

**TDM**  
**PLANTATION**  
**TDM PLANTATION SDN BHD**

**TENDER DOCUMENT**

FOR

SUPPLY, DELIVERY EX-SITE, INSTALLATION, TESTING  
AND COMMISSIONING AND GUARANTEE OF CIVIL AND  
MECHANICAL WORKS OF ONE (1) UNIT 1,500MT CRUDE  
PALM OIL (CPO) BULK STORAGE TANK (BST), DESPATCH  
BAY AND ANCILLARY WORKS AT KEMAMAN PALM OIL  
MILL, KEMAMAN, TERENGGANU

Engineer



**PERUNDING AME SDN BHD** (458276 D)

**(Consulting Engineers)**

Block E Platinum Walk, 65-3

Jalan Langkawi, Taman Setapak, 53300 Kuala Lumpur

Tel: 03-41421502/4502, Fax: 03-41425502

Email: amesb@amesb.com.my

Closing Date	
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## **1. TENDER NOTICE**

TDM Plantation Sdn Bhd		Perunding AME Sdn Bhd	
Document No. AME.TDM.BST.01/25	<b>Section 1 – Tender Notice</b>	REV: 0, AJ	
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**TDM PLANTATION SDN BHD** invites experienced contractors having a minimum **CIDB registration Grade 5 (G5), CE21, B04, M15** to submit tenders for the following works:-

**SUPPLY, DELIVERY EX-SITE, INSTALLATION, TESTING, COMMISSIONING AND GUARANTEE OF CIVIL AND MECHANICAL WORKS OF ONE (1) UNIT 1500T CRUDE PALM OIL (CPO) BULK STORAGE TANK (BST), DESPATCH BAY AND ANCILLARY WORKS AT KEMAMAN PALM OIL MILL, KEMAMAN, TERENGGANU**

Interested contractors can obtain the tender documents on the TDM web at [www.tdmberhad.com.my](http://www.tdmberhad.com.my).

Tenderers are required to submit their bids in sealed envelopes and marked:

**“TENDER FOR CPO STORAGE TANKS AND ANCILLARY WORKS FOR KEMAMAN PALM OIL MILL”**

The tender is to be submitted on..... before 3.00pm at:

**Tender Box**  
**TDM Berhad,**  
WISMA TDM,  
443D, Jalan Kamaruddin 20400,  
Kuala Terengganu,  
Terengganu.  
Tel: 09-620 4800/09-622 800  
Fax: 09-620 4803

Tender received after the tender closing will not be considered.

**TDM PLANTATION SDN BHD** does not bind itself to accept the lowest or any tender.



## **2. TENDER CONDITIONS**

TDM Plantation Sdn Bhd		Perunding AME Sdn Bhd	
Document No. AME.TDM.BST.01/25	<b>Section 2 – Conditions Of Tendering</b>	REV: 0, AJ	
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## 1. DEFINITIONS

In this invitation to tender (ITT) with other related documents, words and expressions shall have the meanings assigned to them, unless otherwise required, as defined in the General Conditions of CONTRACT.

In the construction of this ITT, words bearing the singular shall include the plural and vice versa where the context so permits.

## 2. ADDENDA

EMPLOYER may, from time to time during the TENDER Period, issue addenda to this ITT. TENDERER shall acknowledge receipt of addenda. Such addenda shall be taken into account by TENDERER in the preparation of its Proposal. TENDERER shall include into its Proposal the cost of all WORK indicate in the addenda issued. Addenda are complementary to and form part of the CONTRACT. Where any conflict exists between the addenda, the latest addendum issued shall govern.

## 3. EXAMINATION OF ITT

TENDERER is fully responsible for ensuring that the ITT received by TENDERER is in its complete set.

TENDERER shall be deemed to have examined, fully understood and considered the contents of all documents issued as part of this ITT prior to preparation of the Proposal.

It shall be the sole responsibility of TENDERER to notify EMPLOYER of any discrepancies in the ITT and to obtain interpretation and/or clarification on any questions that may arise as to the intent of the ITT.

TENDERER shall review and verify the ITT with full responsibility to perform the WORK.

A successful TENDERER shall not in any way be relieved from any obligation under the CONTRACT should any technical information, engineering data or other information obtained from EMPLOYER (whether or not contained in the ITT, or otherwise) be incorrect and/or insufficient.

## 4. ENGLISH LANGUAGE

All TENDER together with any documents submitted by the TENDERER as part of any TENDER shall be written in English Language.

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## 5. INTERPRETATION OF ITT

Any TENDERER wishing an interpretation of any portion of the ITT shall submit a request for an interpretation to:

**PERUNDING AME SDN BHD**

65-3 Block E Platinum Walk, Jalan Langkawi, Setapak  
53300 Kuala Lumpur  
Tel: 03-4142 1502/4502, Fax: 03-4142 5502  
Email: azizjidon@amesb.com.my  
(Attn: ABD AZIZ JIDON)

In the event TENDERER finds discrepancies, errors or omissions in any part of the ITT, TENDERER shall immediately request an interpretation.

Requests for interpretation must be received by EMPLOYER at least one (1) week before TENDER Closing Date.

## 6. VERBAL INTERPRETATION

EMPLOYER shall not be bound by any verbal interpretation of the ITT which may be made by EMPLOYER or any of its representatives. Only interpretations made in writing by EMPLOYER in accordance with the procedure set forth in this ITT shall be binding upon EMPLOYER.

## 7. EQUALITY OF SUPPLY OF INFORMATION

A copy of all questions of interpretation received from TENDERERS and the respective answers from EMPLOYER will be sent to all TENDERERS in order to keep the TENDERS on a comparable basis. TENDERER, however, may request EMPLOYER to keep specific items as confidential subject to Employer's approval.

## 8. COMPLIANCE WITH ITT

TENDERER shall submit a TENDER which shall be in full conformity with the requirements set out in this ITT. Changes, deviations, exceptions, exclusions, conditions, variations, assumptions, departures from the terms and conditions etc in TENDERER's Proposal are considered to be deviations from the ITT and may result in this TENDER not being considered.

