

14.2 Revised Programme

If at any time it should appear to the Engineer that the actual progress of the Works does not conform to the programme to which consent has been given under Sub-Clause 14.1 the Contractor shall produce, at the request of the Engineer, a revised programme showing the modifications to such programme necessary to ensure completion of the Works within the Time for Completion.

14.3 Cash Flow Estimate to be Submitted

The Contractor shall, within 20 days after the date of the Letter of Award, provide to the Engineer for his information a detailed funds requirement, in quarterly periods, of all payments to which the Contractor will be entitled under the Contract and the Contractor shall subsequently supply revised funds requirement at quarterly intervals, if required to do so by the Engineer.

14.4 Contractor not Relieved of Duties or Responsibilities

The submission to and consent by the Engineer to such programs or the provision of such general descriptions or cash flow estimates shall not relieve the Contractor of any of his duties or responsibilities under the Contract.

15.1 Contractor's Superintendence

The Contractor shall provide all necessary superintendence during the execution of the Works and as long thereafter as the Engineer may consider necessary for the proper fulfilling of the Contractor's obligations under the Contract. The Contractor, or a competent and authorised representative approved of by the Engineer, which approval may at any time be withdrawn, shall give his whole time to the superintendence of the Works. Such authorised representative shall receive, on behalf of the Contractor, instructions from the Engineer or, subject to the provisions of Clause 2.1 to 2.6, the Engineer's Representative.

If approval of the representative is withdrawn by the Engineer, the Contractor shall, as soon as is practicable, having regard to the requirement of replacing him as hereinafter mentioned, after receiving notice of such withdrawal, remove the representative from the Works and shall not thereafter employ him again on the Works in any capacity and shall replace him by another representative approved by the Engineer.

If the Contractor's authorised representative is not in the opinion of the Engineer fluent in English, the contractor shall have available at site at all times an interpreter competent to ensure the proper transmission of instructions and information.

16.1 Contractor's Employees

The Contractor shall provide on the Site in connection with the execution and completion of the Works and the remedying of any defects therein :

- (a) only such technical assistants as are skilled and experienced in their respective callings and such foremen and leading hands as are competent to give proper superintendence of the Works, and
- (b) such skilled, semi-skilled and un-skilled labour as is necessary for the proper and timely fulfilling of the Contractor's obligations under the Contract.

16.2 Engineer at Liberty to Object

The Engineer shall be at liberty to object to and require the Contractor to remove forthwith from the Works any person provided by the Contractor who, in the opinion of the Engineer, misconducts himself, or is incompetent or negligent in the proper performance of his duties, or whose presence on Site is

otherwise considered by the Engineer to be undesirable, and such person shall not be again allowed upon the Works without the consent of the Engineer. Any person so removed from the Works shall be replaced as soon as possible. A reasonable proportion of the Contractor's superintending staff shall have a working knowledge of English or the contractor shall have available at site at all times a sufficient number of competent interpreters to ensure a proper transmission of instructions and information.

The contractor is encouraged to the extent practicable and reasonable to employ staff and labourers from sources within India.

17.1 Setting-out

The Contractor shall be responsible for :

- (a) the accurate setting-out of the Works in relation to original points, lines and levels of reference given by the Engineer in writing,
- (b) the correctness, subject as above mentioned, of the position, levels dimensions and alignment of all parts of the Works, and
- (c) the provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities.

If, at any time during the execution of the Works, any error appears in the position, levels, dimensions or alignment of any part of the Works, the Contractor, on being required to do so by the Engineer, shall, at his own cost, rectify such error to the satisfaction of the Engineer, unless such error is based on incorrect data supplied in writing by the Engineer, in which case the Engineer shall determine an addition to the Contract Price in accordance with Clause 52.1 to 52.4 and shall notify the Contractor accordingly.

The checking of any setting-out or of any line or level by the Engineer shall not in any way relieve the Contractor of his responsibility for the accuracy thereof and the Contractor shall carefully protect and preserve all bench-marks, sight-rails, pegs and other things used in setting-out the Works.

The Contractor shall give to the Engineer not less than 72(seventy two) hours notice of his intention to set out or give levels for any part of the Works so that timely arrangement may be made for checking or issuing instructions. He shall indicate therein by which date the information, if any is required by him.

18.1 Boreholes and Exploratory Excavation

If, at any time during the execution of the works the Engineer requires the contractor to make bore-holes or to carry out exploratory excavations in excess of the requirements specified elsewhere in the contract, such requirement shall be the subject of an instruction in accordance with clause 51.1 & 51.2, unless an item or a provisional sum in respect of such work is included in the Bill of Quantities.

19.1 Safety, Security and Protection of the Environment

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, and

- (b) provide and maintain at his own cost all lights, guards, fencing, warning signs and watching, when and where necessary or required by the Engineer or by any duly constituted authority, for the protection of the Works or for the safety and convenience of the public or others. Storage space, if any, available at site may be provided to the contractor by the Engineer/Employer. However all necessary security, safety arrangements for the materials, equipments, goods so stored shall be provided by the contractor.
- (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 or operation.
- (d) Screen all lights provided by the Contractor so as not to interfere with any signal light on the railways or with any traffic or signal lights of any local authority.

19.2 Employer's Responsibilities

If under Clause 31.1 (b) the Employer shall carry out work on the Site with his own work-men he shall, in respect of such work:

- (a) have full regard to the safety of all persons entitled to be upon the Site, and
- (b) keep the Site in an orderly state appropriate to the avoidance of danger to such persons.

If under Clause 31.1(b) the Employer shall employ other contractors on the Site he shall require them to have the same regard for safety and avoidance of danger.

20.1 Care of Works

The Contractor shall take full responsibility for the care of the Works and materials and Plant for incorporation therein from the Commencement Date until the date of issue of the Taking-Over Certificate for the whole of the Works, when the responsibility for the said care shall subject to clause 20.1(b) pass to the Employer, Provided that:

- (a) if the Engineer issues a Taking-Over Certificate for any Section or part of the Permanent Works the Contractor shall cease to be liable for the care of that Section or part from the date of issue of the Taking-Over Certificate, when the responsibility for the care of that Section or part shall pass to the Employer, and
- (b) the Contractor shall take full responsibility for the care of any outstanding Works and materials and Plant for incorporation therein which he undertakes to or is otherwise required to finish during the Defects Liability Period until such outstanding Works have been completed pursuant to Clause 49.1 to 49.4.

