

KUWAIT OIL COMPANY (K.S.C.)
(Register of Commerce No. 21835)

GENERAL CONDITIONS OF CONTRACT

- for -

ENGINEERING AND CONSTRUCTION (REV DEC. 2006)

TABLE OF CONTENTS

<u>Clause</u>	<u>Title</u>
1	<u>Definitions</u>
2	<u>Language and Interpretation</u>
3	<u>Entire Agreement</u>
4	<u>Waiver</u>
5	<u>Inspection</u>
6	<u>Extent of Contract</u>
7	<u>Documents Mutually Explanatory</u>
8	<u>Independent Contractor</u>
9	<u>Assignment</u>
10	<u>Subcontracting</u>
11	<u>Superintendent and Superintendent's Representative</u>
12	<u>Company Plans, Drawings and Specification</u>
13	<u>Contractor's Design and Engineering</u>
14	<u>Contractor's General Responsibilities</u>
15	<u>Unforeseen Physical Site Conditions</u>
16	<u>Material Supplied by Contractor</u>
17	<u>Material Supplied by Company</u>
18	<u>Property in Material and Equipment</u>
19	<u>Contractor's Representative</u>
20	<u>Contractor's Personnel</u>
21	<u>General Obligations for Site Operations and Construction</u>
22	<u>Setting Out</u>
23	<u>Possession of the Site</u>
24	<u>The Site and Temporary Works</u>
25	<u>Supply of Constructional Plant</u>
26	<u>Sanitary Arrangements</u>
27	<u>Supply of Water</u>
28	<u>Safeguarding Existing Facilities</u>
29	<u>Inspection, Testing and Commissioning</u>
30	<u>Examination of Covered Work</u>
31	<u>Defective Work</u>
32	<u>Urgent Work</u>
33	<u>Warranties</u>
34	<u>Health, Safety and Environment</u>
35	<u>Identification and Passes</u>
36	<u>Indemnities</u>
37	<u>Insurance</u>
38	<u>Taxes</u>
39	<u>Applicability of State Laws</u>
40	<u>Transportation Priorities</u>
41	<u>Date For Commencement</u>
42	<u>Date for Completion</u>
43	<u>Working Hours</u>

GENERAL CONDITIONS OF CONTRACTS FOR ENGINEERING & CONSTRUCTION

TABLE OF CONTENT

44	<u>Programme of Work</u>
45	<u>Certificate of Completion</u>
46	<u>Defects Liability Period and Final Acceptance Certificate</u>
47	<u>Variations</u>
48	<u>Contract Price</u>
49	<u>Measured Works</u>
50	<u>Method of Payment</u>
51	<u>Retention</u>
52	<u>Intellectual Property Rights</u>
53	<u>Confidentiality</u>
54	<u>Suspension of Work</u>
55	<u>Contractor's Default</u>
56	<u>Consequences of Termination for Default</u>
57	<u>Optional Termination</u>
58	<u>Liquidated Damages</u>
59	<u>Force Majeure</u>
60	<u>Time Limitation on Claims, Delay and Extension of Time</u>
61	<u>Continuance of the Work</u>
62	<u>Governing Law</u>
63	<u>Performance Bond</u>
64	<u>Bank Guarantee for Tax and Labour</u>
65	<u>Severability</u>
66	<u>Audit</u>
67	<u>Notices</u>

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GENERAL CONDITIONS OF CONTRACT

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ENGINEERING AND CONSTRUCTION (REV DEC 2006)

1. DEFINITIONS

The following expressions shall, unless the context otherwise requires or is otherwise defined, have the meanings hereby assigned to them:

- 1.1** **“Adjustment Order”** means a written adjustment to the Contract signed by both parties, subject to the exception referred to in clause 47.5, pursuant to instruction issued by the Superintendent to the Contractor to execute a Variation as referred to in clause 47.
- 1.2** **“Certificate of Completion”** means the certificate issued by the Superintendent stating that the Contractor has completed the Works or any Portion of the Works (excluding obligations to be carried out under the Defects Liability Period), and as further detailed in clause 45.
- 1.3** **“Company”** means Kuwait Oil Company (K.S.C.) a company registered in the State of Kuwait under Register of Commerce No. 21835 its legal successors and assignees.
- 1.4** **“Constructional Plant”** means all vehicles, tools, plant, equipment, appliances, material and the like of whatsoever nature required for the performance of the Works and the Temporary Works, but do not include material or equipment intended to form or forming part of the Works.
- 1.5** **“Contract”** means the aggregate of all documents specified in the Memorandum of Agreement.
- 1.6** **“Contract Price”** means the fixed lump sum price or rates stated in the Form of Tender and/or its attachments forming the Contract, payable to the Contractor for the Works performed and shall include such sums as may be adjusted from time to time.
- 1.7** **“Contractor”** means the person or persons, firm or company named in the Memorandum of Agreement and includes the Contractor’s Representatives, successors and permitted assignees.
- 1.8** **“Contractor’s Representative”** means the Contractor’s employee nominated by the Contractor, who shall represent the Contractor and act on its behalf and as further described in clause 19.
- 1.9** **“Contract Specification”** means the document titled as such and forming part of the Contract.
- 1.10** **“Date for Commencement”** means the date by which the Contractor shall commence the Works and as further described in clause 41.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

1.11 **“Date for Completion”** means the last day by which the Contractor shall complete the Works or any Portion of the Works as applicable, (excluding the obligations to be carried out under the Defects Liability Period), and as further detailed in clause 42.

1.12 **“day”** means a calendar day, **“month”** a Gregorian calendar month, and **“year”** a Gregorian calendar year.

1.13 **“Defect”** means any defect in the Works, omission, imperfection, other fault, deficiency or damage to, in or affecting the Works or any part thereof, including any element of the design, engineering, procurement, construction or installation of the Works or any element of workmanship or any element of material, design document, Contractor’s equipment, tool, supplies or other things the Contractor is required to provide under this Contract that does not comply in all respects with the requirements of the Contract.

1.14 **“Defects Liability Period”** means twelve (12) months commencing from the effective date as specified in the Certificate of Completion and as further referred to in clause 46.

1.15 **“Defects Rectification Certificate”** means the certificate issued by the Superintendent to the Contractor upon making good and rectifying any Defect, in the Works or any Portion of the Works and as further described in clause 46.4.

1.16 **“Drawings”** means drawings and includes data, specification, technical information and any other document of like nature necessary for performance of the Works and provided by the Company or supplied by the Contractor and approved by the Company.

1.17 **“Excepted Risks”** has the meaning ascribed to it in clause 36.6.

1.18 **“Final Acceptance Certificate”** means the certificate issued by the Superintendent stating that the Contractor has complied with its obligations under the Contract and as further described in clause 46.

1.19 **“Force Majeure”** has the meaning ascribed to it in clause 59.

1.20 **“Performance Bond”** means the unconditional and irrevocable bank guarantee of a specified value furnished as a security by the Contractor prior to signing of the Contract in a format approved by the Company as described in clause 63.

1.21 **“Portion of the Works”** means a part of the Works specifically identified in the Contract.

1.22 **“Programme”** means the programme of work referred to in clause 44 upon having been approved by the Superintendent.

1.23 **“Project Manager”** means the Contractor’s personnel specified in clause 19.2.

1.24 **“Provisional Sum”** means the sum referred to in clause 48.7.

1.25 **“Site”** means the lands and other places where the Works are to be performed and shall include any other place provided by the Company for the purposes of the Contract.

1.26 **“Subcontractor”** means any person, firm, partnership, corporation or combination thereof to which any part of the Works is being subcontracted, and shall include Vendor.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

1.27 **“Superintendent”** means the person or persons referred to in clause 11 and in the Contract Specification or such other persons appointed from time to time by the Company and notified to the Contractor to act as Superintendent for the purposes of the Contract.

1.28 **“Superintendent’s Representative”** means the person or persons referred to in clause 11 and in the Contract Specification or such other persons or appointed from time to time by the Superintendent.

1.29 **“Technical Specification”** means the document titled Technical Specification which provides the specification of the Works together with drawings, data sheets and any other technical specification including standards and codes, as identified in the Contract.

1.30 **“Temporary Works”** means all temporary works of every kind required in or about the performance of the Works and shall include temporary buildings, roads, facilities and services.

1.31 **“Variation”** means any change to the Contract pursuant to the provisions of clause 47.

1.32 **“Vendor”** means any Company approved manufacturer or supplier who provides equipment or material to be incorporated in the Works.

1.33 **“Works”** means all that work to be performed by the Contractor together with Temporary Works and all the other obligations and responsibilities of the Contractor pursuant to the Contract.

2. LANGUAGE AND INTERPRETATION

2.1 All communications in connection with this Contract and its performance shall be in the English language.

2.2 Words importing the singular only also include the plural and vice versa where the context requires. Words importing a gender shall include all genders and words importing persons shall include incorporated associations and partnerships and any entity with legal standing.

2.3 The words “accept”, “acceptance”, “accepted”, “agree”, “agreed”, “agreement”, “approval”, “approve”, “approved”, “authorisation”, “authorise”, “authorised”, “certified”, “certify”, “certificate”, “check”, “checked”, “confirm”, “confirmation”, “confirmed”, “consent”, “consented”, “delegate”, “delegated”, “delegation”, “direct”, “directed”, “direction”, “endorse”, “endorsed”, “inform”, “informed”, “instruct”, “instructed”, “instruction”, “notice”, “order”, “ordered”, “permission”, “permit”, “permitted”, “reject”, “rejected”, “settle”, “settled”, “settlement”, “verified” or “verify” wherever used by the Company shall mean in writing.

2.4 Unless otherwise specified, all reference to clause numbers is restricted to these General Conditions of Contracts for Engineering and Construction contained in this document.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

3. ENTIRE AGREEMENT

- 3.1 The Contract embodies the entire agreement between the Company and the Contractor. The parties shall not be bound or obligated by any statement, representation, promise, inducement or understanding of any nature not set forth in the Contract. No changes, amendments or modifications of any of the terms and conditions of the Contract shall be valid unless reduced to writing and signed by both parties.
- 3.2 Any review, agreement or approval by the Company related to the Works shall not act as a waiver of the Contractor's obligations under the Contract.
- 3.3 The cost of any review period stipulated in the Contract shall be deemed to have been built in the Contract Price.

4. WAIVER

None of the provisions of the Contract shall be considered waived by the Company except when such waiver is made in writing by the Superintendent, unless where the waiver impacts the Contract Price or Date for Completion it shall be made through an Adjustment Order. No such waiver shall be or be construed to be a waiver of any past or future default, breach or modification of any of the terms and conditions of the Contract except as expressly stated in such waiver.

5. INSPECTION

Inspection or no-inspection, witnessing or non-witnessing, approval or non-approval by the Company or its representatives of any matter required to be done by the Contractor shall not be construed as acceptance by the Company, nor shall be deemed free from Defect, nor act as a waiver of the Contractor's obligations to comply with the requirements of the Contract.

6. EXTENT OF CONTRACT

- 6.1 The requirements of the Contract comprise the performance and completion of the Works and the provision of all: labour; transport; Constructional Plant; Temporary Works; material whether of a temporary or permanent nature; and any other item as necessary for performance and completion of the Works as specified in, or are reasonably inferred from the Contract.
- 6.2 The Contractor, where any work, material or item is required but is not specified in the Contract but which is necessary for the proper performance of the Works in accordance with the Contract, shall perform such work and/or furnish such material or item as if so specified.

7. DOCUMENTS MUTUALLY EXPLANATORY

- 7.1 All parts of the Contract are intended to be correlative and complementary and any obligation imposed by one part and not mentioned in another shall be performed to the same extent and purpose as though required by all. The misplacement, addition or omission of a word or

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

character shall not change the intent of any part of the Contract from that set forth by the Contract as a whole.

- 7.2 The Superintendent, where ambiguities or discrepancies are found between the documents, shall issue the necessary clarification or instruction for the Contractor's compliance.
- 7.3 Where different standards relative to the same matter appear or are referred to in the Contract, the most stringent of such standards shall apply.

8. INDEPENDENT CONTRACTOR

- 8.1 The Contractor, for the purpose of the performance of the Works, is an independent contractor and in no event shall this Contract or any work performed under it create a relation between principal and agent partnership, joint venture or other relationship between the parties.
- 8.2 The Contractor has no authority to bind the Company in any way without the express prior agreement of the Company.
- 8.3 The Contractor shall be solely liable for the persons employed or engaged by it for the performance of the Works and all debts, liabilities, and obligations of any kind imposed upon or incurred by the Contractor in the performance of the Works shall be deemed to be debts, liabilities and obligations solely of the Contractor.

9. ASSIGNMENT

- 9.1 The Contractor shall not assign the Contract nor any part of it without the prior consent of the Company nor shall the Contractor assign without the prior consent of the Company any benefit or interest in or under the Contract, except where an official assignment of any money due or to become due under this Contract is made in favour of the Contractor's bankers.
- 9.2 The Company may assign the Contract at any time to any entity wholly or substantially owned or controlled by the State of Kuwait.
- 9.3 An assignee of the Contract shall not be entitled to any right or benefit of the Contract until such assignee has undertaken in writing to be bound by the terms and conditions of the Contract.

10. SUBCONTRACTING

- 10.1 The Contractor shall not subcontract the whole of the Works or any part of the Works without the Company's prior consent on the scope of the subcontract and the Company's approval of the Subcontractor. Where subcontracting is a specific requirement of the Contract, or where the Company consents to subcontracting, the subcontracting shall not act as a waiver of any of the Contractor's liabilities or obligations under the Contract and the Contractor shall be responsible for the acts, defaults and neglects of any Subcontractor, its agents, servants or workmen as if they were the acts, defaults and neglects of the Contractor, its agents, servants or workmen. Subcontracting shall not create any contractual relationship between any Subcontractor and the Company.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

- 10.2 The Contractor shall not be liable, notwithstanding the provisions of clause 10.1 in respect of any Subcontractor or Vendor nominated by the Company being in default, provided that the Contractor itself is not the cause partially or wholly of such default. For the purposes of this clause a Company nominated Subcontractor or Vendor shall not include or mean a Subcontractor or a Vendor selected by the Contractor from a list (of whatever number) of Company approved or recommended Subcontractor or Vendor.
- 10.3 All agreements made between the Contractor and any Subcontractor must be in writing and must provide that in respect of the work or goods the subject of the subcontract, the Subcontractor shall be bound to the Contractor under the same obligations and liabilities as are imposed upon the Contractor under the terms of this Contract.
- 10.4 The Contractor, if so directed by the Superintendent, shall promptly remove any Subcontractor who misconducts or is incompetent or is negligent in the performance of its duties or fails to conform to any particular provision of the HSE provisions set out in the Contract and any such Subcontractor shall not be employed again on the Works.
- 10.5 The Contractor shall ensure that its Subcontractor comply with all provisions of the Contract including those applicable to the Contractor's personnel.

11. SUPERINTENDENT AND SUPERINTENDENT'S REPRESENTATIVE

- 11.1 The Superintendent shall be the Company's representative with respect to the performance of the Works and the administration of the Contract and is authorised to give instructions in relation thereto.
- 11.2 The Superintendent may at any time review and inspect the Works, and the Contractor shall give him access at all reasonable times to the Contractor's, Subcontractor's and Vendor's facilities, quality control procedures, engineering tools and data, including computer and scheduling programs.
- 11.3 The Superintendent may reject any drawing, specification, material, equipment or workmanship which does not comply with the requirements of the Contract.
- 11.4 The Superintendent is authorised to make final decisions on all questions involving the interpretation of the specification, Drawings and documents furnished by the Company to the Contractor.
- 11.5 Any review, comment, agreement or approval by the Superintendent shall not be a waiver of the Contractor's obligations under the Contract.
- 11.6 The Superintendent may from time to time appoint a Superintendent's Representative and delegate to him any of the powers and authorities vested in the Superintendent. Any instruction or approval given by the Superintendent's Representative to the Contractor within the terms of such delegation shall bind the Contractor as though it had been given by the Superintendent, provided always that:

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

- 11.6.1 failure of the Superintendent's Representative to disapprove any work or material shall not prejudice the power of the Superintendent thereafter to disapprove such work or material and to order the pulling down, removal or breaking up thereof ;
- 11.6.2 if the Contractor is dissatisfied by reason of any decision of the Superintendent's Representative it may refer the matter to the Superintendent within seven (7) days of such decision by the Superintendent's Representative, who shall thereupon finally confirm, reverse or vary such decision within seven (7) days;
- 11.6.3 the Superintendent shall not delegate to the Superintendent's Representative the authority and powers under clause 9 (Assignment), clause 10 (Subcontracting), clause 47 (Variations), clause 54 (Suspension of Work), clause 55 (Contractor's Default), clause 56 (Consequences of Termination for Default), clause 57 (Optional Termination), and clause 60 (Time Limitation on Claims, Delay and Extension of Time).

