



**AGREEMENT AND SCHEDULE OF CONDITIONS OF
BUILDING CONTRACT
(With Quantities)**

Between

.....

And

.....

Published by:

NATIONAL CONSTRUCTION COUNCIL

(Baraza la Taifa la Ujenzi)

Samora Tower, 9th Floor

Mansfield Street,

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Dar es Salaam

Tanzania

2000 Edition

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PREFACE

The Agreement and Schedule of Conditions of Building Contract has been published by the National Construction Council with the view of having Standard Conditions of Contract which are responsive to the operating environment in Tanzania.

The 1995 Edition was based on the Agreement and Schedule of Conditions of Building Contract (with Quantities), 1977 edition, which is published by the East African Institute of Architects. Since the later are the most well known set of Conditions of Contract in use in building works in Tanzania, effort was made to make as few changes as possible on the Conditions. Changes aimed at achieving: efficiency, through imposition of time limits for some of the key actions, and a mandatory requirement for the Contractor to submit particulars in the programme of work; economy, thus Contractors have not been burdened with excessive risks particularly resulting from delays in payment, the effects of suspension and risks which are beyond control of both parties; and ease of application.

In the 1998 Edition, further amendments were made of an editorial nature and for improvement purposes. Major improvement involved the provisions for environmental protection and care of the Works. The indemnity and insurance clauses were amended to allow ease of application and to take into account the need for the Employer to bear the risks which are of his own cause or those which are beyond the control of both parties. On settlement of disputes, all types of disputes can now be arbitrated at any stage of the Works.

In this 2000 Edition, an additional Clause has been introduced to cater for corrupt practice. Furthermore, the quality of the document has been enhanced to meet market demands.

The Council acknowledges and commends all those who in one way or the other assisted in the preparation of the 1995 Edition. They included representatives from: the Architectural Association of Tanzania, the Association of Consulting Engineers, and Contractor's Association, the Tanzania Institute of Quantity Surveyors; and officials from the Attorney General's Chambers. Further acknowledgements are extended to those who have helped in further improving the Conditions by way of comments, thus resulting into the 1998 Edition and subsequently the 2000 Edition.

ARTICLES OF AGREEMENT

Made the.....day of.....

BETWEEN.....

.....
of (or whose registered office is situated at).....

.....
(hereinafter called 'the Employer') of the one part **AND**.....

.....
of (or whose registered office is situated at).....

.....
(hereinafter called 'the Contractor') of the other part

WHEREAS the Employer is desirous of

.....
(hereinafter called 'the Works') at.....

.....
and has caused Drawings and Bills of Quantities showing and describing the Works to be done, to be prepared by or under the direction of the Architect.

AND WHEREAS the Contractor has supplied the Employer with a full priced copy of the said Bills of Quantities (which is hereinafter referred to as 'the Contract Bills').

AND WHEREAS the said Drawings numbered.....

.....
.....(hereinafter referred to as 'the Contract Drawings') and the Contract Bills have been signed by or on behalf of the parties hereto.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. For the consideration hereinafter mentioned the Contractor will upon and subject to the Conditions annexed hereto carry out and complete the Works shown upon the Contract Drawings and described by or referred to in the Contract Bills and in the said Conditions.

2. The Employer will pay to the Contractor the sum of.....
(hereinafter referred to as 'the Contract Sum') or such other sum as shall become payable hereunder at the times and in the manner specified in the said Conditions.

3. The term 'the Architect' in the said Conditions shall mean.....
.....
of.....
or, in the event of his death or ceasing to be the Architect for the purpose of this Contract such other person as the Employer shall nominate for that purpose, not being a person to whom the Contractor shall object for reasons considered to be sufficient by an Arbitrator appointed in a accordance with clause 40 of the said Conditions. Provided always that no person subsequently appointed to be the Architect under this Contract shall be entitled to disregard or over-rule any certificate or opinion or decision or approval or instruction given or expressed by the Architect for the time being.

4. The term 'the Quantity Surveyor' in the said Conditions shall mean.....
.....of
.....
or, in the event of his death or ceasing to be the Quantity Surveyor for the purpose of this Contract such other person as the Employer shall nominate for that purpose, not being a person to whom the Contractor shall object for reasons considered to be sufficient by an Arbitrator appointed in accordance with clause 40 of the said Conditions.

AS WITNESS the hands of the said parties/Signed and sealed by the said parties.

Signed by the said

.....
.....

In the presence of

Name.....

Address.....

Description.....

Signed by the said

.....
.....

In the presence of

Name.....

Address.....

Description.....

NOTE:

(a) The Contract shall be under seal:

- (i) when the Articles of Association of a Limited Company which is a party to the Contract so require or
- (ii) when either party is a non-trading corporation such as a hospital or school board.

(b) If the Contract is to be executed under seal delete "As witness the hands of the said parties".

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THE CONDITIONS HEREIN BEFORE REFERRED TO

1.0 DEFINITIONS AND INTERPRETATIONS

1.1 Unless the context otherwise requires or the Articles or the Conditions or an item in or entry in the Appendix specifically otherwise provides, the following words and phrases in the Articles of Agreement, the Conditions and the Appendix shall have the meanings given below:

Appendix	means the annexures to these Conditions
Arbitrator	means the person appointed under clause 42 of these Conditions to settle disputes.
Articles or Articles of Agreement	means the Articles of Agreement to which the conditions are annexed and references to any recital set out before the Articles.
Architect	means the person named in Article 3 or any successor duly appointed under Article 3 who has the professional skills and competence to direct and or monitor the execution of the Works and to whom the Employer may delegate rights and or powers under the Contract
Bills of Quantities or Contract Bills	means the Document referred to in the second recital which has been priced by the Contractor and signed by or on behalf of the parties to this Contract.
Certificate of Practical Completion	means a certificate issued pursuant to sub-clause 17.1
Clerk of Works	means the person appointed by the Employer to act as inspector of the Works on behalf of the Employer under the direction of the Architect.
Completion Date	means the date of completion of the execution of the Works as fixed and stated in the Appendix or any date fixed under clause 26
Contract Documents	means this Agreement and Schedule of Conditions, the Contract Drawings, Specification, the Bills of Quantities, the Tender, the Letter of Acceptance, the completed Articles of Agreement and such other documents as may be expressly incorporated in the Letter of Acceptance, or the completed Articles of Agreement
Contractor	means the person named as Contractor in the Articles of Agreement with whom the Employer concludes the Contract and legal successors in title to such person and permitted assigns

Contract Drawings	means the Drawings referred to in the third recital which have been signed by or on behalf of the parties to this Contract.
Contract Sum	means the sum named in Article 2 representing the initial estimate payable for the execution of the Works or such other sum as ascertained by the final statement of account as due to the Contractor under the Contract.
Date of Practical Completion	means the date of completion of the Works as certified under clause 17.
Date of Possession	means the date stated in the Appendix under reference to clause 24.
Defects Liability Certificate	means a certificate issued by the Architect upon the making good of the defects by the Contractors.
Defects Liability Period	means the period stated in the Appendix and calculated from the Date of Practical Completion.
Employer	means the person named as Employer in the Articles of Agreement with whom the Contractor concludes the Contract and includes the legal successors in title to such person and permitted assigns.
Joint Names	means a policy of insurance which includes the Contractor and the Employer as the insured.
Letter of Acceptance	means the formal Letter of Acceptance of the Tender by the Employer.
Nominated Sub-Contractor	means a Sub-Contractor nominated by the Architect pursuant to sub-clause 31.2.
Nominated Supplier	means a Supplier nominated by the Architect to supply materials and goods under sub-clause 32.3.
Prime Cost	means a sum provided for Works or services to be executed by a nominated sub-contractor, a statutory authority or a public undertaking or for materials or goods to be obtained from nominated suppliers. Such a sum shall be deemed to be exclusive of any profit required by the general Contractor and provision shall be made for the addition thereof. The term Prime Cost may be indicated by the abbreviation "P.C" in any document related to this Contract.
Provisional Sum	means a sum provided for work or for costs which cannot be entirely foreseen, defined or detailed at the time the tendering documents are issued.

Quantity Surveyor	means the person named in Article 4 or any successor duly appointed under Article 4 who has the professional skills and competence to perform the Quantity Surveying services.
Retention Money	means the aggregate of all money retained by the Employer pursuant to clause 35.
Site	means the place provided by the Employer where the Works are to be executed or other places as may be specifically designated in the Contract as forming part of the Site.
Specification	means the Specification of the Works included in the Contract and any modification thereof or addition thereto made under clause 13.
Sub-Contractor	means any person to whom a part of the Works has been sub-contracted with the consent of the Architect and the legal successors in title to such person, but not any assignee of any such person.
Tender	means the Contractor's priced offer to the Employer for the execution and completion of the Works and remedying of any defects therein in accordance with the provisions of the Contract, as accepted by the Letter of Acceptance.
Works	means the Works briefly described in the first recital and shown and described in the Contract Drawings and in the Contract Bills.
Writing	means any hand-written, type-written or printed communication, including telex, cable and facsimile transmission and registered post.

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

1.3 Where the context so permits words of importing the singular shall be deemed to include the plural and vice versa and words importing the masculine shall be deemed to include the feminine and vice versa.

2.0 **GENERAL OBLIGATIONS OF THE CONTRACTOR**

2.1 The Contractor shall upon and subject to these Conditions carry out and complete the Works shown upon the Contract Drawings and described by or referred to in the Contract Bills and in these Conditions in every respect to the reasonable satisfaction of the Architect.

-
- 2.2 If the Contractor shall find any discrepancy in or divergence between any two or more of the following documents, including a divergence between parts of any one of them or between documents of the same description, namely:
- i) The Contract Drawings,
 - ii) The Contract Bills,
 - iii) Any instruction issued by the Architect under these Conditions (save insofar as any such instruction requires a variation in accordance with the provisions of sub-clause 13.3),
 - iv) Any Drawings or documents issued by the Architect, and
 - v) Any other documents forming part of the Contract

He shall forthwith give to the Architect a written notice specifying the discrepancy or divergence, and the Architect shall issue instructions in regard thereto as soon as is practicable.

- 2.3 If the Contractor shall fail to get materials and/or goods of the respective kinds and standards described in the Contract Drawings and or Bills he shall forthwith give to the Architect a written notice specifying the unavailability and the Architect shall within 7 days of receipt of such written notice issue instructions in regard thereto.
- 2.4 Notwithstanding any obligation of the Architect to the Employer and whether or not the Employer appoints a Clerk of Works, the Contractor shall remain wholly responsible for carrying out and completing the Works in all respects in accordance with sub-clause 2.1 of this clause whether or not the Architect or the Clerk of Works, if appointed, at any time goes onto the Works or to any workshop or other places where work is being prepared to inspect the same or otherwise, or the Architect includes the value of any work, materials or goods in a certificate for payment, save as provided in clause 34 of these Conditions with regard to the conclusiveness of the Final Certificate.
- 2.5 The Contractor shall, throughout the execution and completion of the Works and the remedying of any defects therein:
- (a) have full regard for the safety of all persons entitled to be upon the site and keep the Site (so far as the same is under his control) and the Works (so far as the same are not completed or occupied by the Employer) in an orderly state appropriate to the avoidance of danger to such persons,
 - (b) provide and maintain at his own cost all lights, guards, fencing, warning signs and watching, when and where necessary or required by the Architect or by any duly constituted authority, for the protection of the Works or for the safety and convenience of the public or others, and
 - (c) take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of his methods of operation.

