

## **Section 6 - General Conditions of Contract**

**Name of Employer:** Public Health Engineering Department,  
Govt. of Mizoram

**Name of Contract:** Procurement of Alternative Water Supply Scheme of  
Aizawl (Gravity) Part-1

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## General Conditions of Contract

### A. General

#### 1. Definitions

- 1.1 Boldface type is used to identify defined terms.
- (a) The **Accepted Contract Amount** means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.
  - (b) The **Activity Schedule** is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity, which is used for valuations and for assessing the effects of Variations and Compensation Events.
  - (c) The **Adjudicator** is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance.
  - (d) **Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Bid.
  - (e) The **Completion Date** is the date of completion of the Works as certified by the Engineer-in-Charge.
  - (f) The **Contract** is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works.
  - (g) The **Contractor** is the party whose Bid to carry out the Works has been accepted by the Employer.
  - (h) The **Contractor's Bid** is the completed bidding document submitted by the Contractor to the Employer.
  - (i) The **Contract Price** is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the Contract.
  - (j) **Days** are calendar days; months are calendar months.
  - (k) **Dayworks** are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.
  - (l) A **Defect** is any part of the Works not completed in accordance with the Contract.
  - (m) The **Defects Liability Certificate** is the certificate issued by Project Manager/CEO upon correction of defects by the Contractor.
  - (n) The **Defects Liability Period** is the period calculated from the Completion Date where the Contractor remains responsible for remedying defects.
  - (o) **Drawings** include calculations and other information provided or approved by the Engineer-in-Charge for the execution of the Contract.

- (p) The **Employer** is the party who employs the Contractor to carry out the Works, as specified in the **PCC**.
- (q) **Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
- (r) **Force Majeure** means an exceptional event or circumstance: which is beyond a Party's control; which such Party could not reasonably have provided against before entering into the Contract; which, having arisen, such Party could not reasonably have avoided or overcome; and, which is not substantially attributable to the other Party.
- (s) **In writing** or **written** means hand-written, type-written, printed or electronically made, and resulting in a permanent record.
- (t) The **Initial Contract Price** is the Contract Price listed in the Employer's Letter of Acceptance.
- (u) The **Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the **PCC**. The Intended Completion Date may be revised only by the Engineer-in-Charge by issuing an extension of time or an acceleration order.
- (v) **Letter of Acceptance** means the formal acceptance by the Employer of the Bid and denotes the formation of the Contract at the date of acceptance.
- (w) **Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- (x) "**Party**" means the Employer or the Contractor, as the context requires.
- (y) **PCC** means Particular Conditions of Contract
- (z) **Plant** is any integral part of the Works that shall have a civil, mechanical, electrical, chemical, or biological function.
- (aa) The **Engineer-in-Charge** is the person named in the **PCC** (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Engineer-in-Charge) who is responsible for supervising the execution of the Works and administering the Contract.
- (bb) **Retention Money** means the aggregate of all monies retained by the Employer.
- (cc) **Schedules** means the document(s) entitled schedules as included in the Contract. Such document may include the Bill of Quantities, data, lists, and schedules of rates and/or prices.
- (dd) The **Site** is the area defined as such in the **PCC**.
- (ee) **Site Investigation Reports** are those that were included in the bidding documents and are factual and interpretative reports about the surface and subsurface conditions at the Site. See **PCC**
- (ff) **Specification** means the latest Specification of the Works included in the Contract and any modification or addition made subsequently during execution of the project as approved by

the Engineer-in-Charge.

- (gg) The **Start Date** is given in the **PCC**. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
- (hh) A **Subcontractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.
- (ii) **Temporary Works** are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- (jj) A **Variation** is an instruction given by the Engineer-in-Charge which varies the Works within the contract price.
- (kk) The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the **PCC**.