12. COMPANY PLANS, DRAWINGS AND SPECIFICATION

- 12.1 The Contractor shall keep on the Site one copy of the Drawings and other documents provided to it by the Company, which shall, at all reasonable times, be available for inspection and use by the Superintendent, the Superintendent's Representative or by any other person authorised by the Superintendent.
- 12.2 The Contractor shall check and verify all the Drawings and other documents provided to it by the Company and shall notify the Company of any discrepancy, error or omission within twenty-one (21) days from the date of receiving them. The Company shall be responsible for the accuracy of the Drawings and other documents provided by it insofar as such inaccuracies could not reasonably have been detected by the Contractor. All reasonable costs incurred by the Contractor due to any alteration to the Works necessitated solely by inaccurate information supplied in writing to the Contractor by the Company (except those which could have been avoided by proper verification) shall be paid to the Contractor. Where the drawings, data, design and other documents have not been supplied by the Company, the Company shall have no obligation to pay any cost incurred by the Contractor.
- 12.3 The Contractor, after proper checking and verification, shall use Company supplied Drawings and other documents to develop further details and drawings for the Works as referred to in clause 13.
- 12.4 The Contractor, where directed by the Company, shall promptly provide to the Superintendent all drawings, data, design and specification provided under the Contract or developed by the Contractor.
- 12.5 All Drawings and other documents acquired from the Company or from any other source or developed by the Contractor under the Contract shall be the property of the Company and the rights and title to which shall vest with the Company and shall not be used, copied or communicated by the Contractor for any purpose other than as required for the performance of the Works.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

12.6 The Superintendent or the Superintendent's Representative may provide the Contractor such further instructions and Drawings, and documents to provide more details as necessary for clarification and performance of the Works.

13. CONTRACTOR'S DESIGN AND ENGINEERING

13.1 Design and engineering where required to be provided by the Contractor, shall be specified in the Contract and shall be subject to the Company's approval. The Contractor shall be responsible for acquiring and verifying all technical data, conducting survey of existing Site conditions, performing slit trenching where required, identifying and verifying the surface and sub-surface conditions for performing the design and engineering.

13.2 The Contractor, while performing design and engineering, shall ensure that the facilities resulting on completion of the Works meet the technical requirements, performance criteria, performance guarantees, and the necessary requirements of safe and efficient operation and maintenance.

13.3 The Contractor, before finalising its design, shall propose appropriate modifications and/or additions which it considers may achieve a better integrated or optimised design. Where the Contractor wishes to make such modifications and/or additions to the design detailed in the Technical Specification, it shall promptly notify the Company. The Company may either accept or reject such proposed modifications and/or addition. Any proposed modification of or alteration to the Contractor's engineering or design submitted to the Superintendent for approval with a view primarily to achieving economies in cost to the Contractor shall not be approved by the Company if such proposals are submitted without a commensurate reduction in the Contract Price. The Company may not approve such proposal without giving reasons therefor.

13.4 The Contractor shall prepare and submit for the Company's review and approval all designs, calculations and methodology of computing the calculations, drawings, data sheets, catalogues including any other relevant document as deemed necessary by the Company within the period specified in the Contract, and where no period is specified, the Contractor shall submit them within the period specified in the Programme. The Superintendent shall notify the Contractor of his approval or disapproval together with details of any modification considered necessary within twenty-one (21) days.

13.5 The Contractor shall attend to the Superintendent's comments, and the documentation revised by the Contractor shall be resubmitted to the Superintendent for further review and approval, and the Superintendent shall respond within fourteen (14) days of receipt of the revised documentation. In the event, however, that the Contractor fails to comply with the Superintendent's comments referred to in clause 13.4, it shall provide the Superintendent with justification for not complying. The Superintendent, where he does not agree with the justification, shall advise the Contractor within fourteen (14) days and the Contractor shall comply with the Superintendent's instructions. In the event the Contractor, on its own, introduces changes to the documents previously reviewed and commented upon by the Superintendent under clause 13.4, the Superintendent shall respond to the new changes within twenty-one (21) days. The Contractor's compliance with the procedures described in this clause 13 shall be deemed to have been built in the Contract Price and the Programme.

13.6 The Contractor shall ensure that its design and engineering is carried out in proper sequence and in accordance with the Programme to allow adequate review period for the Company,

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

including any subsequent Contractor's amendment and re-submittal as directed by the Superintendent for further review and approval until all Company comments are finally resolved. The Contractor shall not be entitled to any extension of time or resultant cost for any delay in the Works due to not following the proper sequence in preparing and submitting the drawings, not obtaining adequate Site details, not performing proper Site survey and slit trenching, late submission of the engineering, design or drawings to be prepared and submitted pursuant to the Contract.

- 13.7 The Contractor shall promptly rectify all discrepancies, errors or omissions in its engineering, design or drawings and other data supplied by it whether the design, drawings or data have been approved by the Company or not.
- 13.8 The Contractor shall not start material procurement, construction or installation work before the related engineering, design and drawings required by the Contract are approved by the Superintendent. Designs approved by the Company shall form the basis for the performance of the Works and shall not thereafter be modified in any way without the express written consent of the Superintendent.
- 13.9 The Contractor, prior to entering into binding commitments with Vendor, shall submit its procurement related specification and design (including any appropriate drawing) to the Superintendent for review. The Superintendent shall notify the Contractor of his comments within twenty-one (21) days of receipt thereof. The Contractor shall attend to the Superintendent's comments in a manner specified in clause 13.5.
- 13.10 The Contractor shall ensure that drawings submitted by it comply with the Company's General Specification for Engineering Drafting and Microfilming.
- 13.11 The Contractor, prior to issue of the Certificate of Completion or at a later date as specified in any other part of the Contract, shall submit to the Company one (1) microfilm, one (1) reproducible and six (6) copies of the as-built drawings including the Company supplied Drawings marked up as-built status of the Works as well as electronic drawings file with the same file name as the drawing number in the AutoCAD latest version on compact disc ("CD"). The Contractor shall also submit six (6) sets of Vendor/manufacturers' documents including drawings, instruction manuals, operating and maintenance manuals and the like.

14. CONTRACTOR'S GENERAL RESPONSIBILITIES

- 14.1 The Contractor shall perform and complete the Works and remedy any Defect to the satisfaction of the Superintendent, and shall provide all labour and supervision, material, Constructional Plant and all other requirements whether of a temporary or permanent nature for the execution of the Works and, as far as the necessity for providing them is specified in or can be reasonably inferred from the Contract. The Contractor shall comply with and strictly adhere to the Superintendent's instructions and directives on any matter, touching or concerning the Works.
- 14.2 The Contractor has entered into the Contract on the basis of a proper examination and interpretation of the data relating to the Works including data relating to the Site and its surroundings; the form and nature of the Site; the quantities and nature of work; details and levels of existing pipelines; cables; conduits; sewers; drains; or other existing services; any physical; surface and sub-surface condition; operation and performance; data and parameters

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

provided by the Company prior to the bid closing date; the means of access to the Site and the accommodation and other facilities required for the performance of the Works; and to have taken into account any climatic condition, Site topography, natural impediment, and all other conditions anticipated or otherwise which may appear at the Site and other information that the Contractor could have obtained from a visual inspection of the accessible areas of the Site and all other data readily available to it relating to the Works. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve it of its obligations or responsibilities under the Contract and the Contract Price shall not be adjusted in respect of any such failure.

- 14.3 The Contractor, where any further data relating to the Site is required to enable the design, performance and completion of the Works, shall within thirty (30) days of the Date for Commencement make a written request to the Company to provide such data. The Company, where such data is available in its possession, shall promptly provide such data and the Contractor shall likewise verify data so provided in accordance with its obligations under clause 14.4. However, if such data is not available, the Company shall advise the Contractor who shall make its own arrangements to carry out such investigations as reasonably necessary or to otherwise obtain such data.
- 14.4 The Contractor, before preparation of its design and engineering or within such time as specified in the Contract, shall use its best endeavours to verify and satisfy itself to the extent reasonably possible of the accuracy and sufficiency of all information furnished to the Contractor by the Company and shall perform Site survey and slit trenching where specified in the Contract to collect all Site related information necessary for preparation of design and engineering.
- 14.5 The Contractor, pursuant to its obligations under clause 14.4, where it identifies any material discrepancy, deficiency, error or conflict in any information furnished by the Company in accordance with clauses 14.2 and 14.3, shall notify the Company within seven (7) days of becoming aware of it, giving the following details in support of such notification:
 - 14.5.1 a detailed technical explanation with the necessary sketches and drawings of the notified discrepancy, deficiency, error or conflict;
 - 14.5.2 full technical details of the Contractor's alternative proposals to overcome such discrepancy, deficiency, error or conflict; and
 - 14.5.3 its proposal for any adjustment to the Contract Price and/or effect on the Date for Completion resulting from the Contractor's alternative proposals.
- 14.6 The Company, on receipt of such notification and supporting details thereof, shall review the information provided by the Contractor, and, if required, seek further documents and information from the Contractor and enter into discussions with the Contractor regarding any notified discrepancy, deficiency, error or conflict together with the Contractor's alternative proposals. If the Company is satisfied that such a discrepancy, deficiency, error, or conflict exists and is also satisfied with the Contractor's alternative proposals, any resultant changes to the Works, as applicable, shall be treated as a Variation for which an Adjustment Order shall be issued in accordance with clause 47.
- 14.7 The Contractor, without prejudice to clause 15 or to any claim made by it pursuant to clause 14.5, shall be deemed to have verified in accordance with its obligations under clauses 14.2,

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

14.3 and 14.4, the accuracy of all information provided by the Company relating to the Site, and shall not be entitled thereafter to a Variation pursuant to clause 14.6 in respect of any discrepancy, deficiency, error or conflict in such information.

15. UNFORESEEN PHYSICAL SITE CONDITIONS

- 15.1 The Contractor, subject to its obligations under clause 14, where during the performance of the Works encounters on the Site any physical condition (other than climatic conditions) that could not have been reasonably foreseen at the bid closing date by an experienced contractor on the basis of its examination and inspection of data and the Site in accordance with clause 14, shall promptly notify the Superintendent describing the physical conditions, and provide the following:
 - 15.1.1 the physical conditions on the Site that could not have been reasonably foreseen, set out the reason why the Contractor considers these to be unforeseeable, and the date such physical conditions were encountered;
 - 15.1.2 the resultant additional or modified work including the steps which the Contractor proposes to take to overcome such physical conditions;
 - 15.1.3 any additional cost that the Contractor is likely to incur; and
 - 15.1.4 the effect of such event on the Date for Completion and any material impact on any major activity dates and the Programme.
- 15.2 The Contractor, where it encounters unforeseen physical Site conditions, shall continue performing the Works using such proper and reasonable measures as appropriate, and shall comply with the Superintendent's instructions. The Superintendent, on receipt of the Contractor's notice referred to in clause 15.1 and on inspecting the Site conditions shall determine:
 - 15.2.1 whether such conditions were unforeseeable; and
 - 15.2.2 whether these would entitle the Contractor for extra cost and extension of the Date for Completion as referred to in clauses 15.1.3 and 15.1.4.
- 15.3 Where the Superintendent determines that unforeseen Site conditions referred to in clause 15.2 have an impact on the Date for Completion and/or the Contract Price, the provisions of clause 47 shall apply.
- 15.4 The Company, when determining the impact on the Contract Price due to the unforeseen physical Site conditions, shall take into consideration the cost saving to the Contractor in other parts of the Works arising from more favourable Site conditions than anticipated when submitting the bid, and shall include such cost saving in the Variations as may be required under clause 15.2.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION**16. MATERIAL SUPPLIED BY CONTRACTOR**

- 16.1 The Contractor, with the exception of material especially required to be supplied by the Company pursuant to the terms of the Contract, shall procure, supply, inspect, test and deliver to the Site all material; equipment; plant and machinery required for incorporation into the Works including material required for the Temporary Works; all special tools; jigs; templates and the like necessary for installation and maintenance; all lubricants; chemicals and spare parts necessary for pre-commissioning and commissioning of the Works. The Contractor shall ensure that material, equipment, plant or machinery and the like supplied by it for incorporation into the Works are new, free of Defect and complies with the specification described in the Contract and, where not particularly specified, of good quality and fit in every respect for the use intended.
- 16.2 The Contractor, unless the Superintendent otherwise authorises in writing, shall procure and ensure that its Subcontractor procure all material, equipment, plant or machinery for incorporation into the Works only from Vendor selected from the lists of Company-approved manufacturers.
- 16.3 The Contractor shall evaluate the Vendor's proposals for the supply of material and equipment for incorporation into the Works, having regard to its technical capabilities, cost of operation, flexibility and ease of operation, cost and ease of maintenance and the cost of and need for spare parts.
- 16.4 The Contractor, prior to ordering all material, equipment, plant or machinery for incorporation into the Works, shall submit to the Superintendent, for approval, full technical details, including all relevant catalogues, and the country of origin of all material, equipment, plant or machinery and their components, accessories and the like, and the name of the proposed manufacturers and or Vendor, based on the information submitted by the Contractor with its bid. The Superintendent shall notify the Contractor of its approval or disapproval together with details of any modification considered necessary within twenty-one (21) days of receipt of such documentation. Where samples are required to be submitted to the Superintendent or the Superintendent's Representative, they shall be equal (or superior) in all respects to the samples earlier submitted to and approved by the Superintendent.
- 16.5 The Contractor shall submit lists of all special tools, jigs and templates (referred to in clause 16.1) required for installation and maintenance to the Superintendent for review and approval prior to the ordering of the related material and equipment. Complete sets of such special tools, jigs and templates shall be used for installation of the equipment and thereafter shall be handed over to the Company at least fourteen (14) days prior to request for issue of the Certificate of Completion related to a Portion of the Works or the entire Works.
- 16.6 The Contractor, where necessary, shall airfreight to ensure the timely delivery of material, equipment and the like at the Site. The Contractor shall, as appropriate, deliver, receive, offload and store at Site all material and equipment in a manner satisfactory to the Superintendent and shall be responsible for their security. The Contractor, prior to incorporation into the Works, shall present all material and equipment to the Company for approval, and shall be used in the Works once approved.
- 16.7 The Contractor shall submit fully itemised and detailed schedules of material and equipment to the Company in quadruplicate prior to commencing the Works, properly referenced to facilitate the checking of material/equipment packing documentation and the

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

material/equipment themselves upon receipt at Site. All items appearing in the schedules must be identifiable by reference to the Contract items and the same reference numbers shall also be identified in all relevant documents.

16.8 Local Industry Preference

- 16.8.1 The Contractor, when obtaining material for product categories listed in the Company List of Approved Manufacturers and where local Kuwaiti manufacturers are also listed for such product category, must obtain quotations and give the price preference to local Kuwaiti manufactured material in accordance with the provisions of clause 39.2.5, provided that the local product meets the schedule delivery requirements and is technically acceptable.
- 16.8.2 The Contractor, where local Kuwaiti manufacturers are not listed in the Company List of Approved Manufacturers, shall use the Ministry of Commerce & Industry – Kuwait Industrial Guide of Kuwaiti manufacturers producing such products. Where local Kuwaiti manufacturers are identified in the guide, the Contractor shall obtain quotations from such Kuwaiti manufacturers, evaluate them technically and give them the price preference stated in clause 16.8.1. Where a quotation is acceptable on the foregoing basis, the Contractor must procure such product from the local Kuwaiti manufacturer.
- 16.8.3 The Contractor, where it intends to use an imported product in preference to an available local product, shall obtain the Company's approval for non-compliance with the provisions of this clause 16.8, supported with justification prior to placing a purchase order. The Contractor shall not incorporate any imported material into the Works when equivalent local material is both technically and commercially acceptable.
- 16.8.4 The Contractor shall ensure that the provisions of this clause 16.8 apply to all subcontracts.

16.9 Inspection and Testing

- 16.9.1 The requirements of this clause 16.9 as well as the other requirements specified in the Contract shall apply in respect of inspection and testing of material, equipment, plant, machinery and spare parts for the Works. The Contractor shall:
 - a) be responsible for all inspection and testing required by Governmental requirements, the Contract, appropriate codes, standards and good industry practice with respect to all material, equipment, plant, machinery and spare parts for the Works. No material equipment, plant, machinery and spare parts shall be delivered until all applicable tests and inspections have been successfully completed revealing no Defect; and
 - b) as early as possible in the procurement phase, submit to the Superintendent a detailed schedule of the inspections and tests planned for each item of material, equipment, plant, machinery and spare parts;
- 16.9.2 The Company may itself or through a third party during the manufacture and prior to delivery to the Site inspect, examine, test and carry out stage inspection of material,

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

equipment, plant and machinery to be supplied under the Contract. Where the Contractor or is required to appoint a third party to carry out inspection of material, equipment, plant and machinery it shall seek the Company's prior approval and the Contractor shall bear the cost of the third party, the cost of which shall be deemed built into the Contract Price.

- 16.9.3 The Contractor shall advise the Superintendent in writing of any off-Site inspection or testing at least fourteen (14) days in advance (or twenty-one (21) days if the off-Site inspection will occur outside of Kuwait). If no representative of the Company appears at the time and place so notified, the inspection or test may be carried out as planned and the Contractor shall promptly furnish the Company with the results of such inspection or test. All material and equipment tests certificates shall be submitted to the Company for review and/or approval.
- 16.9.4 No such inspection, examination or testing shall release the Contractor from any obligation under the Contract.
- 16.9.5 The Company or its nominated representatives may at all reasonable times, alone or with the Contractor, inspect, cause the inspection of, or witness the testing of any material, equipment, plant, machinery and spare part at their place of production or fabrication.