3.0 ARCHITECT'S INSTRUCTION

- 3.1 The Contractor shall (subject to sub-clauses 3.2 and 3.3 of this clause) forthwith comply with all instructions issued to him by the Architect in regard to any matter, in respect of which the Architect is expressly empowered by these Conditions to issue instructions. If within 7 days after receipt of a written notice from the Architect requiring compliance with an instruction the Contractor does not comply therewith, then the Employer may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to such instruction and all costs incurred in connection with such employment shall be recoverable from the Contractor by the Employer as a debt to the Contractor under this Contract.
- 3.2 Upon receipt of instructions issued to him by the Architect, the Contractor may request the Architect to specify in writing the provision of these Conditions which empowers the issue of the said instruction. The Architect shall forthwith comply with any such request, and if the Contractor shall thereafter comply with the said instruction (neither party before such compliance having given to the other a written, request to concur in the appointment of an Arbitrator under clause 40 of these Conditions in order that it may be decided whether the provision specified by the Architect empowers the issue of the said instruction) then the issue of the same shall be deemed for all the purposes of this Contract to have been empowered by the provision of these Conditions specified by the Architect in answer to the Contractor's request.
- 3.3 All instructions issued by the Architect shall be in writing. Any instruction issued orally shall be confirmed in writing by the Contractor to the Architect within 7 days, and if not dissented from in writing within 7 days, by the Architect, it shall be deemed to be an instruction of the Architect. Provided always that if neither the Contractor nor the Architect shall confirm such an oral instruction in the manner and at the time aforesaid but the Contractor shall nevertheless comply with the same, then the Architect may confirm the same in writing, at any time prior to the issue of the final certificate, and the said instruction shall thereupon be deemed to have taken effect on the date on which it was issued.

4.0 CONTRACT DOCUMENTS

- 4.1 This Agreement, Contract Drawings (including all such drawings and details referred under sub-clause 4.4 of this clause) and the Contract Bills shall remain in the custody of the Architect so as to be available at all reasonable times for the inspection of the Employer, the Quantity Surveyor or the Contractor.
- 4.2 Immediately after the execution of this Contract, the Architect shall prepare for himself and for the Quantity Surveyor certified copies of the documents referred in sub-clause 4.1 of this clause and without charge to the Contractor shall furnish him (unless they shall have been previously furnished) with
- (a) One copy certified on behalf of the Employer of the Articles of Agreement and of these Conditions;
 - (b) Two copies of the Contract Drawings; and

(c) Two copies of the unpriced Bills of Quantities, and (if requested by the Contractor) one copy of Contract Bills

4.3 As soon as is practicable after the execution of this Contract the Architect without charge to the Contractor, shall furnish him (unless he shall have been previously furnished) with two copies of the descriptive schedules or other like documents necessary for use in carrying out the Works. Provided that nothing contained in the said descriptive schedules or other documents shall impose any obligation beyond these imposed by the Contract Documents.

4.4 As and when from time to time may be necessary the Architect without charge to the Contractor shall furnish him with two copies of such Drawings or details as are reasonably necessary either to explain and amplify the Contract Drawings or to enable the Contractor to carry out and complete the Works in accordance with these Conditions.

4.5 The Contractor shall keep one copy of the Contract Drawings, one copy of the unpriced Bills of Quantities, one copy of the Specification, descriptive schedules or other like documents referred to in sub-clause 4.3 of this clause, and one copy of the drawings and details referred to in sub-clause 4.4 of this clause upon the Works so as to be available to the Architect or his representative at all reasonable times.

4.6 Upon final payment under clause 33 of these Conditions the Contractor shall if so required by the Architect; forthwith return to the Architect all Drawings Specifications, descriptive schedules and other documents of the like nature which bear his name

4.7 None of the documents herein before mentioned shall be used by the Contractor for any purpose other than this Contract and neither the Employer, the Architect nor the Quantity Surveyor shall divulge or use except for the purposes of this Contract any of the prices in the Contract Bills

4.8 Any certificate to be issued by the Architect under these Conditions shall be issued to the Contractor with the copy to the Employer

5.0 PROGRAMME OF WORKS

5.1 The Contractor shall, within the time stated in the Appendix after the date of the Letter of Acceptance submit to the Architect for his consent without, charge to the Employer two copies of his master programme, in such form and detail as the Architect may reasonably prescribe, for the execution of the Works. The Contractor shall, whenever required by the Architect, also provide in writing for his information general description of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works, and within 14days of any decision by the Architect with two copies of any amendments and revisions to take account of that decision

5.2 If at any time it should appear to the Architect that the actual progress of the Works does not conform to the programme to which consent has been given under sub-clause 5.1 of this clause the Contractor shall produce at the request of the Architect a revised programme showing the modifications to such programme necessary to ensure completion of the Works within the time for completion

5.3 Provided that if the Contractor shall not submit or amend a programme or an updated programme within the specified period, the Architect may withhold any amount due from the next payment certificate and continue to withhold the amount until the next payment after the date on which the overdue programme has been submitted

5.4 The submission for any consent by the Architect of such programmes or the provision of such general descriptions shall not relieve the Contractor of any of his duties or responsibilities under the Contract

6.0 **STATUTORY OBLIGATIONS**

6.1 Subject to sub-clause 6.5 of this clause the Contractor shall comply with, and give all notices required by, any Act of Parliament, any instrument, rule or order made under any Act of Parliament or any regulation or by-law of any local authority or of any statutory undertaker which has any jurisdiction with regard to the Works or with whose systems the same area or will be connected (all requirements to be so complied with being referred to in the Conditions as "the Statutory Requirements").

6.2 If the Contractor shall find any divergence between the statutory requirements and all or any of the documents referred to in sub-clause 4.2 of these Conditions or between the statutory requirements and any instruction of the Architect requiring a variation issued in accordance with clause 13 of these Conditions he shall forthwith give to the Architect a written notice specifying the divergence.

6.3 If the Contractor gives notice under sub-clause 6.2 of this clause or if the Architect shall otherwise discover or receive notice of a divergence between the statutory requirements and all or any of the documents referred to in sub-clause 4.2 of these Conditions or between the statutory requirements and any instruction requiring a variation issued in accordance with sub-clause 13.3 of these Conditions, the Architect shall within 7 days of the discovery or receipt of a notice issue instruction in relation to the divergence. If and in so far as the instructions require the Works to be varied, they shall be treated as if they were Architect's instructions requiring a variation issued in accordance with clause 13 of these Conditions. If in any emergency compliance with sub-clause 6.1 of this clause requires the Contractor to supply materials or execute work before receiving instructions under sub-clause 6.3 of this clause the Contractor shall supply such limited materials and execute such limited work as are reasonably necessary to secure immediate compliance with the statutory requirements.

6.4 The Contractor shall forthwith inform the Architect of the emergency and of the steps that he is taking under sub-clause 6.3. of this clause.

6.5 Work executed and materials supplied by the Contractor under sub-clause 6.3 of this clause shall be treated as if they had been executed and supplied pursuant to an Architect's instruction requiring a variation issued in accordance with clause 13 of these Conditions provided that the emergency arose because of a divergence between the statutory requirements and all or any of the documents referred to in clause 4 of these Conditions or between the statutory requirement and any instruction requiring a variation issued in accordance with clause 13 of these Conditions, and the Contractor has complied with sub-clause 6.3 of this clause.

6.6 Provided that the Contractor complies with sub-clause 6.2 of this clause, the Contractor shall not be liable to the Employer under this Contract if the Works do not comply with the statutory requirements where and to the extent that such non-compliance of the Works results from the Contractor having carried out work in accordance with the documents referred to in sub-clause 4.2 of these Conditions or with any instruction requiring a variation issued by the Architect in accordance with clause 13 of these Conditions.

6.7 The provisions of this clause 6 shall not apply to the execution of part of the Works by a local authority or a statutory undertaker executing such work solely in pursuance of its statutory obligations and such bodies shall not be Sub-Contractors within the terms of this Contract.

7.0 LEVELS AND SETTING OUT OF THE WORKS

7.1 The Architect shall determine any levels which may be required for the execution of the Works, and shall furnish to the Contractor by way of accurately dimensioned drawings such information as shall enable the Contractor to set out the Works at ground level. Unless the Architect shall otherwise instruct, in which case the Contract Sum shall be adjusted accordingly, the Contractor shall be responsible for and shall entirely at his own cost amend any errors arising from his own inaccurate setting out.

8.0 MATERIALS, GOODS AND WORKMANSHIP TO CONFORM TO DESCRIPTION, TESTING AND INSPECTION

8.1 All materials, goods and workmanship shall so far as procurable be of the respective kinds and standards described in the Contract Bills or approved by the Architect under sub-clause 13.1 and explained in sub-clause 13.2 of these Conditions.

8.2 The Contractor shall upon the request of the Architect furnish him with manufacturer's certificate or test certificate to prove that the materials and goods comply with sub-clause 8.1 of this clause.

8.3 The Architect may issue instructions requiring the Contractor to open up for inspection any work covered up or to arrange for carrying out any test of any materials or goods (whether or not already incorporated into the Works) or of any executed work, and the cost of such opening up or testing (together with the cost of making good in consequence thereof) shall be added to the Contract Sum unless provided for in the Contract Bills or unless the inspection or test shows that the work, materials or goods are not in accordance with the Contract.

8.4 The Architect may issue instructions in regard to the removal from the Site of any work, materials or goods which are not in accordance with the Contract.

9.0 ROYALTIES AND PATENT RIGHTS

All royalties or other sums payable in respect of the supply and use in carrying out the Works as described by or referred to in the Contract Bills of any patented articles, processes or inventions shall be deemed to have been included in the Contract Sum,

10.0 STAFF

- 10.1 The Contractor shall constantly keep upon the Works a competent Foreman-in-charge and any instructions given to him by the Architect shall be deemed to have been issued to the Contractor. The Foreman-in-charge shall be capable of interpreting Contract Documents and instructions which are narrated in English.
- 10.2 The Contractor shall make his own arrangements for the engagement of all labour, local or otherwise.
- 10.3 The Architect may (but not unreasonably or vexatiously) issue instructions requiring the dismissal from the Works of any person indicated by the Architect as likely to jeopardize the satisfactory execution of the Works.
- 10.4 The Contractor shall be responsible for observance by his Sub-Contractors of the foregoing provisions.