TENDERER is advised to use positive terms in responding to the ITT. Vague statements will be considered as non-compliance with or deviations from this ITT.

TENDERER is free to submit alternative materials/ equipment that are cost effective while maintaining the same intended functions and purposes.

## 9. TENDER RATES

TENDERER shall price and submit a rate or price as applicable against each item as required by the Schedule of Prices. A Lump Sum set against group of items is not acceptable. All TENDER prices shall be in Ringgit Malaysia. Prices and rates shall be entered in indelible ink. Prices and rates shall be submitted only on the pricing schedule sheets provided herewith.

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## 10. AMBIGUITY

The EMPLOYER reserves the right to adjust arithmetical or other errors in any TENDER in the way which he considers suitable. If the EMPLOYER discovers major errors or omissions in any TENDER; he may require the TENDERER to adjust the same, but in such case the TENDERER may not be permitted to increase the TENDER price.

## 11. SUBMISSION OF TENDER

TENDERER shall submit the TENDER in **ORIGINAL** copy addressed and delivered to:

**PETI TENDER TDM,  
LOBI WISMA TDM,  
Wisma TDM, 443D Jalan Kamaruddin,  
20400 Kuala Terengganu Terengganu.**

Changes and modification or reduction in price after the submission of TENDER shall not be accepted.

## 12. ACCESSIBILITY TO SITE

TENDERERS must visit the site by himself to satisfy him on the site conditions, accessibility and etc. He can make prior arrangement with Mill Manager before the visit.

The TENDERS submitted shall be deemed to have provided for all necessary site investigations, measurements and tests.

## 13. TENDER CLOSING DATE

TENDER(s) must be received by EMPLOYER no later than \_\_\_\_\_

TENDER(s) received by EMPLOYER after this closing time shall not be considered. EMPLOYER will not accept proof of posting as proof of receipt. It is the responsibility of TENDERER to ensure that the whole of its TENDER is received by EMPLOYER at the proper location prior to the TENDER Closing Date.

## 14. EXTENSION OF TENDER CLOSING DATE

If the Employer decides to extend the closing time for TENDER, he shall promptly notify all persons to whom he has issued documents for the purposes of tendering.

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## 15. PERIOD OF VALIDITY OF TENDER

TENDERER's Proposals shall be binding and shall remain valid, irrevocable and open for acceptance by EMPLOYER for ninety (90) days unless otherwise stated elsewhere in this ITT from the TENDER Closing Date. Withdrawal of any statement, terms and conditions or prices during this period will result in the TENDER being rejected.

## 16. TENDER PRICE

The TENDER shall be an all inclusive non-escalating fixed Lump Sum Price (without fluctuations; e.g. currency, exchange rate). The quality and quantity of the WORK included in the TENDER PRICE shall be deemed to be described in the Scope of Work, and/or specifications.

## 17. CURRENCY

The pricing, including all rates therein shall be in Ringgit Malaysia.

## 18. COMPLETENESS OF TENDERER'S PROPOSAL

It is the responsibility of TENDERER to submit all information which demonstrates its ability to complete the WORK described in this ITT. Any inadequacy or failure to submit the required information may result in the TENDER being rejected.

## 19. TENDERER'S COST

All expenses incurred by TENDERER related to the preparation of the TENDER shall be at TENDERER's cost. EMPLOYER shall not compensate for any expenses so incurred by TENDERER.

## 20. INFORMAL TENDERS

A TENDERER, which does not comply with the Instructions to TENDERERS, may be considered to be informal and may be rejected for this reason. If it is so rejected the TENDERER shall be promptly advised of the reason therefore, and his TENDER deposit shall be returned within fourteen (14) days of such rejection.

## 21. RIGHT TO REJECT

EMPLOYER reserves the right to reject, in whole or in part any or the entire TENDER and to select the Proposal of its choice without assigning any reason. EMPLOYER shall not be bound to accept the Proposal with the lowest price submitted, or any Proposal.

## 22. OWNERSHIP OF DOCUMENT

All TENDERER's Proposals submitted shall become the property of EMPLOYER.

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### 23. COMMITMENT TO PARTNERS

Where TENDERER consists of a joint venture, partnership, consortium or any other form of joint endeavour, the members of the joint endeavour shall remain firm and committed throughout the tendering exercise up to the completion of the WORK.

Any change of companies in the joint endeavour which has been pre-qualified by EMPLOYER, before or during the TENDER Period or after Contract Award is not allowed and may result in the Proposal being disqualified or the award being withdrawn by EMPLOYER.

All members of the joint endeavour shall execute the Form of Commercial Proposal and shall be jointly and severally liable under the Proposal.

If successful, all members of the joint endeavour shall be required to be signatories to the CONTRACT. In addition all members of the joint endeavour must provide satisfactory evidence to EMPLOYER, of the authority to enter into the CONTRACT and the authority of the signatories to sign the CONTRACT.

TENDERER shall submit the following undertakings and information to be included in a statement and signed by authorised signatories of all partners:

- a) That the partners of the Joint Venture/ Consortium shall together with any Joint Venture Company to be formed (if applicable) be and remain liable jointly and severally towards OWNER for inter alia the realisation of the WORK in accordance with the terms and conditions of the CONTRACT and that in the event that any one partner goes into liquidation then the surviving partner (s) shall have the full obligation to carry out and complete the CONTRACT and shall be empowered to use all CONSTRUCTION EQUIPMENT furnished by any party in the Joint Venture/Consortium and shall be entitled to have any SUBCONTRACTS assigned to it:
- b) The interest and role of each partner in the Joint Venture/Consortium.
- c) The name of the member nominated to act as Leader of the Joint Venture/Consortium and who in such capacity is authorised to incur liabilities and enter into contractual relationships with third parties, including settlement of any disputes there under, to receive and act upon instructions from EMPLOYER to make and receive payments all on behalf of Joint Venture/ Consortium.
- d) That the undertaking given hereunder shall be included in any Joint Venture or Consortium Agreement, and in the event or any conflict between the provisions of such Joint Venture or Consortium Agreement and the undertaking, the undertaking shall prevail;
- e) That the structure and membership of the Joint Venture/ Consortium shall be maintained throughout the TENDER validity period and, for the successful Joint Venture/ Consortium, to the date of FINAL ACCEPTANCE under the CONTRACT.

