

- (2) The Contractor must ensure that the Contract Sum has taken into consideration the extent and nature of the works and materials necessary for the construction and completion of the Works and the making good of any defects.

12.2 Adverse Physical Conditions

- (1) If the Contractor encounters any conditions about the Site (other than climatic conditions) which have directly or indirectly caused the delay of the Works beyond the Date for Completion, and the Contractor has incurred Costs as a 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.
- (2) The conditions referred to in Clause 12.2(1) above include the conditions listed in Clause 11.4(1) for which the Contractor could not have anticipated given the time available in preparing his Tender and the nature of the conditions encountered in relation to the Works.

12.3 Taxes and Custom Duties

- (1) The Contractor must pay all taxes which are payable under Malaysian laws including the payment of any service tax to any specialist designers whom he employs.

13 WORKS TO BE IN ACCORDANCE WITH CONTRACT

13.1 Works to be in Accordance with Contract

- (1) The Contractor must construct and complete the Works and make good any defects in the Works in accordance with the Contract unless it is legally or physically impossible to do so.
- (2) The legal or physical impossibility referred to in Clause 13.1(1) includes any initial or supervening impossibility.
- (3) If the legal or physical impossibility is of interim or temporary in nature not exceeding 90 days, then such legal or physical impossibility is to be treated as if the Works have been suspended in accordance with the provisions of Clause 41. In such a case the Contractor's entitlements are also in accordance with those stated in Clause 41.

14 CONTRACTOR'S SUBMISSIONS

14.1 Documents to be Submitted

- (1) The Contractor must submit to the Engineer the following documents (collectively, "Contractor's Submissions") within 14 days of the Letter of Acceptance, or any extended time approved by the Engineer:
 - (a) an overall construction program ("Master Program") showing the construction and completion of the Works on or before the Date for Completion;
 - (b) a monthly report ("Monthly Report") showing the progress of the Works of the preceding month
- (2) None of the Contractor's Submissions is a Contract Document. This provision continues to apply even if any of the Contractor's Submissions are bound together with other documents forming the Contract and referred to as such.

14.2 The Master Program

- (1) The Master Program prepared and submitted by the Contractor must
 - (a) be in such form as the Engineer may reasonably require;
 - (b) be in sufficient details as the nature of the Works requires; and
 - (c) identify or highlight any construction activities which are critical to the completion of the Works including where applicable the float time of those non-critical activities.

- (2) The Master Program must also indicate the rate of construction of major activities of the Works which are reasonably required by the Engineer.
- (3) The Engineer may require amendments to be made to the Master Program submitted by the Contractor and instruct for its re-submission if there are errors, inconsistencies and incoherence within the Master Program.
- (4) If the Engineer is of the opinion that the actual progress of the Works does not conform to the Master Program, the Engineer may instruct for revision to be made to the Master Program. The Contractor must produce a revision to the Master Programme within 14 days he is issued with a Certificate of Extended Date for Completion under Clause 45.3(3).
- (5) The revised Master Program must
 - (a) indicate that it is a revised Master Program with the appropriate revision number; and
 - (b) take into consideration the progress of the Works and the Works remain to be completed under the Contract.
- (6) If it is practical and when the Engineer so instructs, the Contractor must prepare programs of shorter duration in any particular period in greater details and which amplify the activities indicated on the Master Program in that period.

14.3 Monthly Report

- (1) Before the seventh day of each month, the Contractor must prepare and submit to the Engineer a monthly report ("Monthly Report") showing the progress and financial status of the Works of the preceding month.
- (2) The Monthly Report must incorporate the following documents and information:
 - (a) salient features of the Works;
 - (b) the 'S' Curves with the corresponding actual physical and financial progress indicated;
 - (c) weather report;
 - (d) plant utilisation;
 - (e) manpower and labour returns;
 - (f) major items of the Works completed;
 - (g) a listing of all instructions issued; and
 - (h) such other information and details as the Engineer may reasonably require.

14.4 Quality Plan

- (1) If it is a requirement of the Contract that the Contractor must submit a Quality Plan, this must be submitted by the Contractor to the Engineer within 28 days of the Date for Commencement.
- (2) The Engineer may comment on the Quality Plan submitted by the Contractor and the Contractor may take into consideration the Engineer's comments and to revise the plan accordingly.
- (3) If the Employer has itself instituted certain Quality Plan and a copy of this is (or relevant details of which are) made available to the Contractor before the close of Tender, the Contractor must then as far as possible adhere to the Employer's Quality Plan (or the disclosed details of the Plan) to such an extent that the Employer will not be in breach of his own Plan.
- (4) The submission by the Contractor of any such Quality Plan, and any subsequent comments on it given by the Engineer, cannot be taken to relieve the Contractor of any of his obligations under the Contract.
- (5) The Contractor must implement the quality procedures in any submitted Quality Plan and close all non-conforming reports.
- (6) The Contractor must appoint a suitably qualified and experienced person to act as Quality Officer on Site whose main duty is to ensure the compliance and smooth implementation of the Quality Plan submitted by the Contractor.

14.5 Contractor not Relieved of Duties

- (1) The submission to and any comments by the Engineer of any of the Contractor's Submissions and the Monthly Report do not relieve the Contractor of any of his duties under the Contract.

- (2) The contents and information in the Contractor's Submissions and Monthly Report, including any revisions made to those submissions, do not constitute any notices which the Contractor is required to serve under any provisions of the Contract.

15 SITE ADMINISTRATION

15.1 Contractor's Supervision

- (1) The Contractor must provide all necessary supervision during the construction of the Works and also as long as the Engineer may consider it necessary for the proper performance of the Contractor's obligations under the Contract.
- (2) The Contractor must provide and employ on the Site only such skilled and experienced technical personnel who are competent to give proper supervision of the Works.

15.2 The Site Manager

- (1) The Contractor must designate a competent representative who must be on site full time for the supervision of the Works. This representative of the Contractor may be referred to on Site, in all correspondences and in these Conditions as the Site Manager.
- (2) The Site Manager is authorised by the Contractor to receive on his behalf all instructions from the Engineer and any instruction received by the Site Manager is an instruction issued to the Contractor.
- (3) The Site Manager must be approved by the Engineer. If the Engineer does not approve the Contractor's choice of the Site Manager, or at anytime after having given approval revoke the approval, he must state his reasons for doing so. The non- approval or the revoking of any approval must not be unreasonable.
- (4) The Site Manager must be proficient in the English Language or Bahasa Malaysia.
- (5) If the approval of the Site Manager is revoked by the Engineer, the Contractor must, as soon as practicable, remove the Site Manager from the Site and replace him by another representative approved by the Engineer.

15.3 The Contractor's Employees

- (1) The Contractor must provide and employ on the Site only suitably skilled and experienced, semi-skilled and unskilled labour which are necessary for the construction and completion of the Works and to make good any defects to the Works.
- (2) The Engineer has the power to object to and require the Contractor to remove from the Site any of the Contractor's employees and the Contractor must remove or cause to be removed these employees from the Site.
- (3) The Engineer can only exercise the power referred to in Clause 15.3(2) if the Engineer finds that the Contractor's employee who is sought to be removed from Site
 - (a) has misconducted himself; or
 - (b) is incompetent or negligent in the performance of his dutiesand such misconduct, incompetence or negligence has caused an adverse and negative impact upon the Works.
- (4) The Contractor must ensure that any person who has been removed under Clause 15.3(2) is not allowed to be involved in the Works without the approval of the Engineer.
- (5) If the Contractor replaces or substitutes the person so removed, such replacement or substitution is entirely at the Contractor's own costs and expenses.
- (6) The Contractor must ensure that all his personnel on Site must be Malaysian citizens or those who are in possession of valid working permits if they are foreigners.

15.4 Days and Hours of Working

- (1) The Contractor must not carry out any construction works at night or on public holidays unless prior approval is obtained from the Engineer. The Engineer must not unreasonably withhold any such approval.

- (2) The restriction of working days and hours does not apply if there is situation such that the works to be carried out at night or on public holidays are
- (a) unavoidable or necessary for the saving of life or property;
 - (b) unavoidable or necessary for the safety of the Works; or
 - (c) by their nature require to be executed in multiple or continuous shifts.

In such an instance, the Contractor must inform the Engineer of his actions at the earliest possible opportunity.

- (3) The Contractor must assume all responsibilities if the Engineer grants approval to work at night or on public holidays. The Contractor must comply with all relevant requirements imposed by relevant authorities and the cost of such compliance must be solely borne by the Contractor.
- (4) For the purpose of this Clause 15.4,
- (a) “night” means the time from 8.00 p.m. to 8.00 a.m.; and
 - (b) “public holiday” means the gazetted public holidays in the State where the Works are constructed in addition to any public holidays as may be gazetted by the Malaysian Government.

16 SETTING OUT

16.1 Accurate Setting Out

- (1) The Contractor must
- (a) accurately and correctly set out the Works;
 - (b) ensure the correctness of the positions, levels, dimensions, and alignment of all parts of the Works; and
 - (c) provide all necessary instruments, equipment, apparatus, labour and suitably qualified or experienced surveyors and survey technicians in fulfilling his obligations in (a) and (b) above.
- (2) The Contractor must also ensure that he has all the original reference points, lines and levels which are necessary for him to commence the setting out works.
- (3) If the Contractor considers that he does not possess all the original reference points, lines and levels mentioned in Clause 16.1(2), he must immediately notify the Engineer in writing for the details to be provided.
- (4) Upon the receipt of the notice from the Contractor under Clause 16.1(3), the Engineer must within 7 days furnish to the Contractor the necessary information in writing if he considers that the information is necessary for the Contractor to begin the setting out of the Works.
- (5) If the Engineer delays in providing the information required for the Contractor to begin the setting out of the Works and such delay has contributed to the delay of the Contractor to complete the Works before the Date for Completion and the Contractor incurs Costs as a consequence, then
- (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) The Contractor must not be held responsible if any error or inaccuracy in setting out is due to the incorrect or inaccurate original reference points, lines and levels provided by the Engineer. In this case, the Contractor is to be treated as if he had been delayed in being given the necessary information and details and Clause 16.1(5) accordingly applies.

