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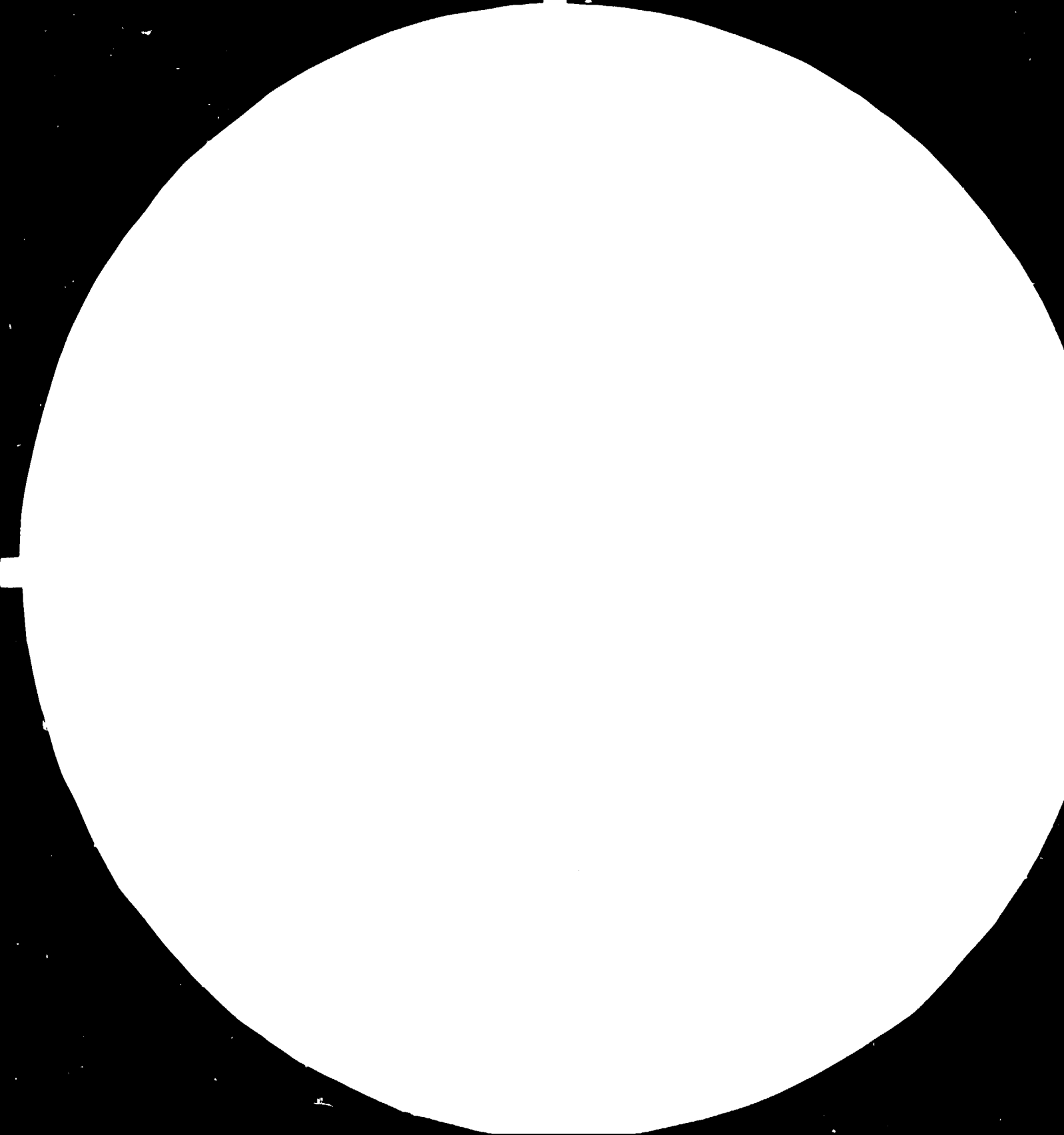
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1.0 25

1.1 22



1.2 20



Resolution test patterns are used to measure the resolving power of an optical system. The patterns consist of groups of five lines, either vertical or horizontal, with a numerical value indicating the spatial frequency. The values shown are 1.0, 1.1, 1.25, 1.4, 1.6, 1.8, 2.0, 2.2, and 2.5.

FOR PARTICIPANTS ONLY

Original : English

IIT/SYM83/T1A

ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC

UNIDO/ESCAP Symposium on Contracts for the Construction of  
Oil and Gas Pipelines

30 August - 2 September 1983  
Jakarta, Indonesia

13043

OVERVIEW OF CURRENT INTERNATIONAL PRACTICES IN CONTRACTS  
FOR THE CONSTRUCTION OF OIL AND GAS PIPELINES \*/

by

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## OVERVIEW OF DIFFERENT TYPES OF AGREEMENTS

### (i) Introduction

The drafting of Agreements should be by means of a partnership between Engineer and Lawyer which in my opinion, is essential to achieve the best result for the Client, whether he be employer or contractor.

### (ii) Consortium Employer

Where the Employer is an operator acting on behalf of a consortium in entering agreements with Contractors for, say, the laying of an offshore pipeline should the appointed operator seen to be acting as an agent or as principal? Subject to the operator being properly indemnified by his co-venturers, perhaps he should contract as principal and hopefully avoid any possibility of having his position or decisions undermined or questioned by a Contractor. On the other hand the Contractor may prefer to be in contract with all members of the consortium. Rather than leave the question open for argument under the local law relating to agency, perhaps it is right for the contract to deal specifically with this aspect.

### (iii) TENDER BIDDING FOR OFFSHORE PIPELINE CONSTRUCTION

#### (a) Procedures.

Offshore bidding procedures are not normally laid down in one set of formal rules. The details and formal framework will vary not only between each oil company but also between each jurisdiction. The details differ because of different types of procurement involved such as procurement of construction work, of supplies and of services. Details also vary due to the size of the contract and how well the scope of works is in fact defined in the contract documentation. A third element which causes details to vary is the actual competitive situation at the time. Some bid packages are designed to enable the employer to go into direct bargaining with respective contractors to obtain the best offer for the contract.

/(b)

(b) Documentation.

The bid contractual documentation usually consists of:-

(1) an "inquiry" being a covering letter sent by or on behalf of the Employer to a number of Contractors selected by him or his consultant to tender for pipeline construction. It may explain the names and nature of the concess or licence holders for the exploitation of offshore gas or oil. It may set out or make reference to the terms of the Joint Venture or Joint Operating Agreement governing that exploitation and where in the normal case there is an operator acting for the Joint Venturers it may explain that the operator is under a duty to obtain the best offer. On the otherhand the employer may choose to assume that all this is within the general knowledge of the contractor and, if as operator he is a major oil company, then he will seek to impose on the contractor the terms of his internal standard contract and established procedures on tender bidding.