16.10 Spare Part

- 16.10.1 The Contractor shall provide at no extra cost to the Company, all spare parts necessary for pre-commissioning and commissioning of the Works.
- 16.10.2 The Contractor, as a condition precedent to the issue of the Certificate of Completion, for all items of equipment for which operational spare parts are normally required, shall within three (3) months of the date of the order for the relevant equipment, submit to the Superintendent the Contractor's and Vendor's manufacturer's recommended spare parts list to provide for two (2) year operation and maintenance under design conditions.
- 16.10.3 The Contractor shall ensure that the spare parts list referred to in clause 16.10.2 is in the form of an itemised list, priced on Free on Board ("FOB") basis. The FOB prices quoted by the Vendor shall be firm and fixed for ordering of such parts by the Company at any time up to one (1) year after the date of the Contractor's confirmation of the purchase order for the corresponding item of equipment. The Contractor, when obtaining quotation for spare parts, shall obtain for the Company the right to purchase in its own name all or any of the listed spare parts direct from the Vendor, on a Cost, Insurance, Freight ("CIF") Kuwaiti port basis, utilising the same FOB price basis referred to above. FOB and CIF shall have the meanings ascribed to them in the Incoterms published by the International Chamber of Commerce in its edition current on the bid closing date.
- 16.10.4 The Contractor, for each item of equipment, shall also supply a comprehensive list of spares, complete with relevant drawings and the Vendor's comprehensive spare parts manual for that equipment, to enable the Company to ascertain or verify its spare parts requirements.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

- 16.10.5 The Company shall have the option to instruct the Contractor to procure the spare parts within the one (1) year period referred to in clause 16.10.3 which shall be supplied and delivered in the Company's warehouse prior to the issue of the Certificate of Completion at the prices stated in the spare parts list and the Company shall be given the benefit of any manufacturer or supplier discount received by the Contractor.
- 16.10.6 The Contractor shall ensure that all spare parts shall be properly packed and protected and shall be marked, tagged as appropriate, and accompanied by such documentation as the Company specifies for ease of post-delivery administration, which shall include a detailed packing list for each consignment.
- 16.10.7 The Contractor shall submit to the Company a statement from the Vendor of equipment that they shall notify the Company of any cessation of production of the supplied equipment within a period of ten (10) years from the date of the appropriate purchase order, thereby enabling the Company to purchase spare parts for such equipment as required. Such notification shall take place one (1) year before the actual cessation of availability of spare parts.

17. MATERIAL SUPPLIED BY COMPANY

- 17.1 The Contractor, where the Company is responsible for supplying any material for incorporation into the Works, shall from time to time, as and when such material is required, complete the necessary requisition form as provided by the Company, which shall be checked, registered and countersigned by the Superintendent's Representative before presentation to the Company for issue of such material. The Contractor shall requisition such material at the earliest practicable opportunity after Date for Commencement and in all cases shall be responsible for giving adequate notice to the Company of its material requirements.
- 17.2 The Company-issued quantities of material shall be inclusive of a reasonable waste content. In the event that the Contractor requires additional quantities of such material due to excessive wastage resulting from bad workmanship, loss or damage, the Contractor shall be responsible for obtaining such additional material and for any delay arising therefrom in the performance of the Works. In the event the Company supplies additional material under this clause, the Company will debit the Contractors account with the full replacement cost to the Company and a ten percent (10%) administration surcharge as liquidated damages.
- 17.3 The Contractor shall carry out all normal cutting, adapting, normal cleaning and preparation of all material supplied by the Company prior to their incorporation into the Works, the cost of which shall be deemed included in the Contract Price. In the event that such material at the time of issue by the Company cannot by reason of their condition be incorporated into the Works until abnormal modifications, straightening or cleaning have been carried out, the Contractor shall immediately notify such condition to the Superintendent or the Superintendent's Representative who shall authorise such remedial work as he may consider necessary to be carried out at the expense of the Company. This shall in no way relieve the Contractor of its responsibilities under clause 18. The Company shall be liable for any Defect not apparent from the visual inspection.
- 17.4 The Contractor shall provide all labour, transportation, and cranes (except as stated in clause 17.5) cranes necessary to ensure all material or equipment supplied by the Company for

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

incorporation into the Works are collected by the Contractor from the Company's warehouse and/or workshops, loaded, transported to, and offloaded at the Site, the cost of which shall be deemed included in the Contract Price.

- 17.5 The Company shall provide at all reasonable times all available cranes to facilitate loading and offloading all material or equipment being collected or delivered by the Contractor at the Company's warehouse and/or workshops.
- 17.6 The Contractor shall promptly return to the place of issue or as otherwise directed by the Superintendent all material or equipment supplied or paid for by the Company for incorporation into the Works which are usable, and become surplus to requirements during the progress of, or upon completion of the Works. Prior to its return or delivery such material or equipment shall be examined and verified by the Company at its warehouse receiving section to judge its authenticity and condition.
- 17.7 The Contractor shall obtain receipts from the Company's storekeeper at the place of delivery in respect of all material or equipment returned under this clause 17.

18. PROPERTY IN MATERIAL AND EQUIPMENT

The Contractor shall not remove from the Site or the storage area any material and equipment supplied for the Works or paid for by the Company nor any surplus material and equipment not incorporated into the Works without the prior consent of the Superintendent or of the Superintendent's Representative, and such material and equipment shall remain the property of the Company and shall be handled, transported and delivered by the Contractor as directed by the Superintendent or the Superintendent's Representative (the cost of such handling and transportation shall be deemed included in the Contract Price). The Contractor shall promptly replace at no extra cost to the Company any such material or equipment which is lost, stolen or damaged from any cause whatsoever.

19. CONTRACTOR'S REPRESENTATIVE

- 19.1 The Contractor, before the commencement of the Works, shall notify the Company of the name of the person nominated as its representative and ensure that such representative is constantly present during the performance of the Works. The Contractor's Representative shall be responsible for managing the Contractor's personnel and for supervision of the Works, and shall receive on behalf of the Contractor notices, directives and instructions from the Superintendent or (subject to clause 11) the Superintendent's Representative. The Contractor's Representative shall have the authority to act on the Contractor's behalf. The Contractor shall not, without the prior consent of the Superintendent, revoke the appointment of the Contractor's Representative or appoint a replacement.
- 19.2 The Contractor, unless specified otherwise in the Contract Specification, shall employ a full time English-speaking Project Manager on the Works who shall be qualified, skilled and experienced in work of similar character to the Works, and shall not be engaged on the Works without the Superintendent's prior approval and shall not be removed from the Works without the Superintendent's prior agreement. Subject to the specific agreement of the Superintendent, such Project Manager may also carry out the duties of the Contractor's Representative specified in clause 19.1.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

19.3 The Contractor may nominate any of its Site personnel employed on the Contract to act as Project Manager with the Superintendent's prior approval.

20. CONTRACTOR'S PERSONNEL

20.1 The Contractor shall provide and employ in connection with the execution and completion of the Works all required personnel including engineers, supervisors, foremen, skilled and unskilled labour and any other necessary personnel. The Contractor shall ensure that the skilled personnel to be employed for the Works are fully qualified with proven experience and are employed only after passing the trade tests conducted by the Company. The Contractor shall be responsible for the professional and technical competence of its personnel and shall employ personnel who will perform effectively, respect local customs and conform to a high standard of moral and ethical conduct.

20.2 The Contractor, within the period specified in the Contract Specification, shall provide details of the key personnel and tradesmen it proposes employing on the Works for evaluation and approval by the Company. The Company shall within ten (10) days of receiving the details of the Contractor's personnel inform it of those personnel that are approved by the Company for employment or for interview and trade test. The Company may interview and trade test any of the Contractor's personnel prior to their employment on the Works or at any time thereafter. The Contractor shall arrange for the Company's interview of its personnel in consultation with the Company. The Company shall not be held responsible for any delay due to its non acceptance of the proposed candidates. The approved Contractor's personnel shall not be removed from the Works without the prior approval of the Superintendent.

20.3 The Contractor, if so directed, shall promptly remove any of its personnel or its Subcontractor's personnel where the Superintendent reasonably considers such person has misconducted himself or is incompetent or negligent in the performance of its duties, or is not conforming with any provision of the Contract or persists in any conduct which is prejudicial to safety, health, or protection of environment, or whose employment is otherwise considered by the Superintendent to be undesirable, without having to state any particular reason therefore. Such a person shall not be again employed on the Works without the permission of the Superintendent. Any person so removed from the Works shall be promptly replaced by the Contractor with one acceptable at no extra cost to the Company.

20.4 The Contractor shall ensure that its manpower is under its direct sponsorship or under the sponsorship of Company approved Subcontractor, and that such manpower is adequate for the performance of the Works and shall remain available under its sponsorship or its Subcontractor's sponsorship throughout the performance of the Works.

20.5 The Superintendent, in the event that adequate supervision is not provided by the Contractor, may suspend the Works, in such case the Contractor shall not be entitled to any time extension or cost due to such suspension.

20.6 The Contractor shall keep updated complete and detailed records of the names and categories or trade of all personnel employed by it from time to time, including time sheets stating the hours worked and wages paid to them in connection with the execution of the Contract and such records shall be made available to the Superintendent for inspection on his direction.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

- 20.7 The Contractor shall not employ any person who has resigned or been discharged from the Company, or from other contractors hired by the Company, or their subcontractors, without a written release from such employers or until a period of not less than twenty-six (26) weeks has elapsed since the person's last working day on the staff of such organisation.
- 20.8 The Contractor, for all key personnel employed for the Contract, shall provide mobile phones for communication with the Company personnel.
- 20.9 The Contractor shall transport its personnel to and from the Site, in and about the Works and shall ensure their punctual arrival at the Site. Such transportation shall be in the cabs, passenger cars or buses that are safe, reliable, roadworthy and suitable for the Site conditions.
- 20.10 The Contractor, in respect of its personnel, shall ensure timely payment of wages, provision and maintenance of necessary accommodation and welfare facilities, meals and transport, compliance with relevant labour laws including laws relating to their employment, health, safety, welfare, immigration, compliance with applicable safety regulations at the work Site and all the conditions to be observed by the Contractor. The cost of these obligations shall be deemed included in the Contract Price.
- 20.11 The Contractor shall at all times maintain good industrial relations and take reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's personnel, and to preserve peace and protection of persons on and near the Site.
- 20.12 The Contractor shall ensure that its welders have valid certificates and are fully qualified with proven experience in the execution and completion of projects of similar nature to the Works.

20.13 Kuwaitisation

- 20.13.1 The Contractor, as part of the Works, shall employ Kuwaiti citizens on the Works in accordance with the terms and conditions specified in the Contract Specification.
- 20.13.2 The Contractor acknowledges that the employment of Kuwaitis is of fundamental importance to the Company's present and future operational and strategic planning, and further acknowledges that the Contractor's non-compliance with the requirements of this clause will disrupt the Company's present and future operational and strategic planning and that the Company's actual loss and damages sustained as a result of the Contractor failing to comply with its obligations to employ Kuwaitis pursuant to the Contract will exceed any contractual entitlement the Company may have against the Contractor.

21. GENERAL OBLIGATIONS FOR SITE OPERATIONS AND CONSTRUCTION

- 21.1 The Contractor shall take full responsibility for adequacy, stability and safety of all Site operations and method of construction. The Contractor shall construct the Works in accordance with the Contract, applicable Drawings and specification, codes and relevant standards specified in the Contract, good industry practice if no code or standard is specified, and the Company's instructions.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

- 21.2 The Contractor shall furnish all necessary supervision, labour, Construction Plant, construction supplies, tools, erection equipment, temporary offices, storage facilities, all utilities and facilities and all other necessary requirements for the Works.
- 21.3 The Contractor shall make appropriate and timely arrangements and coordinate all its construction activities with the Company to ensure that all existing operating facilities of the Company may be operated safely and, as far as possible, without interruption while the Works are in progress. Where the Works requires shutdown of any operating facilities of the Company or others at any particular Site such shutdown shall be kept to the practical minimum, and shall not exceed the shutdown period agreed in the Programme.
- 21.4 The Contractor shall perform tie-ins to the existing facilities testing and commissioning in a sequential manner in accordance with the Programme and in such a way as to minimise shutdowns of any operating facility. The programme for any tie-in that require shutdown shall be agreed with the Superintendent and shall be reconfirmed by the Contractor in writing a minimum of thirty (30) days before the commencement date of any tie-in. In the event of consecutive shutdowns, a minimum interval of fourteen (14) days or such interval as specifically stated in the Contract shall be maintained between the completion of one shutdown and the start of another shutdown, and a fourteen (14) days prior notice given to the Superintendent indicating areas or sections the Contractor requires to be shutdown, subject always to the Company's operational requirements.
- 21.5 The Contractor shall plan its shutdown activities to coincide with the Company's plan for shutdown of the facilities. The Company shall not permit any planned shutdown on Thursdays, Fridays, Company and national holidays unless the Superintendent reasonably considers it absolutely necessary. The Contractor, to minimise the shutdown of the Company operating facilities, shall increase its manpower and equipment, and shall carry out the Site work continuously round the clock as necessary, the cost of which shall be deemed included in the Contract Price.
- 21.6 The Company's approval for a shutdown shall be contingent upon the Contractor having completed all pre-shutdown work and provided all material necessary to support the shutdown requirements. The Company, where the Contractor does not comply with the requirements of this clause, may not provide the required shutdown, in which event the Contractor shall be solely responsible for any delay on account of having to reschedule the shutdown.
- 21.7 The Company shall have the sole discretion to reschedule the shutdown to suit the operational requirements and the Contractor shall not claim any cost for having to reschedule the Works as required.

22. SETTING OUT

- 22.1 The Contractor shall set out the Works in relation to points, lines and the levels of reference specified in the Contract or notified by the Superintendent.
- 22.2 The Contractor shall complete the layout of the Works, establish any additional survey control marker required by the Contractor (subject to the approval of the Superintendent) and be responsible for the detailed survey of the existing conditions, all measurements necessary for the performance of the Works in accordance with the locations, lines and grades specified in the Drawings (subject to such modifications as the Superintendent may require as the Works

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

progress). If at any time during the progress of the Works any error appears in the position, levels, dimensions or alignment of any part of the Works, the Contractor, at no additional cost to the Company, shall rectify such error.

- 22.3 The Contractor shall frequently check all survey control points established by the Company and, if the Contractor or any of its Subcontractor destroy or render inaccurate any Company established survey control point, the Contractor shall promptly notify the Company and such survey control point shall be re-established by the Company at the Contractor's expense.
- 22.4 The Contractor shall provide all instruments, templates, profiles and labour in connection with the survey to be performed by the Contractor, and any survey work that the Contractor may require to carry out for the performance of the Works shall be deemed included in the Contract Price.

23. POSSESSION OF THE SITE

- 23.1 The Company shall give the Contractor possession of the Site in a manner and to the extent as may reasonably be required to enable the Contractor to commence and proceed with the performance of the Works subject to the Contractor's personnel carrying all necessary valid permits and passes. The Contractor shall ensure that its personnel use only such areas of the Site as are specifically required for the Works.
- 23.2 The Superintendent and any person authorised by him shall at all times have access to the Works and to the Site and to all places where the Works are being performed.
- 23.3 The access to and possession of the Site shall not be exclusive to the Contractor but shall be such as only to enable it to perform the Works. The Contractor shall in accordance with the directions of the Superintendent afford every reasonable facility (including free access) for any other Company contractor (whose name shall be communicated in writing to the Contractor by the Company from time to time), and its workmen and any other person employed by the Company on or near the Site. The Contractor shall perform the Works in coordination with other Company contractors to avoid delay to the Works.
- 23.4 The Contractor, without prejudice to the provisions of clause 23.3, shall ensure that no person other than the Contractor, Company approved Subcontractor and their personnel are allowed on Site without the prior consent of the Superintendent.
- 23.5 The Contractor shall ensure that its method of construction permit free unrestricted access to the Site at all times for the Company's personnel. The Contractor shall, upon the reasonable request of the Superintendent, give the Company priority and access over its own on-Site activities.
- 23.6 The Contractor shall bear all costs for special and/or temporary rights-of-way which it may require including those for access to the Site.

24. THE SITE AND TEMPORARY WORKS

- 24.1 The Contractor shall be fully responsible for the care of the Site, the Works and all Temporary Works, and in the event of any damage or loss arising from any cause, the

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

Contractor, as a condition precedent to the issue of the Certificate of Completion, shall remedy and repair the damage and loss at its own cost and ensure that the Site and the Works are in good order and condition and in conformity with the requirements of the Contract.

24.2 The Contractor, at no extra cost to the Company, shall provide and maintain a Site office, store, storage yard and the like to be used exclusively for the Works. The Company, at its discretion and convenience and for the duration of the Works, shall provide land for such facilities. The layout of the Site office and stores shall be subject to prior approval of the Company. The Contractor shall fence such areas and upon issue of the Certificate of Completion shall promptly remove fencing and leave the area clean and tidy. The details of the Site office shall be in accordance with the requirements set out in the Contract Specification.