16.2 Errors in Setting Out

- (1) The Contractor must make good any error in the positions, levels, dimensions or alignment of the Works irrespective of the cause of such error.

- (2) If the cause of such error is a direct consequence of wrong data or information provided by the Engineer in writing or in the Drawings, and such errors cause the delay of the Works beyond the Date for Completion and the Contractor incurs Costs, then
 - (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.
- (3) If however the cause of the error is a direct consequence of the Contractor's own negligence or any other failings, then the Contractor is solely responsible for the time and cost implications of the making good of any such error.

16.3 Approval of Setting Out

- (1) The Contractor must make good any setting out of the Works which are checked and approved by the Engineer but which are subsequently found to be inaccurate or incorrect.
- (2) The time and cost implications of the making good of any setting out errors will be governed by either Clause 16.2(2) or Clause 16.2(3).
- (3) The Contractor must provide all the necessary assistance, apparatus and instruments for the Engineer to check the Contractor's setting out of the Works or any part of the Works.

17 ACCESS FOR THE ENGINEER

17.1 Access for the Engineer

- (1) The Engineer and his representatives must have at all reasonable times access to the Works and the Site. This right of access to the Engineer also applies to any place and any workshops outside the Site where works are being prepared or fabricated for incorporation into the Works or where preparatory works are being carried out in relation to the Works.
- (2) In ensuring the Engineer's right of access mentioned in Clause 17.1(1), the Contractor must do all things and provide the means of access required to facilitate such access by the Engineer.

18. SITE SAFETY AND SECURITY

18.1 Site Safety

- (1) The Contractor must at all times before the issue of the Certificate of Making Good Defects under Clause 48.4 ensure that
 - (a) the safety of all persons entitled to be on Site is not endangered; and
 - (b) the Site is maintained in an orderly state and in a manner that all aspects of safety are not compromised.
- (2) Notwithstanding the general obligations of the Contractor to comply with all laws, the Contractor is to comply with the provisions of
 - (a) Factories and Machinery Act 1967; and
 - (b) Occupational Safety and Health Act 1994or any amendments to or re-enactment of these acts of parliament. The Contractor's obligations in this clause also extend to and include all the regulations and bylaws made under these acts of parliament.
- (3) The Contractor must appoint a suitably qualified and experienced person as safety officer whose main duties are to ensure the compliance by the Contractor with all safety requirements relating to the execution of the Works.
- (4) The appointed safety officer must duly document and report all breaches of safety and accidents and injuries or death to any workmen to the Contractor who must then inform the Engineer in writing.
- (5) The Contractor must ensure that all his personnel and workers including those of his sub-contractors properly understand and comply with the provisions of this Clause.

- (6) Any costs incurred by the Contractor in ensuring the safety of the Site are deemed to be included in the Contract Sum.

18.2 Site Security

- (1) The Contractor must at his own costs and expenses provide all security measures including but not limiting to all lights, guards, fencing, warning signs and watching for the protection of the Works, persons entitled to be on Site and also for the convenience of the public.
- (2) Where and when they are necessary or required, the security measures in Clause 18.2(1)
 - (a) may be instructed by the Engineer; or
 - (b) must be implemented by the Contractor if they are the requirements of any duly constituted authority including any service provider.

18.3 Employer's Responsibility on Safety and Security

- (1) If the Employer requires other persons to carry out works on the Site which are not part of the Works, then the Employer must ensure that these other persons must similarly comply with the provisions of this Clause.
- (2) The Employer must also ensure that these other persons must coordinate and liaise with the Contractor on all aspects of site safety and security.
- (3) Without limiting the general obligations in Clause 18.3(2), the Employer must also require these other persons to comply with all safety and security measures initiated and implemented by the Contractor.

19. CARE OF THE WORKS

19.1 Care of the Works

- (1) The Contractor must take full responsibility for the care of the Works or any Section of the Works during the period from the Date for Commencement to the date of issue of the Certificate of Completion.
- (2) For the purpose of this Clause, the Contractor's responsibility extends to include any works executed or completed by others which works the Contractor has taken over as part of the Works.
- (3) Despite the provisions of Clauses 19.1(1) and (2),
 - (a) the Contractor is not liable for the care of the Works after the issue of Certificate of Completion even though the Employer is not in occupation of the Site or has not commenced the use of the Works; and
 - (b) the Contractor continues to be responsible for the care of those outstanding works which he has undertaken to complete during the Defects Liability Period until such time the works have been completed in accordance with the Contract.

19.2 Contractor's Responsibility to Make Good Damage or Loss

- (1) If there is any damage or loss to the Works, or any part of the Works during the period mentioned in Clause 19.1(1), the Contractor must make good such loss or damage to the Works so that the Works conform to the requirements of the Contract.
- (2) The making good works in Clause 19.2(1) must be carried out without delay and at the Contractor's own costs and expenses.
- (3) If however the damage or loss to the Works is caused by a risk, or a combination of risks which are among the Employer's Risks listed in Clause 19.4, then the provisions of Clause 19.3 is applicable.

19.3 Damage or Loss Due to Employer's Risks

- (1) If the damage or loss is caused by an Employer's Risk or a combination of such risks, the Contractor must make good such damage or loss to the extent instructed by the Engineer. The additional Costs for the making good of such risks are to be certified by the Engineer under Clause 53.

- (2) If damage or loss to the Works and their making good have caused delay to the Works beyond the Date for Completion of the Works, the Engineer must take such delay into consideration in determining any extended Date for Completion which the Contractor may be entitled under Clause 45 and certify Costs incurred which the Contractor may be entitled under Clause 53.

19.4 Employer's Risks

- (1) The following are the Employer's Risks:
 - (a) war (irrespective if the war is declared or not) or hostilities, invasion and act of foreign enemies;
 - (c) acts of terrorism;
 - (d) riots (other than that caused by the Contractor's own employees and those of his sub-contractors'), commotion or disorder or civil war;
 - (e) any operation of the forces or nature which an experienced contractor could not have reasonably foreseen or priced for.

N.B. * *Either of the following Clause 21A or 21B is to apply.*

20A INSURANCE OF WORKS*

20A.1 Contractor's All Risks Insurance Policy

- (1) The Contractor must take out and maintain a Contractor's All Risks Insurance Policy comprising insurances against
 - (a) damage to the Works; and
 - (b) third party liability.
- (2) The Contractor's All Risks Insurance Policy must be maintained from the Date for Commencement until the issue of the Certificate of Completion by the Engineer.
- (3) The Contractor's All Risks Insurance Policy must be in the joint names of the Employer, the Contractor, the Engineer and the sub-contractors.
- (4) The Contractor must insure the replacement value of the Works ("Insured Sum") which is taken to be Contract Sum less the non-Work items in the Bills of Quantities. The Insured Sum must be stated in the Appendix.
- (5) The Contractor must insure against third party liability for a sum not less than that stated in the Appendix.

20A.2 Principal Terms of the Contractor's All Risks Insurance Policy

- (1) The scope of cover of the Contractor's All Risks Insurance Policy must include damages to the Works caused by all risks which are not specifically excluded or which are not Employer's Risks.
- (2) The extensions of the Contractor's All Risks Insurance Policy against damage to the Works must include
 - (a) the costs and expenses of debris removal;
 - (b) professional fees incurred in the reinstatement of the Works; and
 - (c) overtime expenses (including night and public holiday works).
- (3) The scope of cover of the third party liability must include indemnity in respect of the legal liability of the insured parties for the following:
 - (a) accidental death or bodily injury to any person; and
 - (b) accidental loss or damage to property.
- (4) The indemnity provided and insured against must include any costs and expenses incurred in defending any claim, action or proceedings made or taken by the injured party or the owner of the injured or damaged property.

20A.3 Evidence of Insurance Policy

- (1) The Contractor must produce a certified copy of the Contractor's All Risks Insurance Policy to the Engineer before the commencement of any works on Site.
- (2) If the Contractor is not able to produce a certified copy of the Contractor's All Risks Insurance Policy, the Engineer can then accept a cover note evidencing that such an insurance policy has been effected for the purpose of the commencement of any works on Site. The Contractor must as soon as a certified copy of the policy is available forward a copy to the Employer with a copy to the Engineer.
- (3) The Contractor must produce the original or certified true copy of the original copies of the receipt of payment of the premium paid for the maintenance of the Contractor's All Risks Insurance Policy.

20A.4 Failure to Insure

- (1) If the Contractor fails to effect and maintain in force the Contractor's All Risks Insurance Policy within 45 days of the Date for Commencement, the Employer may then effect and maintain in force such a policy as required of the Contractor under the Contract.
- (2) Further to Clause 20A.4(1), the Employer may recover any premium paid for the effecting and maintenance of the policy mentioned from any payment due or to become due to the Contractor under the Contract.
- (3) The Employer's initiative in taking out and maintaining the Contractor's All Risks Insurance Policy when the Contractor fails to do so is without prejudice to the Employer's rights under the Contract and in law.