Next the "Inquiry" letter will deal with any particular requirements of the host government which probably also requires competitive tenders. The host government will probably wish to afford host Contractors an opportunity of participation in the host countries exploitation of oil and gas reserves. Apart from this principle the host government is clearly concerned to see that the construction costs which may be offset against taxable profits of the oil exploitation are not too high as otherwise the government profit by tax or by participation in the development would be reduced.

(2) Enclosed as annexes to the "Inquiry" will be general conditions, special conditions, scope of work, technical information and instructions including a tender bid form.

The tender documentation being drafted by the Employer tends to impose maximum obligations on the bidder and minimum obligations on the Employer.

/The bids

The bids are generally sealed and opened at the same time and the tender evaluation takes place leading to the creation of a short list. In offshore pipelaying work there is often the need for consultations with the short listed bidders regarding further technical solutions.

Depending upon the state of the market the invitation to bidders will either state that there will be no opportunity for adjusting prices during the period of tender evaluation or that there might be some negotiations on the subject or remain completely silent about the possibility of negotiations. The third stance is undesirable. With the first two the Contractor knows where he is and he can elect whether to spend time and money in bidding or not. If there are to be subsequent negotiations most Contractors would be unprepared to go too low in their initial quote. From the Employer's point of view however it is not just a question of obtaining the lowest price; it is also a question of getting the pipelines laid properly, because (certainly offshore) it is a very expensive business to have to come back and either repair or relay. There is much to be said therefore for employing a Contractor with a known track record for offshore pipeline laying. The policy approach to be adopted when using the tender system should therefore be such as to hold the Contractors' general confidence in being willing to participate in the tendering system.

An operator when acting for a consortium is in a slightly difficult position here. He has to know that his partners in the exploitation of the oil and gas reserves will be happy with the conduct of the tender evaluation and subsequent negotiations. It is understood that certain restrictions imposed by the legislature of Norway in 1898 against negotiations and re-bids after tenders for government contracts have been opened were the result of several firms having gone bankrupt after having reduced their tender price too much during subsequent bargaining. Denmark has legislated obligatory rules on tender bidding for private industry. The tenders are to be opened in the presence of the tenderers. The price is to be read out

/and price

and price reductions after the bid is opened are prohibited so far as selecting the lowest bidder is concerned. In England the Joint Operating Agreement for offshore exploitation has to be approved by the Department of Energy and under the usual form of J.O.A. the operator is obliged to obtain competitive sealed bid tenders.

Furthermore, there is a Memorandum of Agreement between all the operators of the British sector and the Department of Energy of 3rd November 1975 (it was revised 2nd February 1981) which assumes a bidding arrangement under which British Industry is given a full and fair opportunity to compete in bidding for tenders. It envisages tender evaluation procedures where inequalities in the submissions are resolved relative to the short listed bidders - but the wording is somewhat flexible!

(iv) Standard Forms

There are several types of standard forms of conditions of contract published by various professional bodies which are used in the engineering and construction fields as a basis for contract and conditions of contract for example:-

- (a) the ICE Conditions of Contract (conditions of contract for works of civil engineering construction - Fifth Edition 1977) - it is understood that these conditions form the basis of many of British Petroleum's contract and conditions;
- (b) the FIDIC - FIEC Civil Conditions of Contract (Conditions of Contract (International) for works of Civil Engineering and Construction - Third Edition 1977) - these are based on and are similar to the ICE Conditions but are specially adapted for use where companies of international standing are invited to tender for works involving civil engineering construction anywhere in the world;
- (c) the Red Book Conditions of Contract (Model form of conditions of contract for process plants suitable for

/lump



lump sum contracts first published October 1968, revised April 1981 by the Institution of Chemical Engineers) - these have been used for some lump sum contracts for the laying of pipelines in the United Kingdom;

- (d) the Green Book Conditions of Contract (Model form of conditions of contract for process plants suitable for reimbursable contracts in the United Kingdom, July 1976 published by the Institution of Chemical Engineers) - these conditions are quite often used in the United Kingdom for the construction of LPG pipelines and associated plant.

The advantage of using a standard form is that it is immediately available for use and will be known to be generally acceptable to the Contractor to be employed on a project. The disadvantages are that the drafting is often rather loose and the conditions tend to be Contractor oriented. There do not appear to be any Standard Conditions for offshore pipe-laying works.

(v) LETTERS OF INTENT

A contractor often asks for a letter of intent whilst negotiations are continuing between him as selected Contractor and the Employer. One kind of letter of intent is a mere statement of commercial intention, pending further negotiations and finalization of the contract documentation. This kind of document contains no intention to be bound legally until the contract documentation is concluded. A second kind of letter of intent is one where the parties intend to be bound but that some of the detailed terms require to be incorporated in a formal contractual document. Legal relations are intended to be created on the basis of the broad principle terms agreed. If a letter of intent is legally binding it is generally couched in phraseology which permits it to comprise of an interim arrangement terminable at any time upon audited costs being paid to the Contractor as may have accrued at date of termination.

/(vi)

(vi) PART PERFORMANCE

It is possible under English law for a contract by conduct to arise where in reliance upon certain assurances given by the employer the contractor has commenced construction arrangements.

II. THE INDIVIDUAL CONTRACT CLAUSES

Preliminary Note

The general conditions to which reference is made with reference to on-shore pipeline contracts are those of the:

INSTITUTION OF CHEMICAL ENGINEERS  
MODEL FORM OF CONDITIONS OF CONTRACT PROCESS PLANTS  
(REIMBURSABLE)

1. DEFINITIONS

- (a) Employer would normally be deemed to include his authorised representatives.
- (b) Contractor would normally be deemed to include his employees and agents contracting to perform work.
- (c) Engineer would normally be deemed to include the person from time to time appointed by the Employer to be Engineer and his authorised representatives.
- (d) Right of Way would cover not only the pipeline trench and the safety area but also the working strip and access to the working strip.
- (e) Work would generally be defined as wide as possible, for example, it would include all the obligations and requirements imposed upon the Contractor.

/On-shore

On-shore Contracts

"Definition of Terms" is contained in clause 1 and "interpretation" in clause 2.

It is clearly important to establish which legal system will govern the parties' obligations and by which the Contract is to be interpreted. In this case it is the law of England (2.1). The Purchaser will frequently insist on his own law and legal system governing the Contract. In the event of conflict between the general conditions and the specification it is usually desirable not to have the provisions of the general conditions prevail and since the parties will tend to be more specific in writing the specification than in amending the standard form to suit their particular requirements (2.2).

2. SCOPE OF DELIVERIES AND SERVICES

(a) Definition of Scope

Lawyers and Engineers must combine their efforts to define the scope of the contract to prevent the contractor using variation machinery to increase the contract price. Very often it is the definition of the scope of the contract which governs whether or not a claim to variation is genuine or not. Wherever it can be reasonably inferred from the contract description of the scope of works that other undescribed work would be necessary to achieve completion or a satisfactory and effective result, then, in the absence of any contrary indication, such undescribed work should normally be regarded as included in the definition of the contract work in the contract. It is better to rely on express obligations rather than implied. This makes the drafting of the scope of the contract clause a most important consideration.

