) any expenses incurred by the erector in accordance with the contract, in connexion with the provision of equipment by him, including where appropriate a charge for the use of the erector's own heavy equipment;
- (f) any taxes or dues levied on the invoice and paid by the erector in the country where erection takes place.

6.2. If the erection is carried out for a lump sum, the quoted price includes all the items above mentioned. Nevertheless, if the erection is prolonged for any cause for which the client or any of

his contractors other than the erector is responsible and if as a result the work of the erector's employees is suspended or added to, a charge will be made for any idle time, any extra work, any extra living expenses of the erector's employees and the cost of any extra journey.

#### **7. Preparatory Work**

7.1. The plant must be on the site in good time. The client must provide, in good time, suitable access to the site for the plant and all necessary equipment and furnish the erector with all information required for making all necessary connexions to the plant.

7.2. If the client is responsible for all preparatory work, it must be completed in good time.

7.3. If the erector is responsible for the foundations work, the client shall furnish him in good time with all necessary information—relating, unless otherwise agreed, only to the work—for preparing suitable foundations. Any expenses resulting from an error or omission in the information furnished by the client shall be borne by the client.

#### **8. Liaison Agents**

8.1. The erector and the client shall each designate in writing a competent representative to be his channel of communication with the other party on the day-to-day execution of the work on the site.

8.2. Each such representative shall be present on or near the site during working hours.

#### **9. Additional Labour**

9.1. If the erector so requires in good time, the client shall make available to the erector free of charge such skilled and unskilled labour as is provided for in the contract and, within reasonable limits, any additional unskilled labour required, even if not provided for in the contract.

#### **10. Safety Regulations**

10.1. The client shall notify the erector in full of the safety regulations which the client imposes on his own employees and the erector shall secure the observance by his employees of such safety regulations.

10.2. If breaches of these regulations come to the notice of the client, he shall inform the erector in writing forthwith, and may forbid persons guilty of such breaches entry to the site.

10.3. Each party shall inform the other in full of any special dangers which the execution of the work may entail.

#### **11. Overtime**

11.1. Any overtime and the conditions thereof shall, within the limits of the laws and regulations of the erector's country and of the country in which the erection is carried out, be as agreed between the parties.

#### **12. Work Outside the Contract**

12.1. The client shall not be entitled to use the erector's employees on any work unconnected with the subject-matter of the contract without the previous consent of the erector. If the erector so consents, he shall not be under any liability in respect of such work, and the client shall be responsible for the safety of the erector's employees while employed on such work.

#### **13. Right of Inspection**

13.1. Until the work is taken over and during any work resulting from the operation of the guarantee, the erector shall have the right at any time during the hours of work on the site to

inspect the work at his own expense. In proceeding to the site, the inspectors shall observe the regulations as to movement in force on the client's premises.

13.2. Any person duly authorized by the client shall also have the right to inspect the work during working hours, provided that such inspection shall entail no expense for the erector.

#### 14. Delivery and Completion

14.1. Unless otherwise agreed, the completion period shall run from the most recent of the following dates:

- (a) the date of the formation of the contract as defined in clause 2;
- (b) the date on which the erector receives notice of the grant of an authorization for the entry of his personnel, if such authorization is required in the country of erection;
- (c) the date on which the erector receives notice of the grant of an authorization for the import of equipment necessary for the erection;
- (d) the date of the receipt by the erector of such payment in advance of erection as is stipulated in the contract.

14.2. Should delay in completion be caused by any of the circumstances mentioned in clause 20 or by an act or omission on the part of the client and whether such cause occur before or after the time or extended time for completion, there shall be granted, subject to the provisions of paragraph 5 hereof, such extension of the completion period as is reasonable having regard to all the circumstances of the case.

14.3. If a fixed time for completion is provided for in the contract, and the erector fails to complete the work within such time or any extension thereof granted under paragraph 2 hereof, the client shall be entitled, on giving to the erector within a reasonable time notice in writing, to claim a reduction in the price payable under the contract, unless it can be reasonably concluded from the circumstances of the particular case that the client has suffered no loss. Such reduction shall be equal to the percentage, specified in paragraph A of the Appendix, of the price payable under the contract for the erection of such part of the works as could not be put to the use intended owing to delay in completion. It shall be calculated for each complete week of delay commencing on the due date of completion but shall not exceed the sum named in paragraph B of the Appendix or, if no sum is specified, 75 per cent of the price payable under the contract for the erection of such part of the plant as cannot be used as intended owing to delay in completion. Such reduction shall be allowed when a payment becomes due on or after completion. Save as provided in paragraph 5 hereof, the said reduction shall be to the exclusion of any other remedy of the client in respect of the erector's failure to complete as aforesaid.

14.4. If the time for completion mentioned in the contract is an estimate only, either party may after the expiration of two-thirds of such estimated time require the other party in writing to agree a fixed time.

If the parties fail to agree, either party may have recourse to arbitration, in accordance with the provisions of clause 23, to determine a reasonable time for completion and the time so determined shall be deemed to be the fixed time for completion provided for in the contract and paragraph 3 hereof shall apply accordingly.

14.5. If any portion of the work in respect of which the client has become entitled to the maximum reduction provided for in paragraph 3 hereof, or in respect of which he would have been so entitled had he given the notice referred to therein, remains uncompleted, the client may by notice in writing to the erector require him to complete and by such last-mentioned notice fix a final time for completion which shall be reasonable taking into account such delay as has already occurred. If for any cause other than one for which the client or some other supplier, contractor, builder or erector employed by him is responsible, the erector fails to complete within such time, the client shall be entitled by notice in writing to the erector, and without requiring the consent of any court, to terminate the contract in respect of such portion of the work and thereupon to recover from the erector any loss suffered by the client by reason of the failure of the erector as aforesaid up to an amount not exceeding the sum named in paragraph C of the Appendix or, if no sum is specified, up to 75 per cent of the price payable under the contract for the erection of such part of the plant as cannot be used as intended owing to delay in completion.



### 15. Payment

- 15.1. Payment shall be made in the manner and at the time or times agreed by the parties.
- 15.2. Payments made on account by the client shall be applied against the price of the work ordered and shall not constitute deposits the renunciation of which would entitle the parties to terminate the contract.
- 15.3. A payment conditional on the fulfilment of an obligation by the erector shall not be due until such obligation has been fulfilled, unless the failure of the erector is due to an act or omission on the part of the client.
- 15.4. If the client delays in making any payment, the erector may postpone the fulfilment of his own obligations until such payment is made, unless the failure of the client is due to an act or omission of the erector.
- 15.5. If the client's delay in making any payment is due to one of the circumstances mentioned in clause 20, the erector shall not be entitled to any interest on the sum due.
- 15.6. Save as aforesaid, if the client delays in making any payment, the erector shall on giving to the client within a reasonable time notice in writing be entitled to the payment of interest on the sum due at the rate fixed in paragraph D of the Appendix from the date on which such sum became due. If at the end of the period fixed in paragraph E of the Appendix the client has not paid the sum due, the erector shall be entitled by notice in writing to the client, and without requiring the consent of any court, to terminate the contract and thereupon to recover from the client the amount of his loss up to the sum mentioned in paragraph F of the Appendix.

### 16. Acceptance of Erection

- 16.1. The erector shall notify the client in writing when the work will be ready for acceptance and such notification shall be given in sufficient time to enable the client to make any necessary arrangements. The date of the acceptance shall be fixed by agreement between the erector and the client. The tests shall take place in the presence of both parties.
- 16.2. If expressly agreed in the contract, the acceptance will include tests which may be carried out separately or at the same time as tests for taking over the plant as a whole.
- 16.3. If in the course of the acceptance or of the taking-over tests it is found that the work is defective as a result of defective mounting, assembly or connexion of the plant supplied to the erector, the erector shall with all speed and at his own expense make good the defects and thereafter, if the client so requires, the acceptance and/or the tests shall be repeated at the expense of the erector.

### 17. Taking-over of the Erection

- 17.1. As soon as the work has been completed in accordance with the contract and has been accepted without any defect for which the erector is responsible having been found, the client shall be deemed to have taken over the work so far as the erector is concerned and the guarantee period shall start to run. The client shall thereupon issue a certificate (herein called a "taking-over certificate") in which he shall certify the date on which the work was completed and passed the tests.
- 17.2. If the client does not take the steps necessary for the acceptance, the work shall be deemed to have been taken over and the guarantee period shall start to run on a written notice to that effect being given by the erector.
- 17.3. If by reason of difficulties encountered by the client (whether or not covered by clause 20) it becomes impossible to proceed to the acceptance, it shall be postponed for a period not exceeding six months, or such other period as the parties agree.

### 18. Guarantee

- 18.1. The erector undertakes to remedy at his expense and with all speed, subject to the provisions set out below, any defect in the mounting, assembly, or connexion of plant furnished to him. If, owing to such defects, parts used in the erection are rendered defective, the erector shall also reimburse the client's expenses in respect of the replacement or repair of the defective

parts, up to the sum named in paragraph G of the Appendix or, if no sum is specified, up to the agreed price of the erection.

18.2. The erector's undertaking under paragraph 18.1. is limited to defects which appear during the period (hereinafter called "the guarantee period") specified in paragraph H of the Appendix and commencing on taking over.

18.3. In order to be able to avail himself of his rights under this clause the client shall notify the erector in writing without delay of any defects that have appeared and shall give him every opportunity of inspecting and remedying them.

18.4. If the erector refuses to fulfil his obligations under this clause or fails to proceed with due diligence after being required so to do, the client may proceed to do the necessary work at the erector's risk and expense, provided that he does so in a reasonable manner.

18.5. The erector's liability does not cover defects arising either out of plant erected, or out of a design imposed or modified by the client.

18.6. After taking over and save as in this clause expressed, the erector shall be under no liability even in respect of defects due to causes existing before taking over. It is expressly agreed that the client shall have no claim in respect of personal injury or of damage to property not the subject matter of the contract arising after taking over nor for loss of profit unless it is shown from the circumstances of the case that the erector has been guilty of gross misconduct.

18.7. "Gross misconduct" does not comprise any and every lack of proper care or skill, but means an act or omission on the part of the erector implying either a failure to pay due regard to serious consequences which a conscientious erector would normally foresee as likely to ensue, or a deliberate disregard of any consequences of such act or omission.

#### 19. Liability for Personal Injury and Damage to Property

19.1. In the event of personal injury or damage to property occurring before all the work has been taken over, the erector's liabilities shall be determined as follows:

- (a) The erector shall at his own expense make good any loss or damage to the erected plant during the execution of the work if such loss or damage is caused by an act or omission of the erector;
- (b) In respect of damage to the client's property other than the erected plant, the erector shall indemnify the client to the extent that such damage was caused by the erector or by the failure of equipment or tools provided by the erector for the purposes of erection, if the circumstances show that the erector failed to use proper skill and care.
- (c)
  - (i) In respect of personal injury, the respective liabilities of the client and of the erector towards the injured person shall be governed by the law of the country where the injury occurred;
  - (ii) If the injured person brings a claim against the client, the erector shall indemnify the client against such claim to the extent that the injury was due to any of the causes mentioned in sub-paragraph (b) hereof;
  - (iii) If the injured person brings a claim against the erector, the client shall, to the extent permitted by the law of the country where the injury occurred, indemnify the erector against such claim save to the extent that, by the operation of sub-paragraph (c) (ii) hereof, the erector would have been liable to indemnify the client had the claim been brought against the client.
- (d) In respect of damage to property of third parties, the provisions of sub-paragraph (c) hereof shall apply *mutatis mutandis*.
- (e) The provisions of this paragraph concerning the liability of the parties to the contract shall also apply to their respective employees. However, in the case of additional labour furnished by the client under paragraph 9.1, the erector shall be liable in respect of his orders and instructions if they were incorrect, badly expressed or given to a person deemed to be unqualified.

19.2. In order to avail himself of his rights under sub-paragraphs (c) and (d) of paragraph 19.1. the party against whom a claim is made must notify the other of such claim and must permit the other, if the other so wishes, to conduct all negotiations for the settlement of such claim and to act in his stead or, to the extent permitted by the law of the country where the action is brought, to join in such litigation.

19.3. Any limitation of the indemnities payable by either party by virtue of this clause shall be as stated in paragraph I of the Appendix.

19.4. The provisions of this clause shall apply equally while the erector is on the site in fulfilment of an obligation under clause 18.

## 20. Reliefs

20.1. The following shall be considered as causes of relief if they supervene after the formation of the contract and impede its performance: industrial disputes and any other circumstances (e.g. fire, mobilization, requisition, embargo, currency restrictions, restrictions on the grant of an entry permit for indispensable personnel of the erector, insurrection, shortage of transport, general shortage of materials and restrictions in the use of power) which are beyond the control of the parties.

20.2. The party wishing to claim relief by reason of any of the said circumstances shall notify the other party in writing without delay of the occurrence and of the cessation of these circumstances.

20.3. The effects of the said circumstances, so far as they affect the timely performance of their obligations by the parties, are defined in clauses 14 and 15. Save as provided in paragraphs 14.5 and 15.6, if, by reason of any of the said circumstances, the performance of the contract within a reasonable time becomes impossible, either party shall be entitled to terminate the contract by notice in writing to the other party without requiring the consent of any court.

20.4. If the contract is terminated in accordance with paragraph 3 hereof, the division of the expenses incurred in respect of the contract shall be determined by agreement between the parties.

20.5. In default of agreement the arbitrator shall apportion the said expenses between the parties in such manner as to him seems fair and reasonable, having regard to all the circumstances of the case.

## 21. Limitation of Damages

21.1. Where either party is liable in damages to the other, these shall not exceed the damage which the party in default could reasonably have foreseen at the time of the formation of the contract.

21.2. The party who sets up a breach of contract shall be under a duty to take all necessary measures to mitigate the loss which has occurred provided that he can do so without unreasonable inconvenience or cost. Should he fail to do so, the party guilty of the breach may claim a reduction in the damages.

## 22. Rights at Termination

22.1. Termination of the contract, from whatever cause arising, shall be without prejudice to the rights of the parties accrued under the contract up to the time of termination.

## 23. Arbitration and Law Applicable

23.1. Any dispute arising out of the contract shall be finally settled, in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by one or more arbitrators designated in conformity with those Rules.

23.2. Unless otherwise agreed, the contract shall be governed by the law of the country where the erection is carried out.

23.3. If the parties expressly so agree, but not otherwise, the arbitrators shall, in giving their ruling, act as "amisables compositeurs".