20A.5 Contractor Liable for Deductibles

- (1) Subject to the provisions of Clause 20A.6, the Contractor is fully responsible and liable for any deductibles stipulated in the Contractor's All Risks Insurance Policy unless the loss or damage is caused by the acts or omissions of either the Employer or the Engineer.
- (2) The Contractor may at his own cost and expense take out such additional insurances as he considers necessary.

20A.6 Compliance with Policy Conditions

- (1) In the event that the Contractor or the Employer fails to comply with any conditions imposed by the Contractor's All Risks Insurance Policy, each must indemnify the other against all losses and claims arising from such failure.
- (2) If there is any loss or damage to the Works or incident which may give rise to third party liability against the Employer, the Contractor (and his sub-contractors) or the Engineer, such damage or loss or incident must first be reported to the insurer with whom the Contractor's All Risks Insurance Policy is effected and maintained.

20B INSURANCE OF WORKS*

20B.1 Employer's All Risks Insurance

- (1) The Employer must insure in the joint names of the Employer, the Contractor, the sub-contractors and the Engineer to their respective obligations under the Contract and in law an All Risks Insurance Policy against
 - (a) damage to the Works; and
 - (b) third party liability.
- (2) The minimum period of coverage for the Employer's All Risks Insurance must commence from the Date for Commencement and such a policy must be maintained until the issue of the Certificate of Completion.
- (3) The sum insured for insurance against damage to the Works must not be less than the Insured Sum.
- (4) The sum insured against third party liability must not be less than that stated in the Appendix.
- (5) The taking out and maintenance of the Employer's All Risks Insurance Policy does not limit the Contractor's responsibility under Clauses 19 and 21 of these Conditions.

20B.2 Principal Terms of the Employer's Arranged All Risks Insurance Policy

- (1) The scope of cover of the Employer's All Risks Insurance Policy must include damages to the Works caused by all risks which are not specifically excluded and these must include Employer's Risks.
- (2) The extensions of the Employer's All Risks Insurance Policy against damage to the Works must include
 - (a) the costs and expenses of debris removal;
 - (b) professional fees incurred in the reinstatement of the Works; and
 - (c) overtime expenses (including night and public holiday works).
- (3) The scope of cover of the third party liability must include indemnity in respect of the legal liability of the insured parties for the following:
 - (a) accidental death or bodily injury to any person; and
 - (b) accidental loss or damage to property.
- (4) The indemnity provided and insured against must include any costs and expenses incurred in defending any claim, action or proceedings made or taken by the injured party or the owner of the injured or damaged property.

20B.3 Production of Employer's All Risks Insurance Policy

- (1) The Employer must make a copy of the Employer's All Risks Insurance Policy available to the Contractor before the Date for Commencement.
- (2) If the Contractor is not satisfied with the terms and conditions of the Employer's All Risks Insurance Policy, the Contractor may at his own costs and expenses effect and maintain any additional or other insurance policies as he considers necessary.
- (3) If the Employer fails to effect and maintain the Employer's All Risks Insurance Policy under Clause 20B.1, the Contractor may consider that Clause 20A then applies. The Engineer must certify the additional Costs incurred by the Contractor in accordance with the provisions of Clause 53.
- (4) If the failure of the Employer in effecting the Employer's All Risks Policy has delayed the commencement of the Contractor's execution of the Works, and such delay has caused delay to the Date for Completion, the Engineer must then determine a new Date for Completion which the Contractor is entitled under Clause 44 and Costs which the Contractor is entitled under Clause 53.

20B.4 Contractor Liable for Deductibles

- (1) Except for losses or damages caused by Employer's Risks or for which the Employer is responsible due to his acts or omissions, the Contractor is responsible for the amount of any deductibles under the Employer's All Risks Insurance Policy.
- (2) If any losses or damages to the Works are claimable under the Employer's All Risks Insurance Policy, then the Contractor is not entitled to any payment in respect of the costs and expenses in reinstatement of the Works other than the monies received or to be received under such a policy.
- (3) Clause 20B.4(2) does not apply if the cause or causes of the losses or damages to the Works are attributable to Employer's Risks in which case the Contractor is entitled to the full amounts of monies received under the insurance policy.
- (4) If the monies received from the insurance policy are less than the costs incurred by the Contractor in the reinstatement works, the Contractor may claim for the balance as Costs under Clause 53.

20B.5 Compliance with Policy Conditions

- (1) The Contractor must comply and must also ensure that his sub-contractors comply with the terms and conditions of the Employer's All Risks Insurance Policy.
- (2) The Contractor must not do anything, or omit to do anything, that can render the Employer's All Risks Insurance Policy voidable or an increase in the premium payable.
- (3) The Contractor must fully comply with any notice procedures for claims and the administrative procedures for such claims under the Employer's All Risks Insurance Policy.

21 INDEMNITY

21.1 Injury to Persons and Damage to Property

- (1) The Contractor must indemnify and keep the Employer indemnified against all losses, expenses, costs, damages, liability and claims in respect of

- (a) death or injury to any persons; and
- (b) loss of or damage to any personal or real property (other than the Works)

which arise out of the Contractor's execution of the Works and the making good of any defects to the Works.

- (2) The indemnity mentioned in Clause 21.1(1) does not apply in the following situations:

- (a) the permanent use or occupation of the Works or any part of the Works by the Employer;
- (b) the unavoidable consequence of the Contractor's execution of the Works or the making good of any defects of the Works in accordance with the Contract;
- (c) the act or neglect of the Employer or his agents or other contractors employed by the Employer.

21.2 Indemnity by the Employer

- (1) The Employer must indemnify the Contractor against all losses, expenses, costs, damages, liability and claims in respect of the situations referred to in Clause 21.1(2).

21.3 Contribution

- (1) The Contractor's liability to indemnify the Employer under Clause 21.1 is reduced in proportion to the extent that the Employer or his agents or other contractors employed by the Employer are responsible and contributed to the death or injury to the persons or loss of or damage to the property.
- (2) The indemnity given by the Contractor in Clause 21.1 must not be defeated by reason of any negligence or omission of the Employer, the Engineer or any other person for whom the Employer or the Engineer is responsible.
- (3) The negligence or omission referred to in Clause 21.3(2) above includes but is not limited to the following:
 - (a) failure of the Engineer to supervise the execution of the Works;
 - (b) failure of the Engineer to detect any defect in the Works; and
 - (c) failure of the Engineer to properly control the Contractor's site operations and methods of working.

21.4 Contractor to Make Good Damage to Property

- (1) Despite the Contractor's liability to indemnify the Employer under Clause 21.1(1)(b), the Contractor must make good any damage to any property (not forming part of the Works) to the satisfaction of the Engineer or the satisfaction of legal owner of such property.
- (2) Notwithstanding any provisions of these Conditions, the Engineer has the jurisdiction to instruct the Contractor to make good any damage to any property not forming part of the Works.
- (3) If the cause of the damage to the property is caused by the negligence or omission of the Employer, the Engineer or any other person for whom the Employer or the Engineer is responsible, the proportionate costs of such making good is claimable as Costs under Clause 53.

21.5 Failure of Contractor to Make Good Damage to Property

- (1) If the Contractor fails to make good any damage to property (not forming part of the Works) or fails to comply with an instruction of the Engineer issued under Clause 21.4(2), then the Employer is entitled to employ other persons to make good the damage.

- (2) The Employer may recover the costs incurred in such making good works from any monies due or to become due to the Contractor under the Contract.
- (3) Before the Employer can set-off any monies due or to become due to the Contractor in Clause 21.5(2), the Employer must furnish to the Contractor evidence of payments to the other persons who have been employed to carry out and complete the making good works.

22 INSURANCE FOR WORKMEN

22.1 SOCSO for Malaysian Workmen

- (1) The Contractor must register and ensure that all his sub-contractors register all Malaysian workmen employed in the execution of the Works who are subject to registration under the Employees' Social Security Scheme ("SOCSO") in accordance with Employees' Social Security Act 1969 or any amendment or re-enactment of the Act.
- (2) For the purpose of this Clause, "Malaysian workmen" are those who are Malaysian citizens and those who are permanent residents of Malaysia.
- (3) The Contractor must submit the code number and the social security number of all those who are registered under SOCSO to the Engineer together with evidence of payment of the necessary contributions.
- (4) The responsibility of the Contractor to comply with the provisions of this Clause and any SOCSO's requirements extends from the Date for Commencement to the issue of Certificate of Making Good Defects.
- (5) The contractor's compliance with the provisions of this Clause is without prejudice to his responsibility to indemnify the Employer under Clause 21.1(1).

22.2 Workmen's Compensation Insurance for Non-Malaysian Workmen

- (1) The Contractor must take out and maintain a Workmen's Compensation Insurance Policy in the joint names of the Employer and the Contractor for all non-Malaysian workers under Workmen's Compensation Act 1952, Workmen's Compensation (Foreign Workers' Compensation Scheme) (Insurance) Order 1998 or any amendment or re-enactment of the Act or Order.
- (2) The Contractor must ensure his obligation in Clause 22.2(1) is also satisfied by his sub-contractors who have non-Malaysian workmen employed for the execution of the Works.
- (3) The Contractor must ensure that all the Workmen's Compensation Insurance Policies are maintained from the Date for Commencement to the date of the issue of Certificate of Make Good Defects under Clause 48.4.
- (4) The Contractor must place with the Employer and the Engineer each a certified copy of the Workmen's Compensation Insurance Policy or Policies.
- (5) The Contractor and/or his sub-contractors must produce certified true copies of the receipts in respect of the payment of premiums paid under such policy or policies.
- (6) The Contractor's compliance with the provisions of this Clause is without prejudice to his responsibility to indemnify the Employer under Clause 21.1(1).