(b) Responsibility for ground conditions

It is usual for the Contractor to accept the full burden of site investigations. If the Employer provides any data, then nonetheless contractor should be bound to make all necessary enquiries to verify such data, and the contract should make clear that the Employer accept the responsibility for data so provided.

/On-shore

### On-shore Contracts

These are set out in clauses 3 and 4 of the general conditions.

The scope of the Contractor's work is defined as being "in accordance with the provisions of Schedule 1 (Description of the Works), the Specification and the other provisions of the Contract. Lack of definition of the precise scope of the Contractor's supply may be the *raison d'etre* for the use of a Reimbursable Form of Contract. Where a lump sum is to be used for any part of the supply appropriate detail will be required (see Guide Notes B & S). "Works" may be expected to include provision and removal of temporary works, and site restoration.

The Contractor is required to carry out "the Works" (as defined) in accordance with good engineering practice and to the reasonable satisfaction of the Engineer. The qualification "reasonable" is desirable from the Contractors' point of view, enabling him to challenge the Engineer's decision in arbitration if he considers it unreasonable.

A brief summary of the distinction between Lump Sum and Reimbursable Contracts is contained in section 3 of the Introductory Notes on pages 2 & 3.

### 3. CONTRACT DOCUMENTS

#### (a) Representatives during negotiations

The Employer should exclude any representations or understandings from the ambit of the contract unless such understandings or representations are set forth in the contract documents.

#### (b) The position of the Engineer

In some contracts the Engineer is closely allied with the Employer and the Contractor is bound to deal with the Engineer directly on all matters relating to the work and in the event of any disagreement the requirements of the contract document shall be decided by the Engineer acting reasonably. The Committee reviewing the FIDIC - FIEC

/Civil

Civil Conditions (1977) has recently suggested that the conditions should contain the following provisions:-

- "a. "requiring maximum co-operation from both parties and the Engineer in the performance of the contract and the practical solution of problems".

Under civil legal systems it is understood that an appeal founded on such basic principles would lie if any party should depart from them. Under English common law legal systems specific objections could be incorporated in the contract with appropriate arbitration machinery.

- b. "defining the circumstances in which the Engineer can be requested or is required to give decisions or instructions and defining the circumstances in which decisions may be reviewed by the Engineer. Where possible a fixed time scale for decisions should be defined, otherwise decisions should be required in a reasonable time".

A review of each and every existing reference in the standard form of contract to the Engineer's "opinion" or "satisfaction" is surely desirable with a view to deletion since such references are to a subjective opinion of the Engineer and not to any objective test. Although the contract provides that some opinions can be overruled on arbitration, the wording of the arbitration clause can easily be misconstrued under some legal systems or if the arbitration clause is altered.

- c. "more attention should be given to the powers of the Engineer, which being fairly wide and loose, may actually disadvantage even employers and engineers.

(i) if the powers are exercised, by rendering an Employer exposed to financial claims by the Contractor in a number of situations which are really the responsibility of the Contractor;

/(ii)

(ii) whether or not the powers are exercised, by rendering both the Engineer and the Employer liable to third persons for damage or accidents occurring during construction which are in reality in the Contractor's area of control."

d. "defining the reasonable and objective criteria upon which the Engineer will have to exercise his discretion, wherever he is given a discretion by the terms of the contract."

(c) Time allowed for Tendering

The time allowed from the date invitations first go out for Contractors' tenders to the date that the works under the contract are to commence may well be insufficient for negotiations and all the formal documentation to be completed. The consequences are:-

- a. that the contract is signed after the works of the contract have started.
- b. the parties will be working under pressure and this could lead to mistakes in documentation. Piecemeal changes could effect construction of other clauses.

A further reason for providing for a reasonable time for negotiations is to allow negotiations to be opened with another Contractor should the original negotiations break down for any reason assuming that the letter of intent if is proposed to be issued is not a letter which creates a binding contract. It could be however that commercial considerations, such as a tight programme for the laying of a pipeline, operate against the holding of successful negotiations. Very often the date for oil or gas having to be on stream is so tight that the construction programme, which is only part of the whole project, has to be kept to a tight timetable. This would not permit time to go through the tendering procedure again to find a new Contractor.

For this reason amongst others, most Employers have their own standard contract conditions. It is easier for their lawyers to make

/changes

changes to those conditions rather than for an Employer's lawyer to try and negotiate and change the Contractors' standard contract and conditions.

(d) Construction of Contract Documents

It is perhaps unwise to provide that priority should be given say to general conditions over and above a schedule of prices or technical documentation forming part of the contract. Some contracts state that priority should be given in the event of ambiguity or contradiction to the agreement and to the schedule of prices. They have priority over general conditions and over technical documents. If a lawyer does not understand technical documentation the result could be to upset the balance of the normal rules of construction.

On-shore Contracts

These are referred to in clause 1 of the Form of Agreement in Appendix 1 on page 34. They comprise the Form of Agreement, General Conditions of Contract, Special Conditions (if any), the Specification and Drawings (if any) and schedules relating to the description of the works etc. The order of precedence is provided for in clause 5 of the Form of Agreement and under clause 2 of the agreement, the Contract as defined in clause 1 comprises a "full statement of the contractual rights and liabilities of the Purchaser in relation to the Works" and nothing signed prior to the Contract has any contractual effect. Without such provisions, confusion can often arise as to whether particular documents have been incorporated into the Contract, particularly where different terms have been discussed during the negotiating stage.

4. WORK SCHEDULE

The Contractor being an independent contractor should be fully responsible for scheduling work. Some Employers however think it prudent to lay down hours of work and working days per week.

Oil Company Employers have a tendency to specify within the scope of work not only the extent of the work required but also

/the procedures

the procedures to be adopted by the Contractor in executing the work and achieving the principle object. By imposing his own procedures and quality tests and controls over the Contractor the Employer may possibly relieve the Contractor, if the contract is governed by English Law from some express or implied obligations as to the performance of work. So perhaps if any schedule of work procedures are to be annexed to a contract, they should be those of the Contractor and identified as such. One can reasonably expect them to have been fully debated prior to annexation!

5. ARRANGEMENTS CONCERNING TRANSPORT FROM FACTORY TO SITE OF MATERIALS AND EQUIPMENT

On-shore Contracts

This is only briefly dealt with by clause 23 which relates only to provision by the Contractor for adequate unloading and storage facilities on Site and the requirement for consent of the Engineer if the Contractor wishes to deliver before the date specified in the approved programme of work. The responsibility for transport would appropriately be set out in Schedule 1 (description of the works). The cost of transport would be included in Schedule 2 (Schedule of Costs Elements - Materials and Sub-contract Materials)(see pages 40 and 41). Risk in the materials remain with the Contractor until take-over by the Purchaser (30.1). The time for delivery will be governed by the approved programme of work (13.1) and Schedule 4 (times of completion).