24.3 The Contractor shall:

- 24.3.1 provide for the Site office and stores, fire extinguishers approved by the Company's HSE Team;
- 24.3.2 provide all electricity, water supply, sanitary and all necessary utilities and maintain hygienic conditions;
- 24.3.3 provide air-conditioned eating and resting facility at each Site location;
- 24.3.4 provide portable toilet for labourers at each Site location;
- 24.3.5 not use gas cooker in the Site office and use a safe hot plate;
- 24.3.6 not store flammable liquids or any combustible material inside the Site offices;
- 24.3.7 ensure that all electrical wiring and appliances are according to the electrical standard and as approved by the Company;
- 24.3.8 provide garbage containers for the Site office;
- 24.3.9 implement a safe method of refuelling the power generator by means of using safety can or hand pump;
- 24.3.10 ensure mandatory reverse parking of Contractor's vehicles in the car parking area for the Company and Contractor's personnel;
- 24.3.11 ensure that adequate space is available inside the Site office store for material storage;
- 24.3.12 ensure provision of exhaust fans for kitchen and bathrooms;
- 24.3.13 ensure that there is provision of reflective type stickers for entrance and emergency exit doors, and for entrance and exit roads;
- 24.3.14 ensure that adequate security is provided for the Site office and other Site areas;

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

24.3.15 provide mobile telephones exclusively for the Site office where there are no land telephone lines have been provided;

24.3.16 provide first aid facility for the Site office; and

24.3.17 obtain at its risk and cost any additional facility, other than those referred to in this clause 24, which it may require for the purpose of the Works.

24.4 The Contractor shall properly protect and secure any Company allocated area made available to it for the performance of the Works, including any Company facilities. The Company reserves the right (for security reasons or otherwise) to instruct the Contractor by giving it seven (7) days notice at any time during the performance of the Works to vacate the Company land and in the event, the Contractor is required to shift to an alternative location, the Company shall reimburse the Contractor the cost incurred as a result of such instruction.

24.5 The Contractor shall utilise the area allocated to it by the Company for the storage of material provided by the Company to provide adequate protection from the weather for material supplied by the Company or by the Contractor for the performance of the Works and shall ensure that such material are stored or stacked in an orderly manner and are readily available for checking by the Superintendent's Representative when directed.

24.6 The Contractor shall provide and erect at the Site temporary signboards to the Company's requirements as detailed in the Technical Specification. Upon completion of the Works the signboards shall be removed from the Site by the Contractor before the issue of the Certificate of Completion.

24.7 The Contractor, during the performance of the Works, shall regularly clear away and remove from the Site and the Site office all rubbish and surplus material as they arise and shall comply with any instruction issued by the Superintendent. On completion of the Works, the Contractor shall clear away and remove from the Site, the Site office, all surplus material, Constructional Plant, rubbish and Temporary Works of every kind and leave the entire Site and Works clean and in a workmanlike condition.

24.8 The Contractor, unless approval of an alternate location for disposal is obtained from the Superintendent, shall deliver all the solid, dangerous and inactive wastes removed from the Site to the designated Shuaiba Industrial Area for disposal in compliance with the Kuwait Municipal Council's Order MB/F25/257/12/98 dated 22 June 1998 and amendment if any, and/or any other area as and when re-designated. The Contractor shall be deemed to have allowed in its Contract Price any cost to be incurred towards removal and/or processing of waste.

24.9 The Company, if the Contractor fails to comply with clauses 24.7 and 24.8, may after giving seven (7) days notice to the Contractor have any rubbish and surplus material cleared away and deduct all costs so incurred plus ten percent (10%) towards administrative cost as liquidated damages from any money due or which may become due to the Contractor or recover it as a debt from the Contractor.

24.10 The Contractor shall promptly remove all water and sand which accumulate on the Site or in the trenches and excavations due to weather or other causes and in respect of which it shall not be entitled to claim any cost, including delay costs.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

24.11 The Company, where specified in the Contract Specification, shall provide the Contractor electric power supply for the Site office and store free of charge at one point pre-determined by the Company. The Contractor at no extra cost to the Company and in accordance with the Company approved route shall arrange for distribution of the power to the Site office and store by providing the necessary cabling, switchboard, wiring, meter and the like. The Contractor shall ensure that its electrical installation meet the Company's approved standards and code. The Company supplied power shall not be used for the purpose of construction work.

25. SUPPLY CONSTRUCTIONAL PLANT

25.1 The Contractor shall provide all Constructional Plant with all fuel and lubricants required for the performance of the Works and the Temporary Works.

25.2 The Contractor's provided Constructional Plant when brought on to the Site and the Temporary Works shall be deemed to be exclusively intended for the performance of the Works, and the Contractor shall not remove any of these except:

- 25.2.1 where it is no longer required for the completion of the Works; or
- 25.2.2 where the Superintendent has given his consent for its removal.

25.3 The Contractor, prior to deploying any Constructional Plant for the Works and at any other time during the construction stage as may be required by the Company, shall submit for inspection and approval all Constructional Plant in respect of its condition and suitability for their proposed use, and shall maintain the Constructional Plant in good order and condition at all times during its deployment at the Site. In the event a Constructional Plant is withdrawn from the Site for any reason including breakdown, it shall be inspected and approved by the Company before re-deployment.

25.4 The Contractor, prior to commencing Site work, shall cause its lifting equipment to be inspected, tested and certified by and in accordance with the regulations of Lloyd's Register of Shipping or an equivalent approved classification society, the cost of which shall be deemed included in the Contract Price. The Contractor shall ensure that its lifting equipment is used within the limits specified in the relevant certificate, and operated by those licensed to operate that category of equipment. The Contractor shall provide to the Company annual inspection certificates for all lifting equipment such as ginpoles and cranes supplied by it.

25.5 The Contractor shall produce the classification society's certificates for its lifting equipment for inspection of the Superintendent's Representative prior to commencing Site work and whenever directed by the Superintendent. The Contractor acknowledges that certification by an agent of a classification society shall not be accepted, and that lifting equipment not having a valid Lloyd's or equivalent approved classification society certificate shall not be allowed on Site.

25.6 The Contractor shall ensure that all fuel and lubricating oils necessary for running and maintenance of its Constructional Plant shall wherever possible be Kuwait Oil products. The Company shall be entitled to carry out audit of the Contractor's records and/or Constructional Plant to ensure the Contractor's compliance with this obligation.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

25.7 The Contractor shall supply all consumable material including any instrument and other items required for the performance and testing of the Works, the cost of which shall be deemed included in the Contract Price.

26. SANITARY ARRANGEMENTS

The Contractor shall provide at Site all requisite sanitary arrangements in accordance with the applicable municipal regulations and Company requirements. Where the Contractor fails to provide adequate sanitary arrangements, the Company may after giving seven (7) days notice to the Contractor provide and maintain such arrangements and charge the Contractor all such costs incurred plus ten (10%) per cent towards administrative cost as liquidated damages.

27. SUPPLY OF WATER

27.1 The Contractor, at all times during the performance of the Works, shall provide all drinking and other water at the Site including necessary arrangements for transportation and storage, the cost of which shall be deemed included in the Contract Price.

27.2 The Company, where specified in the Contract Specification, shall supply for the Works subject to the following:

- 27.2.1 water (i.e. other than potable water), which the Contractor shall collect free of charge (avoidable waste excepted) from the Company's water tanker loading points and transport at its expense to the place where used;
- 27.2.2 for Works to be executed in North Kuwait, only brackish water may be so obtainable without guarantee of availability;
- 27.2.3 the Contractor shall ensure that there is no undue or wasteful use of water; and
- 27.2.4 the Contractor shall be responsible for providing at its expense all necessary pipe work fittings, hoses and storage.

28. SAFEGUARDING EXISTING FACILITIES

28.1 The Contractor, where the nature of the Works warrants, shall safeguard all buried or exposed pipelines, cables and other installations and shall take all steps to acquaint itself with the line, levels and positions of all such installations before commencing any work. The Contractor shall exercise extreme care when carrying out any activity or task adjacent to or in the vicinity of any of the Company's installations to ensure that no damage is inflicted on them. The Contractor, wherever necessary for the safe operation of the Works, shall supply and install Company approved protective barriers between existing installations and the Works.

28.2 The Contractor shall ensure that compacting applied over or close to installations shall not endanger them in any way. Where necessary, only hand compaction shall be employed. The Contractor shall use distributed loading, not damage roads, roadside fixtures, underground

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

cables, overhead transmission lines and their supports, tracks, pipe crossings or bridges of the Company or others.

- 28.3 The Contractor, where the nature of the Works requires it to use waterborne transport, the provisions of clause 28.1 shall be construed as though roads and tracks include a pier, jetty, quay wall or other structure related to a waterway or under-water installation and vehicle include craft, and shall have effect accordingly. The Contractor shall ensure that Constructional Plant in transit to and from the Site or otherwise utilised on the Works does not damage roadside fixtures, underground cables, overhead transmission lines and their supports.
- 28.4 The Contractor, where its Site operation is in the vicinity of existing facilities and requires specific protection of existing installations, shall at least fourteen (14) days before commencing such Site work submit a detailed procedure for the protection of all existing installations, services and facilities. The Company shall, within ten (10) days, either approve the Contractor's submittal or direct the Contractor to make changes.
- 28.5 The Contractor, during construction, shall ensure that all valves, pipelines and the like are safely and securely supported at all times to the satisfaction of the Superintendent's Representative, and shall on no account use such facilities as part of its construction operations to support or strut form work, act as kentledge or anchors or to support staging for labourers, material or plant.
- 28.6 The Contractor, where it causes or allows damage to be caused to any existing pipeline, cable or other services, road, track, pipe crossing, bridge, other installation, services, facilities and the like belonging to the Company or third parties, shall promptly and at its cost repair and make good the damage. Where the Contractor fails to promptly repair the damage, the Company may at its discretion after giving seven (7) days notice to the Contractor, make good any damage caused by the Contractor by using other contractors or the Company's own resources and in such case all costs of repairs including ten percent (10%) towards administrative cost as liquidated damages shall be payable by the Contractor. In case of failure, the Company shall recover all such costs from the Contractor as a debt or may deduct from any money due or that may become due to the Contractor under this or any other contract between the Company and the Contractor without notice or judicial proceedings.

29. INSPECTION, TESTING AND COMMISSIONING

- 29.1 The Contractor shall be responsible for all inspection and testing required by law, appropriate codes, sound engineering and construction practices and the Contract. The Contractor shall provide whatever inspection and testing are required to discover any deviation from the Contract or any Defect in equipment, material or workmanship. All such inspection and testing shall take place in time to avoid delaying completion of the Works and shall be performed at no additional cost to the Company.
- 29.2 The Company shall have the right at all reasonable times to inspect, or cause the inspection of, or witness the testing of any part of the Works while it is in progress.
- 29.3 The Contractor, when it considers that the Works are ready for testing and commissioning, shall notify the Superintendent and both parties shall agree a date on which testing shall commence. The Contractor shall ensure prior to the commencement of testing, that the

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

necessary instruments and test equipment are ready to enable uninterrupted testing of the Works.

- 29.4 The Contractor shall present in writing for the Superintendent's approval procedures for pre-commissioning, commissioning and performance acceptance testing of the Works, at least sixty (60) days before the scheduled commencement of the pre-commissioning activities, and the Contractor shall ensure that all the inspection and testing requirements as specified in the Drawings and other documentation, the Contract and as prescribed by the manufacturer are complied with. Performance acceptance testing and commissioning shall take place after the Superintendent's approval of the procedures submitted by the Contractor
- 29.5 The Company may direct the Contractor to carry out any additional test or may have them carried out by independent third parties. The Company shall bear the cost of any such additional test, which have been carried out by the Contractor and are subsequently directed by the Company to be re-performed. In the event the test results are found to be not identical with the ones already carried out by the Contractor, the Contractor shall bear the cost of any such additional test so directed by the Company.
- 29.6 The Contractor shall provide adequate supervision at all times during the tests and shall be responsible for the safe and proper operation of the testing, and commissioning work during that period.
- 29.7 The Contractor shall ensure that all testing, commissioning and performance testing where required are carried out in the presence of the Superintendent's Representative.
- 29.8 The Contractor shall promptly rectify at no extra cost to the Company any Defect found during the inspection, testing and commissioning.
- 29.9 The Contractor shall submit all test results to the Superintendent's Representative for approval before commissioning the Works.
- 29.10 The Contractor shall not cover up or put out of view any work without the approval of the Superintendent or the Superintendent's Representative and shall serve on the Superintendent a notice of its intention to cover up, in order to permit the Company to examine and measure any work which is about to be covered up or put out of view. The Superintendent and the Superintendent's Representative shall ensure that their examination and measurement of work is carried out in such a manner as to avoid unreasonable delay to the progress of the Contractor in its performance of the Works.

30. EXAMINATION OF COVERED WORK

The Contractor, when directed by the Superintendent or the Superintendent's Representative shall uncover any part of the Works for examination, measurement and testing or make openings in or through and shall reinstate and make good such part to the satisfaction of the Superintendent or the Superintendent's Representative. If any part of the Works which has been covered up or put out of view as a result of the provisions of this clause 30 and is subsequently directed by the Company to be uncovered for re-examination and the works are found to be executed in accordance with the Contract, the costs of uncovering, reinstating and

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

making good shall be borne by the Company, but in all other cases such costs shall be borne by the Contractor.

31. DEFECTIVE WORK

31.1 The Contractor shall, as and when it discovers any Defect during the performance of the Works and/or is instructed by the Superintendent or the Superintendent's Representative:

- 31.1.1 promptly remove from the Site any material or equipment supplied by the Contractor which are not in accordance with the Contract;
- 31.1.2 promptly substitute material or equipment for those removed pursuant to clause 31.1.1; and
- 31.1.3 promptly remove or re-execute (notwithstanding any interim payment made therefore) any work which, in respect of material, equipment, workmanship or design for which it is responsible is not in accordance with the Contract.

31.2 The Company, where the Contractor does not comply with any instruction issued by the Superintendent under clause 31.1 within seven (7) days immediately following the date of such instruction, may employ and pay others to execute any work which may be necessary to give effect to such instruction, and all costs incurred in connection with it, plus ten percent (10%) towards administrative cost as liquidated damages shall be recoverable from the Contractor by the Company as a debt or may be deducted from any money due or which may become due to the Contractor under this or any other contract between the parties, without notice or any judicial proceeding.

31.3 The Company, where the Contractor has failed to rectify any specific deviation from the requirements of the Contract in respect of any material, equipment, workmanship and any shortfall in performance, may at its sole discretion to accept such deviations with a commensurate reasonable reduction in the Contract Price to be determined by the Superintendent.

32. URGENT WORK

The Superintendent, where urgent measures are necessary, may verbally order (and as soon as reasonably practicable thereafter confirm) the Contractor to perform any work which in the opinion of the Superintendent is necessary to avoid the risk of an accident. The Contractor, on receipt of a verbal instruction from the Superintendent, shall immediately carry out the work as instructed. If the Contractor fails to carry out the Superintendent's orders immediately, the Company may use its own or other resources and personnel to execute such emergency work. If the work executed by the Company is of the kind that the Contractor was liable to perform, then all costs and expenses so incurred by the Company plus 10% as liquidated damages towards administrative costs shall be recoverable from the Contractor as a debt and/or from the Performance Bond and/or any money due or which may become due to it under this or any other contract between the parties. However, where the Contractor although not liable carries out the work it is directed to perform, the Company shall pay the Contractor for such work at the rates set out in the Contract for similar work. In the absence of availability of rates

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

in the Contract, the Contractor shall be paid the reasonable prevalent commercial market rates agreed between the Superintendent and the Contractor.