22.3 Insurance for Malaysian Workmen not subject to SOCSO

- (1) The Contractor must take out and maintain an insurance policy in the joint names of the Employer and the Contractor (including any sub-contractors) for Malaysian workmen who are not subject to SOCSO in accordance with the requirements of Social Security Act 1969 or any amendment or re-enactment of the Act.
- (2) The insurance policy in Clause 22.3(1) must be maintained from the Date for Commencement to the issue of Certificate of Make Good Defects.
- (3) The Contractor must place with the Employer and the Engineer each a certified copy of the insurance policy effected under Clause 22.3(1).
- (4) The Contractor must produce certified true copies of the receipts in respect of the payment of premiums paid under such policy.

- (5) The contractor's compliance with the provisions of this Clause is without prejudice to his responsibility to indemnify the Employer under Clause 21.1(1).

22.4 Defaults in Compliance

- (1) If the Contractor does not comply with the provisions of Clauses 22.1, 22.2 and 22.3, the Employer may (without prejudice to any other rights or remedies available) pay on behalf of the Contractor such premiums or contributions as they become due and remain unpaid.
- (2) The Employer can deduct the amounts equivalent to the sum of all premiums or contributions paid on behalf of the Contractor from any payment due or to become due to the Contractor under the Contract.
- (3) The Employer must produce to the Contractor before effecting the deductions in Clause 22.4(2) receipts for the premiums or contributions as evidence of their payment by the Employer.

23 COMPLIANCE WITH LAWS

23.1 Contractor to Comply with Laws

- (1) The Contractor must comply in all respects with the provisions of all written laws, regulations, orders and bylaws (collectively, "Laws") which are applicable to the Works.
- (2) Without undermining the general provision in Clause 23.1(1), the Contractor must give notices and pay all fees and charges required to be given or paid under any of the Law relating to the Works.
- (3) The charges to be paid under in Clause 23.1(2) above include the levies to be paid by the Contractor to the Construction Industry Development Board, Malaysia.
- (4) The Contractor must indemnify the Employer and keep the Employer indemnified against any breach of the provisions of the Laws.
- (5) The Contractor's obligations in this Clause extend to the compliance with all the regulations and requirements of the service providers and to pay all fees and charges required for the installation of permanent connections to the supply systems maintained by them.
- (6) The Employer must reimburse the Contractor the fees and charges paid by the Contractor under Clause 23.1 (5) as Costs under Clause 53 unless such costs have already been included in the Contract Sum.

23.2 Employer to Obtain Planning Approval and Pay Capital Contributions

- (1) The Employer is responsible to obtain any planning approval, zoning and other similar permissions which are required for the Works.
- (2) The Employer must pay all capital contributions and security deposits to any public authority or service provider for the installation of permanent connections to the supply systems maintained by them.
- (3) If Employer fails or delays in paying the capital contributions or security deposits in Clause 23.2 (2) and this failure or delay has delayed the Contractor in completing the Works before the Date for Completion and the Contractor incurs Costs as a consequence, then
 - (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 45; and
 - (b) the Engineer must certify the additional Costs in accordance with the provisions of Clause 53.

23.3 Changes in Law after Submission of Tender

- (1) If there is any change in the Laws after the Contractor has submitted his Tender and this change has
 - (a) necessitated the variation of the Works;
 - (b) required the provision of any temporary works; or
 - (c) the compliance of which has required (a) and (b) above;the Contractor must, before he gives effect to such a change, write to the Engineer requiring him to issue an instruction under Clause 51.

- (2) If the amount of fees and charges required to be paid by the Contractor under any Laws is increased after the Contractor has submitted his Tender, the Contractor can then recover the increased amount as Costs under Clause 53.

24 PATENT RIGHTS AND ROYALTIES

24.1 Patent Rights and Other Protected Rights

- (1) The Contractor must defend and indemnify the Employer from and against all claims, costs, damages, charges and proceedings for any infringement of any patent rights, trademarks or any protected rights in respect of any Constructional Plant and Equipment, materials, goods or designs (as prepared and submitted by the Contractor) used for, in connection with or for incorporation into, the Works.
- (2) The Contractor is not responsible if the infringement of any protected rights stated in Clause 24.1(1) is a consequence of the Contractor's execution of the Works in accordance with the Contract or in complying with an instruction of the Engineer.

24.2 Royalties

- (1) The Contractor must pay all tonnage, royalties, rent and any other payments or compensation whatsoever for obtaining aggregates, sand, gravel, clay or any other materials required for the Works.
- (2) The obligation of the Contractor to pay in Clause 24.2(1) applies even if the materials are not to be incorporated into the Works.

25 ENVIRONMENTAL MANAGEMENT

25.1 Environmental Matters

- (1) The Contractor must fully comply with the provisions of Environmental Quality Act 1974 including any subsequent amendments to or re-enactment of this Act.
- (2) If the Employer has carried out an environmental impact assessment audit and the report of such audit is made available to the Contractor prior to the closing of the Tender, the Contractor must abide by all restrictions, provisions and conditions in the report.
- (3) In general, the Contractor is bound by all factors relating to the environmental aspects of the Works as if the Contractor is himself the Employer.
- (4) Without limiting the general provision of Clause 25.1(3), if it is a requirement of the Contract that the Contractor is to provide an environmental protection plan, the Contractor must then provide such a plan within 14 days of the Date for Commencement.
- (5) The Contractor must take all reasonable steps to protect the environment either on or off the Site. He must also avoid any damage or nuisance to the public as a consequence of his execution of the Works.
- (6) The Contractor must also carry out the Works without unreasonable noise, disturbance or pollutions.

26 LABOUR

26.1 Employment of Workmen and Labour

- (1) The Contractor must, unless it is provided otherwise in the Contract, make his own arrangement for the employment of all labour and for their salaries or wages, accommodation, welfare, food and transport.
- (2) In there are foreigners being employed, the Contractor must at their own costs and expenses obtain valid working permits and in general ensure that all relevant laws and regulations are complied with.

26.2 Returns of Labour

- (1) If required by the Engineer, the Contractor must deliver to the Engineer a detailed return showing the number of the various classes of labour from time to time employed by the Contractor on the Site.
- (2) The return required in Clause 26.2(1) must be in a form and must be submitted in the intervals as the Engineer may prescribe (if the period for their submission is not already prescribed in the Contract).

27 INTERFERENCE WITH TRAFFIC

27.1 Interference with Traffic

- (1) The Contractor must ensure that his construction operations must not unnecessarily or improperly interfere with
 - (a) the convenience of the public; or
 - (b) the access to, use and occupation of any roads irrespective whether the roads are in the possession of the Employer or any other person not connected with the Works.
- (2) The Contractor must indemnify the Employer in respect of all claims, proceedings, damages, costs, charges, and expenses arising out of the Contractor's obligations referred to in Clause 27.1(1).

28 TRANSPORT

28.1 Transport of Contractor's Plant and Equipment

- (1) The Contractor is solely responsible for the delivery and transport to Site of all Constructional Plant and Equipment, machinery and pre-constructed or pre-fabricated parts of the Works.
- (2) The responsibility in Clause 28.1(1) extends to paying any fees, charges, tolls and all costs incurred in protecting and strengthening any roads or bridges (if required).

28.2 Avoidance of Damage to Roads

- (1) If the Contractor requires using any roads or bridges outside the Site for its construction traffic, the Contractor must ensure that all applicable permits are first obtained.
- (2) In using the roads or bridges for its construction traffic, the Contractor must ensure that
 - (a) the roads and bridges are not damaged in any way; and
 - (b) the convenience of the public is not unnecessarily or improperly interfered with.
- (3) The Contractor must indemnify the Employer in respect of all claims, demands, proceedings, damages, costs, charges and expenses irrespective of how they arise in using the roads and bridges.
- (4) For the purpose of Clause 28.2, "roads" includes highways (whether privatised or otherwise) and rivers.

29 FACILITIES FOR OTHER CONTRACTORS

29.1 Opportunities for Other Contractors

- (1) The Contractor must accord all reasonable opportunities to other contractors or the Employer's workmen who carry out works on the Site which do not form part of the Works.
- (2) The Contractor's obligation in Clause 29.1(1) extends to any authorities or service providers who may be employed to carry out works on or near the Site.
- (3) The Contractor must work in harmony, liaise and coordinate with these other contractors or workmen and plan the execution of the Works such that the progress of the Works will not be affected by affording such opportunity.

29.2 Facilities for Other Contractors

- (1) The Contractor must give all reasonable facilities to other contractors or the Employer's workmen who carry out works which are not part of the Works.
- (2) The Engineer may, in his absolute discretion, instruct that the Contractor must make available any facilities belonging to the Contractor to other contractors or the Employer's workmen (including service providers) who execute works not forming parts of the Works.
- (3) If the Contractor incurs additional Costs in complying with Clauses 29.2(1) and (2), then the Engineer must certify the additional Costs in accordance with the provisions of Clause 53.