For more detailed provisions relating to damage to highways, transport of plant and transport of materials, see ICE Conditions of Contract Clause 30, which govern strengthening of and damage to highways and bridges, and transport of Constructional Plant and Materials.

6. REGULATION WITH REGARD TO SPARE PARTS

On-shore Contracts

This is not specifically dealt with in the general conditions of contract, but may be included in Schedule 2 (Schedule of Costs

/Elements



Elements - Field Commissioning) (see page 41).

7. REGULATION WITH REGARD TO MAINTENANCE EQUIPMENT

On-shore Contracts

This is not specifically dealt with in the general conditions of contract but may be included in Schedule 2 (Schedule of Costs Elements - Construction Equipment and Tools) (see page 40).

8. DELIVERY OF WORKS - PASSING OF RISK - TRANSFER OF TITLE

On-shore Contracts

This is specifically dealt with by clause 24 - Ownership of Plant and Materials. Property in the plant and materials vests in the Purchaser on delivery to Site.

Where plant is being assembled and installed on the Purchaser's property and commissioned by the Contractor, it could in theory be argued that the Contractor should retain ownership of and liability for the goods until take-over when property and risk would pass. This solution is however often impracticable since the Contractor will require a substantial payment for the value of the goods when delivered and the Purchaser will require security for the money paid.

Risk however remains with the Contractor under 30.1 until take-over by the Purchaser. This must of course be (unless otherwise agreed) expressly stated, in the absence of which the Purchaser as legal owner of the plant, will find himself treated as the person upon whom liability for any loss or damage falls. Agreement may be reached that the Purchaser will assume responsibility for taking delivery and storage of parts until needed and that while the Purchaser is actually handling or storing the plant, risk remains with the Purchaser.

/9. INSPECTIONS

9. INSPECTIONS AND TESTS

On-shore Contracts

Inspection and off-site testing is dealt with in clause 21 which incorporates provision for notice to be given by the Contractor to the Engineer. Under the provisions of this clause the Contractor is required to carry out off-site tests in accordance with the instructions of the Engineer before delivery to site. Clause 21 contains no provisions for reasons to be given for rejection or for the Engineer to be entitled to request only such tests as are reasonable. If the Purchaser wishes to impose special testing procedures over and above the Contractor's normal internal procedures it is desirable that these be clearly defined in the specification to enable the Contractor to allow for these in his programming. Clause 34 relates to Performance Tests. This clause is however only relevant if the Contractor has given specific guarantees in respect of the performance of the plant. (See also Guide Note K).

10. PACKING AND MARKING

On-shore Contracts

This is not specifically dealt with in the general conditions of contract.

11. TIME FOR COMPLETION - DELAY

On-shore Contracts

The time related provisions are contained in clauses 14, 15 and 16.

The times for completion are to be inserted in Schedule 4. Clause 14.1 contains a mechanism whereby the dates may be completed after execution of the Contract (subject to reference of any dispute to the Expert if the Contractor and Engineer cannot agree on completion dates) to enable design work and planning to proceed to a point where the

/Engineer

Engineer and Contractor can agree on target dates. Under 14.3 the Engineer is given power to suspend performance of the works but no power to order acceleration.

Clause 15 contains provisions relating to delays and extensions of time. The Contractor will be entitled to an extension of time where he is delayed "by any matter not under his reasonable control (including an instruction by the Engineer) which affects the programme of work". An extension of time is also apparently permitted in cases of Force Majeure under clause 43. In that clause Force Majeure is, to some extent, defined.

The liquidated damages provisions are contained in clause 16. This is the standard form of liquidated damages clause whereby the Employer is entitled to claim damages for delay in completion which are automatically calculated in accordance with the length of the delay. Under English law the real extent of the Plaintiff's loss is irrelevant where a valid liquidated damages clause applies, and the Plaintiff will recover the precise amount calculated in accordance with the liquidated damages clause whatever his actual damage may be, unless the clause is held to amount to a penalty i.e. not a genuine pre-estimate of damage. To be declared a penalty, the amount of liquidated damages would have to be wholly unreasonable and the onus would be on the Plaintiff attempting to attack the clause.

There are no bonus provisions.

## 12. PRICE

### (a) Intrusion by Government Agencies

Many countries have set up agencies the object of which is to ensure that the Employers of pipeline laying operations give every opportunity to the local industry to get involved with the provision of goods, services and expertise relating to the exploitation of that country's oil and gas resources; in some cases this may involve specified pricing provisions.

/(b) Export

(b) Export Credits

It is usual to bind the Contractor to give such information, to supply such documentation and to complete such forms as the export credit agency involved (if any) may require. The qualification limiting this to "reasonable requirements" should not be accepted since some government export agencies make unusual demands.

(c) Open ended price

Decisions of the English Courts have been given to the effect that, where all other elements are contracted and agreed, a stipulation to agree a price at a later date does not necessarily invalidate the contract. It seems that the Court will grant an Order for the parties to go away and reappraise the situation and report back on the price agreed. It is suggested that this is not very satisfactory and that the parties should use every endeavour to agree comprehensive schedules of rates and prices not only for the principal work but also for additional work that might be ordered.

(d) Rates

The construction of off-shore pipelines is generally on the basis that Contractors are paid on a day rate and cost-plus basis, at any rate so far as the North Sea is concerned. Day rates are payable for the Contractor's own equipment. So far as sub-contractors services and materials are concerned, Contractors are reimbursed on a cost-plus basis, the "plus" being a mark-up to cover handling and administration.

The construction of on-shore pipelines are more frequently contracted on a lump-sum basis, but sometimes on a reimbursable basis or on a mixture of the two systems.

(e) Bonus Payments

These are arrangements whereby Employers pay bonuses linked to the speed of construction and completion of part of the works by certain dates. The Contractor will undoubtedly argue that he should be entitled to his bonus if he would have achieved a date but for

matters outside his control, for example, an event of Force Majeure, bad weather, interference by Third Parties or causing instructions delay from the Employer. It is really a question of risk apportionment between Employer and Contractor. Whether that should be the same apportionment as under the main contractual clauses is a matter for debate.

(f) Currency

A very substantial proportion of pipelaying contracts in the North Sea were awarded to non-UK companies. There was a time when the English Courts would not make awards of damages in currencies other than sterling. Since the case of *Milianges v. George Frank (Textiles) Limited* (1976) AC 443, claims made in foreign currencies will, where appropriate, be accepted by the English courts considered by the English Courts in relation to those currencies and judgments given and enforced by the English Courts in those currencies.

Employers should therefore expect to pay in the currency of the contract whatever the rate of exchange prevailing as between his own currency and the contract currency is as at the date of payment. The Employers may well be advised to buy forward to cover the risk of foreign exchange fluctuations.