## Appendix

(To be completed by the parties to the contract)

A.	Percentage of reduction for each week's delay	14.3	(in the agreed currency)
B.	Maximum amount of above reduction	14.3	(in the agreed currency)
C.	Maximum amount recoverable for non-completion	14.5	(in the agreed currency)
D.	Rate of interest on overdue payments	15.6	... per cent per annum
E.	Period of delay in payment authorizing termination by erector	15.6	... months
F.	Maximum amount recoverable on termination by erector for failure to make payment	15.6	(in the agreed currency)
G.	Maximum indemnities payable by erector for repair or replacement of defective parts	18.1	(in the agreed currency)
H.	Guarantee period for erection	18.2	... months
I.	Maximum indemnities for personal injury or damage	19.3	(in the agreed currency)

## SUPPLEMENTARY CLAUSE

## Price Revision

Should any change occur in the cost of the relevant materials and/or wages during the performance of the contract, the agreed prices shall be subject to revision on the basis of the following formula:

$$P1 = \frac{Po}{100} \left( a + b \frac{M1}{M0} + c \frac{S1}{S0} \right)$$

where:

- P1 = final price of invoicing  
 Po = initial price as stipulated in the contract and as prevailing at the date of \_\_\_\_\_ (1)  
 M1 = mean (2) of the prices (or price indices) for (type of materials concerned \_\_\_\_\_) over the period \_\_\_\_\_ (3)  
 M0 = prices (or price indices) for the same materials at the date stipulated above for Po.  
 S1 = mean (2) of the wages (including social charges) or relevant indices (4) in respect of \_\_\_\_\_ (specify categories of labour and social charges) over the period \_\_\_\_\_ (3)  
 S0 = wages (including social charges) or relevant indices (4) in respect of the same categories at the date stipulated above for Po.

a, b, c, represent the contractually agreed percentage of the individual elements of the initial price, which adds up to 100.

$$(a + b + c = 100)$$

- a = fixed proportion = \_\_\_\_\_  
 b = percentage proportion of materials = \_\_\_\_\_  
 c = percentage proportion of wages (including social charges) = \_\_\_\_\_

Where necessary, b (and if need be, c) can be broken down into as many partial percentages (b1, b2, b3 \_\_\_\_\_) as there are variables taken into account (b1 + b2 + b3 + bn = b).

- (1) It is recommended that the parties should, as far as possible, adopt as the initial price the price prevailing at the date of the contract and not at an earlier date. This is normally the contract price less cost of packing, transport and insurance.  
 (2) Arithmetical or weighted.  
 (3) Specify the datum period, which may be defined as part or the whole of the delivery period.  
 (4) If legal social charges are covered by the Index, they need not be taken into account again.

*Documentation*

For the purpose of determining the values of materials and wages, the parties agree to use the following documents as sources of reference:

1. Materials: prices \_\_\_\_\_ (type of materials)  
(or price indices)  
published by \_\_\_\_\_  
under the headings \_\_\_\_\_
2. Wages: wages (including related social charges)  
(or relevant indices)  
published by \_\_\_\_\_  
under the headings \_\_\_\_\_ (5)

*Rules for applying the clause*

In the case of partial deliveries which are invoiced separately, the final price shall be calculated separately for each such delivery.

*Period of application of the clause*

The revision clause shall cover the delivery period fixed in the contract, together with any extension thereof granted under clause 20.2., but shall in no case apply after the date on which the erection is completed.

*Tolerances*

Prices shall not be revised unless the application of the formula produces a plus or minus variation of \_\_\_\_\_ (6)

*Saving clause*

If the parties wish the revision formula to be adjusted or replaced by a more accurate method of calculation when the plus or minus variation exceeds a certain percentage, they shall expressly so agree.

(5) Indices relating specifically to the engineering and electrical industries should be used as far as possible.

(6) State the percentage plus or minus variation which must be exceeded before the formula is applied.

*Annex XX*

**UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS<sup>a</sup>**

**GENERAL PROVISIONS AND DEFINITIONS**

(a) These provisions and definitions and the following articles apply to all documentary credits and are binding upon all parties thereto unless otherwise expressly agreed.

(b) For the purposes of such provisions, definitions and articles the expressions "documentary credit(s)" and "credit(s)" used therein mean any arrangement, however named or described, whereby a bank (the issuing bank), acting at the request and in accordance with the instructions of a customer (the applicant for the credit),

- (i) is to make payment to or to the order of a third party (the beneficiary), or is to pay, accept or negotiate bills of exchange (drafts) drawn by the beneficiary, or
- (ii) authorises such payments to be made or such drafts to be paid, accepted or negotiated by another bank,

against stipulated documents, provided that the terms and conditions of the credit are complied with.

(c) Credits, by their nature, are separate transactions from the sales or other contracts on which they may be based and banks are in no way concerned with or bound by such contracts.

(d) Credit instructions and the credits themselves must be complete and precise.

In order to guard against confusion and misunderstanding, issuing banks should discourage any attempt by the applicant for the credit to include excessive detail.

(e) The bank first entitled to exercise the option available under article 32 (b) shall be the bank authorised to pay, accept or negotiate under a credit. The decision of such bank shall bind all parties concerned.

A bank is authorised to pay or accept under a credit by being specifically nominated in the credit.

A bank is authorised to negotiate under a credit either

- (i) by being specifically nominated in the credit, or
- (ii) by the credit being freely negotiable by any bank.

(f) A beneficiary can in no case avail himself of the contractual relationships existing between banks or between the applicant for the credit and the issuing bank.

**A. FORM AND NOTIFICATION OF CREDITS**

*Article 1*

(a) Credits may be either

- (i) revocable, or
- (ii) irrevocable.

(b) All credits, therefore, should clearly indicate whether they are revocable or irrevocable.

(c) In the absence of such indication the credit shall be deemed to be revocable.

*Article 2*

A revocable credit may be amended or cancelled at any moment without prior notice to the beneficiary. However, the issuing bank is bound to reimburse a branch or other bank to which

<sup>a</sup>Revised text adopted by the International Chamber of Commerce Executive Committee that will enter into force on 1 October 1975. Copyright ICC, Paris.

such a credit has been transmitted and made available for payment, acceptance or negotiation, for any payment, acceptance or negotiation complying with the terms and conditions of the credit and any amendments received up to the time of payment, acceptance or negotiation made by such branch or other bank prior to receipt by it of notice of amendment or of cancellation.

*Article 3*

- (a) An irrevocable credit constitutes a definite undertaking of the issuing bank, provided that the terms and conditions of the credit are complied with:
- (i) to pay, or that payment will be made, if the credit provides for payment, whether against a draft or not;
  - (ii) to accept drafts if the credit provides for acceptance by the issuing bank or to be responsible for their acceptance and payment at maturity if the credit provides for the acceptance of drafts drawn on the applicant for the credit or any other drawee specified in the credit;
  - (iii) to purchase/negotiate, without recourse to drawers and/or bona fide holders, drafts drawn by the beneficiary, at sight or at a tenor, on the applicant for the credit or on any other drawee specified in the credit, or to provide for purchase/negotiation by another bank, if the credit provides for purchase/negotiation.
- (b) An irrevocable credit may be advised to a beneficiary through another bank (the advising bank) without engagement on the part of that bank, but when an issuing bank authorises or requests another bank to confirm its irrevocable credit and the latter does so, such confirmation constitutes a definite undertaking of the confirming bank in addition to the undertaking of the issuing bank, provided that the terms and conditions of the credit are complied with:
- (i) to pay, if the credit is payable at its own counters, whether against a draft or not, or that payment will be made if the credit provides for payment elsewhere;
  - (ii) to accept drafts if the credit provides for acceptance by the confirming bank, at its own counters, or to be responsible for their acceptance and payment at maturity if the credit provides for the acceptance of drafts drawn on the applicant for the credit or any other drawee specified in the credit;
  - (iii) to purchase/negotiate, without recourse to drawers and/or bona fide holders, drafts drawn by the beneficiary, at sight or at a tenor, on the issuing bank, or on the applicant for the credit or on any other drawee specified in the credit, if the credit provides for purchase/negotiation.
- (c) Such undertakings can neither be amended nor cancelled without the agreement of all parties thereto. Partial acceptance of amendments is not effective without the agreement of all parties thereto.

*Article 4*

- (a) When an issuing bank instructs a bank by cable, telegram or telex to advise a credit, and intends the mail confirmation to be the operative credit instrument, the cable, telegram or telex must state that the credit will only be effective on receipt of such mail confirmation. In this event, the issuing bank must send the operative credit instrument (mail confirmation) and any subsequent amendments to the credit of the beneficiary through the advising bank.
- (b) The issuing bank will be responsible for any consequences arising from its failure to follow the procedure set out in the preceding paragraph.
- (c) Unless a cable, telegram or telex states "details to follow" (or words of similar effect), or states that the mail confirmation is to be the operative credit instrument, the cable, telegram or telex will be deemed to be the operative credit instrument and the issuing bank need not send the mail confirmation to the advising bank.

*Article 5*

When a bank is instructed by cable, telegram or telex to issue, confirm or advise a credit similar in terms to one previously established and which has been the subject of amendments, it shall be understood that the details of the credit being issued, confirmed or advised will be transmitted to the beneficiary excluding the amendments, unless the instructions specify clearly any amendments which are to apply.

*Article 6*

If incomplete or unclear instructions are received to issue, confirm or advise a credit, the bank requested to act on such instructions may give preliminary notification of the credit to the beneficiary for information only and without responsibility; in this event the credit will be issued, confirmed or advised only when the necessary information has been received.

**B. LIABILITIES AND RESPONSIBILITIES***Article 7*

Banks must examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit. Documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in accordance with the terms and conditions of the credit.

*Article 8*

(a) In documentary credit operations all parties concerned deal in documents and not in goods.

(b) Payment, acceptance or negotiation against documents which appear on their face to be in accordance with the terms and conditions of a credit by a bank authorised to do so, binds the party giving the authorisation to take up the documents and reimburse the bank which has effected the payment, acceptance or negotiation.

(c) If, upon receipt of the documents, the issuing bank considers that they appear on their face not to be in accordance with the terms and conditions of the credit, that bank must determine, on the basis of the documents alone, whether to claim that payment, acceptance or negotiation was not effected in accordance with the terms and conditions of the credit.

(d) The issuing bank shall have a reasonable time to examine the documents and to determine as above whether to make such a claim.

(e) If such claim is to be made, notice to that effect, stating the reasons therefor, must, without delay, be given by cable or other expeditious means to the bank from which the documents have been received (the remitting bank) and such notice must state that the documents are being held at the disposal of such bank or are being returned thereto.

(f) If the issuing bank fails to hold the documents at the disposal of the remitting bank, or fails to return the documents to such bank, the issuing bank shall be precluded from claiming that the relative payment, acceptance or negotiation was not effected in accordance with the terms and conditions of the credit.

(g) If the remitting bank draws the attention of the issuing bank to any irregularities in the documents or advises such bank that it has paid, accepted or negotiated under reserve or against a guarantee in respect of such irregularities, the issuing bank shall not thereby be relieved from any of its obligations under this article. Such guarantee or reserve concerns only the relations between the remitting bank and the beneficiary.

*Article 9*

Banks assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents, or for the general and/or particular conditions stipulated in the documents or superimposed thereon; nor do they assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods represented thereby, or for the good faith or acts and/or omissions, solvency, performance or standing of the consignor, the carriers or the insurers of the goods or any other person whomsoever.

*Article 10*

Banks assume no liability or responsibility for the consequences arising out of delay and/or loss in transit of any messages, letters or documents, or for delay, mutilation or other errors



arising in the transmission of cables, telegrams or telex. Banks assume no liability or responsibility for errors in translation or interpretation of technical terms, and reserve the right to transmit credit terms without translating them.

*Article 11*

Banks assume no liability or responsibility for consequences arising out of the interruption of their business by Acts of God, riots, civil commotions, insurrections, wars or any other causes beyond their control or by any strikes or lock-outs. Unless specifically authorised, banks will not effect payment, acceptance or negotiation after expiration under credits expiring during such interruption of business.

*Article 12*

(a) Banks utilising the services of another bank for the purpose of giving effect to the instructions of the applicant for the credit do so for the account and at the risk of the latter.

(b) Banks assume no liability or responsibility should the instructions they transmit not be carried out, even if they have themselves taken the initiative in the choice of such other bank.

(c) The applicant for the credit shall be bound by and liable to indemnify the banks against all obligations and responsibilities imposed by foreign laws and usages.

*Article 13*

A paying or negotiating bank which has been authorised to claim reimbursement from a third bank nominated by the issuing bank and which has effected such payment or negotiation shall not be required to confirm to the third bank that it has done so in accordance with the terms and conditions of the credit.

**C. DOCUMENTS**

*Article 14*

(a) All instructions to issue, confirm or advise a credit must state precisely the documents against which payment, acceptance or negotiation is to be made.

(b) Terms such as "first class", "well known", "qualified" and the like shall not be used to describe the issuers of any documents called for under credits and if they are incorporated in the credit terms banks will accept documents as tendered.

**C.1. Documents Evidencing Shipment or Despatch or Taking in Charge  
(Shipping Documents)**

*Article 15*

Except as stated in Article 20, the date of the Bill of Lading, or the date of any other document evidencing shipment or despatch or taking in charge, or the date indicated in the reception stamp or by notation on any such document, will be taken in each case to be the date of shipment or despatch or taking in charge of the goods.

*Article 16*

(a) If words clearly indicating payment or prepayment of freight, however named or described, appear by stamp or otherwise on documents evidencing shipment or despatch or taking in charge they will be accepted as constituting evidence of payment of freight.

(b) If the words "freight pre-payable" or "freight to be prepaid" or words of similar effect appear by stamp or otherwise on such documents they will not be accepted as constituting evidence of the payment of freight.

(c) Unless otherwise specified in the credit or inconsistent with any of the documents presented under the credit, banks will accept documents stating that freight or transportation charges are payable on delivery.

(d) Banks will accept shipping documents bearing reference by stamp or otherwise to costs additional to the freight charges, such as costs of, or disbursements incurred in connection with, loading, unloading or similar operations, unless the conditions of the credit specifically prohibit such reference.

*Article 17*

Shipping documents which bear a clause on the face thereof such as "shipper's load and count" or "said by shipper to contain" or words of similar effect, will be accepted unless otherwise specified in the credit.

*Article 18*

(a) A clean shipping document is one which bears no superimposed clause or notation which expressly declares a defective condition of the goods and/or the packaging.