30 MATERIALS AND EQUIPMENT SUPPLIED BY EMPLOYER

30.1 Supply a Requirement of the Contract

- (1) The following sub-clauses to Clause 30.1 are applicable where it is an express requirement of the Contract that certain plant, equipment or materials (collectively and severally, "Employer's Supplied Materials") required for the execution of the Works or for incorporation into the Works are to be supplied by the Employer.
- (2) The express requirement must indicate the quantities and types of the Employer's Supplied Materials to be supplied and delivered, the procedure for their delivery and receipt, the rates or prices of such Employer's Supplied Materials.
- (3) The payment terms for the Employer's Supplied Materials must correspond to that of the Period of Honouring Certificates in Clause 58.3.
- (4) The Contractor must prepare a schedule of the delivery of the Employer's Supplied Materials and the Employer must comply where applicable with the requirements of this schedule.
- (5) Despite the provision of Clause 30.1(4), the Contractor must liaise directly with the designated and authorised representative of the Employer on all the logistical aspects of the Employer's Supplied Materials including their required quantities, time and place of delivery.
- (6) The Contractor's request for the delivery of the Employer's Supplied Materials must be made in writing with a copy of such request copied to the Engineer.
- (7) The Contractor is not responsible if the Employer's Supplied Materials do not comply with the requirements of the Contract or are damaged prior to their acceptance by the Contractor.
- (8) Immediately upon receipt of Employer's Supplied Materials which do not comply with the requirements of the Contract, the Contractor must inform the Employer in writing. The Engineer must similarly be informed.
- (9) If the Employer delays in delivering the Employer's Supplied Materials to the Contractor and this has resulted delay to the completion of the Works, then
 - (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.
- (10) The Employer must remove from the Site at his own costs if any Employer's Supplied Materials delivered to the Site are not in compliance with the requirements of the Contract or which are damaged before their acceptance by the Contractor.
- (11) The Contractor must accord all reasonable opportunities including access within the Site for the delivery of the Employer's Supplied Materials to their designated locations.
- (12) All deliveries of the Employer's Supplied Materials must be accompanied by delivery orders and the delivery orders must be acknowledged and signed by the Contractor's authorised representative upon his receipt of the deliveries.
- (13) The Employer must agree with the Contractor and submit his claim for all payments for the supply and delivery of the Employer's Supplied Materials to the Engineer with a copy to the Contractor in the same manner the Contractor prepares and submits his Interim Payment Application in accordance with Clause 58.
- (14) The Employer's Supplied Materials remain at all times the property of the Employer and these must not be removed from the Site without the written permission of the Employer.
- (15) Except for the provisions in this Clause 30.1 with respect to Employer's Supplied Materials, the Contractor is not relieved from any of his duties and responsibilities under the Contract.

30.2 Separate Supply Agreement between the Employer and the Contractor

- (1) The following sub-clauses to Clause 30.2 are applicable where the Contractor has a separate agreement with the Employer for the delivery of any plant, equipment or materials (collectively and severally, "Contractor's Requested Materials") which the Contractor requires for the execution of the Works or for incorporation into the Works.

- (2) All aspects of the delivery and supply of the Contractor's Requested Materials by the Employer are treated in the same manner as if the Contractor is making his own arrangement to secure the supply and delivery of these Contractor's Requested Materials.
- (3) The Employer may deduct from any payment due or to become due to the Contractor under the Contract for the supply and delivery of these Contractor's Requested Materials only on such terms and rates as may have been agreed between the Employer and the Contractor.
- (4) The Employer must produce copies all delivery orders of the Contractor's Requested Materials which are duly signed receipt by the Contractor's authorised and designated representative as evidence of the supply and delivery of the Contractor's Requested Materials before the Employer can effect any deduction of any payment due or to become due to the Contractor.

31 OWNERSHIP OF EXCAVATED MATERIALS

31.1 Ownership of Excavated Materials

- (1) All materials or things of any kind obtained from excavations or found on or beneath the Site belong, between the Employer and the Contractor, to the Employer.
- (2) The Contractor may use the materials excavated if they are suitable and comply with the requirements of the Contract.

31.2 Disposal of Excavated Materials

- (1) The Contractor must obtain the written approval of the Engineer if he wants to dispose any the excavated materials from the Site.
- (2) The approval of the Engineer given under Clause 31.2(1) does not relieve the Contractor from any of his responsibilities under the Contract.

32. CLEARANCE OF SITE

32.1 Clearance of Site on Completion

- (1) On the completion of the Works, the Contractor must clear and remove from the Site all surplus materials, rubbish and Temporary Works of any kind. The Contractor must generally leave the whole of the Site and the Permanent Works clean to the satisfaction of the Engineer.

32.2 Clearance of Site on Expiry of Defects Liability Period

- (1) The Contractor may retain certain equipment, materials and Temporary Works which are required by the Contractor in fulfilling his obligations during the Defects Liability Period.
- (2) Further to Clause 32.2(1), the Engineer may instruct and designate locations within the Site for the storage of the Contractor's equipment, materials and Temporary Works. This storage must not impair or obstruct the functional use of the Permanent Works.

33 MATERIALS AND WORKMANSHIP

33.1 Quality of Materials and Workmanship

- (1) All the materials for incorporation into the Permanent Works and workmanship must be
 - (a) of the kind described or specified in the Contract;
 - (b) in accordance with the Engineer's instructions; and
 - (c) subjected to such tests as the Engineer may require.
- (2) The tests referred to in Clause 33.1(c) may be carried out at the place of manufacture, fabrication or preparation or on the Site.
- (3) The Contractor must provide all assistance in the form of provision of the instruments, machines, labour and materials which are normally required for examining, measuring and testing of the materials.

33.2 Supply of Samples

- (1) The Contractor must supply samples of any materials for testing by the Engineer before their incorporation into the Works.
- (2) Unless the Engineer decides otherwise, the samples must be taken in the presence or under the supervision of the Engineer.
- (3) The Engineer may decide on the selection of the samples and frequency for their testing if such frequency is not already provided for in the Specifications.
- (4) All samples must be supplied by the Contractor at his own cost.

33.3 Tests

- (1) The Contractor must at his own cost carry out all tests which are provided for in the Specification or which are intended by the Contract.
- (2) Before carrying the tests in Clause 33.3(1), the Contractor must give reasonable notice to the Engineer to enable him to attend.
- (3) The tests must be carried out under the supervision or in the presence of the Engineer.
- (4) The Contractor must keep a complete record of all tests carried out and their results. The test records must be duly signed by the personnel who carry out the tests and these must also be signed by the Engineer's representative who witnesses the tests.
- (5) The format of the records of test results must be approved by the Engineer.
- (6) The signing of the test results in Clause 33.3(4) by any representative of the Engineer does not imply the Engineer's acceptance of the materials or workmanship.
- (7) The Engineer may instruct tests to be carried out even if the tests are not provided for or are not clearly intended by the Contract. In this case, the Contractor is entitled to treat the tests as variation to the Contract under Clause 51.
- (8) If however the tests in Clause 33.3(7) reveal that the materials or workmanship fail to comply with the provisions of the Contract, then the Contractor must bear the cost for the carrying out of the tests. The Contractor must also bear the costs of any additional tests required as a consequence of this failure.

34. EXAMINATION OF WORKS BEFORE COVERING UP

34.1 Examination of Works

- (1) The Contractor must not cover up any Works or part of the Works without first giving the Engineer a reasonable opportunity to inspect them. The Contractor must also give reasonable notice to the Engineer when any works are ready for examination and inspection before they are to be covered up.
- (2) For the purpose of this clause, the notice is reasonable when
 - (a) it has specified the works which are to be inspected and which are to be covered up; and
 - (b) it has given the Engineer sufficient time to inspect the works.
- (3) The Engineer must inspect the work specified in the notice without unreasonable delay unless he informs the Contractor in writing that the inspection of the works specified will not be necessary.
- (4) The Engineer may instruct for any works so covered up in breach of Clause 34.1(1) to be opened up for his inspection. Any cost so incurred as a consequence of the Engineer so instructs is to be fully borne by the Contractor irrespective if the Engineer subsequently accepts or rejects the works inspected.

34.2 Uncovering of Works

- (1) Despite the provisions of Clause 34.1, the Engineer may from time to time before the expiry of Defects Liability Period instruct the Contractor to uncover any part or parts of the Works which have been covered up or to make opening in or through them.

- (2) Any such instruction given to the Contractor in Clause 34.2(1) is deemed to be inclusive of the reinstatement works after the uncovering or opening up of the works.
- (3) If any part or part of the Works are found to be not in accordance with the Contract upon being discovered subsequent to the instruction given under Clause 34.2(1), the Contractor must then fully bear the cost of the opening up or making opening, reinstatement works as well as the removal and re-construction of the works concerned.
- (4) If however the works are found to be in compliance with the requirements of the Contract, the Engineer must certify the additional Costs in accordance with the provisions of Clause 53.

35 REMOVAL OF REJECTED WORKS

35.1 Removal of Rejected Works or Materials

- (1) The Engineer has the authority before the Date for Completion to instruct the removal from the Site of any Works or materials if they are not in accordance with the requirements of the Contract.
- (2) The Engineer's instruction given under Clause 35.1(1) may include the proper substitution or replacement of the works.
- (3) The authority of the Engineer in Clause 35.1(1) extends to those works constructed in accordance with the designs which the Contractor is responsible.
- (4) In exercising his authority under Clause 35.1(1), the Engineer must at the same time notify the Contractor the reasons and the requirements of the Contract which have been breached.
- (5) The failure of the Engineer to disapprove any works must not be construed as the Engineer waiving his authority to subsequently exercise the power in Clause 35.1(1).