20.2 Responsibility to Rectify Loss or Damage

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 20.4, 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 Engineer. 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 49.1 to 49.4 and 50.1.

20.3 Loss or Damage Due to Employer's Risk

In the event of any such loss or damage happening from any of the risks defined in Sub-Clause 20.4, or in combination with other risks, the Contractor shall, if and to the extent required by the Engineer, rectify the loss or damage and the Engineer shall determine an addition to the Contract Price in accordance with Clause 52.1 to 52.4 and shall notify the Contractor accordingly. In the case of combination of risks causing loss or damage any such determination shall take into account the proportional responsibility of the Contractor and the Employer.

20.4 Employer's Risks - DELETED

21.1 Insurance of Works and Contractor's Equipment

The Contractor shall, without limiting his or the Employer's obligations and responsibilities under Clause 20.1 to 20.4, insure:

- (a) the Works, together with materials and Plant for incorporation therein, to the full replacement cost and it being understood that such insurance shall provide for compensation to be payable to rectify the loss or damage incurred.
- (b) an additional sum of 15 percent of such replacement cost, or as may be specified in Part II of these Conditions, to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature, and it being understood that such insurance shall provide for compensation to be payable to rectify the loss or damage incurred.
- (c) the Contractor's Equipment and other things brought onto the Site by the Contractor, for a sum sufficient to provide for their replacement at the Site.

The insurance under clause 21.1 shall be issued by an insurance company which has been determined by the contractor to be acceptable to the Engineer.

21.2 Scope of Cover

The insurance in paragraphs (a) and (b) of Sub-Clause 21.1 shall be in the joint names of the Contractor and the Employer and shall cover:

- (a) the Employer and the Contractor against all loss or damage from whatsoever cause arising (including natural calamities, earthquake, subsidence, landslide, rock slide, flood, storm, cyclone, fire, theft, burglary, strike, riot, sabotage, terrorism), other than as provided in Sub-Clause 21.4, from the commencement date until the date of issue of the relevant Taking-Over Certificate in respect of the Works or any Section or part thereof as the case may be, and
- (b) the Contractor for his liability:
 - (i) during the Defects Liability Period for loss or damage arising from a cause occurring prior to the commencement of the Defects Liability Period, and
 - (ii) for loss or damage occasioned by the Contractor in the course of any operations carried out by him for the purpose of complying with his obligations under Clauses 49.1 to 49.4 and 50.1.

It shall be the responsibility of contractor to notify the Insurance Company of any change in the nature and extent of the works and to ensure the adequacy of

the Insurance cover at all times during the period of contract.

21.3 Responsibility for Amounts not Recovered

Any amounts not insured or not recovered from the insurers shall be borne by the Employer or the Contractor in accordance with their responsibilities under Clause 20.1 to 20.4.

21.4 Exclusions

There shall be no obligation for the insurance in Sub-Clause 21.1 to include loss or damage caused by the risks listed under sub clause 20.4 para a (i) to (iv).

If the Contractor receives instructions from the Employer to insure against War Risk, such insurance if normally available shall be effected, at the cost of the Employer, with an Insurance Company acceptable to the Consultant and shall be in the joint names of the contractor and the Employer.

22.1 Damage to Persons and Property

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, or
- (b) loss or damage to any property (other than the Works) :

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-22.2.

22.2 Exceptions- DELETED

22.3 Indemnity by Employer- DELETED

23.1 Third Party Insurance

The Contractor shall, without limiting his or the Employer's obligations and responsibilities under Clause 22.1 to 22.3, insure, in the joint names of the Contractor and the Employer, against liabilities for death of or injury to any person (other than as provided in Clause 24.1 to 24.2 or loss of or damage arising out of the performance of the Contract other than the exceptions defined in paragraphs (a), (b) and (c) of Sub-Clause 22.2.

23.2 Minimum Amount of Insurance

Such insurance shall be for at least the amount stated in Appendix to Tender.

23.3 Cross Liabilities

The insurance policy shall include a cross liability clause such that the insurance shall apply to the Contractor and to the Employer as separate insured.

24.1 Accident or Injury to Workmen

The Employer shall not be liable for or in respect of any damages or compensation payable to any workman other than for death or injury resulting from any act or default of the Employer, his agents or servants. The Contractor shall indemnify and keep indemnified the Employer against all such damages and compensation, other than those for which the Employer is liable as

aforesaid, and against all claims, proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.

24.2 Insurance Against Accident to Workmen

The Contractor shall insure against such liability and shall continue such insurance during the whole of the time that any persons are employed by him on the Works. Provided that, in respect of any persons employed by any Subcontractor, the Contractor's obligations to insure as aforesaid under this Sub-Clause shall be satisfied if the Subcontractor shall have insured against the liability in respect of such persons in such manner that the Employer is indemnified under the policy, but the Contractor shall require such Subcontractor to produce to the Consultant, when required, such policy of insurance and the receipt for the payment for current premium.

25.1 Evidence and Terms of Insurance

The Contractor shall provide evidence to the Consultant as soon as practicable after the respective insurance have been taken out but in any case prior to the start of work at the Site that insurance required under the Contract have been effected and shall, within 84 days of the Commencement Date, provide the insurance policies to the Employer. When providing such evidence and such policies to the Employer, the Contractor shall notify the Engineer of so doing. Such insurance policies shall be consistent with the general terms agreed prior to the issue of the Letter of Acceptance. The Contractor shall effect all insurance for which he is responsible with insurers and in terms approved by the Consultant.

25.2 Adequacy of Insurance

The Contractor shall notify the insurers of changes in the nature, extent or programme for the execution of the Works and ensure the adequacy of the insurance at all times in accordance with the terms of the Contract and shall, when required, produce to the Consultant the insurance policies in force and the receipts for payment of the current premiums.

25.3 Remedy on Contractor's Failure to Insure

If the Contractor fails to effect and keep in force any of the insurance required under the Contract, or fails to provide the policies to Consultant within the period required by Sub-Clause 25.1, then and in any such case the Employer may effect and keep in force any such insurance and pay any premium as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or to become due to the Contractor, or recover the same as a debt due from the Contractor.