33. WARRANTIES

33.1 The Contractor warrants that:

- 33.1.1 it possesses the specialised knowledge, expertise, skills and experience necessary to enable it to comply with the requirements of this Contract in all respects;
- 33.1.2 each member of its personnel shall be sufficiently qualified, skilled, experienced and competent to perform the Works safely, reliably and to the high standards reasonably to be expected from personnel of an experienced contractor;
- 33.1.3 it shall exercise the degree of professional skill, care and judgment in the performance of the Works and as it is reasonable to expect from a contractor possessing the specialised knowledge, expertise and experience to perform a project of similar size, scope, nature and complexity as the Works;
- 33.1.4 it shall perform the Works in accordance with good industry practices and relevant standards and shall comply with all relevant Kuwait national and local laws and regulations applicable to the Works, the requirements of the Contract and the Superintendent's instructions and directions on any matter arising out of or in connection with the Works;
- 33.1.5 it shall apply itself with due diligence to the performance of the Works promptly and expeditiously, and shall furnish all resources and personnel required for the Works;
- 33.1.6 all items of Constructional Plant, equipment and tools utilised by it for the performance of the Works shall be maintained at all times in a safe and good working condition and shall be fit for their respective intended purposes;
- 33.1.7 all material and products furnished by it and its Vendor and Subcontractor and or utilised in the Works shall be new and free from Defect, and shall meet the specification relating to them and all quality standards and other requirements and shall be fit for their intended purposes;
- 33.1.8 it shall perform its design, engineering and construction in accordance with sound engineering design, procurement and construction principles and good industry practice, all applicable codes and mandatory regulations, so that its design and engineering shall be such as to permit the Works and all components thereof to comply with the requirements of the Contract; and
- 33.1.9 it shall ensure that the warranties or guarantees relating to all material and equipment supplied by it, its Subcontractor and Vendor and incorporated into the Works vest with the Company, and shall render the Company every assistance in enforcing such guarantees and warranties. The provisions of this clause 33.1.9 shall survive the completion of the Works or termination of the Contract.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION**34. HEALTH, SAFETY AND ENVIRONMENT**

- 34.1 The Company places prime importance on health, safety and environment (“HSE”) issues and requires that the Contractor adheres and actively pursues the highest standards of HSE performance.
- 34.2 The Contractor, without prejudice to clause 39, shall be deemed to have acquainted itself and shall comply insofar as applicable with the terms, standards and specification stated in Resolution No. 210 for 2001 issued by the Environment Public Authority containing the Executive Terms of Reference for Law No. 21/1995 amended by Law No. 16/1996.
- 34.3 The Contractor shall take full responsibility for the adequacy, stability and safety of all its operations and methods necessary for the performance of the Works and shall ensure that the Works are carried out in accordance with the requirements of HSE stipulated in Kuwaiti law, Governmental regulations, guidelines of statutory bodies and safe working practices as required by the Company. The Contractor shall strictly comply with the Company’s latest version of Fire and Safety Regulations and Health, Safety & Environmental Management Systems (“HSEMS”) Guidelines for Contractors existing on the date prior to the last date for submission of bid which shall form part of the Contract.
- 34.4 The Contractor shall submit a preliminary HSE plan with its bid based on Company’s Fire and Safety Regulations and HSEMS Guidelines for Contractors and other requirements stipulated in the tender document. The HSE plan shall be for all phases of the Works.
- 34.5 The Contractor, within fourteen (14) days from the Date for Commencement unless otherwise specified in the Contract, shall submit for the Superintendent’s approval its detailed HSE plan based upon the preliminary HSE plan. The Company will within fourteen (14) days approve or direct the Contractor to make amendments to ensure that the HSE plan is in accordance with the requirements of the Contract.
- 34.6 The Contractor shall ensure that its personnel and Subcontractor’s personnel are fully familiar and shall comply with Company’s Fire and Safety Regulations, HSEMS Guidelines and Contractor’s approved HSE plan. The Contractor prior to the Date for Commencement shall attend an orientation meeting with the Superintendent’s Representative. The Contractor shall also ensure that all its personnel and Subcontractor’s personnel are given HSE awareness training which enables them to carry out the Works safely. The Contractor shall ensure that at least one of its HSE personnel possesses a bachelor degree in engineering.
- 34.7 The Contractor shall ensure that the Site work is carried out only after a work permit or excavation permit and/or other permits are obtained from the Company. The Contractor shall obtain work permit and excavation permit in a timely manner so as to ensure uninterrupted progress of the Works. The Contractor, as and where applicable, shall obtain permits, approvals and authorisations from Government and other related agencies.
- 34.8 The Contractor shall provide all necessary safety equipment for the Works and all other similar requirements including; watchmen, fire extinguishers, adequate and appropriate lighting during hours of darkness and safe lighting in confined places where natural light is obscured, adequate protection for the public and other persons including road signs, warning lights, notices, barricades and other protection to permit work to be carried out efficiently, satisfactorily, and safely; and to permit thorough inspection of the Works.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

34.9 The Contractor shall provide its personnel and its Subcontractor's personnel with personal protective clothing and equipment, such as hard hats, gloves, safety shoes, safety glasses, breathing apparatus, personal hydrogen sulphide ("H₂S") gas detectors and any other appropriate safety wear which may be required in connection with the safe performance of the Works, and which shall be maintained by the Contractor in good condition. The Contractor shall ensure that all its personnel's protective equipment complies with the relevant international standard specification and are presented to the Superintendent for approval prior to their use.

34.10 The Superintendent or the Superintendent's Representative may test at any time any item of the Contractor's Constructional Plant, notwithstanding the provisions of clause 25.3. The Contractor shall remove and replace at no extra cost to the Company any item of Constructional Plant which in the opinion of the Superintendent or the Superintendent's Representative, is unsafe.

34.11 The Contractor shall ensure that all Works are carried out with due diligence to the preservation of air, water, soil and animal and plant life. Procedures adopted in this respect shall be in compliance with applicable Company's HSEMS Guidelines, environmental guidelines and regulations and with all regulatory requirements of the State of Kuwait. In the absence of specific national, regional or international standards or guidelines, normal good international oil industry practices shall be adopted.

34.12 The Company shall not permit disposal of untreated sewage, oil spills, chemicals and the like to ground. The method of sewage disposal shall be subject to the Company approval. The Contractor shall collect untreated sewage in appropriate containers and remove it from the Site and transport it to State approved disposal facilities.

34.13 The Company may inspect the Site from time to time to ascertain the Contractor's safety preparedness and ensure compliance with the Company's Fire and Safety Regulations as well as with the Contractor's approved HSE plan, and that the Works are being performed in accordance with safe working practices.

34.14 The Superintendent or the Superintendent's Representative may order the cessation of any work, which in his sole opinion, he reasonably considers is not being carried out in accordance with safe working practices. Work so suspended shall not be resumed until the Contractor has satisfied the Superintendent or the Superintendent's Representative to the adequacy of the safety precautions employed. The Contractor shall not be entitled to claim for extra expense or lost time arising out of any reasonable order to cease work for safety or for any reasonable requirement to take adequate safety measures having regard to the circumstances of the Works.

34.15 The Contractor shall inform the Company immediately of any incident causing death, injury to personnel or damage to any property including near misses, followed by an accident/incident report within twenty-four (24) hours. The Contractor shall hold a thorough incident investigation immediately after any incident, determine the cause, and take preventive measures to avoid re-occurrence. The Contractor shall submit such report to the Superintendent. The Contractor if directed by the Company shall demonstrate mock-up of the accident and the corrective action taken to prevent such reoccurrence in the Company's HSE forum and safety meetings.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

- 34.16 The Contractor, in case of any emergency, shall immediately mobilize all resources to combat the emergency and coordinate with the Company and Company's other contractors.
- 34.17 The Contractor shall take all necessary measures to protect the Works and the Company's existing facilities against accidents and occupational hazards.
- 34.18 The Contractor shall adhere to the Company's driving procedures and specified speed limits in Company's operating areas and within Ahmadi. In the event that any of the Contractor's personnel do not follow the speed limits, the Company may direct the Contractor to replace such personnel at no additional cost to the Company.
- 34.19 The Contractor's HSE performance shall be measured with regards to their compliance with the requirements stated in this clause 34 and in the Company's HSEMS Guidelines for Contractors and the Company's Fire and Safety Regulations.
- 34.20 The Contractor shall conduct monthly advanced safety audit ("ASA") using the Company guidelines and forms as directed by the Superintendent and as further specified in the Contract Specification.
- 34.21 The Contractor shall not use portable electronic devices in the Company operational areas unless such devices are certified to be intrinsically safe by an approved certifying agency. Such devices include mobile phones; wireless devices; laptops; palmtops; organisers; pocket PCs; cameras; radios; audio and video equipment and the like.
- 34.22 The Contractor acknowledges that photography is prohibited in the Company operational areas and that the Contractor shall not use in those areas, mobile phones, watches and all other equipment and tools that have photographic features.
- 34.23 The Contractor shall ensure that buses, cars, trucks, vans and other vehicles shall:
 - 34.23.1 not be older than 5 years at any time when utilised for the Contract;
 - 34.23.2 be regularly serviced and maintained in accordance with the manufacturers' recommendation; and
 - 34.23.3 be subject to inspection by the Company's Transport Operation Team as per agreed schedule.
- 34.24 The Contractor shall fully comply with the Company's Fire and Safety Regulations and HSEMS Guidelines for Contractors with respect to all vehicles.
- 34.25 The Contractor shall ensure that all its drivers comply with the State regulations and State Traffic Department rules. The Contractor shall ensure that all its personnel shall use seat belts during transportation. The Contractor shall not transport personnel neither standing nor sitting on the floor of buses or in the rear or bed of trucks nor under a makeshift canopy
- 34.26 **Unexploded Ordnance Disposal**
 - 34.26.1 The Contractor acknowledges and is placed on notice that unexploded ordnance disposal within the confines of the Site, together with the designated access roads, designated areas for the Contractor's office, lay-down areas and other temporary

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

facilities has been performed on behalf of the Company by professional ordnance disposal contractors using visual and/or mechanical means. The Contractor shall obtain an explosive ordinance clearance certificate for the Site from the Superintendent.

34.26.2 The Contractor further acknowledges and is placed on notice that due to sand coverage and possible re-introduction of explosive ordnance due to winds and subsequent movement of sand, undetected explosive ordnance may be within the Site and other designated areas and/or be reintroduced into such areas, and that there are potential dangers concerning the discovery of, and making safe, such newly discovered items of explosive ordnance.

34.26.3 The Company has taken reasonable precautionary measures to ensure that the Site and surrounding areas are free from unexploded ordnance, the Contractor shall nevertheless shall exercise extreme care during the performance of the Works, and at all times be vigilant, exhorting its personnel to take extreme care as to the dangers of explosive ordnance.

34.26.4 The Contractor shall include as part of its personnel orientation programme for the Works, unexploded ordnance recognition, precautions and action upon discovery programme, such programme shall be:

- a) mandatory for all personnel, including its Subcontractor's personnel;
- b) conducted prior to the performance of the Works and to the employment of any person upon the Works; and
- c) conducted in the native language(s) of the personnel participating in the orientation programme and subsequently to be employed on the Works.

34.26.5 The Contractor shall include the unexploded ordnance recognition, precautions and action upon discovery programme, together with all other procedures and the like pertaining to explosive ordnance within its safety plan for the Works.

34.26.6 The Contractor, where it discovers unexploded ordnance, shall immediately implement the necessary safety procedures to secure the area and shall immediately notify the Superintendent, who shall effect the disposal of the unexploded ordnance.

34.26.7 The Contractor, where it requires for the purpose of the performance and completion of the Works or otherwise where it is required by the Superintendent to utilize areas not ascertained by the Company as being cleared of unexploded ordnance, shall immediately notify the Superintendent that clearance of the concerned area is necessary.

34.26.8 The Contractor, under no circumstances whatsoever, shall utilize any area of the Site, designated access roads, designated areas for the Contractor's offices, lay-down areas and other temporary facilities that have not been declared cleared of unexploded ordnance.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

35. IDENTIFICATION AND PASSES

- 35.1 The Contractor shall provide each of its personnel with an identification badge or card showing the Contractor's name, and the name, registration number and a recent photograph of the personnel.
- 35.2 The Contractor shall apply for passes for its personnel, equipment and vehicles at least fourteen (14) days prior to commencing any Site related activities for the Works within the Company restricted areas and sufficiently in advance before commencing any Site activities in the areas requiring permit from Kuwait National Petroleum Company or from any other authority. The Company shall issue passes for entry into restricted work areas subject to the Contractor applying for them on prescribed forms obtained from the Company with all relevant particulars and producing evidence of sponsorship of all manpower and vehicles to be deployed on the Works.
- 35.3 The Company may not issue passes to personnel not sponsored by the Contractor or its Subcontractor and the Contractor shall not be entitled to claim for any resultant delay or cost.
- 35.4 The Contractor shall be responsible for obtaining all passes from the State authorities where necessary for the performance of the Works.
- 35.5 The Contractor's vehicles and equipment shall be permitted into restricted work areas only after the Contractor has obtained restricted area passes for the operators and drivers, and work permit with entry passes for the relevant vehicles or equipment.
- 35.6 The Contractor is aware that the Company's operational areas are restricted areas, and shall comply with the specific requirements for performing the work in areas that are designated hazardous.
- 35.7 The Contractor shall ensure that all its personnel shall carry with them at all times whilst engaged at the Site, identification badge or card, restricted area pass together with any other passes as may be required from time to time by the State authorities.
- 35.8 The Contractor, with reference to clauses 35.2 and 35.5, shall submit all applications for restricted area passes to the Company's concerned team through the Superintendent.
- 35.9 The Contractor shall ensure that all passes issued to its personnel and its Subcontractor's or Vendor's personnel are promptly returned to the Superintendent upon their expiry or on completion (or earlier termination) of the Works or at the time of dismissal of any such personnel.

36. INDEMNITIES

- 36.1 The Contractor shall be liable for, and shall indemnify and keep indemnified the Company against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of death, injury or damage to any person (other than Company personnel) or damage to property including any property of the Company and or third party whatsoever which may arise out of or as a consequence of the performance of the Works.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

36.2 The Contractor shall be liable for, and shall indemnify and keep indemnified the Company against, all losses and claims for injury or death to any workman or other person in the employment of the Contractor or its Subcontractor, and all losses and claims for damage to Contractor's or its Subcontractor's property which may arise out of or as a consequence of the performance of the Works.

36.3 It is expressly agreed that neither party shall be liable to the other for any consequential, indirect or special damages, including loss of profits and business interruptions howsoever caused. Each party shall defend, indemnify and hold the other party harmless in respect thereof.

36.4 The Contractor's liability under clause 36.1 shall not exceed the limit of insurance required to be maintained by the Contractor and the Contractor shall have no responsibility or liability to the Company or third parties beyond such limit, all of which excess liability is expressly assumed by the Company and the Company shall indemnify and keep indemnified the Contractor against all causes of action and liability in excess of the limit of insurance to be maintained by the Contractor provided that such liability is not as a result of the Contractors and/or its Subcontractor gross negligence or wilful misconduct. The limitation of liability shall not apply to the provisions of clause 52.

36.5 Without prejudice to clause 36.4, the indemnities specified in this clause 36 are given by the parties regardless of the cause of injuries, death, loss or damage and regardless of whose liability the injuries, deaths, losses, damage and claims might otherwise be.

36.6 Excepted Risks

36.6.1 Excepted Risks occur where loss or damage is caused to the Works or any part thereof by reason of:

- war (whether declared or not), hostilities, invasion, act of foreign enemies;
- rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war within Kuwait;
- riot, commotion or disorder within Kuwait by persons other than the Contractor's personnel and other personnel of the Contractor and Subcontractor;
- munitions of war, explosive material, ionising radiation or contamination by radio activity, within Kuwait, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radioactivity; or
- pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

36.6.2 In the events referred to in clause 36.6.1, the Company shall pay to the Contractor all sums payable in respect of the Works executed, notwithstanding that the same be lost, destroyed or damaged, and will pay to the Contractor the replacement value of all Temporary Works and all parts thereof lost, destroyed or damaged to the extent such Temporary Works are necessary to be reinstated for Contractor to complete the Works. If the Company directs the Contractor in writing to make good any loss or damage to the Works thereby occasioned, it shall be subject to Variations. Where the Company does not require the Contractor to make good any loss or damage to the

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

facilities thereby occasioned, the performance of that part of the Works thereby lost, destroyed or damaged may be excluded through Variations or, where the loss or damage affects a substantial part of the Works, the Company may terminate the Contract pursuant to clause 57.

36.7 Liens

The Contractor shall take full responsibility for the payment of Subcontractor under all subcontracts and for the management of all claims for payment thereunder, including payments to all Subcontractor of any tier, and shall take all proper precautions to prevent the imposition of any lien or charge against any property of the Company and to indemnify and defend the Company against any and all claims, demands, actions, suits, proceedings and judgments which may be brought or secured against the Company by reason of the Contractor's failure to make payments under any subcontract.

36.8 Limitation of Liability

36.8.1 The maximum liability of the Contractor to the Company for all matters in connection with the Contract shall be 20% of the Contract Price. Notwithstanding the foregoing, liabilities of the Contractor with respect to the following amounts shall not be subject to the limitation of liability provided for in this clause 36.8.1:

- a) costs recoverable by the Contractor from insurance;
- b) liabilities arising under clause 39 (Applicability of State Laws);
- c) liabilities under clause 38 (Taxes);
- d) liabilities under clause 52 (Intellectual Property Rights);
- e) liabilities under clause 58 (Liquidated Damages);

36.8.2 Nothing in this clause 36.8 shall limit the Contractor's liability for death or personal injury under the provisions of clause 36.2.

37. INSURANCE

37.1 The Contractor and its Subcontractor (if any) shall effect insurances for the amounts specified in the Contract Specification until the issue of the Final Acceptance Certificate on primary loss basis (and not concurrent or excess) over the other valid insurances which may be available to the Company.

37.2 The Contractor shall effect and maintain an Erection All Risks Policy, with the limits as specified in the Contract Specification, in respect of the interest of the Company and the Contractor for any one occurrence, the number of occurrences being unlimited, covering:

37.2.1 physical loss or damage for the full value of the Contract Price (replacement cost basis) of all Works, including the value of all material and equipment supplied by the Company (if any);

37.2.2 any loss or damage to Company's property located on, adjacent to or surrounding the Site on primary loss basis and not concurrent or excess over the other valid insurances which may be available to the additional insured with limit specified in the Contract Specification for any one occurrence; and

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

37.2.3 Constructional Plant brought on the Site by the Contractor to their full replacement cost, with an endorsement to cover passive war risk property damage.