(b) Banks will refuse shipping documents bearing such clauses or notations unless the credit expressly states the clauses or notations which may be accepted.

**C.1.1. Marine Bills of Lading**

*Article 19*

(a) Unless specifically authorised in the credit, Bills of Lading of the following nature will be rejected:

- (i) Bills of Lading issued by forwarding agents.
- (ii) Bills of Lading which are issued under and are subject to the conditions of a Charter-Party.
- (iii) Bills of Lading covering shipment by sailing vessels.

(b) However, subject to the above and unless otherwise specified in the credit, Bills of Lading of the following nature will be accepted:

- (i) "Through" Bills of Lading issued by shipping companies or their agents even though they cover several modes of transport.
- (ii) Short Form Bills of Lading (i.e. Bills of Lading issued by shipping companies or their agents which indicate some or all of the conditions of carriage by reference to a source or document other than the Bill of Lading).
- (iii) Bills of Lading issued by shipping companies or their agents covering unitized cargoes, such as those on pallets or in Containers.

*Article 20*

(a) Unless otherwise specified in the credit, Bills of Lading must show that the goods are loaded on board a named vessel or shipped on a named vessel.

(b) Loading on board a named vessel or shipment on a named vessel may be evidenced either by a Bill of Lading bearing wording indicating loading on board a named vessel or shipment on a named vessel, or by means of a notation to that effect on the bill of lading signed or initialled and dated by the carrier or his agent, and the date of this notation shall be regarded as the date of loading on board the named vessel or shipment on the named vessel.

*Article 21*

(a) Unless transshipment is prohibited by the terms of the credit, Bills of Lading will be accepted which indicate that the goods will be transhipped en route, provided the entire voyage is covered by one and the same Bill of Lading.

(b) Bills of Lading incorporating printed clauses stating that the carriers have the right to tranship will be accepted notwithstanding the fact that the credit prohibits transshipment.

*Article 22*

(a) Banks will refuse a Bill of Lading stating that the goods are loaded on deck, unless specifically authorised in the credit.

(b) Banks will not refuse a Bill of Lading which contains a provision that the goods may be carried on deck, provided it does not specifically state that they are loaded on deck.

**C.1.2. Combined Transport Documents**

*Article 23*

(a) If the credit calls for a combined transport document, i.e. one which provides for a combined transport by at least two different modes of transport, from a place at which the goods are taken in charge to a place designated for delivery, or if the credit provides for a combined transport, but in either case does not specify the form of document required and/or the issuer of such document, banks will accept such documents as tendered.

(b) If the combined transport includes transport by sea the document will be accepted although it does not indicate that the goods are on board a named vessel, and although it contains a provision that the goods, if packed in a Container, may be carried on deck, provided it does not specifically state that they are loaded on deck.

**C.1.3. Other Shipping Documents etc.**

*Article 24*

Banks will consider a Railway or Inland Waterway Bill of Lading or Consignment Note, Counterfoil Waybill, Postal Receipt, Certificate of Mailing, Air Mail Receipt, Air Waybill, Air Consignment Note or Air Receipt, Trucking Company Bill of Lading or any other similar document as regular when such document bears the reception stamp of the carrier or his agent, or when it bears a signature purporting to be that of the carrier or his agent.

*Article 25*

Where a credit calls for an attestation or certification of weight in the case of transport other than by sea, banks will accept a weight stamp or declaration of weight superimposed by the carrier on the shipping document unless the credit calls for a separate or independent certificate of weight.

**C.2. Insurance Documents**

*Article 26*

(a) Insurance documents must be as specified in the credit, and must be issued and/or signed by insurance companies or their agents or by underwriters.

(b) Cover notes issued by brokers will not be accepted, unless specifically authorised in the credit.

*Article 27*

Unless otherwise specified in the credit, or unless the insurance documents presented establish that the cover is effective at the latest from the date of shipment or despatch or, in the case of combined transport, the date of taking the goods in charge, banks will refuse insurance documents presented which bear a date later than the date of shipment or despatch or, in the case of combined transport, the date of taking the goods in charge, as evidenced by the shipping documents.

*Article 28 (26)*

(a) Unless otherwise specified in the credit, the insurance document must be expressed in the same currency as the credit.

(b) The minimum amount for which insurance must be effected is the CIF value of the goods concerned. However, when the CIF value of the goods cannot be determined from the documents on their face, banks will accept as such minimum amount the amount of the drawing under the credit or the amount of the relative commercial invoice, whichever is the greater.

*Article 29*

(a) Credits should expressly state the type of insurance required and, if any, the additional risks which are to be covered. Imprecise terms such as "usual risks" or "customary risks" should not be used; however, if such imprecise terms are used, banks will accept insurance documents tendered.

(b) Failing specific instructions, banks will accept insurance cover as tendered.

*Article 30*

Where a credit stipulates "insurance against all risks", banks will accept an insurance document which contains any "all risks" notation or clause, and will assume no responsibility if any particular risk is not covered.

*Article 31*

Banks will accept an insurance document which indicates that the cover is subject to a franchise or an excess (deductible), unless it is specifically stated in the credit that the insurance must be issued irrespective of percentage.

**C.3. Commercial Invoices***Article 32*

(a) Unless otherwise specified in the credit, commercial invoices must be made out in the name of the applicant for the credit.

(b) Unless otherwise specified in the credit, banks may refuse commercial invoices issued for amounts in excess of the amount permitted by the credit.

(c) The description of the goods in the commercial invoice must correspond with the description in the credit. In all other documents the goods may be described in general terms not inconsistent with the description of the goods in the credit.

**C.4. Other Documents***Article 33*

When other documents are required, such as Warehouse Receipts, Delivery Orders, Commercial Invoices, Certificates of Origin, of Weight, of Quality or of Analysis etc. and when no further definition is given, banks will accept such documents as tendered.

**D. MISCELLANEOUS PROVISIONS****Quantity and Amount***Article 34*

(a) The words "about", "circa" or similar expressions used in connection with the amount of the credit or the quantity or the unit price of the goods are to be construed as allowing a difference not to exceed 10% more or 10% less.

(b) Unless a credit stipulates that the quantity of the goods specified must not be exceeded or reduced a tolerance of 3% more or 3% less will be permissible, always provided that the total amount of the drawings does not exceed the amount of the credit. This tolerance does not apply when the credit specifies quantity in terms of a stated number of packing units or individual items.

### Partial Shipments

#### Article 35

- (a) Partial shipments are allowed, unless the credit specifically states otherwise.
- (b) Shipments made on the same ship and for the same voyage, even if the Bills of Lading evidencing shipment "on board" bear different dates and/or indicate different ports of shipment, will not be regarded as partial shipments.

#### Article 36

If shipment by instalments within given periods is stipulated and any instalment is not shipped within the period allowed for that instalment, the credit ceases to be available for that or any subsequent instalments, unless otherwise specified in the credit.

### Expiry Date

#### Article 37

All credits, whether revocable or irrevocable, must stipulate an expiry date for presentation of documents for payment, acceptance or negotiation, notwithstanding the stipulation of a latest date for shipment.

#### Article 38

The words "to", "until", "till", and words of similar import applying to the stipulated expiry date for presentation of documents for payment, acceptance or negotiation, or to the stipulated latest date for shipment, will be understood to include the date mentioned.

#### Article 39

- (a) When the stipulated expiry date falls on a day on which banks are closed for reasons other than those mentioned in Article 11, the expiry date will be extended until the first following business day.
- (b) The latest date for shipment shall not be extended by reason of the extension of the expiry date in accordance with this Article. Where the credit stipulates a latest date for shipment, shipping documents dated later than such stipulated date will not be accepted. If no latest date for shipment is stipulated in the credit, shipping documents dated later than the expiry date stipulated in the credit or amendments thereto will not be accepted. Documents other than the shipping documents may, however, be dated up to and including the extended expiry date.
- (c) Banks paying, accepting or negotiating on such extended expiry date must add to the documents their certification in the following wording:  
"Presented for payment (or acceptance or negotiation as the case may be) within the expiry date extended in accordance with Article 39 of the Uniform Customs".

### Shipment, Loading or Despatch

#### Article 40

- (a) Unless the terms of the credit indicate otherwise, the words "departure", "despatch", "loading" or "sailing" used in stipulating the latest date for shipment of the goods will be understood to be synonymous with "shipment".
- (b) Expressions such as "prompt", "immediately", "as soon as possible" and the like should not be used. If they are used, banks will interpret them as a request for shipment within thirty days from the date on the advice of the credit to the beneficiary by the issuing bank or by an advising bank, as the case may be.
- (c) The expression "on or about" and similar expressions will be interpreted as a request for shipment during the period from five days before to five days after the specified date, both end days included.

**Presentation***Article 41*

Notwithstanding the requirement of Article 37 that every credit must stipulate an expiry date for presentation of documents, credits must also stipulate a specified period of time after the date of issuance of the bills of lading or other shipping documents during which presentation of documents for payment, acceptance or negotiation must be made. If no such period of time is stipulated in the credit, banks will refuse documents presented to them later than 21 days after the date of issuance of the Bills of Lading or other shipping documents.

*Article 42*

Banks are under no obligation to accept presentation of documents outside their banking hours.

**Date Terms***Article 43*

The terms "first half", "second half" of a month shall be construed respectively as from the 1st to the 15th, and the 16th to the last day of each month, inclusive.

*Article 44*

The terms "beginning", "middle", or "end" of a month shall be construed respectively as from the 1st to the 10th, the 11th to the 20th, and the 21st to the last day of each month, inclusive.

*Article 45*

When a bank issuing a credit instructs that the credit be confirmed or advised as available "for one month", "for six months" or the like, but does not specify the date from which the time is to run, the confirming or advising bank will confirm or advise the credit as expiring at the end of such indicated period from the date of its confirmation or advice.

**E. TRANSFER***Article 46*

(a) A transferable credit is a credit under which the beneficiary has the right to give instructions to the bank called upon to effect payment or acceptance or to any bank entitled to effect negotiation to make the credit available in whole or in part to one or more third parties (second beneficiaries).

(b) The bank requested to effect the transfer, whether it has confirmed the credit or not, shall be under no obligation to effect such transfer except to the extent and in the manner expressly consented to by such bank, and until such bank's charges in respect of transfer are paid.

(c) Bank charges in respect of transfers are payable by the first beneficiary unless otherwise specified.

(d) A credit can be transferred only if it is expressly designated as "transferable" by the issuing bank. Terms such as "divisible", "fractionnable", "assignable", and "transmissible" add nothing to the meaning of the term "transferable" and shall not be used.

(e) A transferable credit can be transferred once only. Fractions of a transferable credit (not exceeding in the aggregate the amount of the credit) can be transferred separately, provided partial shipments are not prohibited, and the aggregate of such transfers will be considered as constituting only one transfer of the credit. The credit can be transferred only on the terms and conditions specified in the original credit, with the exception of the amount of the credit, of any unit prices stated therein, and of the period of validity or period for shipment, any or all of

which may be reduced or curtailed. Additionally, the name of the first beneficiary can be substituted for that of the applicant for the credit, but if the name of the applicant for the credit is specifically required by the original credit to appear in any document other than the invoice, such requirement must be fulfilled.

(f) The first beneficiary has the right to substitute his own invoices for those of the second beneficiary, for amounts not in excess of the original amount stipulated in the credit and for the original prices if stipulated in the credit, and upon such substitution of invoices the first beneficiary can draw under the credit for the difference, if any, between his invoices and the second beneficiary's invoices. When a credit has been transferred and the first beneficiary is to supply his own invoices in exchange for the second beneficiary's invoices but fails to do so on first demand, the paying accepting or negotiating bank has the right to deliver to the issuing bank the documents received under the credit, including the second beneficiary's invoices, without further responsibility to the first beneficiary.

(g) The first beneficiary of a transferable credit can transfer the credit to a second beneficiary in the same country or in another country unless the credit specifically states otherwise. The first beneficiary shall have the right to request that payment or negotiation be effected to the second beneficiary at the place to which the credit has been transferred, up to and including the expiry date of the original credit, and without prejudice to the first beneficiary's right subsequently to substitute his own invoices for those of the second beneficiary and to claim any difference due to him.

*Article 47*

The fact that a credit is not stated to be transferable shall not affect the beneficiary's rights to assign the proceeds of such credit in accordance with the provisions of the applicable law.

## *Annex XXI*

### INCOTERMS 1953: INTERNATIONAL RULES FOR THE INTERPRETATION OF TRADE TERMS<sup>a</sup>

*Prepared by the International Chamber of Commerce (ICC, Brochure 166)*

#### EX WORKS

*(ex factory, ex mill, ex plantation, ex warehouse, etc.)*

##### A. *Seller must:*

1. Supply the goods in conformity with the contract of sale, together with such evidence of conformity as may be required by the contract.
2. Place the goods at the disposal of the buyer at the time as provided in the contract, at the point of delivery named or which is usual for the delivery of such goods and for their loading on the conveyance to be provided by the buyer.
3. Provide at his own expense the packing, if any, that is necessary to enable the buyer to take delivery of the goods.
4. Give the buyer reasonable notice as to when the goods will be at his disposal.
5. Bear the cost of checking operations (such as checking quality, measuring, weighing, counting) which are necessary for the purpose of placing the goods at the disposal of the buyer.
6. Bear all risks and expense of the goods until they have been placed at the disposal of the buyer at the time as provided in the contract, provided that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.
7. Render the buyer, at the latter's request, risk and expense, every assistance in obtaining any documents which are issued in the country of delivery and/or of origin and which the buyer may require for the purposes of exportation and/or importation (and, where necessary, for their passage in transit through another country).

##### B. *Buyer must:*

1. Take delivery of the goods as soon as they are placed at his disposal at the place and at the time, as provided in the contract, and pay the price as provided in the contract.
2. Bear all charges and risks of the goods from the time when they have been so placed at his disposal, provided that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.
3. Bear any customs duties and taxes that may be levied by reason of exportation.

<sup>a</sup>The introduction to the Incoterms sets out the following definition of the Bill of Lading: "As used in these rules the term 'bill of lading' is a shipped bill of lading, issued by or on behalf of the carrier, and is evidence of a contract of carriage as well as proof of delivery of the goods on board the vessel."

A further explanation is added: "A bill of lading may be either freight prepaid or freight payable at destination. In the former case the document is usually not obtainable until freight has been paid."

At the end of the introduction a reference clause has been inserted: "Merchants wishing to use these rules should specify that their contracts will be governed by the provisions of 'Incoterms 1953'."