25.4 Compliance with Policy Conditions

In the event that the Contractor or the Employer fails to comply with conditions imposed by the insurance policies effected pursuant to the Contract, each shall indemnify the other against all losses and claims arising from such failure.

The Contractor shall be entitled to place all insurance relating to the Contract (including, but not limited to, the insurance referred to in Clauses 21.1 to 21.4, 23.1 to 23.3 and 24.1 to 24.2) with insurers from India.

26.1 Compliance with Statutes, Regulations

The Contractor shall conform in all respects, including by the giving of all notices and the paying of all fees, with the provision of :

- (a) any National or State Statute, Ordinance, or other Law, or any regulation, or bye-law of any local or other duly constituted authority in relation to the execution and completion of the Works and the remedying of any defects therein, and

- (b) the rules and regulations of all public bodies and companies whose property or rights are affected or may be affected in any way by the Works, and the Contractor shall keep the Employer indemnified against all penalties and liability of every kind for breach of any such provision. Provided always that the Employer shall be responsible for obtaining any planning, zoning or other similar permission required for the Works to proceed and shall indemnify the Contractor in accordance with Sub-Clause 22.3.

27.1 Fossils

All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the Site shall, as between the Employer and the Contractor, be deemed to be the absolute property of the Employer. The Contractor shall take reasonable precautions to prevent his workmen or any other persons from removing or damaging any such article or thing and shall, immediately upon discovery thereof and before removal, acquaint the Engineer of such discovery and carry out the Engineer's instructions for dealing with the same. If, by reason of such instructions, the Contractor suffers delay and/or incurs costs then the Engineer shall, after due consultation with the Contractor, determine:

- (a) any extension of time to which the Contractor is entitled under Clause 44.1 to 44.3, and
- (b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly.

28.1 Patent Rights

The Contractor shall save harmless and indemnify the Employer from and against all claims and proceeding for or on account of infringement of any patent right, design trademark or name or other protected rights in respect of any Contractor's Equipment, materials or Plant used for or in connection with or for incorporation in the Works and from and against all damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, except where such infringement results from compliance with the design or Specification provided by the Engineer.

28.2 Royalties

Except where otherwise stated, the Contractor shall pay all tonnage and other royalties, rent and other payments or compensation, if any, for getting stone, sand, gravel, clay or other materials required for the Works.

29.1 Interference with Traffic and Adjoining Properties

All operation necessary for the execution and completion of the Works and the remedying of any defects therein shall, so far as compliance with the requirements of the Contract permits, be carried on so as not to interfere unnecessarily or improperly with:

- (a) the convenience of the public, or
- (b) the access to, use and occupation of public or private road, railway and any other right of way and footpaths to or of properties whether in the possession of the Employer or of any other person.

The Contractor shall save harmless and indemnify the Employer in respect of all claims, proceedings, arising out of, or in relation to any such matters insofar as the Contractor is responsible thereof.

If any plant (floating or otherwise) belonging to or hired by the Contractor or any sub-contractor or any person employed by the Contractor or by any sub-contractor or any materials or things therein or there from sink from any

cause whatsoever, it shall immediately be reported by the Contractor to the competent authorities and the Engineer's Representative, and Contractor shall forthwith, at his cost raise and remove any such plant, materials or things or otherwise deal with the same as the Engineer may direct.

The fact that such sunken plant, materials or things are insured or have been declared a total loss or do not represent any further value shall not absolve the Contractor from his obligations under this Clause to raise and remove the same.

Until such sunken plant or materials or things have been raised and removed, the Contractor shall set such buoys and display at night such lights and do all such things for the safety as may be required by the competent authorities or by the Engineer's Representative.

In the event of the Contractor not carrying out the obligations imposed on him by this Clause, the Employer may cause to set buoy and display at night light on such plant and raise and remove the same without prejudice to the right of the Employer to hold the Contractor liable and all expenses and consequences thereon and incidental thereto shall be borne by the Contractor and shall be recoverable from him as a debt by the Employer or may be deducted by the Employer from any moneys due or which may become due to the Contractor.

30.1 Avoidance of Damage to Roads

The Contractor shall use every reasonable means to prevent any of the roads or bridges communicating with or on the routes to the Site from being damaged or injured by any traffic of the Contractor or any of his Subcontractors and, in particular, shall select routes, choose and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of materials, Plant, Contractor's Equipment or Temporary Works from and to the Site shall be limited, as far as reasonably possible, and so that no unnecessary damage or injury may be occasioned to such roads and bridges.

30.2 Transport of Contractor's Equipment or Temporary Works

Save insofar as the Contract otherwise provides, the Contractor shall be responsible for and shall pay the cost of strengthening any bridges or altering or improving any road communicating with or on the routes to the Site to facilitate the movement of Contractor's Equipment or Temporary Works and the Contractor shall indemnify and keep indemnified the Employer against all claims for damage to any such road or bridge caused by such movement, including such claims as may be made directly against the Employer, and shall negotiate and pay all claims arising out of such damage.

If it is found necessary for the Contractor to move one or more loads of heavy constructional plant and equipment, materials or preconstructed units or parts of units of work over roads, highways, bridges on which such oversized and overweight items are not normally allowed to be moved, the Contractor shall obtain prior permission from the concerned authorities. Payments for complying with the requirements, if any, for protection of or strengthening of the roads, highways or bridges shall be made by the Contractor and such expenses shall be deemed to be included in his contract price.