So far as the Contractor is concerned, he would not normally expect to bear the risk of foreign exchange fluctuations. If there is a contractual term requiring him to do so in any respect then the contract should fix the actual exchange rates. Contractors often tender on the basis of fixing their own tender price having regard to certain foreign currencies payable to sub-contractors. There may well be a range of sub-contractors each with his own quoted day-rates or lump sum price in his own particular currency. Some contractors approach the problem by stipulating that a fixed percentage of either lump sums or day rates (as the case may be) should be varied in accordance with variations in the rates of exchange between the currency of the contract and the currencies in which the Contractor has to pay his sub-contractors.

/(g)

(g) Exchange Control

During the construction period local legislation may change in the countries of the Employer, the Contractor or sub-contractors. Exchange control consents may be rescinded. Contracts should normally contain a provision in such circumstances that the contract should not be voidable at the instance of any party and then provide for some solution. The Contractor may have to accept payment being made into blocked accounts of amounts equal to the payment in question converted into the appropriate currency at say the mid-market rate of exchange on the day when the payment is made.

On-shore Contracts

Under the provisions of clause 28 the Contract Price is to be calculated in accordance with the provisions of Schedule 2 (Schedule of Costs Elements), Schedule 3 (Schedule of Rates and Charges) and clause 35 (liability for defects).

Schedule 2 sets out a typical list of main cost elements under the headings, Home Office, Construction Equipment and Tools, Materials and Sub-Contract Materials, Field Office, Field Labour, Field Costs, and Field Commissioning.

Those cost elements identified in Schedule 2 which are chargeable to the Purchaser at other than net cost will require a corresponding entry in Schedule 3 which lists the rates and charges to enable the relevant parts of the Contract Price to be calculated. Reference is made under Schedule 2 to Rates for Home Office Personnel, Rates for Field Office and Field Supervisory Personnel (including commissioning), Travelling and Subsistence Allowances, Geographic Rates, Computer Rates, Construction Tools and Plant, Field Labour, Procurement Rates and Fees.

13. PRICE ESCALATION

Prior to the first major oil crises in 1973 escalation formulae in construction and supply contracts, whilst not being uncommon,

/were not

were not regarded as being usual. Now it is the norm. Some Contractors have been using price variation formulae to escalate the contract price rather than to vary the contract price to reflect inflation. Some countries like the UK, are pursuing anti-inflation policies. Where price reductions are encountered, if an Employer is expected to reimburse a Contractor for increased costs, so a Contractor should afford the Employer the benefit of any decrease in prices.

#### On-shore Contracts

Where the Contract is wholly reimbursable, escalation will only apply to the rates and charges given in Schedule 3. Reference is made to escalation in Guide Note R.

Where the price contains lump sum elements see Guide Note S. Where there are substantial lump sum elements, it may be necessary to incorporate provisions from the Model Form of Conditions of Contract for Process Plants Suitable for Lump Sum Contracts published by the Institution of Chemical Engineers (the Red Book).

#### 14. TERMS OF PAYMENT

##### (a) Timing

A reasonably short period should normally be stated within which payment certificates must be issued. A payment certificate should not be held up simply because some minor matter remains unresolved. Contractual conditions should provide a mechanism whereby deductions can be made in respect of such minor matters. Contractual conditions should normally deal with what happens if there is non-compliance.

##### (b) Interest on late payment

Under English Law it is necessary to have express contractual provisions prescribing the payment of interest for late payment. The case of London Chatham, and Dover Railway v. South Eastern Railway (1893)

AC 429 decided that there is no custom of trade or mercantile usage in relation to building contracts which entitles any person to interest for the late payment of any sum unless and only to the extent that the contract provides otherwise. If proceedings are actually taken then interest can be awarded at the discretion of the English Court or English Arbitrator for whatever period is deemed appropriate. It appears however that if a person pays up just before proceedings are commenced that this effectively prevents the injured party from recovering interest in the absence of contractual provision.

#### On-shore Contracts

This is governed by clause 39 which provides for payment by monthly instalments unless otherwise specifically provided in the Contract. In brief, the procedure to be followed is that the Contractor submits a request for payment each month to the Engineer, the Engineer certifies within 7 days subject to any further information which the Engineer may require from the Contractor, and the Purchaser shall pay within 14 days of receiving the certificate.

Such interim certificates are not binding or conclusive as to the quality of the work performed by the Contractor. In view of the provisions of the arbitration clause (46) it would also seem that a certificate is not a condition precedent to payment since the Arbitrator under 46.2 has power to revise or overrule any decision or certificate of the Engineer.

#### 15. SECURITIES

- (A) In favour of Employer.
  - aa. Bond - Guarantee - Surety

The object of a Bond is to guarantee the Contractors' performance. Problems arise with regard to off-shore pipeline contracts where work is to be performed on a day rate work basis. No bond or insurance

/company



company or insurance group is going to be willing to provide a bond for even its most respected Contractor where work of this kind is involved. It will be recalled that in many offshore pipeline laying contracts there is no obligation to maintain and or to repair defects. Because conditions under sea are not easily the subject of inspection and testing, there tends to be frequent changes in the scope of work.

The present system of attaching a standard form or bond to Standard Conditions is thought to be inadvisable. The form of bond should be tailor-made to the contract in question to avoid contractors charging heavily for the risk in making their tender or in some cases to avoid the best Contractor not being prepared to tender at all. Contractors are nervous about the collectibility of sums secured by bonds, guarantees, letters of credit or surety contracts because in recent times there have been some unjustified call-ins. The contract should make it clear that sums secured by such documents should only be collectible on default. Contract conditions should clearly specify the circumstances in which such sums may be called and should specify the specific form of proof required from the Employer in such event. Thus, for example, if bonds are to be issued on demand then they should be collectible only against the issue by the Employer of a counter-guarantee issued or confirmed by a prime Bank in the Contractor's country and payable upon judgment or award. An alternative suggestion is to provide that the bond moneys should be paid by the guaranteeing bank directly into an escrow account, in a neutral country, from which they will be collectable by the Employer if and when and to the extent that a judgment or award is made in his favour. Failure to take these steps means that a Contractor will price against the risk in his tender.

bb. Bid-Advance-Performance-Wa-ranty-Security

See comment below.

cc. Letter of Credit.

The provision of a Letter of Credit is no guarantee of performance. It is simply a system of enabling the Employer to draw on it for certain

/specified

specified reasons, such as:-

- (i) in respect of liabilities incurred by the Employer against Third Parties where the real responsibility lies with the Contractor;
- (ii) in the UK in respect of the Employers' potential liability for tax under certain provisions of the Finance Act on profits or assessed profits of a non-UK Contractor performing exploitation activities for the Employer in UK designated waters.

It is a well-established principle of international law that one country will not enforce the tax law of another country so that there is little point in dealing with the matter under the contract by way of warranties or indemnities. The amount of the Letter of Credit under English Law jurisdictions must be reasonable so as not to be deemed a penalty.

dd. Retention Monies.