TENDERER shall submit the above undertaking and a signed Joint Venture/ Consortium Agreement for formation of the Joint Venture/ Consortium in the Proposal.

### 24. PARENTAL GUARANTEE

If TENDERER relies on its parent's and/or principal company's experience to undertake the whole or any part of the WORK, EMPLOYER requires a formal Parental Guarantee from its parent or

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principal company which shall be attached to the TENDER. The guarantee shall be in the parent or principal company's letter head.

Such Parental Guarantee shall be released to the unsuccessful TENDERERS as soon as possible after signing of the CONTRACT between EMPLOYER and successful TENDERER.

TENDERER shall bear all expenses, stamp duties and commissioning charges incurred in respect of the provisions of the aforesaid Guarantees.

## 25. FORM OF AGREEMENT

Successful TENDERER shall enter into the CONTRACT with EMPLOYER as described in "Form of Agreement" and in compliance with the requirements of this ITT.

## 26. COMMENCEMENT

For tendering purpose, TENDERER shall assume that the CONTRACT will be awarded on or before the expiry date of the Period of Validity of the TENDER, ninety (90) days after the TENDER Closing Date.

### **3. FORM OF TENDER**



TDM Plantation Sdn Bhd		Perunding AME Sdn Bhd	
Document No. AME.TDM.BST.01/25	<b>Section 3 – Form of Tender</b>	REV: 0, AJ	
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**SUPPLY, DELIVERY EX-SITE, INSTALLATION, TESTING AND COMMISSIONING AND GUARANTEE OF CIVIL AND MECHANICAL WORKS FOR ONE (1) UNIT 1500MT CRUDE PALM OIL (CPO) BULK STORAGE TANK (BST), DESPATCH BAY AND ANCILLARY WORKS AT KEMAMAN PALM OIL MILL, KEMAMAN, TERENGGANU**

TO:

**TDM Plantation Sdn Bhd**  
WISMA TDM, 443D,  
Jalan Kamaruddin,  
20400, Kuala Terengganu,  
Terengganu.  
Tel: 09-620 4800/09-622 800  
Fax: 09-620 4803

Sirs,

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

.....  
.....(RM: ..... )

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

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Dated this ..... day of..... 2025

Signed by .....

In the capacity of .....  
duly authorised to sign tenders for and on behalf of :

Tenderer :.....

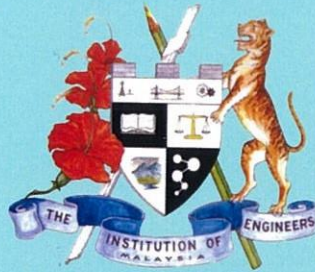
Address :.....  
.....

Witness by :.....

Designation :.....

Address :.....  
.....  
.....

#### **4. CONDITIONS OF CONTRACT**



# IEM

The Institution of Engineers, Malaysia

## **IEM Form of Contract for Mechanical and Electrical Engineering Works**

THIRD EDITION, JANUARY 2017

This document has been prepared by The Institution of Engineers, Malaysia  
and is recommended for general use for mechanical and electrical works in Malaysia.

This document may be cited as "IEM. ME 2012"



# IEM Form of Contract for Mechanical and Electrical Engineering Works

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## **IEM Form of Contract for Mechanical and Electrical Engineering Works**

### **Articles of Agreement**

This Agreement is dated .....

### **Parties to Agreement**

1. .... (Company No.: .....)  
is a company incorporated in Malaysia and have its registered/business office at  
.....  
..... (“Employer”).
2. .... (Company No.: .....)  
is a company incorporated in Malaysia and have its registered/business office at  
.....  
..... (“Contractor”).

### **Background**

- (A) The Employer has appointed the Contractor to design (to the extent required by this Contract), construct, complete the works (called in this Agreement the “Works”) for  
.....  
.....
- (B) The Employer has appointed .....  
of .....  
.....  
to design the Works and also to act as the Engineer for the purposes of the Contract.
- (C) The Contractor agrees to the appointment and undertakes to complete all the works required and necessary to complete the Works.

### **The Terms**

1. The words used in this Agreement have the same meanings which are defined in the Conditions of Contract.
2. The Contract Sum is Ringgit Malaysia ..... RM ( ..... ) only  
and this sum cannot be changed unless this is expressly provided for in the Contract.
3. The following documents shall form the Contract:
  - (a) Letter of Acceptance;
  - (b) Articles of Agreement;
  - (c) Conditions of Contract;
  - (d) Drawings;
  - (e) Specifications;
  - (f) Bills of Quantities;
  - (g) other documents, letters, addenda and others which are specifically specified and identified by the parties as forming the Contract.

Signed by ]  
authorised representative ]  
of the Employer ]  
in the presence of ]

.....  
Name  
I.C. No.

.....  
Name  
I.C. No.

Signed by ]  
authorised representative ]  
of the Contractor ]  
in the presence of ]

.....  
Name  
I.C. No.

.....  
Name  
I.C. No.