30.3 Transport of Materials or Plant

If, notwithstanding Sub-Clause 30.1, any damage occurs to any bridge or road communicating with or on the routes to the Site arising from the transport of materials or Plant, the Contractor shall notify the Engineer, as soon as he becomes aware of such damage or as soon as he receives any claim from the authority entitled to make such claim. Where under any law or regulation the hauler of such materials or Plant is required to indemnify the road authority against damage the Employer shall not be liable for any costs, charges or expenses in respect thereof or in relation thereto. In other cases the Employer

shall negotiate the settlement of and pay all sums due in respect of such claim and shall indemnify the Contractor in respect thereof and in respect of all claims, proceedings, damages, costs charges and expenses in relation thereto. Provided that if and so far as any such claim or part thereof is, in the opinion of the Engineer, due to any failure on the part of the Contractor to observe and perform his obligations under Sub-Clause 30.1, then the amount, determined by the Engineer, due to any failure on the part of the Contractor to observe and perform his obligations under Sub-Clause 30.1, then the amount, determined by the Engineer, after due consultation with the Employer and the Contractor, to be due to such failure shall be recoverable from the Contractor by the Employer and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly. Provided also that the Employer shall notify the Contractor whenever a settlement is to be negotiated and, where any amount may be due from the Contractor, the Employer shall consult with the Contractor before such settlement is agreed.

30.4 Water borne Traffic

Where the nature of the Works is such as to require the use by the Contractor of water borne transport the foregoing provisions of this Clause shall be construed as through "road included a lock, dock, sea wall or other structure related to a waterway and "vehicle" included craft, and shall have effect accordingly.

31.1 Opportunities for other Contractors

The Contractor shall, in accordance with the requirements of the Engineer, afford all reasonable opportunities for carrying out their work to:

- (a) any other contractors employed by the employer and their workmen,
- (b) the workmen of Employer, and
- (c) the workmen of any duly constituted authorities who may be employed in the execution on or near the Site of any work not included in the Contract or of any contract which the employer may enter into in connection with or ancillary to the Works.

31.2 Facilities for other Contractors

If, however, pursuant to Sub-Clause 31.1 the Contractor shall, on the written request of the Engineer:

- (a) make available to any such other contractor, or to the Employer or any such authority, any roads or ways for the maintenance of which the Contractor is responsible, or
- (b) permit the use, by any such, of Temporary Works or Contractor's Equipment on the Site,
- (c) provide any other service of whatsoever nature for any such, the Engineer shall determine an addition to the Contract Price in accordance with Clause 52.1 to 52.4 and shall notify the Contractor accordingly.

32.1 Contractor to keep Site Clear

During the execution of the Works the Contractor shall keep the Site reasonably free from all unnecessary obstruction and shall store or dispose of any Contractor's Equipment and surplus materials and clear away and remove from the Site any wreckage, rubbish or Temporary Works no longer required.

33.1 Clearance of Site on Completion

Before the issue of any Taking-Over Certificate the Contractor shall clear

away and remove from that part of the Site to which such Taking-Over Certificate relates all Contractor's Equipment, surplus material rubbish and Temporary Works of every kind, and leave such part of the Site and Works clean and in a workmanlike condition to the satisfaction of the Engineer. Provided that the Contractor shall be entitled to retain on Site, until the end of the Defects Liability Period, such materials, Contractor's Equipment and Temporary Works as are required by him for the purpose of fulfilling his obligations during the Defects Liability Period.

34.1 Labour

The contractor shall make his own local or other arrangement for the engagement of all labour.

The Contractor and his sub contractors shall abide by the local laws and regulations governing labour applicable from time to time.

Engagement of Labour

The Contractor shall make his own arrangements for the engagement of all labour, local or otherwise, and, save insofar as the Contract otherwise provides, for the transport, housing, feeding and payment thereof.

Supply of Water

Water for drinking shall be made available to the contractors labour, workers and staff, if the spare capacities are available with the Employer/Principal Employer. However, in case the Employer is not able to provide drinking water to the contractors personnel, the contractor shall provide an adequate supply of drinking and clear water for the use of contractor's and his subcontractor's staff and labour engaged at site.

Alcoholic Liquor or Drugs

The Contractor shall not import, sell, give, barter or otherwise dispose of any alcoholic liquor, or drugs, or permit or suffer any such importation, sale, gift, barter or disposal by his sub-contractors, agents or employees.

Arms and Ammunition

The Contractor shall not give, barter or otherwise dispose off to any person or persons, any arms or ammunition of any kind or permit or suffer the same as aforesaid.

Festivals and Religious Customs

The Contractor shall in all dealings with labour in his employment have due regard to all recognised festivals, days of rest and religious or other customs.

Epidemics

In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by the Government, or the local medical or sanitary authorities for the purpose of dealing with and overcoming the same.

Disorderly Conduct, etc.

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst his employees and for the preservation of peace and protection of persons and property in the neighbourhood of the works against the same.

Observance of Legislation etc.

The Contractor shall at all times during the continuance of the Contract comply fully with all existing Acts, regulations and bylaws including all statutory amendments and re-enactments and acts that may be passed in future either by the state or the Central Government or local authority, including, Indian Workmen's Compensation Act, Contract Labour (Regulation and Abolition) Act 1970 and Equal remuneration Act 1976. Factories Act, Minimum Wages Act provident fund regulations employees provident Fund Act and schemes made under same Act, Health and Sanitary Arrangements for workmen, Insurance and other benefits and shall keep the Employer indemnified in case any action is commenced for contravention by the contractor. If the Employer is caused to pay or reimburse any amounts for non-observance of the provisions of this clause on the part of the contractor the Engineer shall have the right to deduct from any moneys due to the contractor or recover from the contractor personally any sum required or estimated to be required for making good the loss or damage suffered by the Employer. All registration and station inspection fees if any in respect of his work pursuant to the contract shall be to the account of the contractor.

Fair Wages :

The Contractor shall pay the labours engaged by him on the work not less than a fair wage, which expression shall mean, whether or time or piecework, the respective rates of wages as fixed by the public works department as fair wages for the area payable to the different categories of labourers or those notified under the Minimum wages act for corresponding employees of the Employer whichever may be higher.

The Contractor shall notwithstanding the provisions of any contract to the contrary, cause to be paid a fair wage to the labourers indirectly engaged on the works including any labour engaged by subcontractors in connection with the said works as if the labourer has been immediately employed by him.

Notices :

The Contractor shall before he commences the work display and correctly maintain in a clean and legible condition at a conspicuous place on the Site notices in English and in a local language spoken by the majority of the workers, stating therein the rate of wages which have been fixed as fair wages and the hours of work for which such wages are earned and send a copy of such notices to the Engineer.