The object of the Employer retaining money upon the payment of the Contractor's monthly certificate is to procure compliance by the Contractor with any obligations that he might have to (a) maintain the works and (b) to repair any defects in the completed works. Where an offshore pipelaying contract is concerned and there is no obligation for running maintenance or to come back to site and repair defects, it is possible that the use of a retention clause might be regarded as a penalty.

On-shore Contracts

Provisions is made in clause 36.4 for the Contractor, if required by the Purchaser, to tender a bond or guarantee by a bank or insurance company of good commercial repute in the event of failure to pass performance tests or revocation of the Acceptance Certificate under clause 36.6.

Three types of bond or bank guarantee which the Contractor may in the normal course of events be required to provide are:-

- (i) Advance payment bond

16. MODIFICATIONS

(a) It would appear to be fair to have a clause that variations which exceed a certain percentage of the original contract price, say 15%, may not be ordered by the Employer if the Contractor is able to demonstrate to the Employer that the acceptance of such a variation would create for him problems of a non financial nature or financial problems which are not covered by the contractual mechanism or which he cannot overcome. A variation of over 15% would probably be regarded as changing the character, the quality or the kind of works. The Contractor may not have the capacity to undertake such a variation; his staff may be employed on other projects. The 15% may be regarded as cumulative, that is to say, that variations already ordered say two variations of 5% each, would in such circumstances only allow a further variation of 5% within the contract rules.

(b) Where a Contractor has undertaken to carry out and complete the work at a certain price. he is usually bound to do so, however expensive it may turn out to be. Quite often a Contractor will claim a variation to try and cover the additional cost involved. A variation clause may also often be used by a contractor who has underbid his tender.

(c) It is difficult to specify exactly in the contract documents the complete content of the contract works because there is always the element of the unknown or the unexpected occurring. A variation in quantity is perhaps easy to argue by a Contractor when the clauses appearing in the FIDIC and ICE General Conditions of contract state that the quantities set out in the bills of quantities are the estimated quantities.

On-shore Contracts

Variations are dealt with by clause 17 of the Contract. The Contractor has no power to object to any variation order and must comply with it save to the extent that he may notify the Engineer under 17.3 if in his opinion the variation order would defer completion of the Works or under 17.4 if in his opinion compliance with the variation order would prevent or prejudice him from or in fulfilling his obligations under the Contract. The Contractor's obligation under 17.4 is to comply with the variation order /in fulfilling

in fulfilling any of his obligations under the Contract. After a notification under 17.4 the Engineer must reconfirm the variation order for it to become binding. The Contractor may also object to a variation order if the cumulative effect of that variation order and previous variation orders would increase or decrease the first agreed estimate of the value of the Contractor's services by more than 25%.

17. WARRANTY

On-shore Contracts

There is no provision for warranties in the standard form.

18. GUARANTEES

Under English Law liquidated damages, which are not a genuine pre-estimate of loss likely to be incurred by the Employer constitute a penalty, the effect of which is to make the liquidated damages clause unenforceable. English Law on the subject is clearly stated in the leading case of Dunlop Pneumatic Tyre Company v. New Garage and Motor Company (1915) AC 79. It must be recognized that the tests laid down in that case are not always easily applied in practice. Lord Dunedin stated the basic principle as being "the question whether a sum stipulated is a penalty or liquidated damages is a question of construction to be decided upon terms and the inherent circumstances of each particular contract judged as at the time of making of the contract, not at the time of the breach". He went on to say that "it will hold to be a penalty if the sum stipulated is extravagant and unconscionable in amount in comparison with the greatest loss that could conceivably be proved to have followed from the breach".

/The

The Dunedin test is applied in different ways and different circumstances:-

(a) where there is a single obligation upon the breach of which a sum becomes payable, if the loss caused by the breach in question can at the date of contract can be accurately or reasonably calculated in money, the fixing of a larger sum by way of liquidated damages will almost certainly be treated as a penalty.

(b) where there are several obligations upon the breach of any one of which a sum becomes payable, the problem is more complex. The test is still the same. The problem occurs where there is a wide discrepancy between the consequences of the various breaches contemplated by the clause in terms of seriousness. How can one say that one lump sum could possibly be a genuine pre-estimate of damage relating to such a variety of breaches? Perhaps a safer way of proceeding is to insert an estimate under each appropriate heading.

#### On-shore Contracts

A form of guarantee to be given by a third party guarantor to the Purchaser is contained in Appendix 2.

### 19. LIABILITY

#### (a) Consequential Losses

Relief is usually given to the Contractor from liability for consequential losses incurred by the Employer as a result of defective work.

#### (b) Contractors Default

Contractors grudgingly accede to a duty to re-perform a service or part of it in the event of their default. Whilst the Contractor might be prepared to take on liability for incidents arising from the works, the Contractor is not normally prepared to take on liability for the employers personnel and property and third party liability irrespective of to whom fault in relation to such liability was attributed. Some

/Contractors

Contractors insist on inserting an express term to the effect that should the Employer be negligent or in default then the responsibility for what ever happens as a result will be his.

(c) Increase of cover

Contractors are also keen to limit their financial liability under contracts. Some contracting companies carry extremely low insurance to cover their liabilities and will gladly increase the limits that their insurance cover necessarily imposes provided the Employer pays a premium.

On-shore Contracts

Under the provisions of clause 44 the Contractor's liability for breach of contract and for making good defects after take over by the Purchaser (excluding liability arising under the insurance provisions) is limited to an amount to be stated in the Form of Agreement. Under this clause the Contractor's liability for breach of contract is also limited to exclude certain consequential loss.

Prior to take over and for the period of 12 months following take over the Contractor's liability for defective work is governed by clause 35 (Liability for Defects).

20. INSURANCE

The Employer may need either to self insure or to obtain all risks insurance in respect of goods and construction work from the time that risk passes.

On-shore Contracts

Clauses 30 and 31 are relevant in this connection.

Under clause 30 the Contractor is responsible for all plant and materials until take-over by the Purchaser but only to the extent that (subject to certain exceptions) he is entitled to be indemnified under the terms of his insurance policy. Any costs of making good damage in excess of those sums recoverable under the policy can be recovered by the Contractor from the Purchaser as part of the Contract Price (30.4).

The insurance provisions are contained in clause 31. Clause 31.1(a) relates to plant and materials. Clause 31.1(b) relates to loss or damage to other property and liability in respect of death or personal injury to third parties arising out of the performance of the Contract.

21. CANCELLATION

On-shore Contracts

The rights of the Contractor in the event of failure by the Employer to make payment in due time are contained in clause 39.5 whereby the Contractor is entitled, if such failure continues for 28 days after giving notice, to suspend performance of the Contract until payment is made. Under 39.6, if the suspension continues for 4 months the Contractor may terminate and the provisions of clause 42 are to apply.