37.3 The Contractor shall effect and maintain a General Third Party Liability Policy, covering its liabilities under clause 36.1 and shall name the Company as principal, endorsed with a cross liability clause whereby the Company and the Contractor shall be third parties to each other. The cover under this General Third Party Liability Policy shall be up to the limit specified in the Contract Specification for any one occurrence, the number of occurrences being unlimited. The policy shall include cover for fire and explosion risks, the use of lifting equipment and damage to underground property.

37.4 The Contractor shall effect and maintain a Workmen's Compensation Policy in accordance with Kuwait labour law and Employers Liability Policy with a minimum limit as specified in the Contract Specification for any one occurrence the number of occurrences being unlimited covering its liabilities under clause 36.2, and with an endorsement to cover passive war risk injury or death.

37.5 The Contractor shall effect and maintain the insurances specified in this clause 37 with an insurance company approved by the Company to meet the requirements of the Contract. The Contractor shall, prior to the Date for Commencement and whenever required by the Company, produce to the Company the policy or policies of insurance and the receipts of the current premiums.

37.6 The Contractor's obtained insurance policies under clauses 37.3 and 37.4 shall include a waiver of subrogation in favour of the Company in terms that the insurer where it is subrogated to the insured's rights of recovery in respect of any claim shall not exercise any such right against the Company and/or its personnel, representatives and agents.

37.7 The Company may on the Contractor's failure to effect and keep in force the insurances required under the Contract obtain and keep in force any such insurance not obtained or kept in force by the Contractor and pay any such premium as may be necessary for the purpose and from time to time deduct the amount so paid by the Company from any amount due or which may become due to the Contractor or recover it as a debt due from the Contractor under this Contract.

37.8 All insurance policies effected by the Contractor under this clause 37 shall contain the provision that they shall not be amended, deleted or permitted to lapse without the express prior approval of the Company.

37.9 Deductibles under the insurances maintained by the Contractor or its Subcontractor under this clause 37 shall be for the Contractor's and or its Subcontractor's account.

38. TAXES

38.1 The Contractor shall pay all taxes, charges or levies of whatsoever nature payable by the Contractor under Kuwaiti law, in respect of or in connection with this Contract, including income or benefit derived from payments received by the Contractor, none of which shall be reimbursable by the Company.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

- 38.2 The Contractor shall comply with the provisions of Decree No. 3 for 1955 and any subsequent amendment or re-enactment thereof. The provisions of this clause shall equally apply to any tax, charge or levy of whatsoever nature payable by the Contractor under the law of any other country in respect of or in connection with this Contract.
- 38.3 The Contractor, prior to the issue of the Final Acceptance Certificate, shall submit a certificate from the Income Tax Control Office of Kuwait to the effect that its tax liability arising under the Contract has been discharged and until such certificate is submitted to the Company, the Contractor shall comply with the provisions of clause 64.

39. APPLICABILITY OF STATE LAWS

- 39.1 The Contractor, insofar as applicable, shall comply with all relevant laws, rules and regulations of the State of Kuwait regarding any matter affecting the Contract and shall indemnify the Company against all penalties and liability of every kind for breach by it of any such law, rule and regulation.
- 39.2 The Contractor, without prejudice to the generality of clause 39.1, shall be deemed to have acquainted itself and shall comply with the following:
 - 39.2.1 Article 114 of law No. 61/76 concerning Social Security;
 - 39.2.2 Order No. 77/1984 (Ministry of Social Affairs and Labour) concerning the Issue of Work Permits to non-Kuwaiti Workers in the Private Sector;
 - 39.2.3 Law No. 18/1978 concerning the Rules of Safety and the Protection of Public Utilities and Resources;
 - 39.2.4 Law No. 45/1978 concerning the protection of environment;
 - 39.2.5 Orders of the Council of Ministers No. 7.3/85, 28/86, 6/1987 and 282/2000 and as amended from time to time concerning the Protection of Local Industrial Products and concerning the Protection of Local Industry respectively;
 - 39.2.6 Articles 33 and 35 of Labour Law No. 38/64 and Order No. 104/1994 (Ministry of Social Affairs and Labour) regarding working hours, overtime and rest day of the personnel employed by the Contractor;
 - 39.2.7 Law No. 19/2000 relating to the employment of Kuwaiti manpower and Resolution No. 904/2002 of the Council of Ministers and any other rule or regulation framed thereunder;
 - 39.2.8 Order of the Council of Ministers No. 157/2005 concerning outdoor working hours between 1200 hours and 1600 hours during the summer months;
 - 39.2.9 Law No. 25/1996 relating to declaration of commissions in connection with State contracts, and where such law is applicable or becomes applicable to this Contract, the Contractor shall serve on the Superintendent within the time limit specified by such law a declaration in the format set out in an attachment to the Form of Tender; and

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

39.2.10 Ministerial Order No. 44/1985 issued by the Ministry of Finance and Economy concerning notification by contractors about their subcontractors.

39.3 The Contractor's failure to provide adequate manpower for the performance of the Works for any reason including its non-compliance with all or any of the laws, rules and regulations (including Ministerial Orders) practices and procedures pertaining to the recruitment of local and foreign labour shall not entitle the Contractor to an extension of time, postponement of the Date for Commencement or an extension of the Date for Completion.

39.4 The Contractor shall comply with the Kuwait import and customs rules and regulations applicable to the shipment and import of goods or any part thereof into Kuwait.

39.5 The Contractor shall be responsible for all necessary documentation required for customs clearance and material, equipment, construction equipment, spare parts, and the like. The Company shall issue the necessary certification required to assist the Contractor for customs clearance purposes.

39.6 The Contractor shall be responsible for and shall bear all costs of customs and import duties, port handling charges, transportation, delivery and the like of all Constructional Plant, material and equipment to/from and at the Site, the cost of which shall be deemed included in the Contract Price.

39.7 The Contractor, prior to the issue of the Final Acceptance Certificate, shall submit to the Company a certificate from the Ministry of Social Affairs and Labour to the effect that it has satisfied the requirements of that ministry in respect of its workforce on completion of the Contract. Where the Contractor is unable to provide the certificate, it shall comply with the provisions of clause 64. The provisions of this clause 39.7 shall not apply where the Date for Completion is no longer than eight (8) months, and in which event the Contractor shall ensure that the total manpower required to perform the Works is locally available and sponsored by the Contractor.

39.8 The Company shall reimburse to the Contractor all such reasonable direct costs actually incurred, in the event that, subsequent to the bid closing date, any law, rule or regulation (including Ministerial Order) comes into effect which causes an increase in the Contractor's cost in the performance of the Works or causes delay in such performance, and grant an extension of the Date for Completion equal to the actual delay caused by such new law, rule or regulation, provided that the Contractor submits for the Company's approval sufficient evidence to the effect that the Contractor had taken the proper immediate steps to mitigate the effect of such law, rule or regulation together with a breakdown of the claimed additional cost and/or time based on the Contract Price and Date for Completion to the extent possible and in accordance with clause 60.

39.9 The Contractor shall not be entitled to reimbursement of any loss incurred by it as a result of change to any law during the period of delay where the Contractor fails to complete the Works by the Date for Completion where such delay is due to its acts or omissions.

39.10 The Contractor where it is not a Kuwaiti, and where it is required by law, shall appoint a Kuwaiti agent in Kuwait in respect of the Contract, and shall provide the following details of its Kuwaiti agent so appointed as and when required by the Company:

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

- 39.10.1 name and commercial registration;
- 39.10.2 address in Kuwait;
- 39.10.3 address of main place of business or office in Kuwait (if different from [b] above); and
- 39.10.4 letter from the agent on agent's letterhead confirming appointment.

39.11 The Contractor, where any of its owners, partners or local agent becomes a member of the Central Tenders Committee or an employee of the Kuwait Oil Company during the Contract, shall promptly notify the Superintendent.

40. TRANSPORTATION PRIORITIES

The Contractor shall use Kuwait Airways Corporation ("KAC") in the event air travel of Contractor's, agents and representatives, or air freight of goods required or becomes necessary for the performance of the Contractor's obligations under the Contract. Where flights of KAC are not available or fully booked, the Contractor may use the respective national airline of the country of such employees, agents or representatives or the country exporting the goods or shall cause carriage arrangements to be undertaken and documented by KAC.

41. DATE FOR COMMENCEMENT

The Superintendent, unless otherwise specified in the Contract Specification, shall advise the Date for Commencement to the Contractor giving not less than seven (7) days notice and the Contractor shall commence the Works from the Date for Commencement, and shall proceed with the Works with due expedition and without delay.

42. DATE FOR COMPLETION

The Contractor shall complete the Works and each Portion of the Works (if any) within the Date for Completion as specified in the Contract Specification, except for the obligations to be carried out under the Defects Liability Period.

43. WORKING HOURS

43.1 The Contractor shall perform the Works at the Site from 0700 hours to 1500 hours or such other hours as permitted by the Superintendent subject to a maximum of eight (8) hours daily Saturday through Thursday except:

- 43.1.1 during Ramadhan when the working hours, Saturday through Thursday shall be 0830 hours to 1430 hours or as directed by the Company subject to a maximum of six (6) hours;
- 43.1.2 on Company holidays as may be declared from time to time when no work shall be carried out. However, the Contractor shall perform the work on Company declared rest days;

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

- 43.1.3 during the summer months the working hours for outdoor work at the Site shall comply with the requirements of clause 39.2.8; and
- 43.1.4 where work in excess of normal working hours is required during the shutdowns of Company's facilities for the performance of the Works, or where the Contractor requires accelerating the Works subject to obtaining the Superintendent's prior approval, and such excess hours shall be at no additional cost to the Company. The Company may not permit the execution of particular items of work requiring special inspection which generally shall be executed during normal working hours only.

43.2 The Contractor shall adhere strictly to the working hours specified in clause 43.1 and shall not carry out any work outside these hours without the Superintendent's prior permission or direction (save for irregular non-scheduled overtime work the requirement for completion of which is inherent in such work as, by way of example, the finishing of a pour of concrete), and any work so permitted or directed shall be at no additional expense to the Company.

44. PROGRAMME OF WORK

- 44.1 The Contractor, within fourteen (14) days from the date of signing the Contract (or such other period as stated in the Contract Specification), shall submit to the Company a fully detailed programme of work including, but not be limited to, the following by location/area:
 - 44.1.1 Site survey;
 - 44.1.2 design and engineering;
 - 44.1.3 document submission;
 - 44.1.4 procurement, shipment, delivery of equipment material at Site;
 - 44.1.5 start of mobilisation on Site;
 - 44.1.6 earthworks;
 - 44.1.7 foundation/Concrete work;
 - 44.1.8 prefabrication;
 - 44.1.9 installation (equipment, structures, piping, electrical, instrumentation, and the like);
 - 44.1.10 shutdowns and stoppages of existing facilities, if required;
 - 44.1.11 demolition work, if required;
 - 44.1.12 testing;
 - 44.1.13 pre-commissioning;
 - 44.1.14 commissioning and performance testing;

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

- 44.1.15 demobilisation; and
- 44.1.16 Final project record book and as-built documentation.
- 44.2 The Contractor shall ensure that the detailed programme of work:
 - 44.2.1 conforms to the preliminary programme of work submitted by the Contractor with its bid;
 - 44.2.2 is in the form of a bar chart prepared using the latest version of Primavera Project Planner, Microsoft Project or other software and software version approved by the Company, showing full details, sequence and interrelationship of all activities of the Works, including those activities on the critical path;
 - 44.2.3 identifies various activities and milestones and provides percentage weighting for each activity, totalling 100% of the Works. These percentage weightings shall be subject to review and approval of the Company;
 - 44.2.4 includes a programme cash flow S-curve, showing resource loading by discipline, manpower histogram, and detail the numerical breakdown of the Constructional Plant and progress measurement system; and
 - 44.2.5 identifies tie-ins to the existing facilities, and pre-commissioning of the facilities in a sequential manner in accordance with the sequence and procedures approved by the Company and the period of shutdowns kept to a minimum.
- 44.3 The Superintendent shall approve or direct the Contractor to make changes to the detailed programme within fourteen (14) days from the date of its receipt. In the latter case the Contractor shall promptly discuss with the Superintendent his proposed changes and shall resubmit the detailed programme for approval not later than seven (7) days. Once approved by the Superintendent no amendments shall be made to the Programme without the express prior approval of the Superintendent or the Superintendent's Representative and shall form the basis for the performance of the Works and all progress reporting, forecasting and scheduling.
- 44.4 The Contractor shall ensure that dates and constraints of all major activities imposed by the Programme shall be incorporated into any subcontract which may be entered into for the execution of any part of the Works.
- 44.5 The Contractor, where the progress of an activity is behind the Programme shall promptly inform the Superintendent in writing giving detailed reason and suggestions to avoid or minimise delay and options for corrective action. The Contractor, where the Superintendent reasonably considers that the Works are not proceeding in accordance with the Programme, shall at no additional cost to the Company provide additional manpower and Constructional Plant or take such other measures including working in excess of those hours specified in clause 43.1 as may be approved or ordered by the Superintendent to ensure completion of the Works by the Date for Completion.
- 44.6 The Contractor, where its actual progress falls behind the Programme or it becomes apparent that it will so fall behind, shall prepare and submit to the Superintendent a revised schedule, taking into account the prevailing circumstances, and shall notify the Superintendent of the steps being taken by it to expedite progress and shall ensure that a rate of progress satisfactory to the Superintendent is maintained to attain completion of the Works or each Portion of the Works by

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

the relevant Date for Completion.

44.7 The Company may at any time instruct the Contractor to reschedule or alter the sequence of the Works to suit the Company's operational requirements. The Contractor shall promptly revise and resubmit the proposed programme for approval of the Superintendent and inform the Superintendent of any claim it considers it considers reasonable as a consequence of any altered sequence of performance of the Works. The Contractor, upon receipt of the Superintendent's instructions shall promptly implement the changes to the Programme and proceed diligently to mitigate the effect of the rescheduling or alteration of the Programme on the overall progress of the Works.

44.8 Reporting

The Contractor shall submit to the Superintendent each month three (3) copies of a progress report of the Works by reference to the Programme, which shall include the following:

- 44.8.1 overall work progress;
- 44.8.2 engineering progress;
- 44.8.3 construction progress;
- 44.8.4 overall material procurement progress;
- 44.8.5 manpower status;
- 44.8.6 subcontract award status;
- 44.8.7 safety issues;
- 44.8.8 inspection and test plan/schedule;
- 44.8.9 details of manpower and equipment deployed;
- 44.8.10 comparison of actual progress and manpower levels relative to the Programme together with steps or corrective measures proposed to be taken by the Contractor to make up the delays or speed up work to regain lost time if required;
- 44.8.11 details of work plan for the current month;
- 44.8.12 cumulative Cash Flow (S-Curve); and
- 44.8.13 any other item or requirements which may become critical in the immediate future and the Contractor's proposed steps to mitigate the situation.

44.9 The Contractor shall submit a detailed monthly progress report within the first seven (7) days of each month and a progress update on weekly basis each Saturday. The Superintendent shall convene a monthly progress review meeting within seven (7) days of receipt of each monthly progress report.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

44.10 The Superintendent or his authorised representative shall take minutes of all formal meetings held between the Company, the Contractor and any other party. The Superintendent shall forward these minutes of meetings to the Contractor for its comments (if any). The Contractor shall communicate its comments (if any) within two (2) days of receipt of such minutes. If the Company does not receive comments within the stipulated period, the minutes shall be considered final.

45. CERTIFICATE OF COMPLETION

45.1 The Contractor, when the Works or a Portion of the Works have been completed in accordance with the Contract (except the punch list items that are minor and do not affect their use for the purpose for which they are intended and save for the obligations of the Contractor under clause 46) and have satisfactorily passed any final test that may be prescribed in the Contract, shall apply to the Company for the Certificate of Completion. The Superintendent shall issue the Certificate of Completion for the Works or the Portion of the Works stating the punch list items, if any, provided that:

- 45.1.1 it is complete and final testing is satisfactory;
- 45.1.2 no Defect or incomplete part remains which would hinder the safe commissioning, performance testing and operation of the facilities;
- 45.1.3 the Contractor has delivered in a format satisfactory to the Company all "as-built" drawing records, certificates and manuals;
- 45.1.4 the Contractor has delivered all tools, jigs and templates as applicable in accordance with clause 16.5;
- 45.1.5 the Site is clean in accordance with clause 24.7;
- 45.1.6 all damages to the Works are reinstated in accordance with clause 24.1;
- 45.1.7 all damages related to Company's existing facilities and other areas are reinstated in accordance with clause 28.6;
- 45.1.8 the Contractor has delivered to the Company all spare parts list for the Company to procure the operational spare parts and or the spare parts in accordance with the provisions of clauses 16.10.2 ; and
- 45.1.9 the Contractor has performed all other obligations specifically provided under the Contract, which is subject to the issue of the Certificate of Completion.

45.2 The effective date of the Certificate of Completion shall be the actual date of completion, and from which date the Defects Liability Period shall commence. The issue of the Certificate of Completion shall not be an admission that the Works have or any Portion of the Works has been completed in every respect. The Contractor shall complete with due diligence all punch list items/work.