11.0 ACCESS FOR ARCHITECT TO THE WORKS

The Architect and his representatives shall at all reasonable times have access to the Works and to the workshops or other places of the Contractor where work is being prepared for the Contract, and when the work is to be so prepared in workshops or other places of a Sub-Contractor (whether or not a nominated Sub-Contractor as defined in clause 31 of these Conditions) the Contractor shall by a term in the sub-contract so far as possible secure a similar right of access to those workshops or places for the Architect and his representatives and shall do all things reasonably necessary to make such right effective.

12.0 CLERK OF WORKS

- 12.1 The Employer shall be entitled to appoint a Clerk of Works, whose primary duty shall be to act as inspector on behalf of the Employer under the direction of the Architect, and the Contractor shall afford every reasonable facility for the performance of that duty.
- 12.2 Directions given by the Clerk of Works in writing to the Contractor or to his Foreman-in-charge shall be deemed to be Architect's instructions in respect of:
- (a) the interpretation of Architect's instructions, Drawings, Specifications or Bills of Quantities,
 - (b) the removal from the Site of any work, materials or goods which are not in accordance with the Contract,
 - (c) matters of urgency involving the safety or protection of persons or property, and
 - (d) any other matters in respect of which the Architect is expressly empowered by these Conditions to issue instructions and on which the Architect has authorized in writing the Clerk of Works so to act.

12.3 Any other directions given by the Clerk of Works to the Contractor or his Foreman-in-charge shall be of no effect.

13.0 **VARIATIONS, PROVISIONAL AND PRIME COST SUMS**

13.1 The Architect may issue instructions requiring a variation and he may sanction in writing any variation made by the Contractor otherwise than pursuant to an instruction of the Architect. No variation required by the Architect or subsequently sanctioned by him shall vitiate this Contract.

13.2 The term "variation" as used in these Conditions means the alteration or modification of the design, quality or quantity of the Works as shown upon the Contract Drawings and described by or referred to in the Contract Bills and includes the addition, omission or substitution of any works, the alteration of any kind or standard of any of the materials or goods to be used in the Works and removal from the site of any work materials or goods executed or brought thereon by the Contractor for the purposes of the Works other than work, materials or, goods which are not in accordance with Contract.

13.3 The Architect shall issue instructions in regard to the expenditure of Prime Cost and Provisional Sums included in the Contract Bills and of prime cost sums which arise as a result of instructions issued in regard to the expenditure of Provisional Sums.

13.4 All variations required by the Architect or subsequently sanctioned by him in writing and all work executed by the Contractor for which Provisional Sums are included in the Contract Bills (other than work for which a tender made under sub-clause 30.8 of these Conditions has been accepted) shall be measured and valued by the Quantity Surveyor who shall give to the Contractor an opportunity of being present at the time of such measurement and of taking such notes and measurements as the Contractor may require. The valuation of variations and of the work executed by the Contractor for which a Provisional Sum is included in the Contract Bills (other than work for which a tender has been accepted as aforesaid) unless otherwise agreed shall be made in accordance with the following rules:

- (a) The prices in the Contract Bills shall determine the valuation of work of similar character executed under similar conditions as work priced therein.
- (b) The said prices, where work is not of a similar character or executed under similar conditions as aforesaid, shall be the basis of prices for the same so far as may be reasonable, failing which a fair valuation thereof shall be made.
- (c) Where work cannot properly be measured and valued the Contractor shall be allowed day work rates on the price prevailing when such work is carried out (unless otherwise provided in the Contract Bills).
 - (i) at rates, if any, inserted by the Contractor in the Contract Bills or in the Tender, or
 - (ii) Architect the workmen's names) and the materials used shall be delivered for verification to the Architect or his authorized representative not later than the end of the week following that in which the work has been executed.

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- (d) The prices in the Contract Bills shall determine the valuation of items omitted; provided that if omissions substantially vary the conditions under which any remaining items of work are carried out the prices for such remaining items shall be valued under rule (b) of this sub-clause.
- 13.5 Effect shall be given to the measurement and valuation of variations under sub-clause 13.4 of this clause in interim certificates and by adjustment of the Contract Sums; and effect shall be given to the measurement and valuation of work for which a Provisional Sum is included in the Contract Bills under the said sub-clause in interim certificates and by adjustment of the Contract Sum in accordance with clause 34.4(c) of these Conditions.
- 13.6 If upon written application being made to him by the Contractor, the Architect is of the opinion that a variation or the execution by the Contractor of work for which a Provisional Sum is included in the Contract Bills (other than work for which a tender made under this clause has been accepted) has involved the Contractor indirect loss and/or expense for which he would not be reimbursed by payment in respect of a valuation made in accordance with the rules contained in sub-clause 13.4 of this clause and if the said application is made within a reasonable time of the loss and or expense having been incurred, then the Architect shall either himself ascertain or shall instruct the Quantity Surveyor to ascertain the amount of such loss and/or expense. Any amount from time to time so ascertained shall be added to the Contract Sum, and if an interim certificate is issued after the date of ascertainment any such amount shall be added to the amount which would otherwise be stated as due in such certificate
- 14.0 **CONTRACT BILLS**
- 14.1 The quality and quantity of the work included in the Contract Sum shall be deemed to be that which is set out in the Contract Bills which Bills unless otherwise expressly stated therein shall be deemed to have been prepared in accordance with the principles of the Standard Method of Measurement of Building Works as stated in the Contract Bills but save as aforesaid nothing contained in the Contract Bills shall override, modify or affect in any way whatsoever the application or interpretation of that which is contained in these Conditions
- 14.2 Any error in description or in quantity or omission of items from the Contract Bills shall not vitiate this Contract but shall be corrected and deemed to be a variation required by the Architect.
- 15.0 **CONTRACT SUM**
- 15.1 The Contract Sum shall not be adjusted or altered in any way whatsoever otherwise than in accordance with the express provisions of these Conditions and subject to sub-clause 14.2 of these Conditions any error whether arithmetic or not in computation of the Contract Sum shall be deemed to have been accepted by the parties hereto

16.0 UNFIXED GOODS AND MATERIALS

16.1 Where in any certificate of which the Contractor has received payment, the Architect has in accordance with sub-clause 34.2 of these Conditions included the value of any unfixed materials and goods required for use in the Works, such materials and goods shall become the property of the Employer and shall not be removed except for use upon the Works unless the Architect has authorized in writing such removal and the Contractor shall remain responsible for any loss of or damage to the same.

17.0 PRACTICAL COMPLETION AND DEFECTS LIABILITY

17.1 When in the opinion of the Architect the Works are practically completed, he shall forthwith issue a Certificate of Practical Completion to that effect and practical completion of the Works shall be deemed for all the purposes of this Contract to have taken place on the day named in such certificate.

17.2 Any defects, shrinkages, frost or other faults which shall appear within the Defects Liability Period named in the Appendix which are due to materials or workmanship not in accordance with the Contract shall be specified by the Architect in a schedule of defects which he shall deliver to the Contractor not later than 14 days after the expiration of the said Defects Liability Period, and within a reasonable time after receipt of such schedule, the defects, shrinkages, frost and other faults therein specified shall be made good by the Contractor and (unless the Architect shall otherwise instruct, in which case the Contract Sum shall be adjusted accordingly) entirely at his own cost

17.3 Notwithstanding the provision of sub-clause 17.2 of this clause the Architect may whenever he considers it necessary to do so, issue instructions requiring any defect, shrinkage or other fault which shall appear within the Defects Liability Period and which are due to materials or workmanship not being in accordance with this Contract to be made good, and the Contractor shall within a reasonable time after receipt of such instructions comply with the same and (unless the Architect shall otherwise instruct, in which case the Contract Sum shall be adjusted accordingly) entirely at his own cost. Provided that no such instructions shall be issued after delivery of a schedule of defects or after 14 days from the expiration of the said Defects Liability Period.

17.4 When in the opinion of the Architect any defects, shrinkages or other faults which may have required to be made good under sub-clauses 17.2 and 17.3 of this clause shall have been made good he shall issue a Defects Liability Certificate to that effect, and completion of making good defects shall be deemed for all purposes of this Contract to have taken place on the day named in such certificate.

18.0 PARTIAL POSSESSION

18.1 At any time or times before practical completion of the Works the Employer, with the consent of the Contractor may take possession of any part or parts of the same (any such part being hereinafter in this clause referred to as "the relevant part")

18.2 Within 7 days from the date on which the Employer shall have taken possession of the relevant part the Architect shall issue a certificate stating his estimate of the approximate total value of the said part, and for all purposes of this clause the value so stated shall be deemed to be the total value of the said part.

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- 18.3 For the purposes of sub-clause 18.7 of this clause and of sub-clauses 17.2 and 17.3 of these Conditions, practical completion of the relevant part shall be deemed to have occurred and the Defects Liability Period in respect of the relevant part shall be deemed to have commenced on the date on which the Employer shall have taken possession thereof.
- 18.4 When in the opinion of the Architect any defects, shrinkages or other faults in the relevant part which he may have required to be made good under sub-clause 17.2 or sub-clause 17.3 of these Conditions shall have been made good he shall issue a certificate to that effect.
- 18.5 The Contractor shall reduce the value insured under clause 23 of these Conditions by the full value of the relevant part, and the said relevant part shall as from the date on which the Employer shall have taken possession thereof be at the sole risk of the Employer as regards any of the contingencies referred to in the said clause.
- 18.6 In lieu of any sum to be paid or allowed by the Contractor under clause 26 of these Conditions in respect of any period during which the Works may remain incomplete occurring after the day on which the Employer shall have taken possession of the relevant part there shall be paid or allowed such sum as bears the same ratio to the sum which would be paid or allowed apart from the provisions of this clause as does the Contract Sum less the total value of the said relevant part to the Contract Sum.
- 18.7 (a) Within 14 days of the date on which the Employer shall have taken possession of the relevant part there shall be paid to the Contractor from the sums then retained under sub-clause 35(2)(b) of these Conditions (if any) half of such amount as bears the same ratio of the unreduced amount named in the Appendix to these Conditions as Limit of Retention Fund as does the total value of the said relevant part to the Contract Sum and the amount named in the Appendix to these Conditions as Limit of Retention Fund shall be reduced by half of such amount,
- (b) On the expiration of the Defects Liability Period in respect of the relevant part or on the issue of the Defects Liability Certificate in respect of the relevant part, whichever is the later, there shall be paid to the Contractor from the sums then retained under sub-clause 35(2) (b) of these Conditions (if any) the other half of the amount referred to in the preceding sub-paragraph of this sub-clause, and the amount named in the Appendix to these Conditions as Limit of Retention shall be reduced by half of such amount.
- 19.0 **ASSIGNMENT**
- 19.1 Neither the Employer nor the Contractor shall, without the written consent of the other, assign this Contract. Provided that the approval of assignment shall not relieve either party of his obligations for the part of the Contract already performed or the part not assigned.