35.2 Defaults in Removal

- (1) If the Contractor fails to comply with the instruction which the Engineer has properly given in accordance with Clause 35.1, and after the Engineer has given due notice to the Contractor,
 - (a) the Employer or the Engineer on his behalf is entitled to engage a third party to carry out the instruction given by the Engineer;
 - (b) the Engineer must determine the costs consequent or incidental to the carrying out of the instruction, such determination must be notified to both the Employer and the Contractor;
 - (c) the Employer may thereafter deduct or set-off from any monies due or to become due to the Contractor the amount so determined by the Engineer.

35.3 Contractor's Proposal

- (1) The Contractor may submit proposal or alternative relating to the subject matter of the Engineer's instruction issued under Clause 35.1. The proposal or alternative submitted must be accompanied by such technical, financial or other information and considerations such that it is possible for the Engineer to study and evaluate the proposal or alternative.
- (2) The Engineer may at his discretion accept or reject such proposal or alternative.
- (3) In accepting any such proposal from the Contractor under Clause 35.3(1), the Engineer may impose such conditions as he may consider reasonable and fair.

36 CONSTRUCTIONAL PLANT AND EQUIPMENT, TEMPORARY WORKS AND MATERIALS

36.1 Constructional Plant and Equipment and Temporary Works Exclusively for the Works

- (1) The Contractor must only bring to the Site the Constructional Plant and Equipment and Temporary Works which he requires exclusively for the execution of the Works.
- (2) The Contractor must not remove or demobilise any Constructional Plant and Equipment and Temporary Works out of the Site after he has brought them onto the Site. The Contractor can only do so after he has obtained a prior written approval from the Engineer.

- (3) The Engineer must not unreasonably withhold any approval when the Contractor requests for the approval under Clause 36.1(2). If the Engineer refuses to give the requested approval, he must at the same time in giving the disapproval state his reason or reasons for so doing.

36.2 Unfixed Materials and Goods

- (1) The Contractor must similarly not remove any unfixed materials and goods delivered to the Site unless they are required to be removed by an express provision of the Contract.
- (2) The provisions of Clauses 36.1(2) and (3) will also apply with respect to unfixed materials and goods delivered to the Site.
- (3) The legal ownership of any unfixed materials and goods will pass to the Employer after the unfixed materials and goods have been certified to be paid under any Interim Payment Certificate issued by the Engineer.
- (4) The Engineer may require the Contractor to give a confirmation or declaration that he is the legal owner of the unfixed materials or he has fully paid for them before the Engineer certifies the values of the unfixed materials and goods to be included in any Interim Payment Certificate.

36.3 Removal of any Constructional Plant and Equipment, Temporary Works, Unfixed Materials and Goods

- (1) No Engineer's approval is necessary if the Contractor intends to remove or demobilise from the Site the Constructional Plant and Equipment, Temporary Works, unfixed materials and goods after the Engineer has issued the Certificate of Completion.
- (2) The Contractor must however consider his outstanding obligations after the issue of Certificate of Completion before he begins the removal and demobilisation of any Constructional Plant and Equipment, Temporary Works, unfixed materials and goods.
- (3) If the Contractor fails to remove the Constructional Plant and Equipment, unfixed materials and goods after the issue of Certificate of Completion, and there are no outstanding works remaining to be completed by the Contractor which require the use of such Constructional Plant and Equipment, unfixed materials and goods, then the Employer may, after prior notice has been given to the Contractor by the Engineer, sell or cause to sell the Constructional Plant and Equipment, unfixed materials and goods. The Employer must carry out any such sale with good faith.
- (4) The Employer must account for the sale and return the proceeds of the sale to the Contractor less any administrative charges which the Employer and the Engineer may reasonably impose.

36.4 The Employer not Liable for Damage

- (1) The Employer is not liable to the Contractor in any way and at any time for any damages caused to the Constructional Plant and Equipment, Temporary Works, unfixed materials and goods which the Contractor has brought onto the Site.
- (2) The Contractor may in his own discretion consider any insurance coverage as he may in his own opinion consider necessary and appropriate for the Constructional Plant and Equipment, Temporary Works, unfixed materials and goods which the Contractor has brought to the Site.
- (3) The Contractor is solely to bear the premium of any such insurance policy or policies taken out under Clause 36.4(2).

36.5 Conditions for Hired or Leased Constructional Plant and Equipment

- (1) The Contractor must not bring to the Site any Constructional Plant and Equipment and Temporary Works which are hired or leased unless this fact is made known to the Engineer.
- (2) The Engineer may require the Contractor to inform and state the legal ownership of the Constructional Plant and Equipment and Temporary Works which he has brought and mobilised to the Site.
- (3) The Engineer may at his discretion approve the Contractor to bring to the Site the Constructional Plant and Equipment and Temporary Works which the Contractor does not legally own subject to the Contractor satisfying or causing to satisfy the following conditions:

- (a) the legal owner of the Constructional Plant and Equipment and Temporary Works must enter into an agreement with the Employer to allow the Employer to continue to use the Constructional Plant and Equipment and Temporary Works after the termination of the Contract;
 - (b) the agreement must take the form of a hiring of the Constructional Plant and Equipment by the Employer from the legal owner;
 - (c) the agreement must contain a condition precedent that the agreement will only come into effect upon the termination of the Contract and the Employer notifies the legal owner in writing of its commencement;
 - (d) such an agreement must contain an Employer's undertaking to account and pay for the hire charges for the use of the Constructional Plant and Equipment.
- (4) If the Engineer gives his approval under Clause 36.5(3), the Constructional Plant and Equipment and Temporary Works will similarly be subject to the provisions of Clause 36.1.

36.6 Incorporation of Clause into Sub-Contracts

- (1) The Contractor must incorporate the whole of Clause 36 when he enters into any sub-contract so that the provisions of Clause will equally apply as if the sub-contractor is the Contractor with respect to all the Constructional Plant and Equipment, Temporary Works, unfixed materials and goods which the sub-contractor will bring and mobilise onto the Site.

37 COMMENCEMENT OF WORKS

37.1 Date for Commencement

- (1) The Date for Commencement is
- (a) the date specified in the Letter of Acceptance or the Appendix as the Date for Commencement; or
 - (b) if no date is specified in the Letter of Acceptance or the Appendix, the date specified in writing by the Engineer to be the Date for Commencement; in this case, and unless agreed to by the Contractor, the Date for Commencement must not be more than 30 days after the receipt by the Contractor of the Letter of Acceptance; or
 - (c) other date as may be agreed to in writing between the Employer and the Contractor.
- (2) The Contractor must start the construction of the Works as soon as is reasonably practical after the Date for Commencement and continue with the execution of the Works regularly and diligently.
- (3) The provision in Clause 37.1(2) is subject to
- (a) the Contractor having submitted evidence of insurance policy or cover note if Clause 20A.3 is applicable;
 - (b) the Contractor having had Workmen's Compensation Insurance Policy or SOCSO in place; and
 - (c) the provisions of Clause 38.1.

38 SITE POSSESSION

38.1 Site Possession

- (1) The Contract may provide the following:
- (a) the extent of portions of the Site which the Contractor is to be given possession from time to time; or
 - (b) the order in which the portions of the Site are to be made available to the Contractor; or
 - (c) the availability and the nature of the access if the provision of such access is the obligation and responsibility of the Employer; or

- (d) the sequence of the construction of the Works.
- (2) The provisions in Clause 38.1(1) must be made known to the Contractor before the submission of the Tender.
- (3) The provisions in Clause 38.1(1) must be read in conjunction with the provisions in Clause 11.1.
- (4) Subject to Clause 38.1(1) and Clause 11.1, the Employer must give to the Contractor on or before the Date for Commencement the whole of the Site and full access if the provision of access is the obligation and responsibility of the Employer.
- (5) Notwithstanding the provision of this Clause, the Site or access or that part of the Site or access (if the provision of the access is the responsibility of the Employer) must be made available to the Contractor to enable the Contractor to begin with the construction of the Works.
- (6) The Employer must thereafter give to the Contractor further part or parts of the Site to enable the Contractor to proceed regularly with the construction and completion of the Works.

38.2 Failure to Give Site Possession

- (1) If the Contractor suffers delay from the failure on the part of the Employer to give possession of Site or where applicable access in accordance with the provisions of this Clause, and such delay has directly or indirectly caused the delay of the Works beyond the Date for Completion, and the Contractor has incurred Costs as a 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.
- (2) If the Employer fails to give possession of Site or where applicable access in accordance with the provisions of this Clause, the Contractor may by notice to the Engineer request that that part of the Works affected by the failure to give possession of the Site or access be suspended in accordance with the provision of Clause 39.1.
- (3) The Engineer may issue instruction to suspend the Works or that part of the Works if the Employer fails to give possession of Site or that part of the Site or where applicable access to the Site to the Contractor to enable the Contractor to proceed with the Works. Such instruction takes effect as if it has been issued under Clause 41.1.

39 RATE OF CONSTRUCTION

39.1 Slow Progress of Construction

- (1) The Engineer may notify the Contractor if he considers that the rate of construction of the Works is not able to meet the Date for Completion or extended Date for Completion. This notice can be sent when
 - (a) the Engineer considers that the Contractor is not entitled to any extension to the Date for Completion; or
 - (b) the Contractor has not served any notice for any extension to the Date for Completion under Clause 39.2(1).
- (2) Upon the receipt of the notice referred to in Clause 39.1(1), the Contractor must immediately take all steps which he considers necessary and which the Engineer may approve to expedite progress of the Works.
- (3) The Contractor is not entitled to claim Costs for taking any steps to expedite progress subsequent to the issue by the Engineer of the notice referred to in Clause 39.1(1). The Contractor is similarly not entitled to claim Costs if he incurs additional expenditure as a consequence of the Engineer approving the steps which the Contractor has proposed to take under Clause 39.1(2).