4. Where he shall have reserved to himself a period within which to take delivery of the goods and/or the right to choose the place of delivery, and should he fail to give instructions in time, bear the additional costs thereby incurred and all risks of the goods from the date of the expiration of the period fixed, provided that the goods shall have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

5. Pay all costs and charges incurred in obtaining the documents mentioned in article A.7, including the cost of certificates of origin, export licence and consular fees.

## FOR-FOT

*free on rail* . . . . . (named departure point)  
*free on truck* . . . . . (named departure point)

## A. Seller must:

1. Supply the goods in conformity with the contract of sale, together with such evidence of conformity as may be required by the contract.

2. In the case of goods constituting either a wagon-load (carload, truckload) lot or a sufficient weight to obtain quantity rates for wagon loading, order in due time a wagon (car, truck) of suitable type and dimensions, equipped, where necessary, with tarpaulins, and load it at his own expense at the date or within the period fixed, the ordering of the wagon (car, truck) and the loading being carried out in accordance with the regulations of the dispatching station.

3. In the case of a load less than either a wagon-load, (carload, truckload) or a sufficient weight to obtain quantity rates for wagon loading, delivery the goods into the custody of the railway either at the dispatching station or, where such facilities are included in the rate of freight, into a vehicle provided by the railway, at the date or within the period fixed, unless the regulations of the dispatching station shall require the seller to load the goods on the wagon (car, truck).

Nevertheless, it shall be understood that if there are several stations at the point of departure, the seller may select the station which best suits his purpose, provided it customarily accepts goods for the destination nominated by the buyer, unless the buyer shall have reserved to himself the right to choose the dispatching station.

4. Subject to the provisions of article B.5 below, bear all costs and risks of the goods until such time as the wagon (car, truck) on which they are loaded shall have been delivered into the custody of the railway or, in the case provided for in article A.3, until such time as the goods shall have been delivered into the custody of the railway.

5. Provide at his own expense the customary packing of the goods, unless it is the custom of the trade to dispatch the goods unpacked.

6. Pay the costs of any checking operations (such as checking quality, measuring, weighing, counting) which shall be necessary for the purpose of loading the goods or of delivering them into the custody of the railway.

7. Give notice, without delay, to the buyer that the goods have been loaded or delivered into the custody of the railway.

8. At his own expense, provide the buyer, if customary, with the usual transport document.

9. Provide the buyer, at the latter's request and expense (see B.6), with the certificate of origin.

10. Render the buyer, at the latter's request, risk and expense, every assistance in obtaining the documents issued in the country of dispatch and/or of origin which the buyer may require for purposes of exportation and/or importation (and, where necessary, for their passage in transit through another country).

## B. Buyer must:

1. Give the seller in time the necessary instructions for dispatch.

2. Take delivery of the goods from the time when they have been delivered into the custody of the railway and pay the price as provided in the contract.

3. Bear all costs and risks of the goods (including the cost, if any, of hiring tarpaulins) from the time when the wagon (car, truck) on which the goods are loaded shall have been delivered into the custody of the railway or, in the case provided for in article A.3, from the time when the goods shall have been delivered into the custody of the railway.

4. Bear any customs duties and taxes that may be levied by reason of exportation.

5. Where he shall have reserved to himself a period within which to give the seller instructions for dispatch and/or the right to choose the place of loading, and should he fail to give instructions in time, bear the additional costs thereby incurred and all risks of the goods from the time of expiration of the period fixed, provided, however, that the goods shall have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

6. Pay all costs and charges incurred in obtaining the documents mentioned in articles A.9 and 10 above, including the cost of certificates of origin and consular fees.

#### FAS

*free alongside ship . . . . . (named port of shipment)*

##### A. Seller must:

1. Supply the goods in conformity with the contract of sale, together with such evidence of conformity as may be required by the contract.

2. Deliver the goods alongside the vessel at the loading berth named by the buyer, at the named port of shipment, in the manner customary at the port, at the date or within the period stipulated, and notify the buyer, without delay, that the goods have been delivered alongside the vessel.

3. Render the buyer at the latter's request, risk and expense, every assistance in obtaining any export licence, or other governmental authorisation necessary for the export of the goods.

4. Subject to the provisions of articles B.3 and B.4 below, bear all costs and risks of the goods until such time as they shall have been effectively delivered alongside the vessel at the named port of shipment, including the costs of any formalities which he shall have to fulfil in order to deliver the goods alongside the vessel.

5. Provide at his own expense the customary packing of the goods, unless it is the custom of the trade to ship the goods unpacked.

6. Pay the costs of any checking operations (such as checking quality, measuring, weighing, counting) which shall be necessary for the purpose of delivering the goods alongside the vessel.

7. Provide at his own expense the customary clean document in proof of delivery of the goods alongside the named vessel.

8. Provide the buyer, at the latter's request and expense (see B.5), with the certificate of origin.

9. Render the buyer, at the latter's request, risk and expense, every assistance in obtaining any documents, other than that mentioned in article A.8, issued in the country of shipment and/or of origin (excluding a bill of lading and/or consular documents) and which the buyer may require for the importation of the goods into the country of destination (and, where necessary, for their passage in transit through another country).

##### B. Buyer must:

1. Give the seller due notice of the name, loading berth of and delivery dates to the vessel.

2. Bear all the charges and risks of the goods from the time when they shall have been effectively delivered alongside the vessel at the named port of shipment, at the date or within the period stipulated, and pay the price as provided in the contract.

3. Bear any additional costs incurred because the vessel named by him shall have failed to arrive on time, or shall be unable to take the goods, or shall close for cargo earlier than the stipulated date, and all the risks of the goods from the time when the seller shall have placed them at the buyer's disposal, provided, however, that the goods shall have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

4. Should he fail to name the vessel in time or, if he shall have reserved to himself a period within which to take delivery of the goods and/or the right to choose the port of shipment, should he fail to give detailed instructions in time, bear any additional costs incurred because of such failure and all the risks of the goods from the date of expiration of the period stipulated for delivery, provided, however, that the goods shall have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

5. Pay all costs and charges incurred in obtaining the documents mentioned in articles A.3, A.8 and A.9 above.

#### FOB

*free on board . . . . . (named port of shipment)*

##### A. Seller must:

1. Supply the goods in conformity with the contract of sale, together with such evidence of conformity as may be required by the contract.

2. Deliver the goods on board the vessel named by the buyer, at the named port of shipment, in the manner customary at the port, at the date or within the period stipulated, and notify the buyer, without delay, that the goods have been delivered on board the vessel.

3. At his own risk and expense obtain any export licence or other governmental authorisation necessary for the export of the goods.

4. Subject to the provisions of article B.3 and B.4 below, bear all costs and risks of the goods until such time as they shall have effectively passed the ship's rail at the named port of shipment, including any taxes, fees or charges levied because of exportation, as well as the costs of any formalities which he shall have to fulfil in order to load the goods on board.

5. Provide at his own expense the customary packing of the goods, unless it is the custom of the trade to ship the goods unpacked.

6. Pay the costs of any checking operations (such as checking quality, measuring, weighing, counting) which shall be necessary for the purpose of delivering the goods.

7. Provide at his own expense the customary clean document in proof of delivery of the goods on board the named vessel.

8. Provide the buyer, at the latter's request and expense (see B.6), with the certificate of origin.

9. Render the buyer, at the latter's request, risk and expense, every assistance in obtaining a bill of lading and any documents, other than that mentioned in the previous article, issued in the country of shipment and/or of origin and which the buyer may require for the importation of the goods into the country of destination (and, where necessary, for their passage in transit through another country).

##### B. Buyer must:

1. At his own expense, charter a vessel or reserve the necessary space on board a vessel and give the seller due notice of the name, loading berth of and delivery dates to the vessel.

2. Bear all costs and risks of the goods from the time when they shall have effectively passed the ship's rail at the named port of shipment, and pay the price as provided in the contract.

3. Bear any additional costs incurred because the vessel named by him shall have failed to arrive on the stipulated date or by the end of the period specified, or shall be unable to take the goods or shall close for cargo earlier than the stipulated date or the end of the period specified and all the risks of the goods from the date of expiration of the period stipulated, provided, however, that the goods shall have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

4. Should he fail to name the vessel in time or, if he shall have reserved to himself a period within which to take delivery of the goods and/or the right to choose the port of shipment, should he fail to give detailed instructions in time, bear any additional costs incurred because of such failure, and all the risks of the goods from the date of expiration of the period

stipulated for delivery, provided, however, that the goods shall have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

5. Pay any costs and charges for obtaining a bill of lading if incurred under article A.9 above.

6. Pay all costs and charges incurred in obtaining the documents mentioned in articles A.8 and A.9 above, including the costs of certificates of origin and consular documents.

#### C & F

*cost and freight . . . . . (named port of destination)*

##### A. Seller must:

1. Supply the goods in conformity with the contract of sale, together with such evidence of conformity as may be required by the contract.

2. Contract on usual terms at his own expense for the carriage of the goods to the agreed port of destination by the usual route, in a seagoing vessel (not being a sailing vessel) of the type normally used for the transport of goods of the contract description, and pay freight charges and any charges for unloading at the port of discharge which may be levied by regular shipping lines at the time and port of shipment.

3. At his own risk and expense obtain any export licence or other governmental authorisation necessary for the export of the goods.

4. Load the goods at his own expense on board the vessel at the port of shipment and at the date or within the period fixed or, if neither date nor time have been stipulated within a reasonable time, and notify the buyer, without delay, that the goods have been loaded on board the vessel.

5. Subject to the provisions of article B.4 below, bear all risks of the goods until such time as they have effectively passed the ship's rail at the port of shipment.

6. At his own expense furnish to the buyer without delay a clean negotiable bill of lading for the agreed port of destination, as well as the invoice of the goods shipped. The bill of lading must cover the contract goods, be dated within the period agreed for shipment, and provide by endorsement or otherwise for delivery to the order of the buyer or buyer's agreed representative. Such bill of lading must be a full set of "on board" or "shipped" bills of lading, or a "received for shipment" bill of lading duly endorsed by the shipping company to the effect that the goods are on board, such endorsement to be dated within the period agreed for shipment. If the bill of lading contains a reference to the charter-party, the seller must also provide a copy of this latter document.

*Note:* A clean bill of lading is one which bears no superimposed clauses expressly declaring a defective condition of the goods or packaging.

The following clauses do not convert a clean into an unclean bill of lading:

(a) clauses which do not expressly state that the goods or packaging are unsatisfactory, e.g. "second-hand cases", "used drums", etc.; (b) clauses which emphasize carrier's non-liability for risks arising through the nature of the goods or the packaging; (c) clauses which disclaim on the part of the carrier knowledge of contents, weight, measurement, quality, or technical specification of the goods.

7. Provide at his own expense the customary packaging of the goods, unless it is the custom of the trade to ship the goods unpacked.

8. Pay the costs of any checking operations (such as checking quality, measuring, weighing, counting) which shall be necessary for the purpose of loading the goods.

9. Pay any dues and taxes incurred in respect of the goods up to the time of their loading, including any taxes, fees or charges levied because of exportation, as well as the costs of any formalities which he shall have to fulfil in order to load the goods on board.

10. Provide the buyer, at the latter's request and expense (see B.5), with the certificate of origin and the consular invoice.

11. Render the buyer, at the latter's request, risk and expense, every assistance in obtaining any documents, other than those mentioned in the previous article, issued in the country of

shipment and/or of origin and which the buyer may require for the importation of the goods into the country of destination (and, where necessary, for their passage in transit through another country).

B. *Buyer must:*

1. Accept the documents when tendered by the seller, if they are in conformity with the contract of sale, and pay the price as provided in the contract.

2. Receive the goods at the agreed port of destination and bear, with the exception of the freight, all costs and charges incurred in respect of the goods in the course of their transit by sea until their arrival at the port of destination, as well as unloading costs, including lighterage and wharfage charges, unless such costs and charges shall have been included in the freight or collected by the steamship company at the time freight was paid.

*Note:* If the goods are sold "C & F landed", unloading costs, including lighterage and wharfage charges, are borne by the seller.

3. Bear all risks of the goods from the time when they shall have effectively passed the ship's rail at the port of shipment.

4. In case he may have reserved to himself a period within which to have the goods shipped and/or the right to choose the port of destination, and he fails to give instructions in time, bear the additional costs thereby incurred and all risks of the goods from the date of the expiration of the period fixed for shipment, provided always that the goods shall have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

5. Pay the costs and charges incurred in obtaining the certificate of origin and consular documents.

6. Pay all costs and charges incurred in obtaining the documents mentioned in article A.11 above.

7. Pay all customs duties as well as any other duties and taxes payable at the time of or by reason of the importation.

8. Procure and provide at his own risk and expense any import licence or permit or the like which he may require for the importation of the goods at destination.

CIF

*cost, insurance, freight . . . . . (named port of destination)*

A. *Seller must:*

1. Supply the goods in conformity with the contract of sale, together with such evidence of conformity as may be required by the contract.

2. Contract on usual terms at his own expense for the carriage of the goods to the agreed port of destination by the usual route, in a seagoing vessel (not being a sailing vessel) of the type normally used for the transport of goods of the contract description, and pay freight charges and any charges for unloading at the port of discharge which may be levied by regular shipping lines at the time and port of shipment.

3. At his own risk and expense obtain any export licence or other governmental authorisation necessary for the export of the goods.

4. Load the goods at his own expense on board the vessel at the port of shipment and the date or within the period fixed or, if neither date nor time have been stipulated, within a reasonable time, and notify the buyer, without delay, that the goods have been loaded on board the vessel.

5. Procure, at his own cost and in a transferable form, a policy of marine insurance against the risks of the carriage involved in the contract. The insurance shall be contracted with underwriters or insurance companies of good repute on FPA terms as listed in the Appendix<sup>b</sup> and

<sup>b</sup>The insurance conditions listed in Part I of the Appendix have been drawn up in consultation with the International Union of Marine Insurance as giving essential guarantees which are, in business practice, equivalent to each other.

Part II of the Appendix contains, as an example, the full wording of one of the insurance conditions listed in Part I, namely, "Institute Cargo Clauses (FPA)" dated 11.2.46.

shall cover the CIF price plus ten per cent. The insurance shall be provided in the currency of the contract, if procurable.<sup>c</sup>

Unless otherwise agreed, the risks of carriage shall not include special risks that are covered in specific trades or against which the buyer may wish individual protection. Among the special risks that should be considered and agreed upon between seller and buyer are theft, pilferage, leakage, breakage, chipping, sweat, contact with other cargoes and others peculiar to any particular trade.