- 2. **Interpretation**
  - 2.1 In interpreting these GCC, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Engineer-in-Charge shall provide instructions clarifying queries about these GCC.
  - 2.2 If sectional completion is specified in the **PCC**, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 3. **Language and Law**
  - 3.1 The language of the Contract and the law governing the Contract is English.
- 4. **Contract Agreement**
  - 4.1 The Parties shall enter into a Contract Agreement after the Contractor receives the Letter of Acceptance. The contract agreement represents the entire and integrated agreement between the parties prepared on the basis of relevant clauses of the following documents, viz :- NIT, technical and financial bid of successful bidder, general and particular conditions of contract and any other required conditions. It supersedes all prior negotiations, representations, agreements, correspondences, other contract documents etc.
- 5. **Assignment**
  - 5.1 Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party:
    - (a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and
    - (b) may, as security in favor of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.
- 6. **Care and Supply of Documents**
  - 6.1 The Specification and Drawings shall be in the custody and care of the Employer. Unless otherwise stated in the Contract, two copies of the

Contract and of each subsequent Drawing shall be supplied to the Contractor, who may make or request further copies at the cost of the Contractor.

- 6.2 Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until taken over by the Employer. Unless otherwise stated in the Contract, the Contractor shall supply to the Engineer six copies of each of the Contractor's Documents.
- 6.3 The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Specification, the Contractor's Documents (if any), the Drawings and Variations and other communications given under the Contract. The Employer's Personnel shall have the right of access to all these documents at all reasonable times.
- 6.4 If a Party becomes aware of an error or defect in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.

## **7. Confidential Details**

- 7.1 The Contractor's and the Employer's Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify the Contractor's compliance with the Contract and allow its proper implementation.
- 7.2 Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the Works prepared by the other Party without the previous agreement of the other Party. However, the Contractor shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects.
- 7.3 Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this Clause.

## **8. Compliance with Laws**

- 8.1 The Contractor shall, in performing the Contract, comply with applicable Laws.
- 8.2 Unless otherwise stated in the Particular Conditions:
- (a) the Employer shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the Employer's Country/State (i) such authorities or undertakings require the Employer to obtain in the Employer's name, and (ii) are necessary for the execution of the Contract, including those required for the performance by both the Contractor and the Employer of their respective obligations under the Contract;
  - (b) the Contractor shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the which such

authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas/Inner Line Permit (ILP) for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Employer under Sub-Clause 8.2(a) hereof and that are necessary for the performance of the Contract. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Employer or its personnel, including the Subcontractors and their personnel, but without prejudice to Sub-Clause 8.1 hereof.

- 9. Joint and Several Liability** 9.1 If the Contractor is a joint venture, consortium, or association (JVCA) of two or more persons, all such persons shall be jointly and severally liable to the Employer for the fulfillment of the provisions of the Contract, unless otherwise specified in the **PCC**, and shall designate one of such persons to act as a leader with authority to bind the JVCA. The composition or the constitution of the JVCA shall not be altered without the prior consent of the Employer.
- 10. Engineer-in-Charge's Decisions** 10.1 Except where otherwise specifically stated, the Engineer-in-Charge shall decide contractual matters between the Employer and the Contractor in the role representing the Employer.
- 11. Delegation** 11.1 The Engineer-in-Charge may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.
- 12. Communications** 12.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.
- 13. Subcontracting** 13.1 The Contractor may subcontract with the approval of the Engineer-in-Charge, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.
- 14. Other Contractors** 14.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as referred to in the **PCC**. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.
- 15. Personnel and Equipment** 15.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid to carry out the functions stated in the Schedule or other personnel and equipment approved by the Engineer-in-Charge.



The Engineer-in-Charge shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.

- 15.2 If the Engineer-in-Charge asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.
- 15.3 If the Employer, Engineer-in-Charge or Contractor determines, that any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or other prohibited practices during the execution of the Works, then that employee shall be removed.

**16. Employer's and Contractor's Risks**

- 16.1 The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.

**17. Employer's Risks**

- 17.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Employer's risks:
- (a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to
    - (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or
    - (ii) 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.
  - (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.
- 17.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to
- (a) a Defect which existed on the Completion Date,
  - (b) an event occurring before the Completion Date, which was not itself an Employer's risk, or
  - (c) the activities of the Contractor on the Site after the Completion Date.

**18. Contractor's Risks**

- 18.1 From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage or

need to maintain or upgrade to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's risks are Contractor's risks.