45.3 The Contractor, as a prerequisite to the issue of the Certificate of Completion, shall deliver to the Superintendent all available warranties, and guarantees from manufacturers and Vendor of

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

all equipment for incorporation into the Works, and if so directed by the Company, shall assist the Company in the enforcement of warranty claims.

46. DEFECTS LIABILITY PERIOD AND FINAL ACCEPTANCE CERTIFICATE

- 46.1 The Contractor shall make good and rectify at its expense all Defect that arise or become apparent in the Works during the Defects Liability Period, due to defective engineering or design or to unsatisfactory workmanship or to the use of the Contractor supplied material or equipment not in accordance with the Contract or due to the neglect or failure by the Contractor to comply with any of its obligations under the Contract.
- 46.2 The Company, where at any time during the performance of the Works or within the Defects Liability Period, notifies the Contractor or the Contractor otherwise becomes aware of any Defect, including any damage caused to the Works by such Defect due to defective engineering or design or to unsatisfactory workmanship or to the use of the Contractor supplied material or equipment not in accordance with the Contract or due to the neglect or failure by the Contractor to comply with any of its obligations, then the Contractor, at no additional cost to the Company, shall promptly rectify such Defect by carrying out any necessary design, engineering, procurement, construction and/or other modification or rectification work, replacement of material and equipment, to comply with the requirements of the Contract and shall carry out any further re-test necessary to verify compliance with the Contract
- 46.3 The Company, where the Contractor fails to remedy the Defect within the time instructed by the Superintendent, may perform such obligations and recover from the Contractor the cost or any money due or which may become due to the Contractor under this or any other contract.
- 46.4 Where any Defect arising within the Defects Liability Period is repaired or replaced in accordance with clause 46.2, a new twelve month Defects Liability Period in respect of such part of the Works shall commence from the date such Defect is made good and recorded on a Defects Rectification Certificate. Notwithstanding the above extension, in no event shall the Defects Liability Period in respect of the Works or any Portion of the Works exceed twenty-four (24) months.
- 46.5 The Contractor, at no extra cost to the Company, shall be responsible to search and conduct trials as may be necessary to determine the cause of any Defect where so required by the Superintendent.
- 46.6 The Company shall make good at its own expense any such Defect which shall be due to defective material supplied by the Company or any other cause, not specified or implied in clause 46.2.
- 46.7 If and to the extent that any Defect notified is directly attributable to faulty operation or maintenance by the Company or to conditions of use more severe than those specified in the Contract, the remedial work shall be carried out at the Company's cost, in which case the Contractor shall be entitled to an Adjustment Order pursuant to clause 47.
- 46.8 If and to the extent that any Defect notified arises from failure in operation due to normal wear and tear when in use by the Company, the remedial work shall be carried out at the Company's cost (provided that the Contractor can demonstrate that such failure is not

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

attributable in whole or in part to inadequate detailed design or specification prepared by the Contractor or faulty material or workmanship), in which case the Contractor shall be entitled to an Adjustment Order pursuant to clause 47.

46.9 The Contractor, as a pre-requisite to the issuance of the Final Acceptance Certificate by the Company, shall comply with all its obligations under this clause 46 and shall also submit a tax clearance certificate in accordance with clause 38.3 and a no-objection certificate from the Ministry of Social Affairs and Labour in accordance with clause 39.7. Where the Contractor fails to submit the certificates referred to in this clause, it shall comply with the provisions of clause 64 before the Final Acceptance Certificate is issued.

47. VARIATIONS

47.1 The Superintendent may make any Variation to the Works or any part of it that may, in his opinion, be necessary and may instruct the Contractor, without limitation, to do any of the following:

- 47.1.1 increase the quantity of any work included in the Contract within such limits as may be defined by the Company;
- 47.1.2 change the character or quality or kind of any work or the specification of material, or the design or drawing of any part of the Works;
- 47.1.3 change the levels, lines, position, dimensions of any part of the Works;
- 47.1.4 execute additional work of any kind necessary for the completion of the Works; or
- 47.1.5 decrease or omit any part or Portion of the Works.

47.2 The Contractor, as soon as possible, but no later than fourteen (14) days after receipt of the Superintendent's instruction delivered pursuant to clause 47.1 or within such other time as may be acceptable to the Company, shall submit to the Superintendent in writing the following:

- 47.2.1 detailed description of the proposed Variation;
- 47.2.2 its proposal for an adjustment of the Contract Price to be calculated in accordance with clause 47.7.;
- 47.2.3 an estimate of the likely effect (if any) on the Date for Completion;
- 47.2.4 its proposal as to necessary adjustments to any of the Contractor's other obligations under the Contract (if any); and
- 47.2.5 if appropriate, any alternative proposal to meet the Company's stated objectives in respect of the proposed Variation.

47.3 The Superintendent, following receipt of the Contractor's proposal pursuant to clause 47.2, shall advise the Contractor whether the Company wishes to implement the Variation and, as necessary, may require further documents and information from the Contractor and enter into

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

discussions with the Contractor regarding the Contractor's proposal with a view to reaching the earliest practicable agreement on any adjustment to the Contract Price, the Date for Completion or any other effect of the Variation. The Contractor shall provide additional documents and information within the period specified by the Company.

- 47.4 The Company, where it wishes the Contractor to implement the proposed Variation, shall issue an Adjustment Order adjusting as applicable, the Contract Price; the Date for Completion; and any other aspect of the Contract. Such Adjustment Order shall incorporate the Contractor's proposal as may be modified by negotiations between the parties.
- 47.5 Where the proposed Variation is only for adjustments under clause 47.1.5, the Adjustment Order may be issued by the Company without the Contractor's consent or signature.
- 47.6 The Contractor, subject only to the terms of clause 47.8, shall not execute a Variation without an Adjustment Order. An Adjustment Order shall in no way affect the rights or obligations of the parties except as expressly provided. All provisions of the Contract shall apply to the Variation.

47.7 Evaluation of Variations

- 47.7.1 Any adjustment to the Contract Price resulting from a Variation shall be calculated as follows:
 - a) by evaluating each item of work and its estimated quantity applying the rate or price specified in the Contract for the item;
 - b) where no rate or price is specified in the Contract, by applying the rate specified for similar work item, if in the opinion of the Superintendent, the same is applicable;
 - c) where the Contract does not contain any rate or price as specified in clauses 47.7.1 (a and b), the rate or price shall be derived from reasonable cost of executing the work as appropriate in the circumstance;
 - d) where using the Contract unit rates results in more than one valuation for a Variation, the Superintendent shall have the discretion to select the lowest valuation. The resultant adjustment to the Contract Price shall be effected by the issue of an Adjustment Order.
- 47.7.2 The Superintendent, where the Contractor does not comply with the requirements of clauses 47.2 and/or 47.3, shall make a fair determination of cost and time, giving due regard to the circumstances and the Adjustment Order shall be processed accordingly.
- 47.7.3 The Company, where it instructs a Variation under clause 47.1.5, the Contractor shall be entitled to payment for work begun and executed up to the date of receipt of the Company's instructions.
- 47.7.4 The Contractor, pursuant to the Company's instructions under clause 47.1.5 shall not be entitled to claim compensation for any work done or expenditure incurred contrary to the Contract or for loss of anticipated profit .

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

- 47.8 The Contractor, in the event that any Variation is urgent and the performance of the Works cannot in the sole opinion of the Superintendent proceed unimpeded due to time involved in processing an Adjustment Order, shall carry out a Variation after receiving an order from the Superintendent specifying the effect thereof (if any) on the Contract Price, and the Date for Completion as agreed with the Contractor pursuant to clause 47.4, and the parties, as soon as practicable thereafter, shall sign an Adjustment Order. The Contractor, where it carries out any Variation other than in accordance with this clause shall be to its account.
- 47.9 The Contractor shall not be entitled to additional costs or to an extension of the Date for Completion in respect of Works already commenced or executed which have not been carried out in accordance with this clause 47.
- 47.10 Where issue of any instruction to vary the Works is necessitated by some default or breach of the Contract by the Contractor or for which it is responsible, any additional cost attributable to such default shall be borne by the Contractor.

48. CONTRACT PRICE

- 48.1 The Contractor shall be deemed to have made proper allowance in the Contract Price to cover for all risks, liabilities and obligations set out or implied in the Contract.
- 48.2 The Contractor shall remain liable to perform all of its obligations under the Contract, notwithstanding that it did not foresee any matter which has affected or may affect the performance of the Works. In particular, the Contractor shall not be entitled to make any claim for additional cost in the event of:
 - 48.2.1 any misunderstanding by the Contractor in respect of any matter relating to the Works;
 - 48.2.2 any failure by the Contractor to obtain correct information pursuant to its obligations under clauses 14 and 15.
- 48.3 The Contract Price is a fixed price or rates and shall not be adjusted except where permitted by and in accordance with the Contract.
- 48.4 The Contract Price shall not be subject to any adjustment due to fluctuation in the cost of personnel, material, equipment, Constructional Plant, Temporary Works, freight, insurance, transport, foreign currencies and any other input to the Works which the Contractor is responsible for providing under the Contract.
- 48.5 The Company shall not be liable to pay any extra sum over the Contract Price towards license fee and royalty for the use of any product or software provided by the Contractor, nor shall the Contractor be entitled to claim for any work done or any expenditure incurred which is not in accordance with the Contract.
- 48.6 The provisions of clauses 48.1 to 48.5 shall apply to the schedule of unit rates contained in the Contract for purpose of valuation of Variations, and are inclusive, but not limited to provision of all material, equipment (including testing equipment), transportation, quality control and inspection, tools, consumables, wages, overtime payment, bonuses, overheads, profits,

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

insurance, mobilisation, demobilisation, and all other costs for fulfilling the Contractor's obligations under the Contract.

48.7 Provisional Sum

- 48.7.1 The Provisional Sum shall be used, in whole or in part or not at all, in accordance with the Company's instructions and the Contract Price adjusted accordingly by way of an Adjustment Order.
- 48.7.2 Any adjustment to the Contract Price resulting from the Company's instruction pursuant to clause 48.7.1 shall be calculated in accordance with clause 47 and as directed by the Company, the Contractor provide necessary details and substantiation such as quotations, invoices, vouchers, receipts and accounts.

49. MEASURED WORKS

- 49.1 Where the Contract sets out quantities or schedules with unit rates in the attachments to the Form of Tender, such quantities shall be taken as estimated quantities and not as the actual and the correct quantities and the payment to the Contractor for each item of the Works shall be subject to measurement to be made for the net actual quantity.
- 49.2 The Contractor, for the purpose of clause 49.1, shall use qualified personnel to promptly measure the quantities of executed Works. All measurements shall be subject to the approval of the Superintendent. The Contractor shall provide necessary assistance to the Superintendent in verifying measured quantities and promptly supply particulars requested by the Superintendent. The Contractor, where it fails to provide the required particulars to the Superintendent, the Superintendent's Representative or any person authorised by the Superintendent shall carry out the measurements and the Contractor shall accept such measurement as accurate.
- 49.3 No changes in the item rates set out in the Contract shall be made on account of any Variations in quantities to any extent due to development of design, detailed working drawings, changes or Variation in design for technical reasons, errors or omissions in the schedule of quantities attached to the Contract

50. METHOD OF PAYMENT

- 50.1 The Contractor shall submit an invoice based upon the physical progress of the Works with relevant supporting documents at the end of each appropriate month to the Company's Accounts Payable Team claiming payment for work executed in accordance with the Contract and in respect of which the Contractor is entitled to be paid in accordance with the Contract.
- 50.2 The Company shall make payment of amounts certified as correct by the Superintendent within thirty (30) days of receipt of each invoice by the Company, subject to clause 51, to a bank account designated by the Contractor, details of which shall be notified to the Company by the Contractor. In case of an error in calculation or a dispute on an invoice, the Company shall pay the undisputed amount, and the disputed amount shall be held for prompt clarification by the Contractor and shall be paid when resolved.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

- 50.3 The Contractor shall not be relieved of its liability to remedy Defect discovered on or before the Final Acceptance Certificate and any payment made to it shall not constitute acceptance of the Works by the Company.
- 50.4 The Company may deduct from any money due to the Contractor, all extra costs or damages incurred by the Company resulting from any error or deficiency in the Works and damages recoverable from the Contractor and any shortfall shall be a debt owed to the Company by the Contractor.
- 50.5 The Company may withhold payment of any part of or the whole of the Contract Price otherwise due under the Contract where the Contractor is in breach of the Contract, provided always that the amount so withheld is commensurate with the value of the breach in question.

51. RETENTION

- 51.1 The Company shall retain five per cent (5%) from each payment due to the Contractor under clause 50.1.
- 51.2 The Contractor, upon the issue of the Certificate of Completion, shall be paid half of the aggregate sum retained by operation of clause 51.1 and the balance shall become due and payable to the Contractor upon the issue of the Final Acceptance Certificate. The Company may, on the Contractor's request, release the balance retention money prior to the issuance of the Final Acceptance Certificate, provided that the Contractor furnishes the Company with an unconditional and irrevocable bank guarantee for the balance two and a half percent (2 ½) % in a form approved and acceptable to the Company, valid until the issuance of the Final Acceptance Certificate.
- 51.3 The Company, where the Contractor has discharged all its liabilities under the Contract except for the provision of clause 38.3 and/or clause 39.7 and provided that the Contractor complies with the provisions of clause 64, may release the balance of the retention amount referred to in clause 51.2 or the bank guarantee furnished in lieu thereof after issuing the Final Acceptance Certificate.

52. INTELLECTUAL PROPERTY RIGHTS

- 52.1 The Contractor shall indemnify, defend and save harmless the Company from and against all liability, claims, suits, actions, losses, costs, damages, and expenses brought against the Company or incurred by the Company as a result of or in connection with any claim or action based upon infringement or alleged infringement of any copyright or patent arising out of the engineering, design, equipment, material or processes furnished by the Contractor or used in the performance of the Works.
- 52.2 The Contractor, where any claim is brought for infringement or alleged infringement of any copyright or patent against it, shall not make any admission of liability without first informing the Company.
- 52.3 The Contractor, in order to avoid any claim or action, may substitute at its expense by non infringing equipment, material or processes or modify at its expense such infringing design, equipment, material and processes so that they become non infringing, provided that such

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

substituted and modified design, equipment, material and processes meet all the requirements of the Contract and are approved by the Company.

- 52.4 The Company shall be the exclusive holder of copyright in all work which is produced either by or on behalf of the Contractor or the Company in connection with the Contract.
- 52.5 The provisions of this clause 52 shall survive termination or expiry of the Contract.

53. CONFIDENTIALITY

- 53.1 The Contractor shall hold in confidence and not divulge to third parties or use in any way whatever except, with the prior approval of the Company any information disclosed directly or indirectly to the Contractor by the Company in regard to the Works or which is provided by the Company or is prepared for the Company by the Contractor, so long as and to the extent that such information is not in the public domain, or was not already in the possession of the Contractor prior to receipt from the Company.
- 53.2 The Contractor, under the same secrecy conditions required of the Contractor under clause 53.1, may if necessary for the performance of the Works disclose to Subcontractor and Vendor information to be held in confidence. The Contractor shall however ensure that its Subcontractor and the Contractor's personnel to whom any information is divulged are bound to hold it under the same conditions to which the Contractor is bound under the provisions of this clause 53.
- 53.3 The Contractor shall not make any announcement or release any information concerning the Contract or the Works to any member of the public or the media or any third party unless prior consent is obtained from the Company.
- 53.4 The provisions of this clause 53 shall survive termination or expiry of the Contract.

54. SUSPENSION OF WORK

- 54.1 The Contractor, on the instruction of the Superintendent, shall suspend the progress of the Works or part thereof for such time or times and in such manner as the Superintendent may consider necessary and shall during such suspension properly protect and secure the Works. All reasonable actual costs unavoidably incurred by the Contractor in giving effect to the Superintendent's instruction under this clause and in subsequently recommencing the performance of the Works shall be payable by the Company unless such suspension is:

- 54.1.1 otherwise provided for in the Contract;
- 54.1.2 necessary by reason of weather conditions affecting the safety or quality or proper execution of the Works or any part of the Works;
- 54.1.3 necessary by reason of some default on the part of the Contractor;
- 54.1.4 necessary for the proper execution of the Works or any part of it, or for the safety and health of any person, or the safety of any property on or adjacent to the Site; or

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

54.1.5 is not payable under the Contract;

and provided that the Contractor gives notice to the Superintendent of its intention to claim within seven (7) days immediately following the date of the Superintendent's instruction to suspend the Works. In the event that it appears likely that any such suspension may exceed seven (7) days, then the Contractor shall promptly submit to the Superintendent, for his approval, its proposed measures for mitigating the costs of such suspension, and upon receipt of such approval (which shall be given within forty eight 48 hours), shall immediately implement those measures.

- 54.2 The Superintendent, where work cannot be satisfactorily carried out at the Site for an aggregate period exceeding four (4) hours on any day due to weather conditions such as severe sand storm or rain (notwithstanding the provisions of clause 59.1), or for safety or for Company's operational reasons, may instruct the Contractor to suspend the Works. The Contractor, in such an event shall be entitled to an extension of time of one day.
- 54.3 Any extension of time granted as a result of such suspension shall be formalised by an Adjustment Order.