When required by the buyer, the seller shall provide, at the buyer's expense, war risk insurance in the currency of the contract, if procurable.

6. Subject to the provisions of article B.4 below, bear all risks of the goods until such time as they shall have effectively passed the ship's rail at the port of shipment.

7. At his own expense furnish to the buyer without delay a clean negotiable bill of lading for the agreed port of destination, as well as the invoice of the goods shipped and the insurance policy or, should the insurance policy not be available at the time the documents are tendered, a certificate of insurance issued under the authority of the underwriters and conveying to the bearer the same rights as if he were in possession of the policy and reproducing the essential provisions thereof. The bill of lading must cover the contract goods, be dated within the period agreed for shipment, and provide by endorsement or otherwise for delivery to the order of the buyer or buyer's agreed representative. Such bill of lading must be a full set of "on board" or "shipped" bills of lading, or a "received for shipment" bill of lading duly endorsed by the shipping company to the effect that the goods are on board, such endorsement to be dated within the period agreed for shipment. If the bill of lading contains a reference to the charter-party, the seller must also provide a copy of this latter document.

*Note:* A clean bill of lading is one which bears no superimposed clauses expressly declaring a defective condition of the goods or packaging.

The following clauses do not convert a clean into an unclean bill of lading:

(a) clauses which do not expressly state that the goods or packaging are unsatisfactory, e.g. "second-hand cases", "used drums", etc.; (b) clauses which emphasize the carrier's non-liability for risks arising through the nature of the goods or the packaging; (c) clauses which disclaim on the part of the carrier knowledge of contents, weight, measurement, quality, or technical specification of the goods.

8. Provide at his own expense the customary packing of the goods, unless it is the custom of the trade to ship the goods unpacked.

9. Pay the costs of any checking operations (such as checking quality, measuring, weighing, counting) which shall be necessary for the purpose of loading the goods.

10. Pay any dues and taxes incurred in respect of the goods up to the time of their loading, including any taxes, fees or charges levied because of exportation, as well as the costs of any formalities which he shall have to fulfil in order to load the goods on board.

11. Provide the buyer, at the latter's request and expense (see B.5), with the certificate of origin and the consular invoice.

12. Render the buyer, at the latter's request, risk and expense, every assistance in obtaining any documents, other than those mentioned in the previous article, issued in the country of shipment and/or of origin and which the buyer may require for the importation of the goods into the country of destination (and, where necessary, for their passage in transit through another country).

#### B. Buyer must:

1. Accept the documents when tendered by the seller, if they are in conformity with the contract of sale, and pay the price as provided in the contract.

<sup>c</sup>CIF A.5 provides for the minimum terms (FPA) and period of insurance (warehouse to warehouse), as listed in Part I of the Appendix. Attention is invited to paragraphs 4-7 of the Introduction. The basis of "Incoterms 1953" is that, in matters on which there are major differences of practice, it provides that the contract-price will include minimum liabilities for the seller. Whenever the buyer wishes more than the minimum liability to be included in the contract, then he should take care to specify that the basis of the contract is to be "Incoterms 1953" with whatever addition he requires. For instance, if he requires WA insurance instead of FPA insurance, the contract may specify "Incoterms 1953 CIF with WA insurance".

2. Receive the goods at the agreed port of destination and bear, with the exception of the freight and marine insurance, all costs and charges incurred in respect of the goods in the course of their transit by sea until their arrival at the port of destination, as well as unloading costs, including lighterage and wharfage charges, unless such costs and charges shall have been included in the freight or collected by the steamship company at the time freight was paid.

If war insurance is provided, it shall be at the expense of the buyer (see A.5).

*Note:* if the goods are sold "CIF landed", unloading costs, including lighterage and wharfage charges, are borne by the seller.

3. Bear all risks of the goods from the time when they shall have effectively passed the ship's rail at the port of shipment.

4. In case he may have reserved to himself a period within which to have the goods shipped and/or the right to choose the port of destination, and he fails to give instructions in time, bear the additional costs thereby incurred and all risks of the goods from the date of the expiration of the period fixed for shipment, provided always that the goods shall have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

5. Pay the costs and charges incurred in obtaining the certificate of origin and consular documents.

6. Pay all costs and charges incurred in obtaining the documents mentioned in article A.12 above.

7. Pay all customs duties as well as any other duties and taxes payable at the time of or by reason of the importation.

8. Procure and provide at his own risk and expense any import licence or permit or the like which he may require for the importation of the goods at destination.

#### Appendices

- I. Insurance conditions
- II. Institute Cargo Clauses (FPA)

(Appendices are not reproduced in this annex; see pages 40-45 of the ICC brochure entitled Incoterms 1953.)

#### FREIGHT CARRIAGE PAID TO . . .

. . . . . (named point of destination)

[Inland Transport only<sup>d</sup>]

#### A. Seller must:

1. Supply the goods in conformity with the contract of sale, together with such evidence of conformity as may be required by the contract.

2. Forward the goods at his own expense, at the date or within the period fixed, to the agreed delivery point at the place of destination. If the delivery point is not agreed or is not determined by custom the seller may select the delivery point at the place of destination which best suits his purpose.

3. Subject to the provisions of article B.3 below, bear all risks of the goods until they shall have been delivered into the custody of the first carrier, at the time as provided in the contract.

4. Give notice, without delay, to the buyer that the goods have been delivered into the custody of the first carrier.

5. Provide at his own expense the customary packing of the goods, unless it is the custom of the trade to dispatch the goods unpacked.

6. Pay the costs of any checking operations (such as checking quality, measuring, weighing, counting) which shall be necessary for the purpose of loading the goods or of delivering them into the custody of the first carrier.

<sup>d</sup>Includes all trade, national and international, by road, rail and inland waterways.

7. At his own expense, provide the buyer, if customary, with the usual transport document.

8. At his own risk and expense obtain any export licence or other governmental authorisation necessary for the export of the goods, and pay any dues and taxes incurred in respect of the goods in the country of dispatch, including any export duties, as well as the costs of any formalities he shall have to fulfil in order to load the goods.

9. Provide the buyer, at the latter's request and expense (see B.4), with the certificate of origin and consular invoice.

10. Render the buyer, at the latter's request, risk and expense, every assistance in obtaining any documents, other than those mentioned in the previous article, issued in the country of loading and/or of origin and which the buyer may require for the importation of the goods into the country of destination (and, where necessary, for their passage in transit through another country).

**B. Buyer must:**

1. Take delivery of the goods at the delivery point at the place of destination and pay the price as provided in the contract, and bear all charges from the time of the arrival of the goods at the delivery point.

2. Bear all risks of the goods from the time when they shall have been delivered into the custody of the first carrier in accordance with article A.3.

3. Where he shall have reserved to himself a period within which to have the goods forwarded to him and/or the right to choose the point of destination, and should he fail to give instructions in time, bear the additional costs thereby incurred and all risks of the goods from the date of expiration of the period fixed, provided always that the goods shall have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

4. Pay all costs and charges incurred in obtaining the documents mentioned in articles A.9 and 10 above, including the cost of certificates of origin and consular fees.

5. Pay all customs duties as well as any other duties and taxes payable at the time of or by reason of the importation.

**EX SHIP . . .**

*(named port of destination)*

**A. Seller must:**

1. Supply the goods in conformity with the contract of sale, together with such evidence of conformity as may be required by the contract.

2. Place the goods effectively at the disposal of the buyer, at the time as provided in the contract, on board the vessel at the usual unloading point in the named port, in such a way as to enable them to be removed from the vessel by unloading equipment appropriate to the nature of the goods.

3. Bear all risks and expense of the goods until such time as they shall have been effectively placed at the disposal of the buyer in accordance with article A.2, provided, however, that they have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

4. Provide at his own expense the customary packing of the goods, unless it is the custom of the trade to ship the goods unpacked.

5. Pay the costs of any checking operations (such as checking quality, measuring, weighing, counting) which shall be necessary for the purpose of placing the goods at the disposal of the buyer in accordance with article A.2.

6. At his own expense, notify the buyer, without delay, of the expected date of arrival of the named vessel, and provide him in due time with the bill of lading or delivery order and/or any other documents which may be necessary to enable the buyer to take delivery of the goods.



7. Provide the buyer, at the latter's request and expense (see B.3), with the certificate of origin and the commercial invoice.

8. Render the buyer, at the latter's request, risk and expense, every assistance in obtaining any documents, other than those mentioned in the previous articles, issued in the country of shipment and/or of origin and which the buyer may require for the importation of the goods into the country of destination (and where necessary, for their passage in transit through another country).

**B. Buyer must:**

1. Take delivery of the goods as soon as they have been placed at his disposal in accordance with the provisions of article A.2, and pay the price as provided in the contract.

2. Bear all risks and expense of the goods from the time when they shall have been effectively placed at his disposal in accordance with article A.2, provided always that they have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

3. Bear all expenses and charges incurred by the seller in obtaining any of the documents referred to in articles A.7 and 8.

4. At his own risk and expense, procure all licences or similar documents which may be required for the purpose of unloading and/or importing the goods.

5. Bear all expenses and charges of customs duties and clearance, and all other duties and taxes payable at the time or by reason of the unloading and/or importing of the goods.

**EX QUAY (duty paid)**

... (named port)<sup>e</sup>

**A Seller must:**

1. Supply the goods in conformity with the contract of sale, together with such evidence of conformity as may be required by the contract.

2. Place the goods at the disposal of the buyer on the wharf or quay at the agreed port and at the time, as provided in the contract.

3. At his own risk and expense, provide the import licence and bear the cost of any import duties or taxes, including the costs of customs clearance, as well as any other taxes, fees or charges payable at the time or by reason of importation of the goods and their delivery to the buyer.

4. At his own expense, provide for customary conditioning and packing of the goods, regard being had to their nature and to their delivery from the quay.

5. Pay the costs of any checking operations (such as checking quality, measuring, weighing, counting) which shall be necessary for the purpose of placing the goods at the disposal of the buyer in accordance with article A.2.

6. Bear all risks and expense of the goods until such time as they shall have been effectively placed at the disposal of the buyer in accordance with article A.2, provided, however, that they have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

7. At his own expense, provide the delivery order and/or any other documents which the buyer may require in order to take delivery of the goods and to remove them from the quay.

<sup>e</sup>Ex Quay (duties on buyer's account).

There are two "Ex Quay" contracts in use, namely Ex Quay (duty paid which as been detailed above and Ex Quay (duties on buyer's account) in which the liabilities specified in A.3 above are to be met by the buyer instead of by the seller.

Parties are recommended always to use the full descriptions of these terms, namely Ex Quay (duty paid) or Ex Quay (duties on buyer's account), or else there may be uncertainty as to who is to be responsible for the liabilities specified in A.3 above.

B. *Buyer must:*

1. Take delivery of the goods as soon as they have been placed at his disposal in accordance with article A.2, and pay the price as provided in the contract.
2. Bear all expense and risks of the goods from the time when they shall have been effectively placed at his disposal in accordance with article A.2, provided always that they have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

**INTERNATIONAL RULES FOR THE INTERPRETATION OF THE TERMS:**

- I. "Delivered at frontier . . . (named place of delivery at frontier)"
- II. "Delivered . . . (named place of destination in the country of importation) duty paid"

*Prepared by the International Chamber of Commerce (ICC, brochure "dp")*

- I. "DELIVERED AT FRONTIER . . . (named place of delivery at frontier)"\*

A. *The seller must:*

1. Supply the goods in conformity with the contract of sale, together with such evidence of conformity as may be stipulated in the contract of sale.
2. At his own risk and expense:
  - (a) Put the contract goods at the disposal of the buyer at the named place of delivery at the frontier on the date or within the period stipulated in the contract of sale, and at the same time supply the buyer with a customary document of transport, warehouse warrant, dock warrant, delivery order, or the like, as the case may be, providing by endorsement or otherwise for the delivery of the goods to the buyer or to his order at the named place of delivery at the frontier, and also with an export licence and such other documents, if any, as may be strictly required at that time and place for the purpose of enabling the buyer to take delivery of the goods for their subsequent movement, as provided in Articles B.1 and 2.  
The goods so put at the disposal of the buyer must be clearly set aside or otherwise identified as the contract goods.
  - (b) Comply with all formalities he may have to fulfil for these purposes, and pay any Customs fees and charges, internal taxes, excise duties, statistical taxes, and so on, levied in the country of dispatch or elsewhere, which he may have to incur in discharge of his duties up to the time when he puts the goods at the disposal of the buyer in accordance with Article A.2 (a).
3. Bear all the risks of the goods up to the time when he has fulfilled his obligations under Article A.2 (a).
4. Procure, at his own risk and expense, in addition to the documents contemplated in Article A.2 (a), any exchange control authorisation or other similar administrative document required for the purpose of clearing the goods for exportation at the named place of delivery at the frontier and any other documents he may require for the purposes of dispatching the goods to that place, passing them in transit through one or more third countries (if need be), and putting them at the disposal of the buyer in accordance with these Rules.
5. Contract on usual terms, at his own risk and expense, for the transport of the goods (including their passage in transit through one or more third countries, if necessary) to the named place of delivery at the frontier, bear and pay the freight or other costs of transport to that place, and also, subject to the provisions of Articles A.6 and 7, any other expenses of or incidental to any movement whatsoever of the goods up to the time when they are duly put at the disposal of the buyer at that place.

\*To avoid misunderstandings, it is recommended that parties contracting according to this trade term should qualify the word "frontier" by indicating the two countries separated by the frontier, and also the named place of delivery. For example: "Delivered at Franco-Italian frontier (Modane)."

Nevertheless, the seller shall, subject to the provisions of Articles A.6 and 7 and at his own risk and expense, be at liberty to use his own means of transport, provided that in the exercise of such liberty he shall perform all his other duties under these Rules.

If no particular point (station, pier, quay, wharf, warehouse, or as the case may be) at the named place of delivery at the frontier is stipulated in the contract of sale or prescribed by the regulations of the Customs or other competent authority concerned, or by the regulations of the public carrier, the seller may, if there are several points to choose from, select the point which suits him best, provided it offers such Customs and other proper facilities as may be necessary to enable the parties to perform their respective duties under these Rules.\* The point so chosen by the seller must be notified to the buyer,\*\* and thereupon that point shall be deemed for the purposes of these Rules to be the point at the named place of delivery at which the goods shall be put at the disposal of the buyer and the risks of the goods shall pass.