20.0 SUB-LETTING

20.1 The Contractor shall not without the written consent of the Architect (which consent shall not be unreasonably withheld to the prejudice of the Contractor) sub-let any portion of the Works. Provided that it shall be a condition in any sub-letting which may occur that the employment of the domestic Sub-Contractor under the sub-contract shall determine immediately upon the determination (for any reason) of the Contractor's employment under this Contract.

21.0 INDEMNIFICATION

21.1 The Contractor shall, except if and so far as the Contract provides otherwise, indemnify the Employer against all losses and claims in respect of:

- (a) death of or injury to any person,
- (b) loss of or damage to any property (other than the Works),
- (c) any fees or charges legally demandable under any Act of Parliament, any instrument, or any regulation or by-law of any local authority or of any statutory undertaker subject to sub-clause 6.7 of these conditions, and
- (d) all claims, proceedings, damages, costs and expenses which may be brought or made against the Employer or to which he may be put by reason of the Contractor infringing or being held to have infringed any patent rights in relation to any such articles, processes and inventions,

which may arise out of or in consequence of the execution and completion of the Works and the remedying of any defects therein, and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, subject to the exceptions defined in Sub-Clause 21.3.

21.2 The Employer shall indemnify the Contractor against all claims, proceedings, damages, costs, charges and expenses in respect of the matters referred to in the exceptions defined in Sub-Clause 21.3

21.3 The exceptions referred to in Sub-Clause 21.1 are:

- (a) the permanent use or occupation of land by the Works, or any part thereof,
- (b) the right of the Employer to execute the Works, or any part thereof, on, over, under, in or through any land,
- (c) damage to property which is the unavoidable result of the execution and completion of the Works, or the remedying of any defects therein, in accordance with the Contract,
- (d) death of or injury to persons or loss of or damage to property resulting from any act or neglect of the Employer, his agents, servants or other contractors, not being

employed by the Contractor, or in respect of any claims, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto or; where the injury or damage was contributed to by the Contractor, his servants or agents, such part of the said injury or damage as may be just and equitable having regard to the extent of the responsibility of the Employer, his servants or agents or other contractors for the injury or damage, and

- (e) where in compliance with Architect's instructions the Contractor shall supply and use in carrying out the Works any patented articles, processes or inventions, the Contractor shall not be liable in respect of any infringement or alleged infringement of any patent rights in relation to any articles, process and inventions and royalties, damages or other monies which the Contractor may be liable to pay to the persons entitled to such patent rights shall be added to the Contract Sum.

22.0 RISKS

22.1 From the Date of Possession until the Date of Practical Completion of the Works, the following are Employer's risks

- (a) loss or damage due to the use or occupation by the Employer of any section or part of the permanent Works, except as may be provided for in the contract
- (b) loss or damage due to negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor
- (c) war; hostilities; rebellion; revolution; insurrection; contagious diseases; fire; lightning; explosion; storm; tempest; flood; bursting or overflowing of water tanks; apparatus or pipes; earthquake; aircraft and other aerial devices or articles dropped there from; riot and civil commotion, (unless solely restricted to the employees of Contractor or his Sub-Contract and arising from the conduct of the Works); radioactive contamination by reason of any law or order proclamation, regulation or ordinance of any Government or of any subdivision thereof; and any act of God against which an experienced Contractor could not reasonably have been expected to take precautions.

22.2 From the Date of Possession until the Date of Practical Completion of the Works, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, plant, materials, and equipment) which are not Employer's risks are Contractor's risks.

22.3 If any loss or damage happens to the Works, or any part thereof, or materials or plant for incorporation therein, during the period for which the Contractor is responsible for the care thereof, from any cause whatsoever, other than the risks defined in sub-clause 22.1, the Contractor shall, at his own cost, rectify such loss or damage so that the permanent Works conform in every respect with the provisions of the Contract to the satisfaction of the Architect. The contractor shall also be liable for any loss or damage to the Works occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations under Clause 17.

22.4 In the event of any such loss or damage happening from any of the risks defined in sub-clause 22.1, or in combination with other risks, the Contractor shall, if and to the extent required by the Architect, rectify the loss or damage and the Architect shall determine an addition to the Contract Sum and shall notify the Contractor accordingly, with a copy to the Employer. In the case of a combination of risks causing loss or damage any such determination shall take into account the proportional responsibility of the Contractor and the Employer

23.0 **INSURANCE**

23.1 The Contractor shall provide, in the Joint Names of the Employer and the Contractor, insurance cover from the Date of Possession to the Date of Practical Completion of the Works, for the following events which are due to the Contractor's risks:

- (a) loss of or damage to the Works, plant, and materials;
- (b) loss of or damage to equipment;
- (c) loss of or damage to property (except the Works, plant, materials, and equipment) in connection with the Contract; and
- (d) personal injury or death

23.2 The Insurance for the Works together with plant and materials for incorporation therein shall cover full replacement cost and any additional cost of and incidentals to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the works or debris of whatsoever nature; and for the Contractor's equipment and other things brought to Site by the Contractor, for a sum sufficient to provide for their replacement at Site.

23.3 Policies and certificates for insurance shall be delivered by the Contractor to the Architect for his approval before the Date of Possession. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

23.4 If the Contractor does not provide any of the policies and certificates required, the Employer may affect the insurance which the Contractor should have provided and recover the premiums from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.

23.5 Alterations to the terms of insurance shall not be made without the approval of the Architect.

23.6 Both parties shall comply with any conditions of the insurance policies.

24.0 **POSSESSION, COMPLETION AND POSTPONEMENT**

24.1 On the Date for Possession stated in the Appendix to these Conditions possession of the Site shall be given to the Contractor who shall thereupon begin the Works and regularly and diligently proceed to execute the same and complete on or before the Completion Date stated in the said Appendix subject nevertheless to the provisions for variation of time for completion contained in clause 26 of these Conditions.

24.2 The Architect may issue instructions in regard to the postponement of any work to be executed under the provisions of this Contract.

24.3 For the purposes of the Works insurances the Contractor shall retain possession of the Site and the Works up to and including the date of issue of the Certificate of Practical Completion and subject to clause 18 of these Conditions the Employer shall not be entitled to take possession of any part or parts of Works until that date.

25.0 DAMAGES FOR NON-COMPLETION

25.1 If the Contractor fails to complete the Works by the Completion Date then the Architect shall issue a certificate to that effect.

25.2 Subject to the issue of a certificate under sub-clause 25.1 of this clause, the Contractor shall as the Employer may require in writing not later than the date of the final certificate pay or allow to the Employer the whole or such part as may be specified in writing by the Employer of a sum calculated at the rate stated in the Appendix as Liquidated and Ascertained Damages for the period between the Completion Date and the Date of Practical Completion and the Employer may deduct the same from any monies due to the Contractor under this Contract (including any balance stated as due to the Contractor in the final certificate) or the Employer may recover the same from the Contractor as a debt.

25.3 If under sub-clause 26.3 of these Conditions the Architect fixes later Completion Date the Employer shall pay or repay to the Contractor any amounts recovered, allowed or paid under sub-clause 26.2 of these Conditions for the period up to such later Completion Date.

26.0 VARIATION OF TIME FOR COMPLETION

26.1 Upon it becoming reasonably apparent that the progress of the Works is likely to be delayed beyond Completion Date or beyond any time previously fixed under this clause due to the following event(s):

- (a) by Employer's risk defined under sub-clause 21.1 (c) of these conditions,
- (b) by reason of any exceptionally inclement weather, or
- (c) by reason of Architect's instructions issued under clause 3, sub-clauses 13.1, 24.2 or 39.2 of these conditions,
- (d) by reason of the Contractor not having received in due time necessary instructions, drawings, details or levels from the Architect for which he specifically applied in writing on a date which having regard to the Completion Date or to any extension of time fixed under this clause was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or

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- (e) by delay on the part of artists, tradesmen or others engaged by the Employer in executing work not forming part of this Contract, or
 - (f) by reason of the opening up for inspection of any work covered up or of the testing of any of the work materials or goods in accordance with sub-clause 8.3 of these Conditions (including making good in consequence of such opening up or testing), unless the inspection or test showed that the work, materials or goods were not in accordance with this Contract, or
 - (g) by the Contractor's inability for reasons beyond his control and which he could not reasonably have foreseen at the date of this Contract to obtain delivery upon the Works such goods or materials which are essential to the proper carrying out of the Works, or
 - (h) by delay caused in compliance to sub-clause 6.1 of these Conditions, or
 - (i) by delay caused by the Employer in failing to hand over the whole of Site on the Date for Possession of Site named in the Appendix of these Conditions, or
 - (j) by delay caused by Employer in failing to pay the Contractor's certificate in a stipulated time,

then within 30 days after such event(s) has first arisen the Contractor shall give a written notice to the Architect. Provided always that the Contractor shall use constantly his best endeavour to prevent delays and shall do all that may reasonably be required to the satisfaction of the Architect to proceed with the Works.

- 26.2 The Architect shall within 30 days of his receipt of detailed particulars of the claim for extension of time subject to sub-clause 26.3 of this clause determine in writing a fair and reasonable extension of time for completion of the Works. Provided that if the Architect shall fail to give a decision on the Contractor's application of extension of time within the stipulated 30 days then the time applied by the Contractor shall be deemed to have been accepted by the Architect as being fair extension of time for completion of the Works.
- 26.3 The Architect is not bound to make any determination pursuant to sub-clause 26.2 of this clause unless the Contractor shall, within 30 days after his notice under sub-clause 26.1 of this clause has been given, submit to the Architect detailed particulars of any extension of time to which he considers himself entitled in order that such submission may be investigated at the time.
- 26.4 Provided also that when an event has a continuing effect such that it is not practicable for the Contractor to submit detailed particulars within the period of 30 days referred to in sub-clause 26.3 of this clause, he shall nevertheless be entitled to an extension of time provided that he has submitted to the Architect interim particulars at intervals of not more than 30 days and final particulars within 30 days of the end of the effects resulting from the event. On receipt of such interim particulars, the Architect shall determine an interim extension of time and, on receipt of t

the final particulars, the Architect shall review all the circumstances and shall determine an overall extension of time in regard to the event. No final review shall result in a decrease of any extension of time already determined by the Architect. Provided also that the time stipulations for the Architects action and the consequences thereof under sub-clause 26.1 of this clause shall be observed

26.5 If for the reason of Architect's instruction issued under sub-clause 13.2 or 24.2 of these Conditions the scope of the Works has been reduced and to the opinion of the Architect the time for which the completion of the Works stated in Appendix or fixed under sub-clause 26.1 of these Conditions is likely to be or has been affected then the Architect shall forthwith make in writing a fair and reasonable reduction of time for completion of the Works.