40 INSPECTION AND TESTING BEFORE DELIVERY

40.1 Engineer's Entitlement to Test

- (1) The Engineer must be entitled at all reasonable times during manufacture to inspect, examine and test on the Contractor's premises or elsewhere the materials and workmanship and performances of all Plant. If any part of the Plant is being manufactured on premises, other than the Contractor's own, the Contractor must obtain permission for the Engineer to inspect, examine and test as if the Plant were being manufactured on the Contractor's premises. Such inspection, examination and testing must not release the Contractor from any obligation under the Contract.

40.2 Date for Test or Inspection

- (1) The Contractor must agree with the Engineer the date on and the place at which any Plant will be ready for testing or inspection as provided in the Contract. The Engineer must give the Contractor 7 days notice of his intention to attend the test or inspection. If the Engineer does not attend at the place so named on the date agreed, the Contractor may proceed with the test or inspection which must be deemed to have been made in the Engineer's presence. The Contractor must forthwith forward to the Engineer duly certified copies of the results of the test or inspection.

40.3 Services for Test or Inspection

- (1) The Contractor must provide free of charge such assistance, labour, materials, electricity, fuel, stores, apparatus, instruments and other things as may be requisite and as may be reasonably demanded to carry out the test or inspection.

40.4 Certificates of Test or Inspection

- (1) When the Engineer is satisfied that any Plant has passed the test or inspection referred to in this clause he must forthwith issue to the Contractor a certificate to that effect.

40.5 Failure on Test or Inspection

- (1) If after inspecting, examining or testing any Plant the Engineer must decide that such Plant or any part of it is defective or not in accordance with the Contract, he may reject the said Plant or part of it by giving to the Contractor within 14 days notice of such rejection, stating the grounds upon which the said decision is based. Following any such rejection the Contractor must make good or otherwise repair or replace the rejected Plant and re-submit the Plant for test or inspection in accordance with this clause and all expenses reasonably incurred by the Employer in attending or in consequence of such re-testing or inspection and the Engineer's attendance must be deducted from the Contract Price.

40.6 Delivery

- (1) The Contractor must apply in writing to the Engineer for permission to deliver any Plant or Contractor's Equipment to the Site. No Plant or Contractor's Equipment may be delivered to the Site without the Engineer's written permission.
- (2) The Contractor must be responsible for the reception and unloading on Site of all Plant and Contractor's Equipment delivered for the purposes of the Contract.

41 SUSPENSION

41.1 Instruction to Suspend

- (1) The Engineer may by written instruction to the Contractor suspend the continuing performance of the Works or part of the Works. The Contractor must forthwith comply with such instruction.
- (2) The instruction given by the Engineer under Clause 41.1(1) must specify that:
 - (a) the suspension has been issued under Clause 41.1(1);

- (b) the period of suspension or an estimate of such a period; and
 - (c) the part or parts of the Works which are to be suspended.
- (3) The Contractor is under no obligation to suspend the Works or any part or parts of the Works except when an instruction under Clause 41.1(1) has been issued.
- (4) The Contractor must during the period of the suspension take steps to properly secure and protect the Works or part of the Works which have been suspended. The Contractor must discuss with and obtain the approval of the Engineer for any steps or measures taken to secure and protect the Works or part of the Works.

41.2 Consequences of Suspension

- (1) If the suspension of the Works or part of the Works has caused the delay of the Works beyond the Date for Completion and the Contractor incurs Costs, then
- (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.
- (2) The provisions of Clause 40.2 are not applicable if the suspension is
- (a) already provided for in the Contract; or
 - (b) necessary due to breach or breaches of the Contract by the Contractor; or
 - (c) caused by an event which is properly the responsibility or obligation of the Contractor; or
 - (d) for the safety of the Works or any part of the Works as a direct consequence of the Contractor's action or inaction; or
 - (e) for the safety of the Works or any part of the Works which is a direct consequence other than an Employer's Risk or a combination of Employer's Risks.

41.3 Prolonged Suspension

- (1) If the suspension instructed is such that
- (a) it will have suspended the progress of the Works or part of the Works for more than 3 calendar months; or
 - (b) instruction to resume the Works or part of the Works suspended is not given by the Engineer within a period of 3 calendar months;
- the Contractor may then serve a notice to the Engineer requesting that Works be resumed within 14 days from the date of receipt by the Engineer of such a request.
- (2) If the Contractor has not received instruction to resume the Works or the part or parts of the Works suspended after having duly served the notice in Clause 41.3(1), the Contractor may
- (a) in the case where the suspension only affects part or parts of the Works, elect to treat such part or parts as having been omitted from the Works under Clause 51; or
 - (b) in the case where the suspension affects the whole of the Works, terminate the Contract under Clause 62 as if the Employer has committed a default under Clause 62.1(1).

42 INSPECTION AND TESTING ON COMPLETION

42.1 Notice of Tests

- (1) The Contractor must give to the Engineer 21 days' notice of the date after which he will be ready to make the Tests on Completion. Unless otherwise agreed the Tests on Completion must take place within 10 days after the said date on such day or days as the Engineer must notify to the Contractor.

42.2 Time for Tests

- (1) If the Engineer fails to appoint a time after having been asked so to do or to attend at any time or place duly appointed for making the Tests on Completion, the Contractor must be entitled to proceed in his absence and the Tests on Completion must be deemed to have been made in the presence of the Engineer. The Contractor must forward to the Engineer duly certified copies of the results of the Tests on Completion.

42.3 Delayed Tests

- (1) If the Tests on Completion are being unduly delayed by the Contractor, the Engineer may, by notice, call upon the Contractor to carry out the Tests within 21 days from the receipt of the said notice. The Contractor must carry out the Tests on Completion on such days within the 21 days as the Contractor may fix and of which he must give notice to the Engineer. If the Contractor fails to make the Tests on Completion within the time specified the Employer or the Engineer may proceed at the risk and expenses of the Contractor and the Cost must be deducted from the Contract Price. If the Contractor established that the Tests on Completion were not being unduly delayed, the Tests on Completion so made must be at the risk and expense of the Employer.

42.4 Repeat Tests

- (1) If any part of the Works fails to pass the Tests on Completion they must be repeated within a reasonable time upon the same terms and conditions. All Cost which the Employer may incur in the repetition of the Tests on Completion must be deducted from the Contract Price..

42.5 Consequences of Failure to Pass Tests on Completion

- (1) If the Works or any Section fails to pass the Tests on Completion (including any repetition thereof) the Contractor must take whatever steps that may be necessary to enable the Works or the Section to pass the Tests on Completion and must repeat the Tests, unless any time limit specified in the Contract for the passing of the Tests must have expired, in which case the Engineer must be entitled to reject the Works or the Section and the Employer must be entitled to proceed in accordance with Clause 61.

43 PERFORMANCE TESTS

43.1 Time for Performance Tests

- (1) Where Performance Tests are included in the Contract they must be carried out as soon as is reasonably practicable and within a reasonable time after the Works, or the Section of the Works to which such tests relate, have been completed.

43.2 Procedure for Performance Tests

- (1) Performance Tests must be carried out by the Contractor and in accordance with the procedures and under the operating conditions specified in the Contract and in accordance with such other instructions as the Engineer or Employer may give in the course of carrying out such tests.

43.3 Cessation of Performance Tests

- (1) The Employer, or the Engineer on his behalf, must be entitled to order the cessation of any Performance Test if damage to the Works or personal injury are likely to result from continuation.

43.4 Adjustments and Modifications

- (1) If the Works or any Section thereof fails to pass any Performance Test (or repetition of such Tests) or if any Performance Test is stopped before its completion, such test must, subject to sub-clause 43.5 (Postponement of adjustments and modifications), be repeated as soon as practicable. Any additional Cost incurred by the Employer solely by reason of the repetition of any Performance Test must be deducted from the Contract Price. The Employer must permit the Contractor to make adjustments and modifications to any part of the Works before the repetition of any Performance Test and must, if

required by the Contractor, shut down any part of the Works for such purpose and re-start it after the adjustments and modifications have been made. All such adjustments and modifications must be made by the Contractor with all reasonable speed and at his own expense. The Contractor must, if so required by the Engineer, submit to the Engineer for his approval details of the adjustments and modifications which he proposes to make.

43.5 Postponement of Adjustments and Modifications

- (1) If the Works or any Section thereof fails to pass any Performance Test (or repetition of such Tests) and the Contractor in consequence proposes to make any adjustments or modifications thereto, the Engineer may notify the Contractor that the Employer requires the carrying out of such adjustments or modifications to be postponed. In such event the Contractor must remain liable to carry out the adjustments or modifications and a successful Performance Test within a reasonable time of being notified to do so by the Engineer. If however the Engineer fails to give any such notice within one year of the date the Contractor proposed to carry out the adjustments or modifications of the Works or Section thereof, the Contractor must be relieved of any such obligation and the Works or Section thereof must be deemed to have passed such Performance Test.

43.6 Duration for Completion of Performance Tests

- (1) If the Contract provides that the Performance Tests (or repetition of such Tests) must be completed within a specified time the Employer must be entitled to use the Works as he thinks fit from the expiry of such time.