Wage Records :

The contractor shall maintain records of wages and other remuneration paid to his employees in such form as may be convenient and to the requirements of the Employer/Engineer and the conciliation officer (Central) Ministry of Labour, Government of India, or such other authorised person appointed by the Central or State Government and the same shall include the following particulars of each worker:

- i) Name, works number and grade
- ii) Rate of daily or monthly wage.
- iii) Nature of work on which employed
- iv) Total number of days worked during each wage period.
- v) Total amount payable for the work during each wage period.
- vi) All deductions made from the wage with details in each case of the ground for which the deduction is made.
- vii) Wage actually paid for each wage period.

The contractor shall provide a wage slip for each worker employed on the works.

The wage record and wage slips shall be preserved for at least 12 months after the last entry.

Inspection of Wage Records

The Contractor shall allow inspection of the aforesaid wage records and wage slip to the Engineer and to any of his workers or to his agent at a convenient time and place after due notice is received, or to the Employer or any other person authorised by him on his behalf.

The Employer and the Engineer or any other person authorised by them on their behalf shall have power to make enquiries with a view to ascertaining and enforcing due and proper observance of the Fair Wages Clause. He shall also have the power to investigate into any complaint regarding any default made by the Contractor or sub-contractor in regard to such provision.

The Employer shall have the right to deduct from the moneys due to the Contractor any sum required or estimated to be required for making good the loss suffered by a worker or workers by reason of non payment of the aforesaid fair wage, except on account of any deductions that may be permissible under any law for the time being in force.

Representation of Parties

- (i) A workman shall be entitled to be represented in any investigation or enquiry under this Clause by :-
 - (a) An officer of a registered trade union of which he is a member.
 - (b) An officer of a federation of trade Union to which the Trade Union referred to in pervious Sub-clause is affiliated.
 - (c) Where the Worker is not a member of any registered Trade Union, by an officer of a registered Trade Union connected with or by any other workman employed in the industry in which the workers is employed.
- (ii) The contractor or sub-contractor shall be entitled to be represented in any investigations or enquiry under this clause by an officer of an Association of Employers of which he is a member.
- (iii) No party shall be represented by a legal practitioner in any investigation or enquiry under this clause, unless all parties agree.

Safety Provisions

The Contractor shall comply with all the precautions as required for the safety of the workman by the I.L.O Convention (NO.62) as far as they are applicable to the Contract. The Contractor shall provide all necessary safety appliances, gears like goggles, helmets, masks, etc. to the workmen and the staff.

The Contractor shall be responsible for observance by his sub-Contractors of the foregoing provisions.

Footwear

The Contractor shall at his own expense provide footwear for all labour engaged on concrete mixing work and all other type of work involving the use of tar, cement, etc. to the satisfaction of the Engineer or his Representative, and on his failure to do so the Employer shall be entitled to provide the same and recover the cost from the Contractor.

The Contractor shall deliver to the Engineer's Representative at his office on the Site a return in detail in such form and at such intervals as the Employer / Engineer may prescribe showing the supervisory staff and the numbers of the several classes of labour from time to time employed on the Site.

35.1

Returns of Labour, etc.

The Contractor shall, if required by the Engineer, deliver to the Engineer's Representative, or at his office, a return in detail in such form and at such intervals as the Engineer may prescribe showing the supervisory staff and the number of the several classes of labour from time to time employed by the Contractor on the site and such information respecting constructional plant as the Engineer's Representative may require.

The Contractor shall file all labour returns in detail to the respective authorities / statutory bodies as prescribed under law applicable at the work site and inform the Employer / Engineer with copies of such returns directly filed.

MATERIALS, PLANTS AND WORKMANSHIP

36.1 Quality of Materials, Plant and Workmanship

All materials Plant and workmanship shall be

- (a) of the Respective kinds described in the Contract and in accordance with the Engineer's instructions, and
- (b) subjected from time to time to such tests as the Engineer may require at the place of manufacture, fabrication or preparation, or on the Site or at such other place or places as may be specified in the Contract, or at all or any of such places.

The Contractor shall provide such assistance, labour, electricity, fuels, stores, apparatus and instruments as are normally required for examining, measuring and testing any materials or plant and shall supply samples of materials, before incorporation in the Works, for testing as may be selected and required by the Engineer.

The contractor is encouraged to the extent practicable and reasonable, to use plant and material from sources within India.

36.2 Cost of Samples

All samples shall be supplied by the Contractor at his own cost if the supply thereof is clearly intended by or provided for in the Contract.

36.3 Cost of Test

The cost of making any test shall be borne by the Contractor if such test is

- (a) clearly intended by or provided for in the Contract, or
- (b) particularised in the Contract (in cases only of a test under load or of a test to ascertain whether the design of any finished or partially finished work is appropriate for the purposes which it was intended to fulfil) in sufficient detail to enable the Contractor to price or allow for the same in his Tender.

36.4 Cost of Tests not provided for

If any test required by the Engineer which is

- (a) not so intended by or provided for, or
- (b) (in the cases above mentioned) not so particularised, or
- (c) though so intended or provided for, required by the Engineer to be carried out at any place other than the Site local test house or the place of manufacture, fabrication or preparation of the materials or Plant tested.

Shows the materials, Plant or workmanship not to be in accordance with the provision of the Contract to the satisfaction of the Engineer, then the cost of such test shall be borne by the Contractor, but in any other case Sub- Clause 36.5 shall apply.

36.5 Engineer's Determination Where Tests not provided for

Where, pursuant to Sub-Clause 36.4, this Sub-Clause applies the Engineer shall, after due consultation with the Contractor, determine:

- (a) any extension of time to which the Contractor is entitled under Clause 44.1 to 44.3, and shall notify the Contractor accordingly.

37.1 Inspection of Operations

The Engineer, and any person authorised by him, shall at all reasonable times have access to the Site and to all workshops and places where materials or Plant are being manufactured, fabricated or prepared for the Works and the Contractor shall afford every facility for and every assistance in obtaining the right to such access.

37.2 Inspection and Testing

The Engineer shall be entitled, during manufacture, fabrication or preparation to inspect and test the materials and Plant to be supplied under the Contract. If materials or Plant are being manufactured, fabricated or prepared in workshops or places other than those of the Contractor, the Contractor shall obtain permission for the Engineer to carry out such inspection and testing in those workshops or places. Such inspection or testing shall not release the Contractor from any obligation under the Contract.