- 19. Insurance**
- 19.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, all risk insurance cover from the Start Date to the end of the Defects Liability Period.
- 19.2 Policies and certificates for insurance shall be delivered by the Contractor to the Engineer-in-Charge for the Engineer-in-Charge's approval before the Start Date. 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.
- 19.3 If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.
- 19.4 Alterations to the terms of an insurance shall not be made without the approval of the Engineer-in-Charge.
- 19.5 Both parties shall comply with any conditions of the insurance policies.
- 20. Site Investigation Reports**
- 20.1 The Contractor, in preparing the Bid, shall rely on any Site Investigation Reports referred to in the **PCC**, supplemented by any information available to the Contractor.
- 21. Contractor to Construct the Works**
- 21.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.
- 22. The Works to Be Completed by the Intended Completion Date**
- 22.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Engineer-in-Charge, and complete them by the Intended Completion Date.
- 23. Designs by Contractor and Approval by the Engineer-in-Charge**
- 23.1 The Contractor shall carry out design to the extent specified in the **PCC**. The Contractor shall promptly submit to the Employer all designs prepared by him for approval of Engineer-in-Charge. Design that has been rejected shall be promptly amended and resubmitted. The Contractor shall resubmit all designs commented on taking these comments into account as necessary.
- 23.2 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Engineer-in-Charge, who is to approve them if they comply with the Specifications and Drawings.
- 23.3 The Contractor shall be responsible for design of Temporary Works.
- 23.4 The Engineer-in-Charge's approval shall not alter the Contractor's responsibility for design of the Temporary Works.
- 23.5 The Contractor shall obtain approval of third parties to the design of

- the Temporary Works, where required.
- 23.6 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Engineer-in-Charge before this use.
- 24. Safety** 24.1 The Contractor shall be responsible for the safety of all activities on the Site.
- 25. Discoveries** 25.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Engineer-in-Charge of such discoveries and carry out the Engineer-in-Charge's instructions for dealing with them.
- 26. Possession of and access to the Site** 26.1 The Employer shall give possession of and access to all parts of the Site to the Contractor.
- 27. Instructions, Inspections and Audits** 27.1 The Contractor shall carry out all instructions of the Engineer-in-Charge which comply with the applicable laws where the Site is located.
- 27.2 The Contractor shall keep, and shall make all reasonable efforts to cause its Subcontractors and sub consultants to keep accurate and systematic accounts and records in respect of the Works in such form and details as will clearly identify relevant time changes.
- 28. Appointment of the Adjudicator** 28.1 The Adjudicator shall be appointed jointly by the Employer and the Contractor, at the time of the Employer's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Employer does not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority designated in the **PCC**, to appoint the Adjudicator within 14 days of receipt of such request.
- 28.2 Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority at the request of either party, within 14 days of receipt of such request.
- 29. Procedure for Disputes** 29.1 If the Contractor believes that a decision taken by the Engineer-in-Charge was either outside the authority given to the Engineer-in-Charge by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Engineer-in-Charge's decision.
- 29.2 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
- 29.3 The Adjudicator shall be paid by the hour at the rate specified in the

**PCC**, together with reimbursable expenses of the types specified in the **PCC**, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision shall be final and binding.

29.4 The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and in the place specified in the **PCC**.

## **B. Staff and Labor**

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| <b>30. Forced Labor</b>                             | 30.1 The Contractor shall not employ forced labor, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty. This covers any kind of involuntary or compulsory labor, such as indentured labor, bonded labor or similar labor–contracting arrangements.  |
| <b>31. Child Labor</b>                              | 31.1 The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Where national laws have provisions for employment of minors, the Contractor shall follow those laws applicable to the Contractor. Children below the age of 18 years shall not be employed in dangerous work.   |
| <b>32. Workers' Organizations</b>                   | 32.1 If the national law recognizes workers' rights to form and to join workers' organizations of their choosing without interference and to bargain collectively, the Contractor shall comply with national law. If the national law substantially restricts workers' organizations, the Contractor shall enable alternative means for the Contractor's Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. In either case described above, and where national law is silent, the Contractor shall not discourage the Contractor's Personnel from forming or joining workers' organizations of their choosing or from bargaining collectively, and shall not discriminate or retaliate against the Contractor's Personnel who participate, or seek to participate, in such organizations and bargain collectively. The Contractor shall engage with such workers representatives. Worker organizations are expected to fairly represent the workers in the workforce. |
| <b>33. Non-Discrimination and Equal Opportunity</b> | 33.1 The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training,  |

promotion, termination of employment or retirement, and discipline. If the national law provides for non-discrimination in employment, the Contractor shall comply with national law. When national laws are silent on non-discrimination in employment, the Contractor shall meet this Sub-Clause's requirements. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination.