# **IEM Form of Contract for Mechanical and Electrical Engineering Works**

## **Conditions of Contract**

### **1 DEFINITIONS AND INTERPRETATIONS**

#### **1.1 Definitions**

The following words and expressions have the meanings given to them when used in this Contract unless the context requires otherwise:

- (1) "Appendix" means the appendix to these Conditions.
- (2) "Approved" means approved in writing by the Engineer including subsequent written confirmation of oral approval; "approval" means approval in writing and includes confirmation of oral approval.
- (3) "Certificate of Completion" means the certificate issued by the Engineer under Clause 47.2.
- (4) "Certificate of Default" means a certificate issued by the Engineer under Clause 61.1(1).
- (6) "Certificate of Making Good Defects" means the certificate issued by the Engineer under Clause 48.4.
- (7) "Conditions" means the Conditions of Contract for Civil Engineering Works and Option Modules specified in the Appendix.
- (8) "Contract" or "Contract Document" means the documents as described in Clause 4.1(1).
- (9) "Contract Sum" means the sum set out in the Letter of Acceptance and is fixed subject only to adjustments expressly provided by the Conditions.
- (10) "Contractor" means the person, firm or corporation identified in the Articles of Agreement whose Tender has been accepted by the Employer.
- (11) "Constructional Plant and Equipment" means the equipment, apparatus, plant, machinery, and things of whatsoever nature required by the Contractor for the construction and completion of the Works (including the making good of any defects) but not intending to be part of the Works.
- (12) "Costs" means and includes
  - (a) the direct relevant costs of Constructional Plant and Equipment, materials, goods and labour actually incurred on Site by the Contractor; and
  - (b) costs of an overhead nature actually and necessarily incurred on Site by the Contractor; and
  - (c) the amount equivalent to the percentage stated in the Appendix of the sum of the costs referred to in (a) and (b) above, this amount is taken to include head office or other administrative overheads and financing charges.

It is the intention of the parties that "Costs" excludes profit.

- (13) "Date for Commencement" means the date fixed for the commencement of the Works and this is the date determined in accordance with Clause 37.1(1).
- (14) "Date for Completion" means the date on or before which the Contractor must complete the Works and this date is fixed and can only be extended or varied in accordance with the express provisions of these Conditions.
- (15) "day" means a calendar day.
- (16) "Defects Liability Period" means a period the duration of which is stated in the Appendix and during which the Contractor must make good all defects notified to him by the Engineer.

- (17) "Drawings" means the drawings referred to in the Contract including those drawings issued from time to time by the Engineer and shop drawings prepared by the Contractor.
- (18) "Employer" means the person, firm, corporation identified in the Articles of Agreement who has accepted the Tender.
- (19) "Engineer" means the person identified in the Articles of Agreement for the purposes of the Contract.
- (20) "Engineer's Representative" means the person appointed by the Engineer and notified to the Contractor under Clause 2.4(1).
- (21) "Letter of Acceptance" means the formal acceptance of the Tender by the Employer.
- (22) "Lump Sum Works" means those items of works shown on the Drawings or described in the Specifications and which are described and designated in the Bills of Quantities for Lump Sum Works.
- (23) "Option Module" means the Option Module appearing at the end of these Conditions.
- (24) "Performance Tests" means the tests (if any) detailed in the Specification or in a performance tests schedule otherwise agreed between the Employer and the Contractor, to be made to demonstrate the performance of the Works.
- (25) "Permanent Works" means works of a permanent nature to be constructed in accordance with the Contract.
- (26) "Plant" means machinery, computer hardware and software, apparatus, materials, articles and things of all kinds to be provided under the Contract other than Constructional Plant and Equipment.
- (27) "Remeasured Works" means those items of works shown on the Drawings or described in the Specifications and which are described and designated in the Bills of Quantities for Remeasured Works.
- (28) "Schedule of Prices for Lump Sum Works" means the schedule included in the Bills of Quantities describing works which are neither Remeasured Works nor those works described and designated as Prime Cost or Provisional Sums.
- (29) "Section" means an identified and specific part of the Works in respect of which a corresponding date for completion and liquidated damages are specified in the Appendix.
- (30) "Specifications" means the Specifications included in the Contract together with any later modification or amendment which the Engineer may issue or approve from time to time.
- (31) "Site" means the land and other places on, under, in or through which the Works are to be constructed and can where applicable include
  - (a) land designated or provided by the Employer for the purposes of the Contract; and
  - (b) land proposed by the Contractor and agreed to by the Engineer for the purposes of the Contract.
- (32) "Temporary Works" means all temporary works of every kind required for the carrying out of the Works and which would be removed after the completion of the Works.
- (33) "Tender" means the Contractor's priced offer to the Employer for the construction, completion and maintenance of the Works in accordance with the provisions of the Contract.
- (34) "Tests on Completion" means the tests specified in the Contract (or otherwise agreed by the Employer and the Contractor) which are to be made by the Contractor upon completion of erection and/or installation before the Works are taken over by the Employer.
- (35) "Works" means collectively the Permanent Works and Temporary Works.

## **1.2 Singular and Plural**

- (1) Words which are used in the singular only also include the plural and *vice versa* where the context requires.

**1.3 Clauses and Headings**

- (1) References to Clauses, Appendix and Option Modules are references to clauses, appendix and option modules of these Conditions.
- (2) The headings in these Conditions of Contract are not a part of the Contract and are not to be taken into consideration in the interpretation of the Contract.

**1.4 Joint and Several Liability**

- (1) If any party to the Contract is a partnership, joint venture or consortium, it is a term of this Contract that the individual persons, entities or companies comprising that party are jointly and severally liable to the other party under this Contract.
- (2) Either party to the Contract may, in its absolute discretion, commence arbitral or legal proceedings against any or all of the individual persons, entities or companies comprising the other party in respect of the obligations arising under this Contract.
- (3) The party commencing the arbitral or legal actions under this Contract is not obliged to make any claim against all the persons, entities or companies comprising the other party.

**2 ENGINEER AND ENGINEER'S REPRESENTATIVE**

**2.1 Duties of the Engineer**

- (1) The Engineer must carry out the duties specified in or which can be implied from the Contract.