55. CONTRACTOR'S DEFAULT

- 55.1 The Company, after giving seven (7) days advance notice to the Contractor, may enter the Site and expel the Contractor and Subcontractor and terminate the Contract without need for any judicial proceeding, if the Contractor becomes bankrupt, or has a receiving order made against it, or has filed a bankruptcy petition, or makes arrangement with or assignment in favour of its creditors, or agrees to carry out the Contract under a committee of inspection of its creditors or, being a corporation, has gone into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or has had an execution levied on its goods, or generally, if anything arises to indicate to the Company that the Contractor is financially insolvent.
- 55.2 The Company, in the event of the following occurrences, may give the Contractor notice calling upon it to remedy the default within seven (7) days of receipt of notice or within such other reasonable period directed by the Superintendent, failing which the Company may terminate the Contract, or part of the Works without the need for judicial proceedings, where the Contractor:
 - 55.2.1 without prior approval of the Company, assigns the Contract or subcontracts the Works or any part thereof;
 - 55.2.2 has abandoned the Contract;
 - 55.2.3 without reasonable excuse the Contractor has failed to commence the Works or has suspended the progress of the Works;
 - 55.2.4 is slow in executing the Works; has failed to proceed with the Works with due diligence or is so far behind the Programme that in the reasonable opinion of the Superintendent it is unlikely to complete the Works by the Date for Completion;

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

- 55.2.5 has failed to remove rejected material from the Site, or to pull down and replace work which has been rejected by the Superintendent;
- 55.2.6 has not executed the Works in accordance with the Contract or has persistently or flagrantly neglected its obligations;
- 55.2.7 has failed to pay the minimum take-home salaries to its personnel if so specified in the Contract;
- 55.2.8 has failed to comply with health, safety and environment related obligations; or
- 55.2.9 has failed to perform any of its obligations under the Contract.

55.3 The Company, in the event it exercises its rights under clause 55.1 or 55.2, may complete the Works or employ other contractors to complete the Works and in so doing the Company or such other contractor may use any of the Constructional Plant, Temporary Works, and unused material (being originally the property of the Contractor) as it may think proper and the Company shall not be responsible to the Contractor or third parties for whatever damage or loss of value such property may sustain or for payment of any amount that may be due to third parties thereon or payment of any rent therefor whether to the Contractor or third parties, and may at any time attach, or attach and sell any or all of the Constructional Plant, Temporary Works, and unused material and shall hold the proceeds of the sale to the credit of the Contractor or apply them in or towards the satisfaction of any sum due or which may become due to the Company under the Contract.

55.4 The Company, where the Contractor has failed to carry out any work required under the Contract or refused to comply with any instruction of the Superintendent in accordance with the Contract within a specified reasonable time, may carry out such work by itself or by employing other contractor, without prejudice to any other remedy available under the Contract or the law. All additional expenditure incurred by the Company as a result of carrying out such work shall be recoverable from the Contractor. The Contractor, where the Company has incurred any expense in executing the Works as result of the Contractor's fault, shall accept as conclusive evidence the statements of the Company with respect to the amounts paid and expenses incurred by the Company in executing the Contract and all matters relating to it. Likewise, any contract concluded between the Company and third parties for this purpose shall form a basis for settlement.

55.5 The Company, notwithstanding any provision to the contrary, may recover any amount due to the Company under the Contract, including overpayments, liquidated or other damages, cost and expenses incurred, shall be recoverable without judicial proceedings by deduction from the Performance Bond or any money due or becoming due to the Contractor under this or any other contract with the Company whether or not the Company has exercised its rights of termination in accordance with this clause 55.

55.6 The rights and remedies of Company provided by this clause 55 are in addition to any other right and remedy provided by law or under the Contract.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION**56. CONSEQUENCES OF TERMINATION FOR DEFAULT**

- 56.1 The Contractor, upon termination of this Contract by the Company in accordance with clause 55, if instructed by the Company, and subject to the Company's rights under clause 55, shall promptly remove from the Site, in a safe and proper manner and with such precautions as shall prevent injury or damage for which before such termination it was liable under clause 36, all Constructional Plant and Temporary Works supplied by the Contractor.
- 56.2 The Company shall be under no liability to the Contractor whatsoever (save for any surplus accruing as a result of the sum certified under clause 56.2.2) exceeding the gross amount specified in clause 56.4, and the Contractor's liability to the Company shall be for an amount calculated as soon as practicable after termination by the Superintendent who shall measure, calculate and certify the following:
 - 56.2.1 the amount (if any) which at the time of such termination had been reasonably earned by the Contractor in respect of work actually satisfactorily performed by it under the Contract. This amount, ("Sum A"), shall be the gross value of such work less five per cent (5%) of such amount, to provide for costs which otherwise might have arisen pursuant to clause 46;
 - 56.2.2 the outstanding amount (if any) due to the Contractor at the time of such termination which shall be the amount determined by the deduction from Sum A of the amounts already paid to the Contractor under the Contract, ("Sum B");
 - 56.2.3 the value of the outstanding work under the Contract at the time of such termination which shall be the Contract Price less Sum A, ("Sum C");
 - 56.2.4 the actual or prospective cost of completion of the Works that has been ascertained after such termination ("Sum D").
- 56.3 The amount (if any) due to the Company by the Contractor shall be the gross amount of the following:
 - 56.3.1 The amount by which Sum D exceeds Sum C;
 - 56.3.2 Ten percent (10%) administrative costs on Sum D as liquidated damages;
 - 56.3.3 Any other loss or damage suffered by the Company due to the Contractor's breach of Contract.
 - 56.3.4 The amount calculated in accordance with this clause 56.3 shall be payable as soon as notified to the Contractor by the Superintendent and shall be recoverable as a debt to the Company. Without prejudice to any other method of recovery, the Company may recover all or part of such debt by the sale of the Contractor's property in accordance with the provisions of clause 55.
- 56.4 Notwithstanding any provision herein to the contrary, in the event there is a Sum B, this will be credited to the Contractor after deductions under clause 56.3.
- 56.5 The parties on termination shall attempt to agree the precise state of progress of the Works and on the inventory of Constructional Plant and material provided for incorporation in the

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

Works. If the Contractor fails to present itself promptly at termination in order to reach such an agreement or on failure to reach an agreement, the Company shall measure the state of progress and compile such inventory and such progress and inventory as certified by the Superintendent shall be binding on the parties.

57. OPTIONAL TERMINATION

- 57.1 The Company, at any time without cause, may terminate the Contract by giving the Contractor a notice. Such notice shall specify the effective date of termination should it be different from the date of the notice and the Contractor shall cease all work on that date and thereafter shall do only such work as may be necessary to preserve and protect the Works, the Temporary Works and material provided for incorporation in the Works until handing over to the Company is effected.
- 57.2 The Contractor, upon termination by the Company under clause 57.1, shall promptly remove from the Site, all Constructional Plant and Temporary Works supplied by it for the Works and in the event of any injury or damage caused by such removal, shall be liable in accordance with clause 36.
- 57.3 The Company, upon termination of the Contract under this clause 57, shall pay to the Contractor in full and final satisfaction of all claims and entitlement of the Contractor arising out of or in connection with termination of the Contract (after subtracting any amount already paid by the Company) as follows:
 - 57.3.1 the Contract Price of the Works completed at the date of termination;
 - 57.3.2 the value of work begun and executed but not completed at the date of such termination;
 - 57.3.3 the cost of material or goods properly ordered for the Works for which the Contractor shall have paid or shall be liable to pay provided these are handed over to the Company and are of a quantity and quality acceptable to the Company;
 - 57.3.4 the reasonable cost of removal of Constructional Plant and Temporary Works; and
 - 57.3.5 the reasonable overhead costs to which the Contractor has committed itself solely with respect to the performance of the Contract and which the Contractor can demonstrate conclusively are impossible to avoid subsequent to termination.
- 57.4 The Contractor, where the Company has terminated the Contract under clause 57, shall not be entitled to claim compensation for any loss of anticipated profit.

58. LIQUIDATED DAMAGES

- 58.1 The Contractor, where it fails to complete the Works or any Portion of the Works by the Date for Completion or as extended, shall pay to the Company the sum specified in the Contract Specification as liquidated damages for such default, and not as a penalty, for each day of the period which shall elapse between the relevant Date for Completion (as may have been

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

extended) and the actual date(s) of completion of the Works as evidenced by the issue of a Certificate of Completion.

- 58.2 The Company, without prejudice to any other method of recovery and without the need for judicial proceedings, may deduct the amount of liquidated damages from any money in its hands due or which may become due to the Contractor. No prior notice shall be required for the application of liquidated damages which shall become due and payable by the mere event of delay. The payment or deduction of such damages shall not relieve the Contractor from its obligation to complete the Works or from any of its other obligations and liabilities.
- 58.3 Nothing in this clause 58 shall operate to limit or restrict any other right and remedy available to the Company in law or under the Contract.

59. FORCE MAJEURE

- 59.1 Force Majeure shall be any event or occurrence starting after the date of this Contract, whatever the origin, which cannot be foreseen and is beyond the control of, and cannot be circumvented by, the party affected, and which renders the performance of the obligation impossible. Force Majeure shall exclude, amongst others, inclement weather, congestion of orders or strike at a manufacturer's plant, an oversold condition of the market, lack of manpower, lack of material, inefficiencies of the Contractor, its Vendor or Subcontractor of any tier, or similar occurrence.
- 59.2 Neither party shall be considered in default of its obligations hereunder if the performance of these obligations is delayed, hindered or prevented by Force Majeure provided that within seven (7) days after the start of an event or occurrence claimed as Force Majeure the party affected by Force Majeure gives the other party notice of such event or occurrence and that immediate steps are taken by the affected party to mitigate where possible the effects of the event or occurrence.
- 59.3 The Contractor, where it is delayed in performance of the Works by an occurrence it believes to be Force Majeure and cannot avoid or prevent such delay in any way whatever and provided the Contractor has given notice to the Company as specified in clause 59.2, then the Company, if it agrees, will give notice to the Contractor confirming the existence of Force Majeure and will authorise the issue of an Adjustment Order as may be necessary.
- 59.4 The Contractor, notwithstanding any provision to the contrary, shall not be entitled to any additional cost of whatever nature as a result of Force Majeure or due to extension of time granted by the Company to the Contractor under this clause 59.
- 59.5 In the event that Force Majeure notified in accordance with clause 59.2 prevents performance of the whole Works or a substantial part of the Works for a continuous uninterrupted period of ninety (90) days, either party shall have the right on giving notice to the other party to terminate the Contract, and such termination shall be treated as a termination by the Company in accordance with clause 57.
- 59.6 The acceptance by any party of the other party's claim of Force Majeure shall not be considered as a waiver of any of the obligations of the party claiming Force Majeure except to the extent specifically provided for in this clause 59.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

60. TIME LIMITATION ON CLAIMS, DELAY AND EXTENSION OF TIME

60.1 The Contractor, where it considers that it is entitled to make a claim under the Contract for an extension of time or an adjustment to the Contract Price, shall:

60.1.1 within seven (7) days of becoming aware of such event or circumstance, give written notice to the Company that it intends to make a claim, which notice shall include the following details:

- a) brief particulars of the events or circumstances giving rise to the claim;
- b) the specific clause under the Contract on which such claim is based; and
- c) the measures the Contractor has taken or proposes to take to avoid or mitigate the effects of any delay.

60.1.2 within thirty (30) days of becoming aware of such event or circumstance, or where such event or circumstance is still ongoing, as soon as practicable thereafter, submit to the Superintendent in writing the details stating quantities, cost valuation and time impact as may be applicable.

60.2 The Contractor shall constantly endeavour to prevent delays to the performance of the Works and diligently investigate and inform the Superintendent of possible methods to overcome potential or actual delays.

60.3 The Contractor, except where expressly permitted under the Contract, shall not be entitled to an extension of time to the Date for Completion in respect of any delay to the progress of the Works.

60.4 The Contractor, immediately upon becoming aware of any likely delay (or the commencement of any delay) to the Works, shall promptly serve a notice of the delay on the Superintendent, giving as complete details of the delay as possible with all supporting documents and a reasonable estimate of the delay or likely delay to the progress of the Works.

60.5 The Contractor, where the delay is a delay event entitling it to claim an extension of time, shall inform the Superintendent in the notice of delay of any extension of time it considers it is entitled to claim.

60.6 The Superintendent, as soon as practicable, shall issue instruction to the Contractor in respect of the delay.

60.7 The Contractor's sole entitlement to reimbursement of any delay cost and loss incurred by it due to delay caused by any act or omission by the Company (but not for any other delay event) shall be the direct loss the Contractor proves to the satisfaction of the Company that it has suffered.

60.8 Where there is concurrent delay by both the Company and the Contractor, the predominant cause of delay, as determined by the Superintendent, shall be regarded as the cause of delay to the progress of the Works.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

60.9 It is a condition precedent to the Contractor's entitlement to an extension of time and or Company caused delay costs, as the case may be, that it complies with all the following conditions precedent, namely, the Contractor:

- 60.9.1 has complied with the time and notice provisions of clauses 60.1, 60.4 and 60.5;
- 60.9.2 has made reasonable attempts to avoid or mitigate the delay (giving details);
- 60.9.3 can reasonably demonstrate that its acts, breach, fault, negligence or omissions were not the cause of any delay event;
- 60.9.4 can demonstrate by reference to the Programme that the delay event is on the critical path;
- 60.9.5 can establish to the satisfaction of the Company that the amount claimed, is the direct cost and loss the Contractor has suffered as a result of the Company caused delay.

60.10 The Company shall be discharged from all liability in connection with any event or circumstance where the Contractor has failed to comply with the conditions stipulated in this clause 60.

61. CONTINUANCE OF THE WORK

The Contractor, notwithstanding any disagreement, dispute, protest or court proceedings, relating directly or indirectly to the Works, shall proceed with the Works in accordance with the determinations, instructions and clarifications of the Company. The Contractor, where it fails to proceed with the Works, shall be considered in default. The Contractor, during the period it proceeds with the Works, shall be paid the undisputed portion of any claim or payment due under the Contract as the case may be.

62. GOVERNING LAW

The Contract shall be deemed to have been signed in Kuwait. It shall be construed and have effect in all respects in accordance with the laws of the State of Kuwait and both the Company and the Contractor agree and accept that the Courts of Kuwait shall have exclusive jurisdiction to decide all disputes between the parties including Subcontractor.

63. PERFORMANCE BOND

- 63.1 The Company, where it considers the Contractor in default or in order to recover monies due to it, may at any time without prior notice to the Contractor encash the Performance Bond furnished by the Contractor prior to the signing of the Contract.
- 63.2 The Contractor, in the event of drawing down or encashment of the Performance Bond, shall reinstate the same to its full value. The Contractor, with any increase in the Contract Price resulting from any Adjustment Order, shall at the Company's directive increase the value of the Performance Bond proportionately.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING & CONSTRUCTION

- 63.3 The Contractor shall extend the validity of the Performance Bond to correspond with the issue of the Final Acceptance Certificate.
- 63.4 Where extension of the validity of the Performance Bond is required due to any rectification work performed during the Defects Liability Period, the value of the Performance Bond may be reduced as deemed appropriate by the Company at its sole discretion.

64. BANK GUARANTEE FOR TAX AND LABOUR

The Contractor, with reference to clause 46.9 and where prior to the issue of the Final Acceptance Certificate, has not submitted the tax certificate and the labour release certificate in accordance with clauses 38.3 and 39.7 respectively, shall submit a bank guarantee in a Company-approved format in the value of five percent (5%) of the Contract Price, which shall remain valid until the Contractor submits the certificates referred to in this clause.

65. SEVERABILITY

If any provision of this Contract is or become invalid, illegal or unenforceable, the legality, validity or enforceability of the remaining provisions shall not in any way be affected or impaired thereby and the parties shall in such an event negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the invalid, illegal or unenforceable provision which as nearly as possible validly gives effect to their intentions as expressed herein.

66. AUDIT

The Contractor and its Subcontractor shall maintain, and ensure its Subcontractor maintain, a complete and accurate set of records, sufficient to enable the Company to verify all transactions between the Company and the Contractor. The Company shall have the right, at all reasonable times until the expiry of two (2) years after the issue of the Final Acceptance Certificate, to inspect and audit the relevant records of the Contractor; provided, however, that the Contractor shall have the right to exclude from any such inspection and audit any trade secret, formula, process and other proprietary or non-public confidential information. Where the results of any audit discloses any overpayment, appropriate adjustment shall be made; with the understanding that either party reserves the right to question the results of any such audit.

67. NOTICES

- 67.1 Any notice required pursuant to this Contract shall be considered duly given if sent by registered mail acknowledgement due to the Contractor or the Company at their respective addresses as stated in the Contract Specification or handed to their duly authorised representatives. Notices may, also, be given by telex or fax provided that confirmation of any such notice given is received from the party to whom the notice is addressed.
- 67.2 The service of notice on the Superintendent and the Contractor's Representative as the case may be shall be proper service of notice on either party.