Clause 41 relates to Contractor's default (i.e. bankruptcy/ liquidation - otherwise not defined). In addition to his other remedies, the Purchaser is entitled to take possession of Contractor's equipment, etc. on the Site and to have a lien on them pending completion of the Works and payment by the Contractor of all damages due.

/22. TERMINATION

22. TERMINATION

(1) Termination by Employer

Most Employers take a power to terminate a pipelaying contract at their discretion during the currency of the contract. This could occur because of a change in the overall pipelaying scheme involving the abandonment of the line under contract in favour of an alternative network. Or this could occur because the economics of the field development had change so dramatically (say due to a change in the taxation regime or a substantial fall in the price of oil and gas) as to make the continuance of the project uneconomic for the Employer. A third possible reason would be that the Contractor's performance and the difficulties encountered say on the sea bed were so appalling as to make the Employer want to cut his losses in circumstances where he could not show that the problems were entirely or even mainly attributable directly to default by the Contractor. In such an event a Contractor would expect to be compensated for his reasonable and proper loss and the contract would spell out how this must be calculated. Under English Law the level of compensation set by the Contractor must not be so high as to amount to a penalty. Provision must be made for mitigating steps able to be taken by the contractor to be taken into account, such as the use of pipelaying equipment elsewhere or the use of labour elsewhere. To the extent that a local law system does not provide a duty on the Contractor to mitigate the rules should be spelt out in the contract.

(2) Termination due to default of Contractor

There is always the problem of the Contractor who undercuts his price to provide continuing employment for his workforce and equipment and then finds himself in financial difficulties which, coupled with other events, may well lead to the appointment of a Receiver or Liquidator. One then is faced with the problem as to whether the Liquidator can or cannot renounce the contract but it is usual to provide that the appointment of a Receiver or Liquidator is an event that enables the Employer to terminate the contract.

/Another



Another event that gives rise to termination is where the Contractor is substantially in breach of contract. It is desirable in order to avoid argument to define the expression "substantial". There is then the problem of taking on employees and plant. Even in such circumstances there is no guarantee that labour working on the site would be prepared to make itself available to serve a new Contractor. There can also be problems with loaned or hired plant and equipment where the standard terms of hire preclude the Employer's remedy of taking over such plant allocating it to a new Contractor for the purpose of completing the works. It is doubted whether a legal framework can provide sufficient safeguards for what is an essentially a practical matter. The track record and capability of respective Contractors is something that Employers examine very carefully before letting the contract.

(3) Termination for other reasons

The question arises as to the apportionment of risk between Employer and Contractor to cover such contingencies as, offshore, say freak weather leading to a complete breakdown of safe construction of a gas pipeline, and, onshore, say of a band of insurgents intent upon pipeline destruction or the wrecking of pipelaying equipment in support of some sort of industrial dispute. From the Contractor's point of view anything which occurs beyond the reasonable control of either party which causes an interruption or slows down or even prevents work should be regarded as an event of "Force Majeure". From the Employer's point of view the Contractor should bear some of the risk in having his tender accepted for the works and consequently the Employer prepares a list of matters which constitute his opinion in the events of Force Majeure.

To what extent does a Contractor have control over his own workforce? Should he bear the risk of delays due to industrial disputes? Should the Employer be exposed to any financial risk due to industrial disputes other than the consequences arising from delay in completion? Why should for example day rate payments continue to be paid to a Contractor during the continuance of an industrial dispute?

/Should

Should not the Contractor take the risk of mechanical or equipment breakdown? The weather conditions for the site in question must be known and the pipelaying barges surely must be designed to accommodate those weather conditions. Personnel operating pipelaying barges presumably are skilled enough to know when bad weather is likely to occur. Why therefore should day-rate payments continue to be made to Contractors during periods of pipelaying barge breakdown due to adverse weather? In some contracts clauses have been introduced allowing a wait and see period. If a problem is overcome during this period then the Contractor continues to get paid full rates. If the defect is not remedied then various scales are introduced allowing for the payment of reduced rates with an appropriate cut-off.

#### On-shore Contracts

Where this is due to force majeure clause 43 applies, with either party having the option to terminate if performance of the Works is substantially prevented by force majeure for a continuous period of 4 months.

The Purchaser may order termination of the Contract under clause 42. Under clause 42.5, the Contractor is entitled to be paid under the terms of a termination certificate to be issued by the Engineer within 3 months of the Contractor's withdrawal from site or within 3 months of receipt of the termination order. On termination, the Contractor is obliged to assign rights and deliver drawings and other documents to the Purchaser.

#### 23. INDUSTRIAL PROPERTY RIGHTS

Most pipeline arrangements between Employer and Contractor relate only to the performance of work utilising coated pipelines furnished by and belonging to the Employer. In such cases the question of ownership of goods does not arise. However, with increasing technological advances there is often the question which now tends to arise of a mixed supply of goods and services. Some long pipelines require intermediate structures with plant and equipment on them relating to the operation of the pipeline.

/The time

The time of passing of ownership and risk in the physical property can be of considerable importance. The Employer would like to have property rights as quickly as possible and to leave the risk with the contractor or the supplier for as long as possible. The supplier would like to pass the risk immediately the equipment has passed out of the factory gates.

The pipeline system may well involve original design work. Provisions should therefore be made in construction contracts for the ownership of the design and of all drawings showing the works to pass to the Employer. It should also be provided for copyright in the designs and drawings to pass to the Employer because after all he has paid the contractor for them. To what extent an Employer may also be entitled to the benefit of technical innovations which may have been created as a result of the Contractor being paid by the Employer for design work is a matter for negotiation. Technical innovations which would no doubt be protected by patent arise from the Contractor's own expertise notwithstanding that he has been paid for them and that they arose due to the nature of the works in the course of a specific contract.

#### On-shore Contracts

This is dealt with by clause 7, providing an indemnity against protected right infringement, for the Landlord of litigation and a warranty by the Purchaser in respect of furnished designs.

#### 24. STOPPAGE OF THE WORKS AND SUPPLIES

Clearly there should be power to suspend work and order investigations on any sign of failure or defects in the work. The cost should be to the account of the Contractor if the failure or the defects are due or found to be due to defective work carried out by the Contractor. If not, the costs fall on the Employer, unless the Contractor takes full risk of defective ground site conditions, defective materials or adverse climatic conditions. The power should also be taken to open up further similar areas of work if the Contractor's work has been shown to be defective in any one place and that this is a reasonable step to take. Such investigations should be at the expense of the Contractor. Contracts

/should

should also contain provisions whereby the permanent work can be varied without extra cost to the Employer if it is more practical to have variations implemented as opposed to reconstruction.

On-shore Contracts

This is dealt with by clause 14.3 under which the Engineer is entitled to order the Contractor to suspend performance of the Contract. Under clause 14.5, if this suspension lasts for a continuous period of 4 months and the Engineer fails to respond to the Contractor's notice, the Contract shall be terminated.