**2.2 Authority of the Engineer**

- (1) The Engineer may exercise the authority specified in or necessarily to be implied from the Contract.
- (2) Unless it is expressly stated in the Contract, the Engineer has no authority to amend the Contract or to relieve the Contractor of any of his obligations under the Contract.
- (3) The giving of any consent or approval by or on behalf of the Engineer does not in any way relieve the Contractor of any of his obligations under the Contract. The giving of any consent or approval will also not relieve the Contractor of his duty to ensure the correctness or accuracy of the matter or thing which is the subject of the consent or approval.

**2.3 Named Individual**

- (1) If the Engineer is not an individual, the Engineer must within 14 days of the Letter of Acceptance notify to the Contractor in writing the name of the individual who will act on his behalf to carry out the duties or to exercise the authority of the Engineer for the purposes of the Contract.
- (2) The Engineer may change the named Engineer but this change can only take effect after the Contractor has been notified in writing of the change.
- (3) No person who is subsequently appointed to act as the Engineer is entitled to disregard or overrule any certificate, opinion, decision, approval or instruction given earlier by the Engineer whom he replaces.

**2.4 Engineer's Representative**

- (1) The Engineer's Representative may be appointed by and be responsible to the Engineer. The Engineer must notify the appointment of the Engineer's Representative to the Contractor in writing.
- (2) The Engineer's Representative assists the Engineer to watch and supervise the construction and completion of the Works and the making good of any defects in the Works.
- (3) The Engineer's Representative does not have any authorities under the Contract except those which are expressly delegated to him by the Engineer.

**2.5 Delegation of Authorities by the Engineer**

- (1) Subject to Clause 2.5(4), the Engineer may delegate to the Engineer's Representative any of the authorities vested in the Engineer. The Engineer may also at any time amend or revoke the delegation.

- (2) The delegation of any authorities by the Engineer to the Engineer's Representative must be notified to the Contractor in writing. This delegation can only take effect after a written notice of the delegation has been received by the Contractor.
- (3) The authorities delegated to the Engineer's Representative continue to be in force until Engineer notifies the Contractor in writing that the delegation has been revoked.
- (4) The Engineer must not delegate the making of any decision, the exercise of any authority or the issue of any certificate under Clauses 44.3, 46.2, 48.4, 59.2, 61.1, 61.4 and 62.4.
- (5) If the Contractor is not satisfied with any decision of the Engineer's Representative, he may refer the decision to the Engineer. The Engineer must confirm, reverse or vary the decision within 14 days after the Contractor has referred it to him.

## **2.6 Appointment of Assistants**

- (1) The Engineer may appoint any number of persons to assist the Engineer's Representative in carrying out his functions under Clause 2.4(2). He must notify the Contractor in writing of this appointment and the notice must also specify the scope of responsibilities of such persons.
- (2) The assistants do not have any authority to issue any instructions to the Contractor except for those directions that are necessary to enable them to carry out their duties in ensuring that the materials, goods or works are in accordance with the Contract.

## **2.7 Impartiality, Reasonableness and Timeliness**

- (1) The Engineer must act impartially within the terms of the Contract having regard to all the circumstances. The Engineer must also act impartially, reasonably and timely in exercising all or any of the authorities vested in him under the Contract.
- (2) Similarly, the Engineer's Representative must also act impartially, reasonably and timely.

## **3 ENGINEER'S INSTRUCTIONS**

### **3.1 Contractor to Comply with Engineer's Instructions**

- (1) The Contractor must comply with and adhere strictly to all Engineer's instructions touching or concerning the Works which are properly issued in accordance with the Contract.
- (2) The Contractor must take instructions only from the Engineer or where the Engineer's Representative is so delegated with the relevant authorities, from the Engineer's Representative.

### **3.2 Instructions to be in Writing**

- (1) All instructions issued by the Engineer must be in writing.
- (2) Any instruction issued by the Engineer which is not in writing is of no effect.
- (3) The provisions of this Clause 3.1 apply equally to instructions given by the Engineer's Representatives.
- (4) Minutes of meetings on any matters must not be taken as instructions in writing.

### **3.3 Confirmation of Oral Instructions**

- (1) Confirmation in writing of any oral instructions by the Engineer or minutes of meeting, whether before or after the carrying out of the instruction, is a properly issued instruction within the meaning of Clause 3.1.
- (2) The Contractor may, either before or after the carrying out of an instruction given other than in writing, confirm such instruction in writing with the Engineer. If this confirmation is not contradicted within 7 days by the Engineer, it is then a properly issued instruction within the meaning of Clause 3.1.

### **3.4 Failure to Comply with Engineer's Instructions**

- (1) If the Contractor does not comply with an instruction properly issued by the Engineer 14 days after his receipt of such instruction (or such longer period as may be extended by the Engineer), or before a date of compliance that is specified in the instruction,



- (a) the Employer can then employ other persons to do whatever that is necessary to give effect to the instruction; and
- (b) the Employer is entitled to deduct or set-off from any payment due to the Contractor under the Contract for any direct cost, losses, expenses and damages which the Employer suffers or incurs as a consequence.

#### **4 CONTRACT DOCUMENTS**

##### **4.1 Documents forming the Contract**

- (1) The following are the documents forming the Contract:
  - (a) Letter of Acceptance;
  - (b) Articles of Agreement;
  - (c) Conditions of Contract;
  - (d) Drawings;
  - (e) Specifications;
  - (f) Bills of Quantities;
  - (g) Schedules of Technical Data; and
  - (h) other documents, letters, addenda and others which are specifically specified and identified by the parties as forming the Contract.

##### **4.2 Documents Mutually Explanatory**

- (1) All the documents forming the Contract are to be taken as mutually explanatory and be read as a whole.
- (2) If there is any conflict, inconsistency or ambiguity within or between the documents forming the Contract, such a conflict, inconsistency or ambiguity must be resolved by the Engineer by issuing an instruction to explain and adjust such a conflict, inconsistency or ambiguity.
- (3) In resolving any such conflict, inconsistency or ambiguity, the Engineer must treat the Letter of Acceptance, the Articles of Agreement and the Conditions of Contract (in this order of priority) as prevailing over those other documents forming the Contract.