### C. Time Control

- 34. Program**
- 34.1 Within the time stated in the **PCC**, after the date of the Letter of Acceptance, the Contractor shall submit to the Engineer-in-Charge for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.
- 34.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- 34.3 The Contractor shall submit to the Engineer-in-Charge for approval an updated Program at intervals no longer than the period stated in the **PCC**. If the Contractor does not submit an updated Program within this period, the Engineer-in-Charge may withhold the amount stated in the **PCC** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted. The Contractor shall provide an updated Activity Schedule within 14 days of being instructed to by the Engineer-in-Charge.
- 34.4 The Engineer-in-Charge's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Engineer-in-Charge again at any time.
- 35. Extension of the Intended Completion Date**
- 35.1 The Engineer-in-Charge shall extend the Intended Completion Date as and when required if it is impossible for Completion to be achieved by the Intended Completion Date.
- 35.2 The Engineer-in-Charge shall decide whether and by how much to extend the Intended Completion Date following the Contractor asking the Engineer-in-Charge for a decision. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.
- 36. Management Meetings**
- 36.1 The Engineer-in-Charge may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.

- 36.2 The Engineer-in-Charge shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Engineer-in-Charge either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.
- 36.3 The Contractor shall cooperate with the Engineer-in-Charge in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Engineer-in-Charge.

## D. Quality Control

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| <b>37. Identifying Defects</b>   | 37.1 The Engineer-in-Charge shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Engineer-in-Charge may instruct the Contractor to search for a Defect and to uncover and test any work that the Engineer-in-Charge considers may have a Defect. |
| <b>38. Tests</b>                 | 38.1 If the Engineer-in-Charge instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples.  |
| <b>39. Correction of Defects</b> | 39.1 The Engineer-in-Charge shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the <b>PCC</b> . The Defects Liability Period shall be extended for as long as Defects remain to be corrected.  |
|                                  | 39.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Engineer-in-Charge's notice.  |
| <b>40. Uncorrected Defects</b>   | 40.1 If the Contractor has not corrected a Defect within the time specified in the Engineer-in-Charge's notice, the Engineer-in-Charge shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.   |

## E. Cost Control

- |                           |  |
|---------------------------|--|
| <b>41. Contract Price</b> | 41.1 The Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item. |
|---------------------------|--|

- 42. Variations** 42.1 All Variations shall be included in updated Programs within the total contract price.No extra payment will be made on any ground whatsoever.
- 43. Payments** 43.1 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Engineer-in-Charge.
- 43.2 Items of the Works for which no rate or price has been entered in shall not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.
- 44. Tax** 44.1 The Engineer-in-Charge shall adjust the Contract Price if taxes, duties, and other levies are changed. The adjustment shall be the change in the amount of tax payable by the Contractor.
- 45. Retention** 45.1 The Employer shall retain from each payment due to the Contractor the proportion stated in the **PCC** until Completion of the whole of the Works.
- 45.2 Upon the issue of a Certificate of Completion of the Works by the Engineer-in-Charge, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Engineer-in-Charge has certified that all Defects notified by the Engineer-in-Charge to the Contractor before the end of this period have been corrected. The Contractor may substitute retention money with an “on demand” bank guarantee.
- 46. Liquidated Damages** 46.1 The Contractor shall pay liquidated damages to the Employer at the rate per day stated in the **PCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the **PCC**. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities.
- 46.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Engineer-in-Charge shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate.
- 47. Advance Payment** 47.1 The Employer shall make advance payment to the Contractor of the amounts stated in the **PCC** by the date stated in the **PCC**, against provision by the Contractor of an unconditional bank guarantee in a form and by a bank acceptable to the Employer in amounts equal to the advance payment. The guarantee shall remain effective until the advance payment has been repaid, but the amount of the guarantee shall be progressively reduced by the amounts repaid by the Contractor.