27.0 **LOSS AND EXPENSE CAUSED BY DISTURBANCE OF REGULAR PROGRESS OF THE WORKS**

27.1 In the event that the Contractor has been involved in direct loss and/or expense for which he would not be reimbursed by a payment made under any other clause in this Contract by reason of the regular progress of the Works or of any part thereof having been materially affected by:

- (a) the Contractor not having received in due time necessary instructions, drawings, details, or levels from the Architect which he specifically applied in writing on a date which having regard to Completion Date stated in the Appendix to these Conditions was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or
- (b) the opening up for inspection of any work covered up or the testing of any of the work, materials or goods in accordance with sub-clause 8.3 of these Conditions (including making good in consequence of such opening up or testing) unless the inspection or test showed that the work, materials, or goods were not in accordance with this Contract, or
- (c) any discrepancy in or divergence between the Contract Documents, or
- (a) delay on the part of artists, tradesmen or others engaged by the Employer in executing work not forming part of this Contract, or
- (f) Architect's instruction issued in regard to the postponement or any work to be executed under the provisions of the Contract, or
- (g) delay caused by the Employer in failing to handover the whole or part of the Site on the Date of Possession of Site named in the Appendix of these Conditions,
- (h) the supply by the Employer of materials and goods which the Employer has agreed to provide for the Works or the failure so to supply, or
- (i) by reason of increase or decrease of scope of Works certified by the Architect under sub-clause 13.1 of these Conditions,

then he shall give the Architect a notice of his intention to make such a claim within 30 days after the event giving rise to the claim has first arisen

- 27.2 Within 30 days, or such other reasonable time as may be agreed by the Architect, giving notice under sub-clause 27.1 of this clause the Contractor shall send to the Architect an account giving detailed particulars of the claim and the grounds upon which the claim is based. Where the event giving rise to the claim has a continuing effect, such account shall be considered to be an interim account and the Contractor shall at such intervals as the Architect may reasonably require, send further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. In case where interim accounts are sent to the Architect, the Contractor shall send a final account within 30 days of the end of the effects resulting from the event. The Contractor shall if required by the Architect so to do, copy to the Employer all accounts sent to the Architect pursuant to this sub-clause.
- 27.3 If the Contractor fails to comply with any of the provisions of this clause in respect of any claim which he seeks to make, his entitlement to payment in respect thereof shall not exceed such amount as the Architect or any Arbitrator(s) appointed pursuant to clause 40 of these Conditions assessing the claim considers to be verified by contemporary records.
- 27.4 Any amount from time to time so ascertained shall be added to the Contract Sum, and if an interim certificate is issued after the date of ascertainment any such amounts shall be added to the amount which would be otherwise stated as due in such certificate.
- 27.5 The provisions of this clause are without prejudice to any other rights and remedies which the Contractor may possess.
- 28.0 **DETERMINATION BY EMPLOYER**
- 28.1 Without prejudice to any other rights or remedies which the Employer may possess, if the Contractor shall make default in any one or more of the following respects, that is to say; if:
- (a) without reasonable cause wholly suspends the carrying out of the Works before completion thereof, or
 - (b) he fails to proceed regularly and diligently with the Works, or
 - (c) in spite of previous notice from the Architect in writing is otherwise persistently or flagrantly neglecting to comply with his obligation requiring him to remove defective work or improper materials or goods and by such refusal or neglects the Works are materially affected, or
 - (d) he fails to comply with the provisions of clause 19 of these Conditions, or
 - (e) he fails to comply with the provisions of clause 20 of these Conditions,

then the Architect may give to him a notice by registered post or recorded delivery specifying the default, and if the Contractor either shall continue such default for 14 days after receipt of such notice then the employer without prejudice to any other rights or remedies, may within 10 days after such continuance by notice by registered post or recorded delivery forthwith determine the Employment of the Contractor under this Contract, provided that such notice shall not be given unreasonably or vexatiously.

- 28.2 In the event of the Contractor becoming bankrupt or making a composition or arrangement with his creditors or having a winding up order made or (except for purpose of reconstruction) a resolution for voluntary winding up passed or a receiver or manager of his business or undertaking duly appointed, or possession taken, by or on behalf of the holders of any debentures secured by a floating charge, or any property comprised in or subject to the floating charge, the employment of the Contractor under this Contract shall be forthwith automatically determined but the said employment may be reinstated and continued if the Employer and the Contractor, his trustee in bankruptcy, liquidator, receiver or manager as the case may be shall so agree.
- 28.3 In the event of the employment of the Contractor being determined as aforesaid and so long as it has not been reinstated and continued, the following shall be the respective rights and duties of the Employer and Contractor.
- (a) The Employer may employ and pay other persons to carry out and complete the Works and he or they may enter upon the Works and use all temporary buildings, plant, tools, equipment, goods and materials intended for, delivered to and placed on or adjacent to the Works (including materials and goods stored and paid for by the Employer but on approval of the Architect has been stored away from Site) and may purchase all materials and goods necessary for the carrying out and completion of the Works.
 - (b) The Contractor shall, if so required by the Employer or Architect within 14 days of the date of determination assign to the Employer without payment the benefit of any agreement for the supply of materials and goods/or for the execution of any work for the purposes of this Contract but on the terms that a supplier or Sub-Contractor shall be entitled to make any reasonable objection to any further assignment thereof by the Employer. In any case the Employer may pay any supplier or Sub-Contractor for any materials or goods delivered or Works executed for the purposes of this Contract (whether before or after the date of determination) in so far as the price thereof has not already been paid by the Contractor. The Employer's rights under this paragraph are in addition to his rights to pay nominated Sub-Contractors as provided in sub-clause 31.4 of these Conditions and payments made under this sub-clause may be deducted from any sum due or to become due to the Contractor
 - (c) The Contractor shall as and when required in writing by the Architect so to do (but not before) remove from the Works any temporary buildings, plant, tools, equipment, goods and materials belonging to or hired by him. If within 30 days after any such requirement has been made in writing the Contractor has not complied therewith, then the Employer may (but without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor

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- (d) The Contractor shall allow or pay to the Employer in the manner hereinafter appearing the amount of any direct loss and/or damage caused to Employer by the determination. Until after completion of the Works under paragraph (a) of this sub-clause the Employer shall not be bound by any provision of this Contract, to make any further payment to the Contractor, but upon such completion and the verification within 30 days of the accounts thereof the Architect shall certify the amount of expenses properly incurred by the Employer and the amount of any direct loss and/or damage caused to the Employer by the determination and, if such amounts when added to the monies paid to the Contractor before the date of determination exceed the total amount which would have been payable on due completion in accordance with this Contract, the difference shall be a debt payable to the Employer by the Contractor, and if the said amounts when added to the said monies be less than the said total amount, the difference shall be a debt payable by the Employer to the Contractor.

29.0 DETERMINATION BY CONTRACTOR

29.1 Without prejudice to any other rights and remedies which the Contractor may possess, if:

- (a) the Employer does not pay the amount properly due to the Contractor on any certificate within 30 days from the issue of that certificate and continues such default for 30 days after receipt by registered post or recorded delivery of a notice from the Contractor stating that notice of determination under clause 29 of these Conditions will be served if payment is not made within 30 days from receipt thereof, or
- (b) the Employer interferes with or obstructs the issue of any certificate due under this Contract, or
- (c) the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for a continuous period of the length named in the Appendix by reason of
- (i) Architect's instructions issued under clause 3 of these Conditions unless caused by reason of some negligence or default of the Contractor, his servants or agents or of any person employed or engaged upon, or in connection with the Works or any part thereof, his servants or agents other than the Employer or any person employed, engaged or authorised by the Employer or by any local authority or statutory undertaker executing work solely in pursuance of its statutory obligations, or
- (ii) the Contractor not having received in due time necessary instructions, drawings, details or levels from the Architect for which he specifically applied in writing provided that such application was made on a date which having regard to the Completion Date was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or
- (iii) delay in the execution of work not forming part of this Contract by the Employer himself or by persons employed or otherwise engaged by the Employer or the failure to execute such work or delay in the supply by the Employer of materials and goods which the Employer has agreed to provide for the Works or the failure so to supply, or

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- (iv) the opening up for inspection of any work covered up or the testing of any of the work, materials or goods (including making good in consequence of such opening up or testing), unless the inspection or test showed that the work materials or goods were not in accordance with this Contract, or
 - (v) failure of the Employer to give in due time Possession of the Site of the Works or any part thereof in accordance with the Contract or failure of the Employer to give such possession as otherwise agreed between the Architect and the Contractor,

then the Contractor may thereupon by notice, by registered post or recorded delivery to the Employer or the Architect forthwith determine the employment of the Contractor under this Contract, provided that such notice shall not be given unreasonably or vexatiously.

29.2 Upon such determination, then without prejudice to the accrued rights and liabilities of either party or to any liability of the causes mentioned in clause 21 of these Conditions which may accrue either before the Contractor or any Sub-Contractors shall have removed his or their temporary buildings, plant, tools, equipment, goods or materials or by reason of his or their so removing the same, the following shall be the respective rights and liabilities of the Contractor and the Employer:

- (a) The Contractor shall with all reasonable dispatch and in such manner and with such precautions as will prevent any injury, death or damage remove from the Site all his temporary buildings, plant, tools, equipment, goods and materials and shall give facilities for his Sub-Contractors to do the same, but subject always to the provisions of paragraph (iv) of sub-clause 29.2 (b) of this clause.
- (b) After taking into account amounts previously paid under this Contract the Contractor shall be paid by the Employer:
 - (i) the total value of work completed at the date of determination, such value to be computed as if it were a valuation in respect of the amounts to be stated as due in an interim certificate issued under sub-clause 34.1 of these Conditions but after taking account of any amounts referred to in sub-clauses 29.2 (b) (iii) to (vi) of this clause,
 - (ii) the total value of work begun and executed but not completed at the date of determination, the value being ascertained in accordance with clause 32 of these Conditions as if such work was a variation required by the Architect but after taking account of any amounts referred to in such sub-clauses 29.2(b) to (vi) of this clause,
 - (iii) any sum ascertained in respect of direct loss and/or expense under sub-clause 13.6 and clause 28 of these Conditions (whether ascertained before or after the date of determination),

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- (iv) the cost of materials or goods properly ordered for the Works for which the Contractor shall have paid or for which the Contractor is legally bound to pay, and on such payment by the Employer any materials or goods so paid for shall become the property of the Employer.
 - (v) the reasonable cost of removal under sub-clause 29.2 (a) of this clause, and
 - (vi) any direct loss and or damage caused to the Contractor by the determination.
- (b) The Employer shall inform the Contractor in writing which part or parts of the amount paid or payable under sub-clause 29.2 (b) (vi) is or are fairly and reasonably attributable to any nominated Sub-Contractor and shall so inform each Sub-Contractor in writing.