43.7 Evaluation of Results of Performance Tests

- (1) The results of Performance Tests must be compiled and evaluated jointly by the Employer, or the Engineer on his behalf, and the Contractor in the manner detailed in the Contract. Any necessary adjustments to the results to take account of any previous use of the Works by the Employer, the measuring tolerances and any differences between the operating conditions under which the Performance Tests were conducted and those detailed in the Specification or performance test schedule must be made in accordance with the provisions of the Specification or, if the Specification contains no such provisions, then in such manner as is fair and reasonable.

43.8 Consequences of Failure to Pass Performance Tests

- (1) If the Works or any Section fails to pass the Performance Tests (or any repetition of such Tests) within the period specified in the Contract or, if no period is specified, within a reasonable time:
 - (a) where liquidated damages for failure to achieve any guaranteed performances have been specified in the Contract and the results are within the stipulated acceptance limits the Contractor must pay or allow to the Employer the liquidated damages so specified. Upon payment or allowance of such liquidated damages by the Contractor the Employer must accept the Works.
 - (b) where such damages have been so specified but the results are outside the stipulated acceptance limits, or where liquidated damages have not been so specified, the Employer must be entitled to accept the Works or the Section subject to such reasonable reduction in the Contract Price as may be agreed by the Employer and the Contractor or, in default of agreement, as may be determined by dispute resolution under Clause 63.
 - (c) where such failure of the Works or the Section would deprive the Employer of substantially the whole of the benefit thereof the Engineer must be entitled to reject the Works or the Section and the Employer must be entitled to proceed in accordance with Clause 61.

44 DATE FOR COMPLETION

44.1 Date for Completion

- (1) The Contractor must construct and complete the Works on or before
 - (a) the Date for Completion or such other extended date as may be determined by the Engineer under Clause 45; or
 - (b) such varied Date for Completion as may be fixed by the Engineer under Clause 44.2.

44.2 Entitlement to Vary Date for Completion

- (1) If the Engineer wishes in good faith to advance or postpone the Date for Completion, he may after consultation with the Contractor determine and fix the varied Date for Completion. The Engineer must confirm this to the Contractor in writing.
- (2) As part of the consultation process, the Contractor must after being notified by the Engineer, produce in reasonable time to the Engineer
 - (a) a revised construction programme taking into considerations of the advanced or postponed Date for Completion; and
 - (b) any increase or decrease in Costs.
- (3) The Engineer in determining and fixing the varied Date for Completion under this Clause may also notify the Contractor of the increase in Costs which he is entitled.
- (4) The provision of this Clause is separate and distinct from the provision of Clause 45.

45 EXTENDED DATE FOR COMPLETION

45.1 Extended Date for Completion

- (1) The Engineer may certify extension to Date for Completion of the Works by fixing an extended Date for Completion if there is delay to the completion of the Works which has been caused by any of the following events or a combination of them:
 - (a) any variation instructed under Clause 51;
 - (b) any circumstance or occurrence entitling the Contractor to an extended Date for Completion by reason of an express provision of the Contract;
 - (c) the occurrence of an Employer's Risk or a combination of these risks;
 - (d) the relocation of any buried services or mains which are not shown on the Drawings; or
 - (e) any act of prevention or breach of Contract by the Employer.
- (2) The certificate issued under Clause 45.1 is referred to as Certificate of Extended Date for Completion for the purposes of the Contract. This Certificate must be issued to the Contractor with a copy to the Employer.
- (3) The Certificate of Extended Date for Completion must
 - (a) certify the extended date on or before which the Contractor is required to complete the Works; and
 - (b) state the events listed in Clause 45.1(1) which the Engineer has relied on in so certifying including stating where applicable the relevant express provision or provisions of the Contract or the act of prevention or breach of the Contract.
- (4) The Engineer may take the following factors into consideration before certifying the extension to the Date for Completion:
 - (a) the reasonable efforts and steps taken by the Contractor to mitigate the effects of any delay caused by the event or events listed in Clause 45.1(1); and

- (c) whether the Contractor has been executing the Works regularly and diligently.
- (5) “Date for Completion” used in this Clause also includes where applicable an extended Date for Completion.

45.2 Contractor’s Notice

- (1) If the Contractor considers that there will be or has been delay to the completion of the Works beyond the Date for Completion which are caused by the events listed in Clause 45.1(1), he must then serve a notice to the Engineer.
- (2) The notice referred to in Clause 45.2(1) must include the following information:
 - (a) the appropriate provision in Clause 45.1(1) which is applicable including the express provision of the Contract in the case of Clause 45.1(1)(b) or the details of the act of prevention in the case of Clause 45.1(1)(e); and
 - (b) the estimated extended Date for Completion which he considers that he is properly entitled to or which he requires to complete the Works.
- (3) The Contractor must act with reasonable despatch in serving the notice required in Clause 45.2(1).
- (4) If the delaying event is still operating when the Contractor serves the notice referred to in Clause 45.2(1), the Contractor must nevertheless within 28 days of the event stops being operative update or revise the details which he has submitted earlier.

45.3 The Engineer’s Certification

- (1) If the Engineer considers that he requires further information and details from the Contractor to enable him to properly consider and certify an extension of the Date for Completion, the Engineer may request the Contractor to supply such information. The Engineer must convey such a request in reasonable time after the receipt of the Contractor’s notice referred to in Clause 45.2(1). The Contractor must comply with such request.
- (2) The Engineer must notify the Contractor, within 14 days of the receipt of the Contractor’s notice given under Clause 45.2(1) or further information and details from the Contractor under Clause 45.3(1), whether in his opinion the Contractor is entitled to any extension to the Date for Completion.
- (3) If the Engineer has considered that the Contractor is entitled to an extension to the Date for Completion and he has also notified the Contractor under Clause 45.3(2), the Engineer must then within a further 30 days issue the Certificate of Extended Date for Completion.
- (4) If the delaying event on which the Engineer has certified the extended Date for Completion is continuing, the Engineer may nevertheless issue an interim Certificate of Extended Date for Completion. The interim Certificate of Extended Date for Completion must expressly state that the extension so granted is on an interim basis.
- (5) The Engineer must take the following factors into consideration before he certifies the extended Date for Completion:
 - (a) the extension to the Date for Completion previously certified if any;
 - (b) the effect of any works omitted from the Contract by the provision of Clause 51; and
 - (c) the effect of any substantial decrease in the quantity for any item of Remeasured Works which has a critical impact on the Date for Completion.
- (6) Further to Clause 45.3(5), the Engineer must not consider in his certification of any extension of the Date for Completion the effect of the events due to the Contractor’s fault which operate concurrently with any of the events listed in Clause 45.1(1).
- (7) In certifying extension to the Date for Completion due to any event listed in Clause 45.1(1) which is operative after the Date for Completion, the extension certified must be such that the extended Date for Completion must continue from the Date for Completion and not from the date the event stops being operative.

45.4 Certification after Date for Completion

- (1) The Engineer may, before he issues the Final Payment Certificate under Clause 59.2, and irrespective if any notice has been served by the Contractor under Clause 45.2(1), consider and review all events known to him which are among those listed in Clause 41.1 and which have caused delay to the completion of the Works before the Date for Completion.
- (2) If upon such consideration and review the Engineer considers that the Contractor is entitled to an extension of the Date for Completion, he must accordingly issue a Certificate of Extended Date for Completion similar to that in Clause 45.1(2).
- (3) The Engineer must not certify any extended Date for Completion earlier than that already notified to the Contractor in this consideration and review.

46 LIQUIDATED DAMAGES

46.1 Liquidated Damages

- (1) If the Contractor fails to complete the Works by the Date for Completion, or by any extended Date for Completion as the case may be,
 - (a) the Employer is then entitled to demand from the Contractor the sum designated as Liquidated Damages in the Contract and the Contractor must pay to the Employer on such demand; or
 - (b) the Employer is entitled to set-off from the Contractor the sum designated as Liquidated Damages any payment due or which will become due to the Contractor under the Contract.
- (2) The total amount of Liquidated Damages payable by the Contractor to the Employer must be calculated at the rate stated in the Appendix for the period from the Date for Completion (or any extended Date for Completion) to the date that the Contractor has completed the Works as certified by the Engineer.

46.2 Certificate of Non-Completion

- (1) It is a condition precedent before the Employer can exercise his option in Clause 46.1(1) that the Engineer must have certified that in his opinion there is no reason why the Contractor ought not to have completed the Works. The certificate issued by the Engineer under this clause is called in this Contract the Certificate of Non-Completion.
- (2) The Engineer must issue the Certificate of Non-Completion to the Contractor with a copy to the Employer. Where the delay to the completion of the Works has been caused by the Nominated Sub-Contractor, a copy of the Certificate of Non-Completion must also be copied to the Nominated Sub-Contractor.
- (3) The Engineer must properly consider all the circumstances and factors if the Contractor is fairly entitled to an extension of the Date for Completion before he issues the Certificate of Non-Completion.

46.3 The Employer's Common Law Rights

- (1) If for whatever reason the Employer chooses not to enforce his right under Clause 46.1(1), or the Employer has for whatever reason not entitled to exercise his right under Clause 46.1(1), the Employer still retains his right to claim from the Contractor such loss, expense and any other damages which he is entitled under Common Law.

47 CERTIFICATE OF COMPLETION

47.1 Notice of Completion of Works

- (1) When the Contractor considers that the Works have been completed, he may serve a notice ("Completion Notice") to that effect to the Engineer. The Completion Notice also takes effect as the request by the Contractor to the Engineer to issue a certificate certifying the completion of the Works.
- (2) The Contractor must include in the Completion Notice the following undertakings:
 - (a) that the Contractor undertakes to complete with due expedition any minor works which are not yet completed; and