25. ASSIGNMENT

On-shore Contracts

This is dealt with in clause 9.1. and permitted with consent.

26. SUB-CONTRACTING AND SUB-SUPPLYING

Where the Employer permits sub-contracting but reserves himself the right to nominate who the sub-contractors shall be, then the case law of English Law jurisdictions indicates that in certain circumstances a Contractor may be relieved from his obligations to the Employer with respect of performance of the work where that work should have been performed by a sub-contractor nominated by the Employer. It is probably better for the Employer to approve sub-contractors chosen by the main Contractor rather than to nominate. (Some of the English Law cases are Gloucestershire CC v. Richardson (1969) 1 AC 480 and Vickerton v. North West Metropolitan Regional Hospital Board (1970) 1 WLR 607).

If the Employer involves himself in approving the terms of the sub-contracts to too great an extent, then the Employer may inadvertently relieve the Contractor of some of his obligations. Surely it is sufficient for the Employer merely to satisfy himself in general terms as to the competence of any sub-contractor and to approve the business terms of the arrangement i.e. the amount and method of payment, the

/warranties

warranties as to quality and performance of the work and insurance matters, and leave the other matters to the main Contractor.

#### On-shore Contracts

This is dealt with in clauses 8.2 - 8.9 and 9. The prior written consent of the Engineer is required before the Contractor may enter into any sub-contract (8.3). Sub-contractors must be bound to observe terms corresponding to the general conditions of the main Contract (8.4). In sub-contracts for supply of materials, the Contractor must use his best endeavours to obtain appropriate guarantees in respect of materials, workmanship and fitness for purpose (8.5).

#### 27. GOVERNING LAW

Some construction contracts relating to the oil and gas industry provide that the rules of commercial law generally acceptable in the countries of Western Europe shall apply as governing law. It is surely better to plump for some specific law with a well-known track record for fairness and equity.

It is normal for the contractor to undertake to comply with local law and with the duties imposed by that law, i.e. the *lex situs*. The Employer should not give itself so many areas of inspection and approval as to reduce the Contractor's liability in this area.

Sometimes the Employer from the public relations point of view is very concerned to see that Contractors comply with safety requirements, arrangements and devices. In this connection the Employer reserves to himself the right to inspect and approve.

#### On-shore Contract

See clause 2.1 of standard conditions.

#### 28. SETTLEMENT OF DISPUTES

On occasions a need arises for urgent decisions to be made. Contracts should therefore provide a mechanism whereby an arbitrator

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can give an interim decision in a short space of time. If this is not feasible for any reason then one could build in a mechanism by referring the point in question to referee, along the lines presently being studied by the International Chamber of Commerce in Paris and by other bodies concerned with arbitration matters. Some contract conditions permit quasi-judicial review by the Engineer of his own decision. Such a clause is only favoured by Employers who wish to make things more difficult for the Contractor. It certainly makes things difficult for the Engineer.

Where the contracting parties' first language is English, English Law is often chosen as the governing law with a reference to arbitration in England. Such arbitrations are not final and binding but either party if he dissatisfied with the arbitration can state a case to the English High Court with Appeals to the Court of Appeal and House of Lords. The advantage is that there are clear rules and the arbitration is relatively cheap compared say with an arbitration under the rules of International Chamber of Commerce in Paris. The new Arbitration Act of Hong Kong has additional benefits.

#### On-shore Contracts

See clauses 45 and 46. Certain disputes are expressly made referable to an Expert to be agreed between the parties or in the absence of such agreement to be appointed by the President for the time being of the Institution of Chemical Engineers on application by either party. Such disputes are to be decided by the Expert as an Expert and not as an Arbitrator. Any dispute referred to an Expert under clause 45.1 thereupon ceases to be referable to arbitration under clause 46.

See also Guide Note Q.

### 29. NOTICES AND ADDRESSES

#### On-shore Contracts

See clause 5 of the standard conditions.

30. PARTIAL INVALIDITY

On-shore Contracts

This is not dealt with under the standard conditions.

31. REGULATION OF NON-REGULATED MATTERS

On-shore Contracts

Statutory and other obligations are dealt with under clause 6 of the standard conditions.

32. COMPLETENESS CLAUSE

On-shore Contracts

This is contained in clause 2 of the form of agreement in Appendix 1.

33. WRITING CLAUSE

Oral amendments should be prohibited.

34. LANGUAGE

On-shore Contracts

There is no specific clause relating to this in the standard conditions, but the language of the law of the Contract should perhaps prevail.

35. CONTRACT COSTS

On-shore Contracts

These may be included as reimbursable costs under Schedule 2 as a main cost element under Home Office - "Legal" or "General Administration and Overheads".

36. RIGHT TO WITHHOLD PAYMENT OR TO OFFSET

On-shore Contracts

There are no specific set-off provisions in the standard conditions.

37. ANNEXES

On-shore Contracts

See clause 1 of the Form of Agreement and Guide Notes for the Preparation of the Schedules.

38. REGULATION WITH REGARD TO EXPORT LICENCE AND IMPORT LICENCE COSTS, DELAY ETC.

On-shore Contracts

These are likely to be included as reimbursable items in Schedule 2 under "materials and sub-contract materials - licences, duty and tax".

39. SECRECY

A clause should be inserted placing an express obligation on the parties to keep confidential information imparted by one party to another of a confidential nature and which is clearly identified as having the quality of confidence. The party receiving confidential information would be put under an obligation not to make unauthorised use of it. Under English Law an injunction can normally be obtained restraining not only the person making unauthorised use of the information being the person to whom the information was originally imparted but also against a person receiving that information in a situation whereby that person knew or reasonably ought to have known that such information was protected as confidential. The leading case is *Coco v. A.N. Clarke (Engineers)* (1969) RPC 41.

On-shore Contracts

This is dealt with in clause 18.



40. COMPLETION CERTIFICATE

In general, the issue of a completion certificate signifies only two things: firstly that the works have been completed; secondly that the works are free from apparent defects. After the issue of a completion certificate the Contractor will remain liable in respect of latent defects for maintenance in accordance with contractual conditions relating to maintenance, and for partial or total collapse. These matters and similar matters are governed by the law made applicable by the contract. That law defines the extent and duration of such liabilities.

The question of the Contractor giving as warranty that the works constructed will stand up to use by the proposed operation becomes particularly important in relation to the acceptance of the work by the Employer and to questions of maintenance and repair. The provision of off-shore construction expertise in the laying of off-shore pipelines has perhaps initially been very much a seller's market and Contractors have been able to refuse to accept any obligations with regard to a maintenance period for the construction works they had performed or with regard to returning to repair defects not immediately apparent at or before the time of the hand-over and acceptance. This has been reflected in the fact that many contracts have been on a day-rate work basis rather than on a lump-sum basis. So far as off-shore laying of pipelines is concerned, equipment is often fully committed and difficult to acquire for repair work and in any event Contractors ask to be paid full day-rates throughout the repair period.

/Appendix