30.0 DETERMINATION BY EMPLOYER OR CONTRACTOR

- 30.1 Without prejudice to any other rights or remedies which the Employer or the Contractor may possess, if the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for a continuous period of the length named in the Appendix by reason of Employer's risks then the Employer or the Contractor may thereupon by notice, by registered post or recorded delivery to the Contractor or to the Employer forthwith determine the employment of the Contractor under this Contract, provided that such notice shall not be given unreasonably or vexatiously.
- 30.2 The Contractor shall not be entitled to give notice of determination under sub-clause 30.1 of this clause where the suspension or continued suspension of the carrying out of the uncompleted Works is caused by some negligence or default of the Contractor, his servants or agents or of any person employed or engaged upon or in connection with the Works or any part thereof, his servants or agents other than the employer or any person employed, engaged or authorised by the Employer or by any local authority or statutory undertaker executing work solely in pursuance of its statutory obligations.
- 30.3 Upon such determination under sub-clause 30.1 of this clause the provisions of sub-clause 29.2 shall apply with exception of sub-clause 29.2 (b) (vi) of these Conditions

30.1 NOMINATED SUB-CONTRACTOR

- 31.1 The provisions of sub-clause 31.2 to 31.9 of this clause shall apply where Prime Cost sums are included in the Contract Bills or arise as result of Architect's instructions given in regard to the expenditure of Provisional Sums in respect of persons to be nominated by the Architect to supply and fix materials or goods or to execute work.
- 31.2 Such sums shall be expended in favour of such persons as the Architect shall instruct and all specialists or others who are nominated by the Architect are hereby declared to be Sub-Contractors employed by the Contractor and are referred to in these Conditions as Nominated Sub-Contractors. Provided that the Architect shall not nominate any person as a Sub-Contractor against whom the Contractor shall make reasonable objection, or (save where the Architect and Contractor shall otherwise agree) who will not enter into a sub-contract which provides, inter alia:

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- (a) That the Nominated Sub-Contractor shall carry out and complete the sub-contract Works in every respect to the reasonable satisfaction of the Contractor and of the Architect and in conformity with all the reasonable directions and requirements of the Contractor.
 - (b) That the Nominated Sub-Contractor shall observe, perform and comply with all the provisions of this Contract on the part of the Contractor to be observed, performed and complied with so far as they relate and apply to the sub-contract Works or to any portion of the same.
 - (c) That the Nominated Sub-Contractor shall indemnify the Contractor, against the same liabilities in respect of the sub-contract Works as those for which the Contractor is liable to indemnify the Employer under this Contract.
 - (d) That the Nominated Sub-Contractor shall indemnify the Contractor against claims in respect of any negligence, omission or default of such Sub-Contractor, his servants or agents or any misuse by him or them of any scaffolding or other plant, and shall insure himself against any such claims and produce the policy or policies and receipts in respect of premiums paid as and when required by either the Architect or the Contractor.
 - (e) That the sub-contract Works shall be completed within the period or (where they are to be completed in parts) periods therein specified, that the Contractor shall not without the written consent of the Architect grant any extension of time for the completion of the sub-contract Works or any part thereof, and that the Contractor shall inform the Architect of any representation made by the Nominated Sub-Contractor as to the cause of any delay in the progress or completion of the sub-contract Works or of any part thereof.
 - (f) That if the Nominated Sub-Contractor shall fail to complete the sub-contract Works (where the sub-contract Works are to be completed in parts) any part thereof within the period therein specified or within any extended time granted by the Contractor with the written consent of the Architect, and the Architect certified in writing to the Contractor that the same ought reasonably so to have been completed, the Nominated Sub-Contractor shall pay or allow to the Contractor either a sum calculated at the rate therein agreed as Liquidated and Ascertained Damages for the period during which the said Works or any part thereof, as the case may be, shall so remain or have remained incomplete or (where no such rate is therein agreed) a sum equivalent to any loss or damage suffered or incurred by the Contractor and caused by the failure of the Nominated Sub-Contractor as aforesaid.
 - (g) That payment in respect of any work, materials or goods comprised in the sub-contract shall be made within 14 days after receipt by the Contractor of the sum to which the Contractor shall be entitled by virtue of the Architect's certificate issued under clause 34 of these Conditions which states as due an amount calculated by including the total value of such work, materials or good and shall when due be subject to the retention by the Contractor of the sums mentioned in sub-paragraph (h) of this sub-clause.
 - (h) That the Contractor shall retain from the sum directed by the Architect as having been included in the calculation of the amount stated as due in any certificate issued under clause 34 of these Conditions in respect of the total value of work, materials, or goods executed or supplied by the Nominated Sub-Contractor the percentage of such value, named in the Appendix to these Conditions as Percentage of Certified Value Retained up to a total amount not exceeding a sum which bears the same ratio to the sub-contract

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- (i) price as the unreduced sum named in the Appendix to these Conditions as Limit of Retention Fund bears to the Contract Sum; and that the Contractor's interest in any sums so retained (by whosoever held) shall be fiduciary as trustee, for the Nominated Sub-Contractor (but without obligation to invest); and that the Nominated Sub-Contractor beneficial interest in such sums, shall be subject only to the right of the Contractor to have recourse thereto from time to time for payment of any amount which he is entitled under the sub-contract to deduct from any sum due or to become due to the Nominated Sub-Contractor; and that if and when such sums, or any part thereof are released to the Nominated Sub-Contractor they shall be paid in full.
- (i) That the Architect and his representative shall have a right of access to the workshops and other places of the Nominated Sub-Contractor as mentioned in clause 11 of these Conditions.
- 31.3 The Architect shall direct the Contractor as to the total value of the work, materials or goods executed or supplied by a Nominated Sub-Contractor included in the calculation of the amount stated as due in any certificate issued under clause 34 of these Conditions and shall forthwith inform the Nominated Sub-Contractor in writing of the amount of the said total value. The sum representing such total value shall be paid by the Contractor to the Nominated Sub-Contractor within 14 days after receipt by the Contractor of the sum to which the Contractor shall be entitled by virtue of the certificate less only:
- (a) any retention money which the Contractor may be entitled to deduct under the terms of the sub-contract and
- (b) any sum to which the Contractor may be entitled in respect of delay in the completion of the sub-contract works or any part thereof.
- 31.4 Before issuing any certificate under clause 34 of these Conditions the Architect may request the Contractor to furnish to him reasonable proof that all amounts included in the calculation of the amount stated as due in previous certificates in respect of the total value of the work, materials or goods executed or supplied by any Nominated Sub-Contractor have been duly discharged, and if the Contractor fails to comply with any such request the Architect shall issue a certificate to that effect and thereupon the Employer may himself pay such amounts to any Nominated Sub-Contractor concerned and deduct the same from any sums due or to become due to the Contractor.
- 31.5 (a) The Contractor shall not grant to any Nominated Sub-Contractor any extension of the period within which the sub-contract works or (where the sub-contract works are to be completed in parts), any part thereof is to be completed without the written consent of the Architect, provided always that the Contractor shall inform the Architect of any representations made by the Nominated Sub-Contractor, as to the cause of any delay in the progress or completion of the sub-contract works or of any part thereof, and that the consent of the Architect shall not be unreasonably withheld

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- (b) If any Nominated Sub-Contractor fails to complete the sub-contract works or (where the sub-contract works are to be completed in parts) any part thereof within the period specified in the sub-contract or within any extended time granted by the Contractor with the written consent of the Architect, then if the same ought reasonably to have been completed the Architect shall certify in writing accordingly; immediately upon issue the Architect shall send a duplicate of any such certificate to the Nominated Sub-Contractor.
- 31.6 If the Architect desires to secure final payment to any Nominated Sub-Contractor before final payment is due to the Contractor and if such Sub-Contractor has satisfactorily indemnified the Contractor against any latent defects, then the Architect may in an interim certificate include an amount to cover the said final payment, and thereupon the Contractor shall pay to such Nominated Sub-Contractor the amount so certified. Upon such final payment, the amount named in the Appendix to these Conditions as Limit of Retention Fund shall be reduced by the sum which bears the same ratio to the said amount as does such Sub-Contractor's sub-contract price to the Contract sum and save for latent defects the Contractor shall be discharged from all liability for the work, materials or goods executed or supplied by such Sub-Contractor, under the sub-contract to which the payment relates.
- 31.7 Neither the existence nor the exercise of the foregoing powers nor anything else contained in these Conditions shall render the Employer in any way liable to any Nominated Sub-Contractor.
- 31.8 (a) Where the Contractor in the ordinary course of his business directly carries out Works for which Prime Cost sums are included in the Contract Bills and where he has so informed the Architect and the Architect is prepared to receive tenders from the Contractor for such items, then the Contractor shall be permitted to tender for the same or any of them but without prejudice to the Employer's right to reject the lowest or any tender. If the Contractor's Tender is accepted, he shall not sublet the work without the consent of the Architect. Provided that where a Prime Cost sum arises under Architect's instruction issued under sub-clause 13.3 of these Conditions it shall be deemed for the purposes of this paragraph to have been included in the Contract Bills and the item of work to which it relates shall likewise be deemed to have been set out in the Appendix to these Conditions
- (b) It shall be a condition of any tender accepted under this paragraph that clause 13 of these Conditions shall apply in respect of the items of work included in the tender as if for the reference therein to the Contract Drawings and the Contract Bills there were references to the equivalent documents included in or referred to in the tender.
- 31.9 Where the terms of a Contract between the Contractor and a Nominated Sub-Contractor so require or the Architect shall so authorise in writing the Contractor shall make advance payments to the Sub-Contractor before delivery of the goods, and the Contractor shall be allowed interest for the period from the date of such advance payment of the value of such goods calculated at the rate of 3/4 (three quarters) percent per month until the value of the said goods is included in a certificate in accordance with sub-clause 34.4 (a) of these Conditions.

32.0 NOMINATED SUPPLIERS

32.1 The provisions of sub-clause 32.2 to 32.5 of this clause shall apply where Prime Cost sums are included in the Contract Bills, or arise as a result of Architect's instructions given in regard to the expenditure of Provisional Sums, in respect of any materials or goods to be fixed by the Contractor.

32.2 Such sums and the term Prime Cost when included or arising as aforesaid, shall be understood to mean the net cost to be defrayed as a Prime Cost after deducting any trade or other discount and shall include customs duty or other tax, and the cost of packing carriage and delivery. Provided that, where in the opinion of the Architect the Contractor has incurred expenses for special packing or special carriage, such special expense shall be allowed as part of the sums actually paid by the Contractor.

32.3 Such sums shall be expended in favour of such persons as the Architect shall instruct, and all specialists, merchants, tradesmen or others who are so nominated by the Architect to supply materials or goods are hereby declared to be suppliers to the Contractor and are referred to in these Conditions as nominated suppliers. provided that the Architect shall not (save where the Architect and Contractor shall otherwise agree) nominate as a supplier a person who will not enter into a Contract of sale which provides (inter alia).

(a) That the materials or goods to be supplied to be to the reasonable satisfaction of the Architect.