6. Provide the buyer, at the buyer's request and risk, with a through document of transport normally procurable in the country of dispatch covering on usual terms the transport of the goods from the point of departure in that country to the point of final destination in the country of importation named by the buyer, provided that in so doing the seller shall not be deemed to assume any duty or to incur any risks or expenses other than those he would normally be called upon to incur, perform, bear and pay under these Rules.

7. If it is necessary or customary for the goods to be unloaded, discharged or landed on their arrival at the named place of delivery at the frontier, bear and pay the expenses of such operations (including lightering and handling charges).

If the seller elects to use his own means of transport for sending the goods to the named place of delivery then, in such case, he shall bear and pay all the expenses of or incidental to the necessary or customary operations contemplated in the last preceding paragraph.

8. Notify the buyer at seller's expense that the goods have been dispatched to the named place of delivery at the frontier. Such notice must be given in sufficient time to allow the buyer to take such measures as are normally necessary to enable him to take delivery of the goods.\*\*\*

9. Provide, at his own expense, packaging customary for the transport of goods of the contract description to the named place of delivery, unless it is the usage of the particular trade to dispatch goods of the contract description unpacked.

10. Bear and pay the expenses of or incidental to any checking operation, such as measuring, weighing, counting or analysing of quality, which may be necessary to enable him to transport the goods to the named place of delivery at the frontier and to put them at the disposal of the buyer at that place.

11. Bear and pay in addition to any expenses to be borne and paid by the seller in accordance with the preceding Articles, any other expenses of or incidental to the performance of the seller's duty to put the goods at the disposal of the buyer at the named place of delivery at the frontier.

12. Render to the buyer, at buyer's request, risk and expense, a reasonable amount of assistance in obtaining any documents other than those already mentioned, which may be obtainable in the country of dispatch or of origin, or in both countries, and which the buyer may require for the purposes contemplated in Articles B.2 and 6.

#### B. The buyer must:

1. Take delivery of the goods as soon as the seller has duly put them at his disposal at the named place of delivery at the frontier, and be responsible for handling all subsequent movements of the goods.

\*If at the named place of delivery at the frontier there are two customs-posts of different nationalities, it is recommended that the parties should either stipulate which one has been agreed upon, or leave the choice to the seller.

\*\*See Article A.8, foot-note.

\*\*\*Such notice may be served by the seller upon the buyer by sending it through the post by air mail, and addressed to the buyer at his place of business given in the contract of sale. But if the goods have been dispatched by air, or if the distance between the point of departure in the country of dispatch and the named place of delivery at the frontier is short, or if the business addresses of the seller and the buyer are so far apart as to be likely to cause undue delay in the delivery of notice sent through the post then, in any such case, the seller shall be bound to give such notice to the buyer by sending the same by cable, telegram or telex.

2. Comply at his own expense with any Customs and other formalities that may have to be fulfilled at the named place of delivery at the frontier, or elsewhere, and pay any duties that may be payable at the time or by reason of the entry of the goods into the adjoining country or of any other movement of the goods subsequent to the time when they have been duly put at his disposal.

3. Bear and pay the expenses of or incidental to unloading, discharging or landing the goods on their arrival at the named place of delivery at the frontier, in so far as such expenses are not payable by the seller in accordance with the provisions of Article A.7.

4. Bear all the risks of the goods and pay any expenses whatsoever incurred in respect thereof including Customs duties, fees and charges from the time when they have been duly put at his disposal at the named place of delivery at the frontier.

5. If he fails to take delivery of the goods as soon as they have been duly put at his disposal, bear all the risks of the goods and pay any additional expenses incurred, whether by the seller or by the buyer, because of such failure, provided that the goods shall have been clearly set aside or otherwise identified as the contract goods.

6. Procure, at his own risk and expense, any import licence, exchange control authorisation, permits or other documents issued in the country of importation, or elsewhere, that he may require in connection with any movement of the goods subsequent to the time when they have been duly put at his disposal at the named place of delivery at the frontier.

7. Bear and pay any additional expenses which the seller may have to incur for the purpose of obtaining a through document of transport in accordance with Article A.6.

8. At seller's request and at buyer's expense, place such import licence, exchange control authorisation, permits and other documents, or certified copies thereof, at the disposal of the seller for the limited purpose of obtaining the through document of transport contemplated in Article A.6.

9. Supply the seller, at his request, with the address of the final destination of the goods in the country of importation, if the seller requires such information for the purpose of applying for such licences and other documents as are contemplated in Articles A.4 and A.6.

10. Bear and pay the expenses incurred by the seller in providing the buyer with any expert third-party certificate of conformity of the goods stipulated in the contract of sale.

11. Bear and pay any expenses the seller may incur in or about his endeavours to assist the buyer in obtaining any of the documents contemplated in Article A.12.

## II. "DELIVERED ... (named place of destination in the country of importation) duty paid"

### A. *The seller must:*

1. Supply the goods in conformity with the contract of sale, together with such evidence of conformity as may be stipulated in the contract of sale.

2. At his own risk and expense:

(a) Put the contract goods at the disposal of the buyer, duty paid, at the named place of destination in the country of importation on the date or within the period stipulated in the contract of sale, and at the same time supply the buyer with a customary document of transport, warehouse warrant, dock warrant, delivery order, or the like, as the case may be, providing by endorsement or otherwise for the delivery of the goods to the buyer or to his order at the named place of destination in the country of importation and also with such other documents, if any, as may be strictly required at that time and place for the purpose of enabling the buyer to take delivery of the goods, as provided in Article B.1.

The goods so put at the disposal of the buyer must be clearly set aside or otherwise identified as the contract goods.

(b) Provide the import licence or permit and bear the cost of any import duties or taxes, including the cost of Customs clearance, as well as any other taxes, fees or charges payable at the named place of destination at the time of the importation of the goods, so far as such payments are necessary for the purpose of enabling the seller to put the goods duty paid at the disposal of the buyer at that place.

(c) Comply with all formalities he may have to fulfil for these purposes.

3. Bear all the risks of the goods up to the time when he has fulfilled his obligations under Article A.2 (a).

4. Procure at his own risk and expense, in addition to the documents contemplated in Article A.2 (a), any export licence or permit, exchange control authorisation, certificates, consular invoice and other documents issued by the public authorities concerned, which he may require for the purposes of dispatching the goods, exporting them from the country of dispatch, passing them in transit through one or more third countries (if necessary), importing them into the country of the named place of destination, and putting them at the disposal of the buyer at that place.

5. Contract on usual terms, at his own risk and expense, for the transport of the goods from the point of departure in the country of dispatch to the named place of destination, bear and pay the freight or other costs of transport to that place, and also, subject to the provisions of Article A.6, any other expenses of or incidental to any movement whatsoever of the goods up to the time when they are duly put at the disposal of the buyer at the named place of destination.

Nevertheless, the seller shall, at his own risk and expense, be at liberty to use his own means of transport, provided that in the exercise of such liberty he shall perform all his other duties under these Rules.

If no particular point (station, pier, quay, wharf, warehouse, or as the case may be) at the named place of destination in the country of importation is stipulated in the contract of sale or prescribed by the regulations of the Customs or other competent authority concerned, or by the regulations of the public carrier, the seller may, if there are several points to choose from, select the point which suits him best, provided it offers such Customs and other proper facilities as may be necessary to enable the parties to perform their respective duties under these Rules. The point so chosen by the seller must be notified to the buyer,\* and thereupon that point shall be deemed for the purposes of these Rules to be the point at the named place of destination at which the goods shall be put at the disposal of the buyer and the risks of the goods shall pass.

6. If it is necessary or customary for the goods to be unloaded, discharged or landed on their arrival at the named place of destination for the purpose of putting them duty paid at the disposal of the buyer at that place, bear and pay the expenses of such operations, including any lightering, wharfing, warehousing and handling charges.

7. Notify the buyer, at seller's expense, that the goods have been placed in the custody of the first carrier for dispatch to the named place of destination, or that they have been dispatched to that destination by the seller's own means of transport, as the case may be. Any such notice must be given in sufficient time to allow the buyer to take such measures as are normally necessary for the purpose of enabling him to take delivery of the goods.\*\*

8. Provide, at his own expense, packaging customary for transport of goods of the contract description to the named place of destination, unless it is the usage of the particular trade to dispatch goods of the contract description unpacked.

9. Bear and pay the expenses of or incidental to any checking operations, such as measuring, weighing, counting or analysing of quality, which may be necessary to enable him to transport the goods to the named place of destination and to put them at the disposal of the buyer at that place.

10. Bear and pay, in addition to any expenses to be borne and paid by the seller in accordance with Articles A.1 to 9 inclusive, any other expenses of or incidental to the performance of the seller's duty to put the goods at the disposal of the buyer at the named place of destination in accordance with these Rules.

**B. The buyer must:**

1. Take delivery of the goods as soon as the seller has duly put them at his disposal at the named place of destination, and be responsible for handling all subsequent movement of the goods.

\*See Article A.7, foot-note.

\*\*Such notice may be served by the seller upon the buyer by sending it through the post by air mail, and addressed to the buyer at his place of business given in the contract of sale. But if the goods have been dispatched by air, or if the distance between the point of departure in the country of dispatch and the named place of destination is short, or if the business addresses of the seller and the buyer are so far apart as to be likely to cause undue delay in the delivery of notice sent through the post then, in any such case, the seller shall be bound to give such notice to the buyer by sending the same by cable, telegram or telex.

2. Bear and pay the expenses of or incidental to unloading, discharging or landing the goods on their arrival at the named place of destination, in so far as such expenses are not payable by the seller in accordance with the provisions of Article A.6.

3. Bear all the risks of the goods and pay any expenses whatsoever incurred in respect thereof from the time when they have been put at his disposal at the named place of destination in accordance with Article A.2 (a).

4. If he fails to take delivery of the goods as soon as they have been duly put at his disposal, bear all the risks of the goods and pay any additional expenses incurred, whether by the seller or by the buyer, because of such failure, provided that the goods shall have been clearly set aside or otherwise identified as the contract goods.

5. Supply the seller, at his request, with the address of the final destination of the goods in the country of importation, if the seller requires such information for the purpose of applying for such documents as are contemplated in Article A.2 (b).

6. Bear and pay the expenses incurred by the seller in providing the buyer with any expert third-party certificate of conformity of the goods stipulated in the contract of sale.

7. Render to the seller, at seller's request, risk and expense, a reasonable amount of assistance in obtaining any documents which may be issued in the country of importation and which the seller may require for the purpose of putting the goods at the disposal of the buyer in accordance with these Rules.

***Annex XXII***

**CHECK LIST FOR SPARE PARTS, MAINTENANCE  
AND TRAINING PROGRAMMES**

The following specifications should be included into the tender documents.

1. ***Language(s)*** in which instructions and other papers should be written.
2. ***Spare parts***  
Specify duration of period during which autonomy has to be secured. This period should be at least as long as the period for which spare and wear parts have to be available. The number of such parts should be stipulated and guaranteed by the contractor. They include  
Parts of normal tear and wear  
Parts of extra tear and wear and  
Parts which have no or little wear but should be kept on stock because of their vital function.
3. ***Manuals for operation and maintenance***  
The contractor should deliver in a specified number  
Operating instructions including operator maintenance and fault diagnosis, safety procedures  
Maintenance manuals with complete technical descriptions, fault diagnosis, repair and overhaul and routine maintenance procedures.
4. ***Training facilities***  
The contractor should deliver in a specified number  
Wall diagrams  
Films  
Transparencies  
Training manuals.

*Annex XXIII*

**EXTRACT FROM PROCUREMENT CHECK LIST SHOWING MAINTENANCE  
AND PRODUCT SUPPORT QUESTIONS<sup>a</sup>**

<i>Section Item</i>	<i>Description</i>	<i>Answer</i>
<b>1</b>	<b>MAINTAINABILITY</b>	
<b>a</b>	Has a reliability and maintainability study been made?	
<b>b</b>	Do the designers apply D.O.M. (design out maintenance)?	
<b>c</b>	Fault diagnosis and repair	
	(1) Have design dependencies been analysed?	
	(2) Are test positions accessible and marked?	
	(3) What special test gear is needed?	
<b>d</b>	Monitoring	
	(1) Does design provide for performance monitoring?	
	(2) Is vibration analysis provided for?	
<b>e</b>	Does a lubrication/inspection schedule exist?	
<b>f</b>	Do full maintenance schedules exist?	
<b>g</b>	Spare parts	
	(1) What is the recommended list?	
	(2) Which items are already held in stock by the user?	
	(3) What are the lead times for the non standard items?	
	(4) Are component identifications clearly marked?	
<b>h</b>	What special tools and lifting gear are needed for maintenance?	
<b>j</b>	Maintenance labour requirements	
	(1) Is some operator maintenance possible?	
	(2) What percentage of preventive and corrective maintenance requires vendor assistance, if any?	
<b>2</b>	<b>RELIABILITY</b>	
<b>a</b>	Is quality control applied at all stages of manufacture?	
<b>b</b>	Are quality assurance specifications available?	
<b>3</b>	<b>DELIVERY AND INSTALLATION</b>	
<b>a</b>	Have installation drawings been made available?	
<b>b</b>	What are the power, weight and space requirements?	
<b>c</b>	Is a special foundation necessary?	
<b>d</b>	Can equipment be moved economically if installation is subsequently replanned?	
<b>4</b>	<b>PRODUCT SUPPORT AND SERVICING</b>	
<b>a</b>	Will installation drawings and instructions be available as required before delivery?	
<b>b</b>	Will operators and maintainers receive training?	
<b>c</b>	Will operator instructions be available immediately after installation?	

<sup>a</sup>Provided by E. N. White, consultant, London.



<i>Section Item</i>	<i>Description</i>	<i>Answer</i>
d	Will the following maintenance information be available immediately after installation? (1) Maintenance manual (2) Spare parts manual (illustrated) (3) Lists of recommended spares (4) Lubrication plan (5) Maintenance schedules (preventive) (6) Circuit and other diagrams.	
e	Will the maintenance manual contain full illustrated instructions for disassembly, overhaul, repair, reassembly and testing?	
f	Is all the documentation user-orientated and suitable for the particular labour force being used?	
g	Are the special tools available?	
h	Are the recommended spares available?	
j	Will production drawings be supplied to permit local manufacture of non-standard spares?	
5	<b>COSTS</b>	
a	What are the basic prices for: (1) The machine, delivered and installed (2) The recommended spares package complete (3) The spares package, less items already stocked in the user's stores (4) The special tools etc. (5) Product support (training, technical manuals, maintenance schedules, etc.)	
b	Is the machine similar to a previous purchase? If so, are further spare parts necessary?	
c	Do the plant engineers approve the machine?	
d	Is the machine interchangeable with existing plant to facilitate shut-down maintenance?	
e	What are the costs of accepting plant engineer suggestions rather than buying on lowest tender (if different)?	
f	Will vendor accept full penalty on the documentation, training, spares and support aspects, as on the machine itself?	