##### **4.3 Additional Costs Incurred**

- (1) If the Contractor incurs additional Costs in complying with the instruction issued by the Engineer under Clause 4.2(2), and as a direct consequence there is delay to the completion of the Works,
  - (a) these Costs may then be recovered by the Contractor under Clause 53; and
  - (b) the Engineer must take the delay into consideration in exercising his authority with respect to Clause 44 of these Conditions.

##### **4.4 Custody of Contract Documents**

- (1) The original set of the Contract Documents is to remain in the custody of the Employer.
- (2) Within 14 days after the execution of the Contract, the Engineer must arrange a duplicate set of the Contract Documents for the Contractor at no charge to the Contractor.

##### **4.5 Confidentiality of Contract Documents**

- (1) The Contractor must use the Contract Documents and all subsequent documents issued to him by the Engineer only for the purposes of the Contract.
- (2) Unless the written consent of the Engineer is obtained, the Contractor must not disclose or make available to a third party the Contract Documents and all the details and information contained within the Contract Documents.

##### **4.6 Language and Law**

- (1) The Contract Documents have been prepared in the English Language and the language of the Contract is English.
- (2) This Contract is subject to Malaysian law.

## **5 DRAWINGS**

### **5.1 Supply of Drawings**

- (1) In addition to Clause 4.4(2), the Engineer must make available to the Contractor two sets of the Drawings within a reasonable time after the issuance of the Letter of Acceptance. These two sets of Drawings must be supplied without any extra charge to the Contractor.
- (2) If the Contractor requires further copies of the Drawings, these must be obtained from the Engineer. The Engineer may impose reasonable charges for providing to the Contractor these further copies of the Drawings.
- (3) One set of the Drawings supplied to the Contractor under Clause 5.1(1) together with a copy of Specifications must be kept on Site by the Contractor. The Engineer or his authorised representatives can inspect this set of the Drawings or the Specifications on Site at all reasonable times.

### **5.2 Further Drawings by the Engineer**

- (1) The Engineer has authority under the Contract to issue from time to time before the completion of the Works further drawings to the Contractor. These further drawings must be issued to the Contractor by way of instructions.
- (2) The provisions of Clauses 3.1 and 3.3 apply to these instructions issued under Clause 5.2(1).

### **5.3 Requests for Further Drawings**

- (1) If the Contractor considers that further drawings are necessary for the proper execution and completion of the Works, he must serve a notice to that effect to the Engineer.
- (2) The notice served under Clause 5.3(1) must include the following details:
  - (a) descriptions of the drawings required; and
  - (b) information of why and by when the drawings are required.
- (3) Further to the requirements of Clause 5.3(2), the notice must be served within a reasonable time such that
  - (a) the planning or execution of the Works will not be delayed or affected; and
  - (b) the Engineer can respond to the notice and instruct the necessary and required drawings to be issued.
- (4) Further drawings referred to in Clause 5.3 must be issued by way of instructions. The provisions of Clauses 3.1 and 3.3 also apply to these instructions.

### **5.4 Delay in Issuing Further Drawings**

- (1) If the Engineer fails or is unable to issue the required drawings within the time reasonable in all circumstances, and the Contractor suffers delay to the completion of the Works and incurs Costs, then
  - (a) such delay must be taken into consideration by the Engineer in determining any new Date for Completion to which the Contractor may be entitled to under Clause 44; and
  - (b) the Costs may be recovered by the Contractor under Clause 53.
- (2) The provision in Clause 5.4(1) is subject to the Contractor having fulfilled the requirements of Clause 5.3(3).

## **6 CONTRACTOR'S SHOP DRAWINGS AND DESIGNS**

### **6.1 Shop Drawings and Works Designed by the Contractor**

- (1) The Contractor must prepare shop drawings and carry out any further design necessary to prepare such shop drawings for the Permanent Works.
- (2) The Contractor must submit such shop drawings and designs referred to in Clause 6.1(1) for the approval of the Engineer within a reasonable time

- (a) to allow the Engineer to assess and check the design; and
  - (b) so that the planning and construction of these Permanent Works and all other related and associated works will not be affected or delayed.
- (3) The Contractor must not proceed with the construction of these Permanent Works unless approval to the Contractor's design is obtained from the Engineer.
- (4) The Engineer may discuss with the Contractor on aspects of the design and instruct that the design be amended or revised. Notwithstanding this, the Engineer must approve the Contractor's design within 21 days of its submission and receipt by the Engineer unless the Engineer has before that instructed for amendments and revisions to be made to the design.
- (5) The design submission of the Contractor must include the following:
  - (a) drawings or sketches or a combination of both;
  - (b) technical details of equipment and materials;
  - (c) calculations; and
  - (d) any other such information as may be necessary and required for the Engineer to assess the suitability, adequacy, integrity and safety of the design.
- (6) Where practical or required, the Contractor's design submission must also include operation and maintenance manuals. These manuals must be in sufficient details to enable the Employer to operate, maintain, dismantle, reassemble and adjust the Permanent Works incorporating the design.
- (7) Other than shop drawings, all designs submitted by the Contractor must be formally endorsed by a Professional Engineer registered with Lembaga Jurutera Malaysia in the discipline which relates to the designs.

#### **6.2 Amendment or Modification of Contractor's Design on Permanent Works**

- (1) The Contractor may, with the written consent of the Engineer, amend or modify the design of the Permanent Works which the Engineer has earlier approved under Clause 6.1(4).
- (2) If the amendment or modification of the design in Clause 6.2(1) results in extra costs and expenses incurred by the Contractor, such costs and expenses are to be solely borne by the Contractor.
- (3) If however there are any savings, these savings must be shared equally between the Employer and the Contractor. The amount of the savings must be agreed between the Engineer and the Contractor before the Engineer gives his approval to the amended or modified design.
- (4) The Employer may set-off from any payments due to the Contractor the savings which are agreed in writing between the Engineer and the Contractor in Clause 6.2(3).
- (5) The Contractor's amended or modified design must be approved by the Engineer and Clauses 6.1(2) to (7) are applicable to this amended or modified design.