(b) That the nominated supplier shall make good by replacement or otherwise any defects in the materials or goods supplied which appear within such period as is therein mentioned and shall bear any expenses reasonably incurred by the Contractor, as a direct consequence of such defects provided that:

(i) where the materials or goods have been used or fixed such defects are not such that examination by the Contractor ought to have revealed them before using or fixing, and

(ii) such defects are due solely to defective workmanship or material in the goods supplied and shall not have been caused by improper storage by the Contractor or by misuse or by any act or neglect of either the Contractor the Architect or the Employer or by any person or persons for whom they may be responsible.

(c) That delivery of the materials or goods supplied shall be commenced and completed at such times as the Contractor may reasonably direct.

32.4 All payment by the Contractor for materials or goods supplied by the nominated supplier shall be in full and shall be paid within 30 days of the end of the month during which delivery is made.

32.5 Where the terms of a Contract between the Contractor and a nominated supplier so require or the Architect shall so authorise in writing the Contractor shall make advance payments to the supplier before delivery of the goods, and the Contractor shall be allowed interest for the period from the date of such advance payment on the value of such goods calculated at the rate of 3/4 (three quarters) percent per month until the value of the said goods is included in a certificate in accordance with sub-clause 34.2 of these Conditions

33.0 WORKS BY EMPLOYER OR PERSONS EMPLOYED OR ENGAGED BY EMPLOYER

- 33.1 Where the Contract Bills, in regard to any work not forming part of this Contract and which is to be carried out by the Employer himself or by persons employed or otherwise engaged by him, provide such information as is necessary to enable the Contractor to carry out and complete the Works in accordance with the Conditions, the Contractor shall permit the execution of such work.
- 33.2 Where the Contract Bills do not provide the information referred to in sub-clause 33.1 of this clause and the Employer requires the execution of work not forming part of this contract by the Employer himself or by persons employed or otherwise engaged by the Employer, then the Employer may with the consent of the Contractor (which consent shall not be unreasonably withheld) arrange for the execution of such work.
- 33.3 Every person employed or otherwise engaged by the Employer as referred to in sub-clause 33.1 and 33.2 of this clause shall for the purpose of clause 21 of these Conditions be deemed to be a person for whom the Employer is responsible and not to be a Sub-Contractor.

34.0 CERTIFICATES AND PAYMENTS

- 34.1 Upon written application by the Contractor, at intervals of not less than 4 weeks, the Architect shall issue within a reasonable time a certificate stating the amount due to the Contractor from the Employer, and the Contractor shall on presenting any such certificate to the Employer, be entitled to payment thereof within 30 days from the date of presentation. Provided that all monies payable by the Employer to the Contractor after the expiry of 30 days shall earn interest at a rate to be specified in the Appendix to these Conditions. Interim valuations shall be made whenever the Architect considers them to be necessary for the purpose of ascertaining the amount to be stated as due in an interim certificate.
- 34.2 The amount stated as due in an interim certificate shall, subject to sub-clause 31.4 of these Conditions and to any agreement between the parties as to stage payments, be the total value of work properly executed and the value of materials and goods required for use in the Works which have either been delivered to or adjacent to the Works or have with the Architect's approval been stored elsewhere in safe custody by the Contractor or his agent. Provided that such certificate shall only include the value of such materials and goods as and from such time as they are reasonably, properly and not prematurely brought to or placed adjacent to the Works or stored as aforesaid and are adequately stored and protected against weather and other casualties and are covered by proper insurance as provided in clause 23 of these Conditions and have passed to the legal ownership of the Contractor and provided further that there shall be deducted from the amount of the certificate such sums as may be retained by the Employer as hereinafter provided and less any instalments previously paid under this clause.
- 34.3 So soon as it is practicable but before the expiration of 30 days from the end of the Defects Liability Period stated in the Appendix to these Conditions or from completion of making good defects under clause 17 of these Conditions or from receipt by the Architect of the documents referred to in paragraph (b) or sub-clause 35.3 of these Conditions, whichever is the latest, the Architect shall issue the final certificate. The final certificate shall state:

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- (a) the sum of the amount paid to the Contractor under interim certificates and the amount named in the said Appendix as Limit of Retention Fund, and
 - (b) the Contract Sum adjusted as necessary in accordance with the terms of these Conditions, and the difference (if any) between the two sums shall be expressed in the said certificate as a balance due to the Contractor from the Employer or to the Employer from the Contractor as the case may be subject to any deductions authorised by these Conditions, the said balance as from the 30th day after presentation of the final certificate by the Contractor to the Employer shall be a debt

payable by the Employer to the Contractor or as the case may be as from the 30th day after issue of the final certificate shall be debt payable by the Contractor to the Employer.

34.4 Unless a written request to concur in the appointment of an Arbitrator shall have been given under clause 40 of these Conditions by either party before the final certificate has been issued or by the Contractor within 60 days after such issue, the said certificate shall be conclusive evidence in any proceedings arising out of this Contract (whether by arbitration under clause 40 of these Conditions or otherwise) that the Works have been properly carried out and completed in accordance with the terms of this Contract and that any necessary effect has been given to all the terms of this contract which require an adjustment to be made to the Contract Sum except and insofar as any sum mentioned in the said certificate is erroneous by reason of:

- (a) fraud, dishonesty or fraudulent concealment relating to the Works, or any part thereof, or to any matter dealt within the said certificate; or
- (b) any defect (including any omission) in the Works, or any part thereof which reasonable inspection or examination at any reasonable time during the carrying out of the Works or before the issue of the said certificate would not have disclosed; or
- (c) any accidental inclusion or exclusion of any work, materials, goods or figure in any computation or any arithmetical error in any computation.

34.5 Save as aforesaid no certificate of the Architect shall of itself be conclusive evidence that any works materials or goods to which it relates are in accordance with this Contract.

35.0 RETENTION FUND

35.1 The Employer may retain the percentage of the total value of the work, materials and goods referred to in sub-clause 34.2 of these Conditions which is named in the Appendix to these Conditions as Percentage of Certified Value Retained. Provided always that when the sum of the amounts so retained equals the amount named in the said Appendix as Limit of Retention Fund or that amount as reduced in pursuance of sub-clause 18.7 and/or sub-clause 31.6 of these Conditions, as the case may be, no further amounts shall be retained by virtue of this sub-clause.

35.2 The amounts retained by virtue of sub-clause 35.1 of this clause shall be subject the following rules:

- (a) The Employer's interest in any amounts so retained shall be fiduciary as trustee for the Contractor (but without obligation to invest), and the Contractor's beneficial interest therein shall be subject only to the right of the Employer to have recourse thereto from time to time for payment of any amount which he is entitled under the provisions of this Contract to deduct from any sum due or to become due to the Contractor.
- (b) On the issue of the certificate of Practical Completion the Architect shall issue a certificate for half of the total amount then so retained and the Contractor shall, on presenting any such certificate to the Employer, be entitled to payment of the said amount within 30 days from the date of presentation.
- (c) On the expiration of the Defects Liability Period named in the Appendix to these Conditions, or on the issue of the certificate of completion of making good defects, whichever is the later, the Architect shall issue a certificate for the residue of the amounts then so retained and the Contractor shall, on presenting any such certificate to the Employer, be entitled to pay of the said residue within 30 days from the date of presentation.

35.3 Subject to the approval of the Employer, the Contractor may adjust the amount to be retained as Retention Fund as follows:-

- (a) The measurement and valuation of the Works shall be completed within the period of final measurement and valuation stated in the Appendix to these Conditions calculated from the Date of Practical Completion and the Contractor shall be supplied with a copy of the summary of the priced bills of variation not later than the end of the said period and before the issue of the final certificate under sub-clause 34.3 of these Conditions.
- (b) Either before or within a reasonable time after Practical Completion of the Works the Contractor shall send to the Architect all documents necessary for the purposes of the computations required by these Conditions including all documents relating to the accounts of Nominated Sub-Contractors and nominated suppliers.
- (c) In the settlement of accounts the amounts paid or payable under the appropriate contracts by the Contractor to Nominated Sub-Contractors or nominated suppliers, the amounts paid or payable by virtue to sub-clause 33.2 of these Conditions in respect of fees or charges for which a Provisional Sum is included in the Contract Bills, the amounts paid or payable in respect of any insurances maintained in compliance with sub-clause 23.2 of these Conditions, the tender sum (or such other sum as is appropriate in accordance with the terms of the tender) for any work for which a tender made under sub-clause 31.8 of these Conditions is accepted and the value of any work executed by the Contractor for which a Provisional Sum is included in the Contract Bills or arising under Architect's instructions issued under sub-clause 13.3 of these Conditions as the case may be and the balance, after allowing in all cases pro rata for the Contractor's profit at the rates shown in the Contract Bills, shall be added to or deducted from the Contract Sum. Provided that no deduction shall be made in respect of any damages paid or allowed to the Contractor by any Sub-Contractor or supplier

36.0 ADVANCE PAYMENT

- 36.1 An advance payment of the amount stated in the Appendix to Tender shall, following the presentation by the Contractor to the Employer of an approved performance security in accordance with clause 37 of these Conditions and an advance payment guarantee in terms approved by the Employer for the full value of advance payment, be certified by the Architect for payment within 30 days from the date of presentation of the Architects certificate to the Employer. Provided also that the advance payment guarantee shall be progressively reduced by the amount repaid by the Contractor as indicated in interim certificates of the Architect issued in accordance with this clause.
- 36.2 The Contractor shall use the advance payment only to pay for mobilisation expenses required specifically for the execution of the Contract. The Contractor may be required by the Architect to demonstrate that the advance payment has been used this way through submission of documentary evidence.
- 36.3 The advance payment shall not be subject to retention.
- 36.4 The advance payment shall be repaid by way of reduction in interim payment certificates commencing with the next certificate as a fraction of the difference between the total certified value of the permanent Works and any other items in the Bills of Quantities (excluding the deduction of retention) due for certification in such interim payment certificate and the said value in the last preceding interim payment certificate until the advance payment has been repaid in full.
- 36.5 Provided that upon the issue of a certificate of completion for the whole Works or upon the happening of the events in clause 28.0 of these Conditions or termination, the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Employer.

37.0 PERFORMANCE GUARANTEE

- 37.1 The Contractor shall provide one surety who must be an established bank, insurance company or fidelity guarantee corporation to the approval of the Architect and who will be bound to the Employer in the sum equivalent to ten per cent (10%) of the Contract Sum for the due performance of the Contract until the Completion Date named in the Appendix to these Conditions subject nevertheless to the provisions contained in clause 26 of these Conditions.
- 37.2 Provided also that no payments shall be made in favour of the Contractor prior to the provision of the guarantee.

38.0 FLUCTUATIONS

- 38.1 Unless otherwise stipulated in the Appendix to these Conditions the Contract shall be at fixed prices which shall not be revised.
- 38.2 Where prices may be revised under the Contract the rules for the revision shall be as laid down in either sub-clauses 38.3 to 38.5 or sub-clause 38.6 of this clause. The preferred option for revising the Contract Sum to take into account the changes in prices shall be specified in the Appendix to these Conditions.