## *Annex XXIV*

### PAYMENT FOR ENGINEERING SERVICES<sup>a</sup>

#### 7.1. General

There are a number of bases of payment for engineering services. These vary according to the type of service to be rendered and the conditions under which they are to be performed. It is therefore essential that the engineer be given as much information as possible to enable him to make a proper fee proposal. The more precisely the scope of services can be appraised, the more definite can be the estimate of fees. It must be clearly understood, however, that an estimate of fees is not to be construed as a competitive bid.

Payment for engineering services is usually determined on one or more of the following bases:

- (i) Per hour or per diem rates;
- (ii) Payroll cost multiplied by a factor;
- (iii) Fixed lump sum;
- (iv) Percentage of the cost of the work;
- (v) Retainer.

The following describes in more detail the bases shown with recommendations as to the type of service to which each is applicable.

#### 7.2. Per hour or per diem rates

This basis uses fixed hourly or daily charges applicable to the different grades of personnel. This rate is set to include normal office overhead and profit but not out-of-pocket expenses which are reimbursable. Any type of engineering service can be paid for on this basis but it is particularly applicable for the following:

- a. Counselling services where the services are provided by an individual who is eminently qualified, with little or no staff assistance. In this case the rates set should be commensurate with the engineer's status and the services rendered.
- b. Engineering reports; appraisals, evaluations and rate studies; management and production advisory services; expert assistance before courts and in arbitration proceedings.
- c. There are also parts of over-all design services which can properly be covered by this method. These are preliminary and feasibility studies; surveys of existing buildings, plant, utilities and properties; negotiations;
- d. On certain projects, where a partial service only is being rendered or where the complexity is such that a percentage of cost would not be equitable, this method can be used for basic design and supervisory services.

All time expended on the work, whether in the engineer's office, at the client's premises, or elsewhere, is chargeable. The engineer should be reimbursed for all expenses as defined in 7.7.

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<sup>a</sup>FIDIC, *Guide to the Use of Independent Consultants for Engineering Services* (The Hague, FIDIC, 1967), pp. 19-24.

### 7.3. Payroll costs multiplied by a factor<sup>b</sup>

The fee in this case is arrived at by multiplying the payroll cost of all persons employed on the project by a factor. This factor must cover overhead costs and profit. This basis can be used for all grades of staff except principals and other very senior personnel. In their case per hour or per diem rates should properly be used. It can be used for payment for all types of engineering services and particularly for the following:

- a. In cases where the scope of the work is not clearly defined and for continuation or extension of work.
- b. Where the consulting engineer and his staff work in conjunction with the client's staff in the execution of a project.
- c. For resident staff engaged on inspection and supervision duties during construction and installation, where full supervision is not provided under other bases.

### 7.4. Fixed lump sum

This method of payment is used for certain types of assignments where circumstances permit the engineer to make an accurate estimate of costs. In general, this basis is only used where the engineer has been given a prior assignment to make a complete appraisal of the work involved for which appraisal he has been compensated on a time basis. Certain types of engineering services such as transportation studies are sometimes carried out on this basis. In all cases detailed terms of reference defining very clearly the scope of work must be part of any agreement covering services to be paid for on this basis. The consulting engineer must have reasonable assurances that he will be retained for the work before submitting a proposal based on a fixed lump sum fee.

The engineer should be reimbursed for all costs as defined in 7.7.

### 7.5. Percentage of the cost of the work

This method is based on a percentage of the final or estimated cost of the completed project. It is a method of charging for engineering services for projects for which a defined construction cost can be established.

Basic design engineering services are often provided for on this basis.

These include:

- (i) Preliminary Design;
- (ii) Detailed Design;
- (iii) General Supervision of construction.

The following cases are usually not included on this basis and are generally charged for on the basis described in 7.2 and 7.3.

(i) Pre-design services such as preliminary and feasibility investigations and reports, topographical surveys and plans, surveys and studies of existing building, plant, utilities and properties, special negotiations on behalf of the client and in general all preliminary work necessary to establish the criteria for design.

(ii) Special services such as resident supervision of construction; preparation of bills of materials; special inspection and testing; scheduling and expediting services; initial operation of plant and equipment including training of owner's staff; preparation of record drawings and

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<sup>b</sup>In this type of payment, a difficult item is the basic salaries including social and fringe benefits of the various categories of staff. These form the basis of the contract since overhead and fee are a percentage applied to these basic salaries, bringing the cost of staff per man month to as much as 225 to 250 per cent of the basic salaries. These basic salaries vary greatly, depending on the category of work, qualifications of each staff member etc. Cost of staff per man month including social benefits, overhead and fee may range from say \$2,500 for the level of foremen or mechanics to \$6,000 or more for top levels. Some years ago there was the additional problem of different salary levels in different countries from which consultants were retained, but in recent years these differences have largely disappeared. When contracts are based on actually paid salaries plus percentages, the client is entitled to have payment of these salaries checked by his own accountants, if he desires.

operation manuals and generally all those extra services which are not considered a part of normal design and supervision services.

Some of the additional services described above may be provided under the percentage fee if the percentage is increased to take care of this. Due to the difficulty of accurately appraising the work involved in these activities, however, it is probably better to use a different basis for payment.

Some national associations belonging to FIDIC publish an appropriate scale of percentage fees. These vary with the size of the project and with the complexity of the work and the services to be provided on a percentage basis.<sup>c</sup>

The engineer should be reimbursed for all costs as defined in 7.7.

#### 7.6. Retainer

This method of remuneration is used when the services of a consulting engineer are expected to be required at intervals over a period of time. It is a means of ensuring in advance that the services of a particular engineer will be available to the client when required. Under this method a stipulated amount is paid at regular intervals for which the engineer is obliged to render a certain service or to spend a certain amount of time on the client's requirements. He often keeps technical records pertaining to the client's affairs in his office and is thoroughly familiar with the client's needs and problems. The retainer is usually enough to pay for the minimum services required by the client and all additional services are paid for on a different agreed basis, normally per hour or per diem rates. Some of the services provided on a retainer basis are: assistance during long litigation, advisory services, management and production services. The engineer should also be reimbursed for expenditures as defined in 7.7.

#### 7.7. Reimbursable costs<sup>d</sup>

These are disbursements directly chargeable to a project. They are reimbursable at cost, or cost plus a percentage to cover overhead and interest payments, depending on the circumstances:

- a. Living and travelling expenses of employees, partners and principals when away from the home office on business connected with the project.
- b. Identifiable communication expenses, such as long distance calls, costs of site telephone, telegraph, postage and express charges.
- c. Cost of rental of special equipment and instruments necessary for the project.
- d. Cost of outside services for items such as soil and material tests and reports; visual and radiographic inspections; legal and other surveys; special legal, accounting, stenographic or audit services, and other work for which it is necessary to use the services of other persons or firms.
- e. Identifiable reproduction costs such as blueprinting, photostating, mimeographing, printing etc., additional to those covered in the agreement.

#### 7.8. Payment of services

A consulting engineer's expenses consist mainly of salary payments to staff. These, of course, must be paid promptly at short intervals. It is therefore necessary that the fees due to the engineer be also paid at regular intervals.

Frequent progress payments are advisable and should normally be provided for.

The agreement between the client and the consulting engineer should contain details regarding stages at which payment is due and method of payment.

<sup>c</sup>Most national associations publish scales of fees appropriate for conditions in their own countries. When operating in other territories, it by no means follows that the scales will necessarily be the same.

<sup>d</sup>This form of payment calls for careful scrutiny, particularly for payments to site staff.

## Annex XXV

### CONDITIONS FOR THE PROVISION OF TECHNICAL PERSONNEL ABROAD

The material presented in this annex has been prepared by the Organisme de Liaison des Industries Métalliques Européennes (ORGALIME). ORGALIME groups the central engineering and metalworking trade associations in 13 European countries and provides liaison between these bodies in economic, legal, technical and other matters of concern to the industries they represent.

Copies of these "Conditions" can be obtained in French, English or German from:  
ORGALIME, Rue des Drapiers 13, B-1050 Brussels, Belgium.

### CONDITIONS FOR THE PROVISION OF TECHNICAL PERSONNEL ABROAD

#### Foreword

These conditions for the provision of technical personnel abroad have a double purpose:

1. On the one hand, these conditions may constitute *the basis of an independent and separate contract*, viz. where the contractor does not send his technical personnel to the customer's country for carrying out work under an already existing contract, but where such provision of personnel is independent of any other transaction; these conditions are thus an adequate basis for the contractual relations governing this work (e.g. erection or repair) in the customer's country.

2. If however the provision of technical personnel for carrying out work is *ancillary to another transaction* (where, for instance, the contractor's personnel is to carry out work in the customer's country under an already existing contract of delivery and erection), these conditions may complete that contract in case the latter does not treat in detail the points dealt with in the conditions, such as costs, working conditions in respect of the personnel provided by the contractor (remuneration, board and lodging, holiday, medical treatment, etc.).

Where these conditions are used in the latter sense in order to stipulate in detail certain provisions of an already existing agreement, it is recommended that the provisions setting out more generally the rights and obligations of the parties should be deleted, if the points dealt with are already covered by the existing agreement. Otherwise, these points would be treated twice, and this might cause misunderstandings as well as difficulties of construction.

These conditions were drawn up on the assumption that, in the case mentioned under 2., the already existing agreement has been made on a time basis under the general conditions for the supply and erection of plant and machinery for import and export (188A), prepared under the auspices of the United Nations Economic Commission for Europe (ECE).

Therefore, part 1 of the following conditions provides detailed rules for those points which are not dealt with in the ECE conditions 188A. Part 2, on the other hand, contains general provisions concerning, inter alia, limitation of liability, arbitration, law applicable, etc., which, for the most part and with slight modifications, are taken from the ECE conditions. Thus if the existing contract is based on the ECE conditions 188A, it is recommended to drop part 2 altogether. For this reason, part 2 is introduced by a note recommending the deletion of points already covered by the existing contract.

If however the already existing agreement is not based on the ECE conditions 188A, the provisions of such agreement should be closely examined as to whether the points treated therein are also covered by the following conditions. In the latter case, the risk of a varying construction will be particularly great, for the wording will generally not be identical. It is therefore necessary to reconcile the existing agreement with these conditions.

CONDITIONS FOR THE PROVISION OF TECHNICAL  
PERSONNEL ABROAD

PART I

Article I  
Scope of Application

These conditions shall apply to the provision of technical personnel for carrying out work in the customer's country. The "customer's country" shall be deemed to be the country where the work is to be carried out.

Article II  
Obligations of the Customer

§ 1. *Notification of readiness on site.*

The customer shall give adequate notice to the contractor of the date on which the contractor's personnel is expected on the site (1).

§ 2. *Preparations.*

In order that the work may be started immediately on arrival of the personnel and may be prosecuted without unnecessary hindrance, all the equipment and tools required for the work and furnished by the customer shall be available on the working site in advance and all other preparations shall be complete. Any foundations required for the work shall be perfectly dry and in accordance with the requirements specified by the contractor.

§ 3. *Lodging.*

The customer shall place at the disposal of the personnel suitable furnished single rooms, with proper washing facilities, in the vicinity of the working site (2).

§ 4. *Interpreters.*

The customer shall ensure that competent interpreters are available free of charge to the contractor's personnel at the site during the work (3).

§ 5. *Accident prevention.*

The customer shall take all necessary and legally prescribed measures for accident prevention.

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(1) If this is already fixed in the contract the clause may be omitted. Otherwise the parties will be wise to specify more exactly the period of notification required. It should be noted that in some cases it will be the contractor who must give notice of the date of departure of his personnel. The clause will then require modification.

(2) The parties should also observe the necessity of having washing facilities for the contractor's personnel at the site itself and suitable rooms usable as an office in the vicinity of the site.

Special cases (e.g. where the contract is performed in a tropical country) will require special provisions, for instance in respect of air-conditioning, electric light, etc.

(3) It would be wise to indicate in the contract the languages in which the interpretation shall be done and the technical field in which the interpreter has to be competent.

Article III
Make-up of Charges (4)

Save as varied by express agreement, the provision of the technical personnel is effected on a time basis as follows:

§ 1. Daily allowances.

For each day's absence of the personnel from the premises of the contractor, the following expenses shall be charged:

For . . . . .
(insert here the relevant grades of personnel) (agreed currency)

The daily allowance includes board, lodging and pocket money. If the customer provides board and/or lodging free the following reductions shall be made:

board . . . . .
lodging . . . . .

This allowance shall be payable in respect of every day (whether working or work free) from the date of departure from the contractor's premises in . . . . . until the date of arrival there on return, and shall be payable even during incapacity for work caused by sickness or accident. If at any time these amounts prove to be insufficient to cover the expenses included in the allowances, these shall be increased by such reasonable amount as may be necessary.

§ 2. Working hours and remunerations.

a) The remuneration referred to below applies to a normal working week of . . . hours, spread over five working days if not otherwise agreed, provided that the working hours occur between 6 a.m. and 6 p.m., and do not exceed . . . hours (5) per day. Otherwise, a special agreement shall be made. By workfree days shall be understood all days which are customarily free at the relevant site. The personnel shall not be obliged to work on the following public holidays customary in the country of the contractor . . . . .

b) For each working hour on a working day within the normal weekly shift the following amounts which include social charges payable in the contractor's country, shall be charged:

For . . . . .
(insert here the relevant grades of personnel) (agreed currency)

c) The remuneration shall be payable even during incapacity for work caused by sickness or accident (6).

d) The necessary travelling time shall be charged as normal working days; no overtime is to be paid.

e) If the daily journey between lodging and working site, or between the working site and place for meals requires more than 15 minutes in each direction, any time in excess of such 15 minutes shall be charged as working time if it exceeds one hour a day altogether.

(4) Where the services of the personnel during their stay in the customer's country are utilized by several customers, the travelling expenses, daily allowances and remuneration will have to be charged to each customer in proportion to the length of time spent with him.

(5) The working hours should correspond to the working time specified in the collective agreement currently applicable to the contractor's personnel.