#### **6.3 Temporary Works Designed by Contractor**

- (1) The Contractor must at his own expense design the Temporary Works. The design of these Temporary Works must be approved by the Engineer.
- (2) The provisions of Clauses 6.1 (2) – (5) inclusive and Clause 6.1(7) which govern the design of the Permanent Works also govern the design and, when the Contractor chooses, the amended or modified design, of the Temporary Works.

#### **6.4 Delay in Approving Design**

- (1) If the Engineer has delayed the approval of the design submitted by the Contractor under Clauses 6.1 or 6.3 and the Contractor incurs delay in meeting the Date for Completion and additional Costs as a direct consequence,
  - (a) the Engineer must take the delay into consideration in determining any extended Date for Completion to which the Contractor may be entitled under Clause 44; and
  - (b) the Engineer must certify the additional Costs in accordance with the provisions of Clause 53.

**6.5 Responsibility Unaffected by Approval**

- (1) The Contractor retains at all times responsibility with respect to his designs of both the Permanent Works and the Temporary Works. Any approval given by the Engineer under Clause 6.1(4) will not relieve the Contractor of this responsibility.
- (2) Any approval given by the Engineer under the Clause 6.1(4) above must not be used as a ground to limit the Engineer's authority to instruct variations to the Works under Clause 51 even if such variations may require changes to the Temporary Works which have already been approved.
- (3) Further to Clause 6.5(2), if the instructed variation requires changes to the Temporary Works, the Contractor may include in his valuation of the variation instructed the value of the works necessitated by the changes to the Temporary Works.

**6.6 Intellectual Property Rights**

- (1) The Contractor retains intellectual property rights to all designs submitted by the Contractor to the Engineer but the Contractor irrevocably grants to the Employer licence to use such rights for all matters relating to the Works.
- (2) It is a condition of the Contract that for all designs submitted by the Contractor, the Contractor undertakes that the designs must not infringe any pre-existing intellectual property rights belonging to any third party. The Contractor further indemnifies the Employer and the Engineer against any actions, damages, claims and others for any infringement of any intellectual property rights belonging to a third party.
- (3) The intellectual property rights referred to in this Clause include patent rights, trademarks, copyrights and any other protected rights.

**7 EMPLOYER'S GENERAL OBLIGATIONS**

**7.1 Employer's General Obligations**

- (1) The following are the Employer's general obligations under this Contract:
  - (a) The Employer must give the right of access to and possession of the Site in accordance with Clause 11.
  - (b) The Employer must ensure that the land use of the Site has been correctly categorised and approved for the Works.
  - (c) The Employer must obtain development or planning approvals including where applicable building plan approval and such other necessary approvals from the relevant statutory authorities or service providers relating to the Works. These approvals must be obtained before the Date for Commencement.
  - (d) The Employer must not obstruct nor interfere the Contractor's performance of the Contract unless such obstruction or interference is provided for in the Contract.
  - (e) The Employer must not interfere, influence or obstruct the Engineer in his certification duties under the Contract.
  - (f) The Employer must appoint another Engineer if the Engineer dies or for any reason cannot function as the Engineer under the Contract. Such appointment must be made within 30 days of the Engineer's death or his inability to function as the Engineer under the Contract.
- (2) The Engineer appointed by the Employer under Clause 7.1(1)(f) must not overrule the decisions and the certifications of the former Engineer.
- (3) The Employer's general obligations listed in Clauses 7.1 (a) to (f) (inclusive) must not be taken to limit the obligations of the Employer both under the Contract and in law.

**8 CONTRACTOR'S GENERAL OBLIGATIONS**

**8.1 Contractor's General Obligations**

- (1) The Contractor must, with due care and diligence,

- (a) design the Works to the extent required by the Contract;
- (b) set out, construct and complete the Works; and
- (c) remedy all defects

in accordance with the provisions of the Contract.

- (2) In fulfilling his obligations set out in Clause 8.1(1), the Contractor must fully provide

- (a) management and technical know-how;
- (b) supervision;
- (c) labour;
- (d) Constructional Plant and Equipment;
- (e) materials and goods;

and all other things whether of a temporary or permanent nature as he may require.

- (3) The Contractor must at all times be fully responsible and take full measures to ensure and maintain the adequacy, stability and safety of all operations on Site.
- (4) The Contractor's general obligations listed in Clauses 8.1 (1) to (3) (inclusive) must not be taken to limit the obligations of the Contractor both under the Contract and in law.

## **9. NOTICES**

### **9.1 Notices**

- (1) Notices to either the Employer or the Contractor must be served to the respective address stated in the Articles of Agreement.
- (2) The Employer or the Contractor may amend the address stated in the Articles of Agreement and the amendment can only take effect after the notice of the change is received by the other party.
- (3) Unless there are express provisions relating to a particular mode of serving notices, notices can be served in either of the following manners:
- (a) by hand delivery to the authorised representative of the Employer or the Contractor or his Site Manager (in the case of the Contractor) with the receiving person acknowledging receipt;
  - (b) by courier to the address stated in the Articles of Agreement and with the acknowledgement receipt obtained; or
  - (c) by AR Registered Post to the address stated in the Articles of Agreement.

## **10 PERFORMANCE SECURITY**

### **10.1 Submission of Performance Security**

- (1) If it is a requirement under the Contract that the Contractor must provide a performance security, the Contractor must obtain and provide to the Employer such security within 14 days of the Date for Commencement or an extended date as the Employer may agree to in writing.
- (2) The performance security must be in the form of a guarantee or bond.
- (3) The performance security must be in the amount equivalent to the percentage of the Contract Sum stated in the Letter of Acceptance or Appendix to these Conditions.
- (4) The Contractor must at the same time of the submission of the performance security to the Employer also provide to the Engineer with a certified true copy of the performance security submitted.
- (5) If the Contractor fails or is unable to produce the performance security, then the Employer may retain any payment due to the Contractor under the Contract to the amount required of the performance security.
- (6) Both the Employer and the Contractor agree that the arbitrator appointed under Clause 63.2 of these Conditions will have the jurisdiction on all matters related to the performance security to the extent allowed by Arbitration Act 2005.