47.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Engineer-in-Charge.

47.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis.

#### 48. Securities

48.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount specified in the **PCC**, by a bank acceptable to the Employer. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a bank guarantee.

#### 49. Cost of Repairs

49.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost.

### F. Force Majeure

#### 50. Definition of Force Majeure

50.1 In this Clause, "Force Majeure" means an exceptional event or circumstance:

- (a) which is beyond a Party's control,
- (b) which such Party could not reasonably have provided against before entering into the Contract,
- (c) which, having arisen, such Party could not reasonably have avoided or overcome, and
- (d) which is not substantially attributable to the other Party.

50.2 Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (b) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war,
- (c) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel,
- (d) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
- (e) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.



- 51. Notice of Force Majeure**
- 51.1 If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.
- 51.2 The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.
- 51.3 Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.
- 52. Duty to Minimize Delay**
- 52.1 Each Party shall at all times use all reasonable endeavours to minimize any delay in the performance of the Contract as a result of Force Majeure.
- 52.2 A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

## **G. Finishing the Contract**

- 53. Completion**
- 53.1 The Contractor shall request the Engineer-in-Charge to issue a certificate of Completion of the Works, and the Engineer-in-Charge shall do so upon deciding that the work is completed.
- 54. Taking Over**
- 54.1 The Employer shall take over the Site and the Works within seven days of the Engineer-in-Charge's issuing a certificate of Completion.
- 55. Final Account**
- 55.1 The Contractor shall supply the Engineer-in-Charge with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Engineer-in-Charge shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Engineer-in-Charge shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Engineer-in-Charge shall decide on the amount payable to the Contractor and issue a payment certificate.
- 56. Operating and Maintenance Manuals**
- 56.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the **PCC**.

56.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the **PCC** or they do not receive the Engineer-in-Charge's approval, the Engineer-in-Charge shall withhold the amount stated in the **PCC** from payments due to the Contractor.

## 57. Termination

57.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

57.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:

- (a) The Contractor stops work for 28 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Engineer-in-Charge .
- (b) The Engineer-in-Charge instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;
- (c) The Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) The Engineer-in-Charge gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Engineer-in-Charge;
- (e) The Engineer-in-Charge gives two consecutive Notices to update the Program and accelerate the works to ensure compliance with GCC Sub-Clause 22.1 [The Works to be Completed by the Intended Completion Date] and the Contractor fails to update the Program and demonstrate acceleration of the works within a reasonable period of time determined by the Engineer-in-Charge;
- (f) The Contractor does not maintain a Security, which is required;
- (g) The Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the **PCC**; and
- (h) If the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

57.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.

## 58. Fraud and Corruption

58.1 It is the Employer's policy to require that Employers as well as Contractor observe the highest standard of ethics during the execution of the Contract. In pursuance of this policy, the Employer defines, for the purpose of this provision, the terms set forth below as follows:

- i. "Corrupt practice" means the offering, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the selection process or in contract execution;
- ii. "Fraudulent practice" means a misrepresentation or omission of

- facts in order to influence a selection process or the execution of a contract;
- iii. "Collusive practices" means a scheme or arrangement between two or more consultants, with or without the knowledge of the Employer, designed to establish prices at artificial, non-competitive levels;
  - iv. "coercive practices" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract;
- 58.2 The Employer may terminate the contract if it determines at any time that the Contractor is engaged in corrupt, fraudulent, collusive or coercive practices during the the execution of that contract.
- 58.3 The Employer may also sanction against the Contractor, including declaring the Firm ineligible, either indefinitely or for a stated period of time, if it at any time determines that the Firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in executing the contract
- 59. Payment upon Termination**
- 59.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Engineer-in-Charge shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the **PCC**. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.
- 59.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Engineer-in-Charge shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.
- 60. Property**
- 60.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor's default.
- 61. Release from Performance**
- 61.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Engineer-in-Charge shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.