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- 38.3 Where the revision of prices shall be based on net increases or decreases no adjustment of the Contract sum shall be made for any increase or decrease in cost of materials, goods, services, labour and the like except in respect of the matters contained in sub-clauses 38.4 and 38.5 of this clause.
- 38.4 (a) If after the date of tender there shall be a decrease or increase in the cost prevailing at such date of the materials contained in the basic price list given in the Appendix to the Bills of Quantities which shall result in an increase or decrease of cost to the Contractor in carrying out the works the net increase or decrease of cost shall form an addition or deduction as the case may be to or from a contract sum and shall be paid to or allowed by the Contractor.
- (b) The basic price list of materials and goods shall be construed as the current prices for the materials specified in the basic price list prevailing 30 days prior to the latest date for submission of tenders.
- (c) The Contractor shall use due diligence to ensure that excessive wastage of the materials referred to in this sub-clause 38.4 shall not occur. Any such materials removed from the site of the Works shall be clearly identified in the books under paragraph (g) of this sub-clause.
- (d) The provisions of this sub-clause shall apply to fuel used in Contractor's equipment engaged on the site for the purpose of executing the Works including vehicles owned by the Contractor (or hired by him under long-term arrangements under which the Contractor is obligated to supply fuel) engaged in transporting any staff, labourers, Contractor's equipment, temporary Works, plant or materials to and from the site, such fuel shall be clearly identified in the records required under paragraph (g) of this sub-clause. The provisions of this sub-clause shall not apply to any fuels sold or supplied to any employee of the Contractor or to any person for use in any motor vehicle not being used for the purposes of the Contract.
- (e) The Contractor shall at all times have regard to suitable markets and shall, whenever buying materials a variation in the cost of which would give rise to an adjustment of the Contract Sum under this sub-clause be diligent to buy or procure the same at the most economical prices as a consistent with the due performance by the Contractor of his obligations under the Contract. If at any time there shall be any lack of diligence, default or negligence on the part of the Contractor, whether in observing the above requirements or otherwise, then, for the purposes of adjusting the Contract Sum pursuant hereto, no account shall be taken of any increase in cost which may be attributable to such lack of diligence, default or negligence and the amount by which any costs would have been decreased but such lack of diligence, default or negligence shall be deducted from the Contract Sum.

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- (f) In determining any amount of any adjustment to the Contract Sum pursuant to this sub-clause no account shall be taken of any overheads or profits.
 - (g) The Contractor shall forthwith, upon the happening of any event which may or may be likely to give rise to adjustment of the Contract Sum pursuant to this sub-clause, give notice thereof to the Architect and the Contractor shall keep such books, accounts, and other documents and records as are necessary to enable adjustment under this sub-clause to be made and shall at the request of the Architect, furnish any invoices, accounts, documents or records so kept and such other information as the Architect may require.
 - (h) No adjustment shall be made to the Contract Sum:
 - (i) in respect of changes of basic prices which occur after the Date of Practical Completion except during such other period as may be granted as an extension of time under clause 26 of these Conditions,
 - (ii) for work for which the Contractor is allowed day work rates under sub-clause 32.4 of these Conditions,
 - (iii) for work executed or materials or goods supplied by any nominated supplier or Sub-Contractor.

38.5 The Contract Sum shall be deemed to have been calculated in the manner set out below and shall be subject to adjustment in the events specified hereunder:

- (a) The prices contained in the contract bills are based upon the rates of wages and other emoluments and expenses as determined by the Contractor and set out in the annexed schedule of Basic Rates,
- (b) If any of said rates of wages or other emoluments and expenses referred to under paragraph (a) of this sub-clause are increased or decreased by reason of any alteration, decisions or agreements promulgated after the date of tender, then the Contract Sum shall be increased or decreased by the amount to be agreed between the Quantity Surveyor and the Contractor basing on agreed basic price list contained and annexed in the priced Bills of Quantities. The net amount of the increase or decrease in wages and other emoluments and expenses together with the net amount of any consequential increase or decrease in the Employer's liability insurance, of third party insurance, and of any contribution, levy tax payable by person in his capacity as an Employer shall, as the case may be, be paid to or allowed by the Contractor,
- (c) No adjustments shall be made in respect of changes in the rates of wages and other emoluments and expenses which occur after the Date for Practical Completion except during such other period as may be granted as an extension of time under clause 26 of these Conditions

(d) For the purpose of this sub-clause the 'basic rate' shall mean the applicable basic minimum wage rate prevailing on the date 30 days prior to the latest date for submission of tenders by reason of any legislation or regulation or by-law of any duly constituted authority.

(e) The provisions of this sub-clause shall not apply:

(i) to nominated suppliers and Sub-Contractors,

(ii) for work for which the Contractor is allowed day-work rates.

38.6 Alternative to sub-clauses 38.1 to 38.5 of this clause adjustment to the Contract Sum in respect of rise and fall in the cost of labour and materials and other matters affecting the cost of execution of the works will be calculated by application of the National Construction Council (NCC) Price Fluctuation formula and the monthly published indices.

39.0 **ANTIQUITIES**

39.1 All fossils, antiquities and other objects of interest or value which may be found on the site or in excavating the same during the progress of the Works shall become the property of the Employer and upon discovery of such an object the Contractor shall forthwith :

(a) use his best endeavour not to disturb the object and shall cease work if and in so far as the continuance of work would endanger the object or prevent or impede its excavation or its removal,

(b) take all steps which may be necessary to preserve the object in the exact position and condition in which it was found, and

(c) inform the Architect or the Clerk of Works of the discovery and precise location of the object.

39.2 The Architect shall issue instructions as soon as is practicable in regard to what is to be done concerning an object reported by the Contractor under sub-clause 39.1 of this clause and (without prejudice to the generality of his power) such instructions may require the Contractor to permit the examination, excavation or removal of the object by a third party. Any such third party shall for the purposes of clause 33 of these Conditions be a person for whom the Employer is responsible and not to be a Sub-Contractor.

39.3 If in opinion of the Architect compliance with the provisions of sub-clause 39.2 of this clause has involved the Contractor in direct loss and/or expense for which he would not be reimbursed by a payment made under any other provision of this Contract then the Architect shall himself ascertain or shall instruct the Quantity Surveyor to ascertain the amount of such loss and or expense.

40.0 **SETTLEMENT OF DISPUTES**

40.1 If a dispute of any kind whatsoever arises between the Employer or the Architect on his behalf and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, whether during the execution of the Works

or after their completion or abandonment or after repudiation or after termination of the Contract, then, either the Employer or the Contractor may give notice to the other party, with copy for information to the Architect, of his intention to commence arbitration, as hereinafter provided as to the matter in dispute.

40.2 Where notice of intention to commence arbitration to a dispute has been given in accordance with sub-clause 40.1 of this clause, arbitration of such dispute shall not be commenced unless an attempt has first been made by the parties to settle such dispute amicably. Provided that, unless the parties otherwise agree, arbitration may be commenced on or after the 60th day after the day on which notice of intention to commence arbitration of such dispute was given, whether or not any attempt for amicable settlement thereof has been made

40.3 Any dispute in respect of which amicable settlement has not been reached within the period stated in sub-clause 40.2 of this clause shall be finally settled, unless the parties otherwise agree, under the Arbitration Rules of the National Construction Council.

40.4 The Arbitrator(s) appointed pursuant to the provisions of sub-clause 40.3 of this clause shall have full power to open up, review and revise any decision, opinion, instruction, determination, certificate or valuation of the Architect or Quantity Surveyor related to the dispute

40.5 The award of the Arbitrator shall be final and binding on the parties.

41.0 **NOTICES**

41.1 All certificates, notices or instructions to be given to the Contractor by the Employer or the Architect under the terms of the Contract shall be sent by post, cable, telex or facsimile transmission to or left at the Contractor's principal place of business or such other address as the Contractor shall nominate for that purpose.

41.2 Any notice to be given to the Contractor or to the Architect under the terms of the Contract shall be sent by registered post, cable, telex or facsimile transmission to or delivered by dispatch at the Contractor's registered office

41.3 Either party may change a nominated address by prior notice to the other party with a copy to the Architect, and the Architect may do so by prior notice to both parties.

42.0 **CORRUPTION**

42.1 If the Contractor or any of his Subcontractors, agents or servants offers to give or agrees to offer or give to any person, any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any action in relation to the contract or any other contract with the Employer or for showing or forbearing to show favor or disfavor to any person in relation to the contract or any other contract with the Employer, then the Employer may enter upon the Site and the Works and terminate the employment of the Contractor and the provisions of Clause 28 hereof shall apply as if such entry and termination had been made pursuant to that Clause

APPENDIX TO THE GENERAL CONDITIONS

	Clause
Master Programme Submission Date	5.1.....
Defects Liability period	17, 18 and 30.....
Date for Possession	24.1.....
Liquidated and Ascertained damages	25.2 at the rate of Tshs..... per calender.....or part thereof
Completion Date	26.....
Period for Determination by Contractor due to continuous suspension of works	29.1(c).....
Limit of Suspension Period	30.1.....%
Interest Rate on interim certificate after expiration of 30 days	34.1.....
Percentage of certified value retained	35.1.....
Limit of Retention Fund	35.1.....
Period of final measurement and valuation	35.3(a).....
Advance payment (optional)	36.....
Performance guarantee	37.....
Amount of surety	37.....
Fluctuations	38.....

Signed by the said:

.....**EMPLOYER**

.....**CONTRACTOR**

Name of Contract

.....

.....

FORM OF PERFORMANCE GUARANTEE

To be used with Agreement and Schedule of Conditions of Building Contract.

KNOW ALL MEN BY THESE PRESENTS that we.....(SURETY).
of.....
ARE BOUND to.....(EMPLOYER)
of.....
in the sum of (Amount in words).....
.....(Amount in figures)
to be paid by us to the said.....(EMPLOYER)
WHEREAS by an agreement in writing dated
.....(CONTRACTOR)
of.....
contracted with the said.....(EMPLOYER)
to (description of Works).....
.....
in the said agreement: particular described and conformable thereto.

NOW THE condition of the above written bond is such that if the said.....
.....
.....(CONTRACTOR)
his/their executors, administrators, successors or assigns shall conform to the said agreement then the
above-written bond to be void otherwise to remain in full force. Provided always and it hereby agreed and
declared that the liability of us the said.....
.....
.....(SURETY)
under the above-written bond shall not in any way be discharged or impaired by reason of any breach or
breaches (wilful or otherwise) of the said agreement committed with or without the knowledge or consent
of the said:.....
.....(CONTRACTOR)
his/their executors, administrators, successors or assigns shall conform to the said agreement then the
above-written bond to be void otherwise to remain in full force. Provided always and it hereby agreed and
declared that the liability of us they said