(6) This provision may be modified to the extent that the contractor is covered by insurance.

### § 3. Overtime.

Any work done outside the above mentioned or agreed working hours shall be charged to the customer in accordance with the following scale:

#### *Normal overtime*

For . . . . . per cent per hour  
 . . . . . of the amount  
 . . . . . indicated in 2 b)

(insert here the relevant grades of personnel)

#### *Overtime worked between 6 p.m. the day before and 6 a.m. the day after a workfree day*

For . . . . . per cent per hour  
 . . . . . of the amount  
 . . . . . indicated in 2 b)

(insert here the relevant grades of personnel)

The personnel shall only be called upon to work overtime in exceptional cases. If extensive overtime is required, exceeding 10 per cent of the normal working time per month, the permission of the contractor must first be obtained.

### § 4. Waiting time.

Any waiting time for which the contractor or his personnel are not responsible shall be charged to the customer as normal working time.

### § 5. Travelling expenses and holiday.

a) All travelling expenses incurred in connection with the contract shall be borne by the customer. By travelling expenses are to be understood the following:

aa) Fares for journeys by rail (. . . class), sea (. . . class), air (. . . class), car or bus.

bb) Carriage, freight, and customs duties as well as insurance dues in connection with personal effects, instruments and tools required for the contract.

b) If the personnel should be obliged by local conditions to travel between their lodging and the working site, or between the working site and the place for meals, and the customer does not provide free transport, the expenses for such travel shall be borne by the customer.

c) For each contract lasting more than . . . consecutive months, each member of the personnel shall, at the end of each period of . . . months, be entitled to a journey to the country of the contractor and back, and a stay there for a period of . . . weeks. The travelling expenses for these journeys shall be borne by the customer in accordance with article III, § 5, a). The daily allowances shall be payable during the period of travel, but not during the period spent in the contractor's country (7).

### § 6. Charges for tools and contractor's equipment.

For the provision of each normal set of hand tools, a sum of . . . . . per week shall be charged, or a supplement of . . . per cent shall be added to the hourly rate.

A charge of . . . . . shall be made for each day's absence from the contractor's premises of lifting appliances, scaffolding and all other heavy tools provided by the contractor.

If the contractor so requires, the customer shall give all necessary assistance with the customs formalities required for the import and re-export of the contractor's tools and equipment free of all duties and taxes.

(7) In particular cases (e.g. where the contract is performed in a tropical country) the contractor's personnel may be entitled to local leave at comparatively short intervals in addition to periodic home leave. Or they may prefer to take their home leave in a country other than their own. These and other special cases will require special provisions.



§ 7. Taxes and dues.

The contractor shall be entitled to recover from the customer any taxes or dues levied in the customer's country on the contractor or his personnel in respect of obligations performed there by the contractor (8).

*Article IV*  
Accident, Illness and Death

§ 1. Medical treatment.

In the event of accident or illness necessitating medical attention or hospital treatment, the customer shall, at his own expense, during the stay of the sick or injured person in the country where the work is to be done, provide the necessary medical attention and hospital treatment and procure the necessary medicaments, whether or not the accident or illness occurs in the course of work or during his off-time. Medical attention and hospital treatment shall be the best available.

§ 2. Repatriation.

The customer shall, at his own expense in the most suitable and quickest way, send the said person home if this is advisable on medical grounds, or if the customer so decides and this is medically possible. If in any case the said person is sent home at his own request, the cost of sending him home shall not be borne by the customer.

In the event of death, the customer shall assume the same obligation in respect of the transportation of the deceased and the payment of the relevant costs.

§ 3. Substitution.

In the event of death, or if by reason of illness or accident a member of the personnel is unavailable or unfit for work for more than 4 weeks, the contractor shall with all reasonable speed and at his own expense provide a substitute.

§ 4. Reimbursement.

If the contractor is insured in respect of any costs to be borne by the customer under this article the contractor shall reimburse the customer with such costs.

*Article V*  
Interruption of Work

§ 1. If the work is interrupted for a cause for which the contractor is not responsible:

a) The customer is entitled to require the contractor to withdraw his personnel, in which case the customer shall pay the expenses of their withdrawal and return to the site.

b) The contractor is entitled to recall his personnel if the interruption exceeds a reasonable period, in which case also the customer shall pay the expenses under 1, a).

§ 2. If the contractor's personnel is withdrawn or recalled, the contract is not thereby terminated and its performance is merely suspended until the customer has required the return of the contractor's personnel to the site by giving at least . . . month's notice.

§ 3. Should the suspension be of so long duration that the basis of the contract becomes substantially altered, either party shall be entitled to terminate the same without prejudice to the rights of either party accrued up to time of termination (9).

(8) This clause is designed for cases in which the contractor sends his personnel abroad for a specific contract. If the contractor maintains an establishment in the customer's country, the clause, as it stands, is not appropriate. The parties should then specify which of them shall bear such taxes as income tax (wage tax), corporation tax, turnover tax, or payroll tax.

(9) It should be noted that this sentence may be interpreted in different ways under different laws.

*Article VI*  
**Accounting and Payment**

§ 1. The contractor shall make out invoices relating to the preceding month or to such other period as may be agreed. Such invoices shall be sent to the customer not later than 30 days after the expiration of the month or other agreed period.

§ 2. Unless otherwise agreed, payment shall be made in full within 30 days after the date of the invoice to the account of the contractor at the bank stated in the contract. Payment shall be made in . . . . . The rate of exchange shall be that prevailing on the date of payment. Provided that, in the case of late payment, the contractor shall be entitled to choose between the rate prevailing at the end of the above-mentioned period of 30 days and the date of actual payment. He shall in any case be entitled to interest on the sum overdue, to which he shall become immediately entitled without further notice on expiry of the said period of 30 days. The rate of interest shall be 2 per cent above the official discount rate of the contractor's country, without prejudice to the right of the contractor to claim additional compensation when this rate does not cover the loss actually suffered by him (10). Save as provided in article VI, §4 hereunder, the customer shall not be entitled to set off any sums due or alleged to be due to him from the contractor.

§ 3. The contractor's invoices for working hours and overtime, as stated in article III, paragraphs 2, 3 and 4, shall be based on the reports kept by the personnel. These reports shall be made out by the personnel at the end of each week. The customer's superintendent on the working site shall be given the opportunity of checking the reports without delay. If he does not do so, the reports shall be deemed to be correct.

§ 4. If the contractor so requests, the customer shall make reasonable advances of money to the contractor's personnel, which shall be set off against the contract price.

*Article VII*  
**Price Revision Clause**

If after the date of the contract a change takes place in the indices of wages in the contractor's industry in his own country, the rates applicable to article III, paragraphs 2 and 3, shall be adjusted accordingly.

*Article VIII*  
**Permits**

The customer shall take any necessary steps to secure that the personnel, in good time, obtain visas and any official entry, exit or working permits required in the country where the work is to be carried out, as well as to ensure that the personnel have access to the working site.

**PART 2 (11)**

*Article I*  
**Local Laws and Regulations; Safety Regulations**

§1. The customer shall to the best of his ability assist the contractor to obtain the necessary information concerning the local laws and regulations applicable to the work (12).

(10) The right to additional compensation may be invalid under certain legal systems.

(11) Part 2 should be omitted, if the points mentioned therein are already covered by an existing contract providing, among other things, the provision of technical personnel abroad (cf. foreword).

(12) The parties will be wise to define in the contract the measures which each must take in order to observe local laws and regulations (art. I, §1) or for avoiding any special dangers (art. I, §2, c).

§2. a) The customer shall notify the contractor in full of safety regulations which the customer imposes on his own employees and the contractor shall secure the observance of such safety regulations by his own personnel (12)

b) If breaches of these regulations by the contractor's personnel come to the notice of the customer, he must inform the contractor in writing forthwith. The customer may take such measures as are necessary for the avoidance of danger resulting from such breaches, and may, in particular, forbid persons guilty thereof entry to the site.

c) The contractor shall inform the customer of any special dangers which the execution of the work may entail (12).

#### *Article II* Working Conditions

§1. Unless otherwise agreed, the contract is made under the following conditions:

a) The work shall not be carried out in unhealthy or dangerous surroundings.

b) The customer shall make available to the contractor's personnel suitable board in the neighbourhood of the site and shall provide access to adequate medical services.

c) All necessary hoisting devices, scaffolding and other equipment, fuel, power, lubricants, cleaning agents, consumable stores and water shall be provided, free of charge, by the customer in good time.

d) The customer shall provide the contractor (free of charge, unless otherwise agreed) with closed or guarded premises on or near the site as a protection against theft and deterioration of the contractor's tools and equipment and of the clothing of the contractor's personnel.

Any departure from the conditions mentioned in this paragraph shall attract a reasonable extra charge.

§2. If the circumstances resulting from such departure are such that it would be unreasonable to require the contractor to proceed with the work, the contractor may, without prejudice to his rights under the contract, refuse to do so.

#### *Article III* Additional Labour

Upon the contractor's requirement in good time, the customer shall make available to the contractor, free of charge, such skilled and unskilled labour as may be found necessary even if not provided for in the contract. The persons made available by the customer under this clause shall provide their own tools.

The contractor shall not be under any liability either towards such additional labour or for their acts and omissions (13).

#### *Article IV* Work Outside the Contract

The customer shall not be entitled to use the contractor's personnel on any work unconnected with the subject-matter of the contract without the previous consent of the contractor. Where the contractor so consents, he shall not be under any liability in respect of such work and the customer shall be responsible for the safety of the contractor's personnel while employed on such work.

#### *Article V* Contractor's Liability

§1. The contractor shall be liable for loss and damage suffered by the customer by reason of the negligence or lack of diligence of the contractor or his personnel, provided however that he has failed to choose suitable personnel for the work or to provide them in due time (14).

(13) This final provision is of doubtful validity under certain systems of law.

(14) This provision will be inoperative under that system of law in which a master cannot escape liability for the conduct of his servants acting within the scope of their employment.

§2. The contractor's liability shall not extend to loss or damage which the contractor could not reasonably have foreseen at the time of making the contract.

§3. The contractor's liability shall not extend to losses due to service interruptions or loss of profit.

§4. The liability of the contractor for the totality of all claims hereunder shall not exceed the sum of .....

*Article VI*  
**Law Applicable**

The contract shall be governed by the law of the contractor's country.

*Article VII*  
**Arbitration**

Any dispute arising out of or in connexion with this agreement shall be settled, without recourse to the courts, in accordance with the rules of conciliation and arbitration in the International Chamber of Commerce by one or more arbitrators designated in conformity with those rules, the award being final and binding. The arbitrator or arbitrators shall have power to rule on their own competence and on the validity of the agreement to submit to arbitration.

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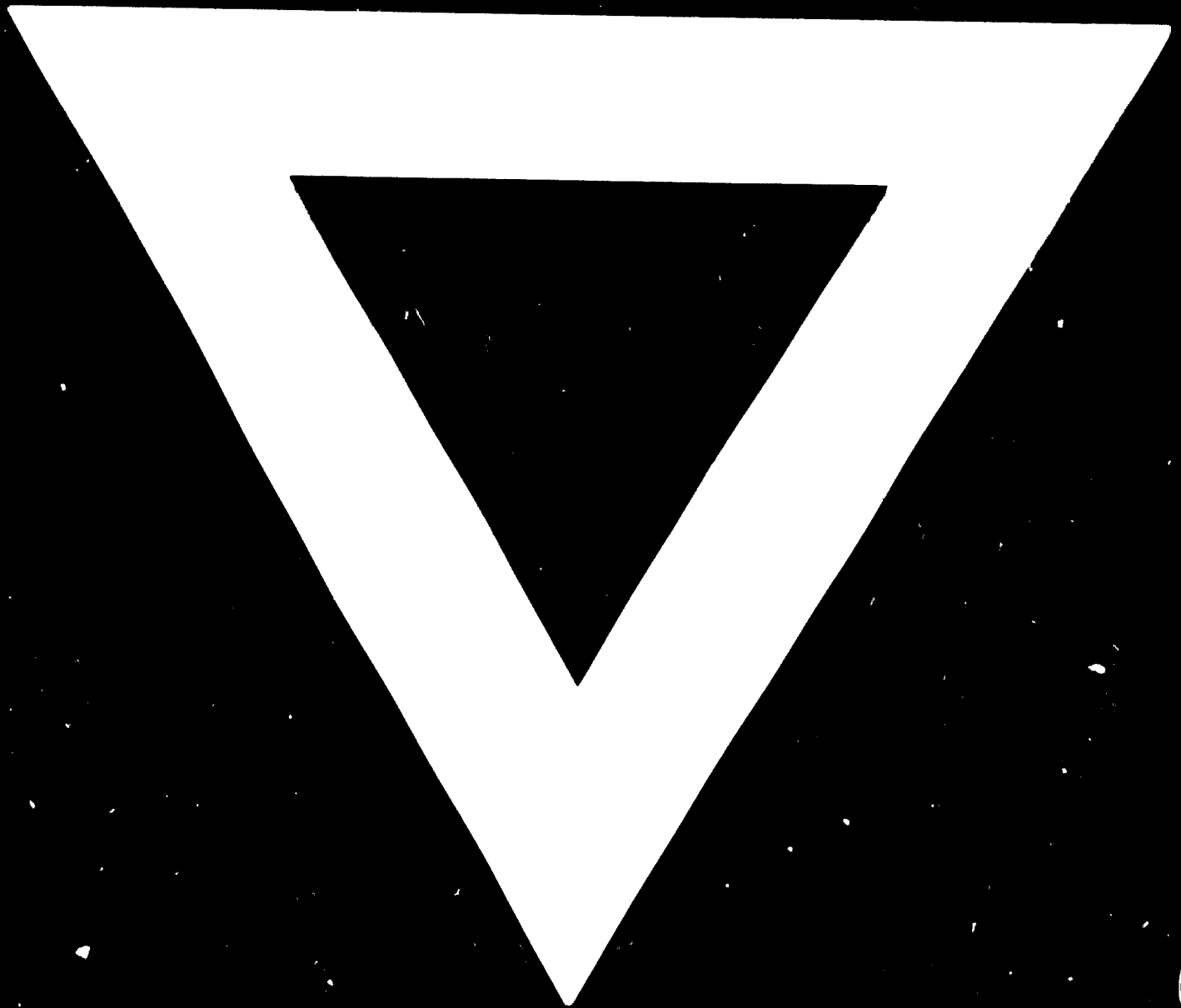
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