37.3 Dates for Inspection and Testing

The Contractor shall agree with the Engineer on the time and place for inspection or testing of any materials or Plant as provided in the Contract. The Engineer shall give the Contractor not less than 24 hours notice of his intention to carry out the inspection or to attend the tests. If the Engineer, or his duly authorised representative, does not attend on the date agreed, the Contractor may, unless otherwise instructed by the Engineer, proceed with the tests, which shall be deemed to have been made in the presence of the Engineer. The Contractor shall forthwith forward to the Engineer duly certified copies of the test readings. If the Engineer has not attended the tests, he shall accept the said readings as accurate or instruct the tests to be repeated at the Employer's cost to enable him to decide.

37.4 Rejection

If at the time and place agreed in accordance with Sub-Clause 37.3, the materials or Plant are not ready for inspection or testing or if, as result of the inspection or testing referred to in this Clause, the Engineer determines that the materials or Plant are defective or otherwise not in accordance with the Contract, he may reject the materials or Plant and shall notify the Contractor thereof immediately. The notice shall state the Engineer's objections with reasons. The Contractor shall then promptly make good the defect or ensure that rejected materials or Plant comply with the Contract. If the engineer so requests, the test of rejected materials or Plant shall be made or repeated under the same terms and conditions. All costs incurred by the Employer by the repetition of the tests shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer and may be deducted from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

37.5 Independent Inspection

The Engineer may delegate inspection and testing of materials or Plant to an independent inspector. Any such delegation shall be effected in accordance with Sub- Clause 2.4 and for this purpose such independent inspector shall be considered as an assistant of the Engineer. Notice of such appointment (not

being less than 14 days) shall be given by the Engineer to the Contractor.

38.1 Examination of Work before Covering up

No part of the Work shall be covered up or put out of view without the approval of the Engineer and the Contractor shall afford full opportunity for the Engineer to examine and measure any such part of the Works which is about to be covered up or put out of view and to examine foundations before any part of the work is placed thereon. The Contractor shall give notice to the Engineer whenever any such part of the Works or foundations is or are ready or about to be ready for examination and the engineer shall unless he considers it unnecessary and advises the Contractor accordingly, attend for the purpose of examining and measuring such part of the Works or of examining such foundations.

38.2 Uncovering and Making Opening

The Contractor shall uncover any part of the Works or make opening in or through the same as the Engineer may from time to time instruct and shall reinstate and make good such part. If any such part has been covered up or put out of view after compliance with the requirement of Sub-Clause 38.1 and is found to be executed in accordance with the Contract, the Engineer shall, after due consultation with the Contractor, determine the amount of reinstating and making good the same, which shall be added to the Contract Price, and shall notify the Contractor accordingly. In any other case all costs shall be borne by the Contractor.

39.1 Removal of Improper Work, Materials or Plant

The Engineer shall have authority to issue instructions from time to time, for :

- (a) The removal from the Site, within such time or times as may be specified in the instruction, of any materials or Plant which, in the opinion of the Engineer, are not accordance with the Contract,
- (b) The substitution of proper and suitable materials or Plant, and
- (c) The removal and proper re-execution, notwithstanding any previous test thereof or interim payment therefor, of any work which, in respect of
 - (i) materials, Plant or workmanship, or
 - (ii) design by the Contractor or for which he is responsible, is not, in the opinion of the Engineer, in accordance with the Contract.

39.2 Default of Contractor in Compliance

In case of default on the Contractor in carrying out such instruction within the time specified therein or, if none, within a reasonable time, the Employer shall be entitled to employ and pay other persons to carry out the same and all costs consequent thereon or incidental thereto shall, after due consultation with the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly.

SUSPENSION

40.1 Suspension of Work

The Contractor shall, on the instructions of the Engineer, suspend the progress of the Works or any part thereof for such time and in such manner as the Engineer may consider necessary and shall, during such suspension, properly

protect and secure the Works or such part thereof so far as is necessary in the opinion of the Engineer. Unless such suspension is

- (a) otherwise provided for in the Contract, or
- (b) necessary by reason of some default of or breach of contract by the Contractor or for which he is responsible, or
- (c) necessary by reason of extra-ordinary climatic conditions on the Site, or
- (d) necessary for the proper execution of the Works or for the safety of the Works or any part thereof (save to the extent that such necessity arises from any act or default by the Engineer or the Employer or from any of the risks defined in Sub-Clause 20.4), Sub- Clause 40.2 shall apply.

40.2 Engineer's Determination following Suspension

Where, pursuant to Sub-Clause 40.1, this Sub- Clause applies the Engineer shall, after due consultation with the Contractor determine

- (a) any extension of time to which the Contractor is entitled under Clause 44.1 to 44.3, and
- (b) the amount, which shall be added to the Contract Price, in respect of the cost incurred by the Contractor by reason of such suspension.

And shall notify the Contractor accordingly.

40.3 Suspension lasting more than 84 Days

If the progress of the Works or any part thereof is suspended on the written instructions of the Engineer and if permission to resume work is not given by the Engineer within a period of 84 days from the date of suspension then, unless such suspension is within paragraph (a), (b), (c) or (d) of Sub-Clause 40.1, the Contractor may give notice to the Engineer requesting permission, within 28 days from the receipt thereof, to proceed with the Works or that part thereof in regard to which progress is suspended. If, within the said time, such permission is not granted, the Contractor may, but is not bound to, elect to treat the suspension, where it affects part only of the Works, as an omission of such part under Clause 51.1 to 51.2 by giving a further notice to the Engineer to that effect, or, where it affects the whole of the Works, treat the suspension as an event of default by the Employer and terminate his employment under the Contract in accordance with the provisions of Sub- Clause 69.1, whereupon the provisions of Sub-Clause 69.2 and 69.3 shall apply.

COMMENCEMENT AND DELAYS

41.1 Commencement of Works

The Contractor shall commence the Works within 2 weeks from the date of receipt of notice by him to this effect from the Engineer to proceed with the works with due expedition and without delay.