**10.2 Requirements of Performance Security**

- (1) The performance security mentioned in Clause 10.1 must satisfy the following requirements:
  - (a) It must be substantially in the form and content as per the Proforma of Performance Bond of IEM Form of Contract for Mechanical and Electrical Engineering Works or in such other form and content as may be agreed between the Employer and the Contractor.
  - (b) It must be issued by a bank or other financial institution approved by the Employer.
  - (c) It must be valid at all times until the Date for Completion or any extension of date.
- (2) The performance security must be provided at the expense of the Contractor.

**10.3 Extension of Validity**

- (1) If it appears that the Contractor will not be able to complete the Works by the Date for Completion, the Contractor must extend the validity of the performance security such that he fulfils his obligation under Clause 10.2(1)(c).
- (2) The extension of the validity of the performance security mentioned in Clause 10.3(1) must be effected at least 30 days before the expiry of the submitted performance security.
- (3) The costs involved in extending such performance security may be recovered by the Contractor as Costs under Clause 53 of these Conditions if the delay to the Completion is not due to the acts or omissions of the Contractor.

**10.4 Call on Performance Security**

- (1) Before the Employer can make a claim under the performance security, the Engineer must have already issued the Certificate of Default.
- (2) All claims or calls to the bank or financial institution by the Employer on the performance security must be accompanied by the Certificate of Default.
- (3) The Certificate of Default is the only condition precedent for any call or claim on the performance security.

**10.5 Utilisation of the Proceeds of the Performance Security**

- (1) The Employer may use such amount of the proceeds of the performance security to set-off any costs, damages or losses which he may have suffered as a direct consequence of the Contractor's fundamental breach or breaches of the Contract for which the Engineer has issued the Certificate of Default.
- (2) If there is any balance amount remaining of the proceeds of the performance security after the set-off mentioned in Clause 10.5(1), such balance must be to the account of the Contractor and the Contractor must be reimbursed accordingly.

**11 THE SITE**

**11.1 Possession of the Site**

- (1) The Contractor must not use the Site or any part of it for any purpose or activity not connected with the Works.
- (2) Possession of the Site by the Contractor must not be taken to be for the sole and exclusive use of the Contractor. Such possession of the Site granted by the Employer to the Contractor constitutes nothing more than a revocable licence granted, where it is legally possible so to do, by the Employer to the Contractor.
- (3) In that part of the Site not legally owned by the Employer or to which other person or persons not connected with the Works can have continual access and use, the Contractor is deemed to have been granted the possession of that part of the Site at the Date for Commencement provided that
  - (a) the relevant local, state or federal authorities have agreed to their use for the purposes of the Works; and

- (b) the Contractor must ensure the continual access and use of this part of the Site by those persons not connected with the Works.

#### **11.2 Designated Site**

- (1) The Contractor may request the Engineer's approval to designate any land adjacent to, or in the vicinity of, the Site as forming part of the Site.
- (2) The Engineer may, before giving his approval to the Contractor's request, require such undertakings from the Contractor as the circumstances of the Contractor's request or the status of the land may require.
- (3) The Engineer retains the absolute discretion in giving, withholding or revoking any approval to the Contractor's request under Clause 11.2(1).

#### **11.3 Contractor to Keep Site Clear**

- (1) The Contractor must keep the Site free from all unnecessary obstructions during the execution of the Works.
- (2) The Contractor must remove from the Site any materials and Temporary Works which are no longer required for the Works together with rubbish and any other unwanted materials.
- (3) In removing any rubbish or unwanted materials from the Site, the Contractor must keep the Engineer informed of the location, ownership and other details of the dumping grounds where the rubbish or unwanted materials will be dumped.

#### **11.4 Inspection of the Site**

- (1) If the Site has been made available to the Contractor for any reasonable period for his inspection and examination before his submission of the Tender, then it is a condition of the Contract that the Contractor has satisfied himself as to the following information and conditions about the Site:
  - (a) the form and nature of the Site including existing ground levels;
  - (b) the form and nature of the subsurface conditions;
  - (c) the hydrological conditions of the Site;
  - (d) the climatic conditions of the Site;
  - (e) the means and access to the Site;
  - (f) the locations and routes of the existing services, mains or other utilities;
  - (g) the existence of any vegetation or foliage;
  - (h) the risk of injury or damage to property within, adjacent to or in the vicinity of the Site or to the occupier of such property; and
  - (i) the availability of labour, energy sources, materials and others necessary for the construction and completion of the Works.
- (2) Other than the provisions of Clause 11.4(1), it is also a condition of this Contract that the Contractor has consulted, inspected and obtained all published data regarding the information of the Site and the construction of any works on the Site.
- (3) The Employer and the Engineer are not bound and are under no obligation to provide any information, data or details about the Site to the Contractor. If any such information, data or details are given to the Contractor, either before or after the submission of the Tender, this must not be taken as relieving the Contractor of his obligations stated in Clauses 11.4(1) and (2).
- (4) The information, data or details referred to in Clause 11.4(3) include those provided
  - (a) by the Employer, the Engineer or their employees; and
  - (b) in the Contract Documents

and the Employer and the Engineer do not warrant the accuracy or the correctness of the information, data or details so provided and the Contractor is duty bound to independently verify the same.

### **12 SUFFICIENCY OF TENDER AND ADVERSE PHYSICAL CONDITIONS**

#### **12.1 Sufficiency of Tender**

- (1) The Contractor must satisfy himself as to the correctness and sufficiency of the Tender including the rates and prices in the Bills of Quantities. The Contractor must also ensure that the Contract Sum covers all his obligations under the Contract.