42.1 Possession of Site and Access Thereto

Save insofar as the Contract may prescribe:

- (a) the extent of portions of the Site of which the Contractor is to be given possession from time to time, and
- (b) the order in which such portions shall be made available to the Contractor and subject to any requirement in the Contract as to the order in which the Works shall be executed,

The Employer will, with the Engineer's notice to commence the Works, give to the Contractor possession of

- (c) so much of the Site, and
- (d) such access as, in accordance with the Contract, is to be provided by the Employer,
as may be required to enable the Contractor to commence and proceed with the execution of the Works in accordance with the programme referred to in Clause 14.1 to 14.4, if any, and otherwise in accordance with such reasonable proposals as the Contractor shall, by notice to the Engineer make. The Employer will, from time to time as the Works proceed, give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to proceed with the execution of the Works with due dispatch in accordance with such programme or proposals, as the case may be.
- (e) All water including rain water which may accumulate on the site during the progress of the works or in trenches or excavations, shall be removed promptly from the site to the satisfaction of engineer and at the cost of contractor.

42.2 Wayleaves and Facilities

The Contractor shall bear all costs and charges for special or temporary wayleaves required by him in connection with access to Site. The Contractor shall also provide at his own cost any additional facilities outside the Site required by him for the purposes of the Works.

43.1 Time for Completion

The whole of the Works and, if applicable, any Section required to be completed within a particular time as stated in the Appendix to Tender, shall be completed, in accordance with the provisions of Clause 48.1 to 48.4, within the time stated in the Appendix to Tender for completion of the whole of the Works or the Section (as the case may be), calculated from the Commencement Date, or such extended time as may be allowed under Clause 44.1 to 44.3.

44.1 Extension of Time for Completion

In the event of

- (a) the amount or nature of extra or additional work, or
- (b) any cause of delay referred to in these Conditions by reference to clause 44.1 to 44.3, or
- (c) exceptionally adverse climatic conditions, or
- (d) any delay, impediment or prevention by the Employer, or
- (e) other special circumstances which may occur, other than through a default of or breach of contract by the Contractor or for which he is responsible,

being such as fairly to entitle the contractor to extension of time for completion of the works or any section or part thereof, the Engineer shall after due consultation with the contractor, and subject to clause 44.2 determine the amount of such extension and shall notify the contractor accordingly.

44.2 Contractor to Provide Notification and Detailed/ Particulars

The Engineer is not bound to make any determination under clause 44.1 unless the Contractor has

- (a) within 28 days after such event has arisen notified the Engineer, and
- (b) within 28 days, or such other reasonable time as may be agreed by the Engineer, after such notification submitted to the Engineer detailed particulars of any extension of time to which he may consider himself entitled in order that such submission may be investigated at the time.

44.3 Interim Determination of Extension

Provided also that where an event has continuing effect such that it is not practicable for the Contractor to submit detailed particulars within the period of 28 days referred to in Sub-Clause 44.2 (a), he shall nevertheless be entitled to an extension of time provided that he has submitted to the Engineer interim particulars at intervals of not more than 28 days and final particulars within 28 days of the end of the effects resulting from the event. On receipt of such interim particulars, the Engineer shall, without undue delay, make an interim determination of extension of time and on receipt of the final particulars the Engineer shall review the circumstances and shall determine an overall extension of time in regard to the event in consultation with the Contractor and shall notify the Contractor of the determination. No final review shall result in a decrease of any extension of time already determined by the Engineer.

45.1 Restriction on Working Hours

Subject to any provision to the contrary contained in the Contract, none of the Works shall save as hereinafter provided, be carried on during the night or on locally recognised days of rest without the consent of the Engineer, except when work is unavoidable or absolutely necessary for the saving of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer. Provided that the provisions of this Clause shall not be applicable in the case of any work which it is customary to carry out by multiple shift.

46.1 Rate of Progress

If for any reason, which does not entitle the Contractor to an extension of time, the rate of progress of the Works or any Section is at any time, in the opinion of the Engineer, too slow to enable the contractor to complete the execution of and passing the tests on completion of the Works or such section by the time for completion, the Engineer shall so notify the Contractor who shall thereupon take such steps as are necessary, subject to the consent of the Engineer, to expedite progress so as complete the execution of and passing the tests on completion of the Works or such section by the time for completion. The Contractor shall not be entitled to any additional payment for taking such steps. If, as a result of any notice given by the Engineer under this Clause, the Contractor considers that it is necessary to do any work at night or on locally recognised days of rest, he shall be entitled to seek the consent of the Engineer to do so. Provided that if any steps, taken by the Contractor in meeting his obligations under this Clause, involve the employer in additional supervision costs, such costs shall, after due consultation with the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or to become to the Contractor and the Engineer shall notify the Contractor accordingly.

47.1 Liquidated Damages for Delay

If the Contractor fails to complete the execution of and passing the test on

completion of the works or any section by the time for completion, in accordance with Clause 48.1 to 48.4, within the relevant time prescribed by Clause 43.1, then the Contractor shall pay to the Employer the relevant sum stated in the Appendix to Tender (Appendix - B) as liquidated damages for such default and not as a penalty (which sum shall be the only monies due from the Contractor for such default) for every day or part of a day which shall elapse between the relevant Time for Completion and the date stated in a Taking-Over Certificate of the whole of the Works or the relevant Section, subject to the applicable limit stated in the Appendix to Tender (Annexure - B). The Employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies due or to become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the contract.

47.2 Reduction of Liquidated Damages

If, before the Time for Completion of the whole of the Works or, if applicable, any Section, a Taking-Over Certificate has been issued for any part of the Works or of a Section, the liquidated damages for delay in completion of the remainder of the Works or of that Section shall, for any period of delay after date stated in such Taking-Over Certificate, and in the absence of alternative provisions in the Contract, be reduced in the proportion which the value of the part so certified bears to the value of the whole of the Works or Section, as applicable. The Provisions of this Sub-Clause shall only apply to the rate of liquidated damages and shall not affect the limit thereof.

48.1 Taking-Over Certificate

When the whole of the Works have been completed and all the equipments and systems have satisfactorily passed the Tests on Completion and the equipments and systems have been satisfactorily Validated, the Contractor shall give a notice of Completion to the Employer through the Engineer. Such notice shall be deemed to be a request by the Contractor to issue a Taking-Over Certificate in respect of the Works. The Engineer shall, within 21 days of the date of delivery of such notice, either issue to the Contractor, a Taking-Over Certificate, stating the date on which, in his opinion, the Works were completed in accordance with the Contract, or give instructions in writing to the Contractor specifying all the work which in the Engineer's opinion, is required to be done by the Contractor before the issue of such Certificate. The Engineer shall also notify the Contractor of any defects in the Works affecting completion that may appear after such instructions and before completion of the Works specified therein. The Contractor shall be entitled to receive such Taking-Over Certificate within 21 days of completion, to the satisfaction of the Engineer, of the Works so specified and remedying any defects so notified.

48.2 Taking-Over of Sections or Parts

Similarly, in accordance with the procedure set out in Sub-Clause 48.1, the Contractor may request and the Engineer shall issue a Taking-Over Certificate in respect of :

- (a) any Section in respect of which a separate Time for Completion is provided in the Appendix to Tender, or
- (c) any part of the Permanent Works which has been both completed to the satisfaction of the Engineer and, otherwise than as provided for in the Contract, occupied or used by the Employer, or
- (d) any part of the Permanent Works which the Employer has elected to

occupy or use prior to completion (where such prior occupation or use is not provided for in the Contract or has not been agreed by the Contractor as a temporary measure).

48.3 Completion of Parts

If any part of the Permanent Works has been satisfactorily completed and has satisfactorily passed any Tests on Completion prescribed by the Contract, and such part of the work is intended to be used by the Employer, the engineer may issue a Taking-Over Certificate in respect of that part of the Permanent Works before completion of the whole of the Works and , upon the issue of such Certificate, the Contractor shall be deemed to have undertaken to complete with due expedition any outstanding work in that part of the permanent Works during the Defects Liability Period.

48.4 Surfaces Requiring Reinstatement

Provided that a Taking-Over Certificate given in respect of any Section or part of the Permanent Works before completion of the whole of the Works shall not be deemed to certify completion of any ground or surfaces requiring reinstatement, unless such Taking- Over certificate shall expressly so state.

If the Contractor is prevented from carrying out the Tests on Completion by a cause for which the employer or the Engineer or other contractors employed by the Employer are responsible, the employer shall subject to clause 7.2 (b) be deemed to have taken over the Works on the date when the Tests on Completion would have been completed but for such prevention. The Engineer shall issue a Taking-Over Certificate accordingly. Provided always that the Works shall not be deemed to have been taken over if they are not completed in accordance with the Contract.

If the Works are taken over under this Sub-Clause the Contractor shall nevertheless carry out the Tests on Completion during the Defects Liability Period. The Engineer shall require the Tests to be carried out by giving 14 days notice.

DEFECTS LIABILITY

49.1 Defects Liability Period

In these Conditions the expression "Defects Liability Period" shall mean the defects liability period named in the Appendix to Tender, calculated from:

- (a) the date of completion of the Works certified by the Engineer in accordance with Clause 48.1 to 48.4 or clause 63.1; or
- (b) in the event of more than one certificate having been issued by the Engineer under Clause 48.1 to 48.4, the respective dates so certified.

49.2 Completion of Outstanding Work and Remedying Defects

To the intent that the Works shall, at or as soon as practicable after the expiration of the Defects Liability Period, be delivered to the Employer in the condition required by the Contract, fair wear and tear excepted, to the satisfaction of the Engineer, the Contractor shall:

- (a) complete the work, if any, outstanding on the date stated in Taking-Over Certificate as soon as practicable after such date and
- (b) execute all such work of amendment, reconstruction , and remedying defects, shrinkages or other faults as the Engineer may, during the Defects Liability Period or within 14 days after its expiration, as a result of an inspection made by or on behalf of the Engineer prior to its expiration, instruct the Contractor to execute.

49.3 Cost of Remedying Defects

All work referred to in Sub-Clause 49.2 (b) shall be executed by the Contractor at his own cost if the necessity thereof is, in the opinion of the

engineer, due to:

- (a) the use of materials, Plant or workmanship not in accordance with the Contract, or
- (b) where the Contractor is responsible for the design of part of the Permanent Works, any fault in such design, or
- (c) the neglect or failure on the part of the Contractor to comply with any obligation, expressed or implied, on the Contractor's part under the Contract.

If, in the opinion of the Engineer, such necessity is due to any other cause, he shall determine an addition to the Contract Price in accordance with Clause 52.1 to 52.4 and shall notify the Contractor accordingly, with a copy to the Consultant.

49.4 Contractor's Failure to Carry out Instructions

In case of default on the part of the Contractor in carrying out such instruction within a reasonable time, the consultant shall be entitled to employ and pay other persons to carry out the same and if such work, in the opinion of the Engineer, the Contractor was liable to do at his own cost under the Contract, then all costs consequent thereon or incidental thereto shall, after due consultation with the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly.

The Provisions of this Clause shall apply to all replacements or renewals of Plant carried out by the Contractor to remedy defects and damages as if the replacements and renewals had been taken over on the date they were completed.

The Defects Liability Period for the Works shall be extended by a period equal to the period during which the Works cannot be used by reason of a defect or damage. If only part of the Works is affected the Defects Liability Period shall be extended only for that part. In neither case shall the Defects Liability Period extend beyond 2 years from the date of taking over.

When the progress in respect of Plant has been suspended under clause 40.1 to 40.3, the Contractor's obligations under this Clause shall not apply to any defects occurring more than one year after the Time for Completion established on the date of the Letter of Acceptance.

50.1 Contractor to Search

If any defects, shrinkage or other fault in the Works appears at any time prior to the end of the Defects Liability Period, the Engineer may instruct the Contractor, to search under the directions of the Engineer for the cause thereof. Unless such defect, shrinkage or other fault is one for which the Contractor is liable under the Contract, the Engineer shall, after due consultation with the Contractor, determine the amount in respect of the costs of such search incurred by the Contractor, which shall be added to the Contract Price and shall notify the Contractor accordingly. If such defect, shrinkage or other fault is one for which the Contractor is liable, the cost of the work carried out in searching as aforesaid shall be borne by the Contractor and he shall in such case remedy such defect, shrinkage or other fault at his own cost in accordance with the provisions of Clause 49.1 to 49.4.