



General Conditions of Contract

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1. CONSTRUCTION OF CONTRACT

The Contract shall be governed by and construed with reference to the laws for the time being in force in the State or Territory named in the Annexure hereto.

All prices and sums of money and all payments made under the Contract shall be in Australian currency and payments shall be made at the place named in the Annexure hereto.

All communications between the Principal, the Superintendent and the Contractor shall be in the English language.

All measurements of physical quantities shall be in Commonwealth legal units of measurement within the meaning of the Weights and Measures (National Standards) Act 1960 as amended from time to time.

2. INTERPRETATION

In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them, except where the context otherwise requires -

"Bill of Quantities" means a document named therein by the Principal as a Bill of Quantities issued to tenderers by the Principal stating estimated quantities of work to be carried out and "Priced Bill of Quantities" means the Bill of Quantities priced and lodged by the Contractor with the Superintendent and approved by the Superintendent as to rates;

"clause" means clause of these General Conditions of Contract and

"sub-clause" means the relevant sub-clause of the clause indicated by the context;

"Constructional Plant" means all plant, motor vehicles, appliances and things (including scaffolding, formwork and the like) of whatsoever nature used or in use in or about the execution of the work under the Contract but does not include materials, plant, equipment or other things intended to form or forming part of the Works;

"contract sum" means

- (a) where payment is to be made on a Lump Sum basis, the sum which is stated in the Contract to be payable to the Contractor for the execution of the work by the Contractor and the performance of the obligations of the Contractor under the Contract;
- (b) where payment is to be made on a Schedule of Rates basis, the sum ascertained by calculating the products of the rates and the corresponding quantities set out in the Schedule of Rates and adding to the sum thereof the total of any lump sums, provisional sums, contingency sums or other sums included in the Schedule of Rates;
- (c) where payment is to be made on a Lump Sum and a Schedule of Rates basis, the aggregate of the sums referred to in paragraphs (a) and (b),

but excluding any additions or deductions which may be required to be made pursuant to the Contract;

"date of acceptance of tender" means the date which appears upon the notice in writing of acceptance of the Contractor's tender issued by the Principal or upon the acceptance in writing by either party of an offer (including a counter-offer) for the execution of the work under the Contract and the performance of the obligations of the Contractor under the Contract;

"Drawings" means the drawings referred to in the Specification and any modification of such drawings notified to the Contractor by the Superintendent and includes such other drawings as may from time to time be supplied to the Contractor by the Superintendent, or the use of which has been permitted by the Superintendent, for the purposes of the Contract;

"final contract sum" means the total sum which, subject to the provisions of the Contract, will have become payable to the Contractor by the Principal upon the completion of the work under the Contract and the performance of the obligations of the Contractor under the Contract;

"month" means calendar month;

"person" includes a firm or body corporate or unincorporate as well as an individual;

"Practical Completion" is that stage in the execution of the work under the Contract when -

- (a) the Works or a separable part of the Works, as the case may be, are complete except for minor omissions and minor defects:
 - (i) which do not prevent the Works or that separable part of the Works from being reasonably capable of being used for its intended purpose, and
 - (ii) in relation to which the Superintendent determines that the Contractor has reasonable grounds for not promptly rectifying them, and
 - (iii) rectification of which will not prejudice the convenient use of the Works or of that separable part of the Works, and
- (b) those tests which are required by the Contract to be carried out and passed before the Works or the separable part of the Works, as the case may be, are handed over to the Principal have been carried out and passed, and
- (c) such documents and other information required under the Contract which, in the opinion of the Superintendent, are essential for the use, operation and maintenance of the Works have been supplied;

"Schedule of Rates" means any schedule included in the Contract which, in respect of any section or item of work to be carried out, shows the rate or respective rates of payment for the execution of that work and which may also include lump sums, provisional sums, contingency sums, other sums, quantities and prices;

"separable part of the Works" means a part of the Works specified in the Specification or Drawings as a separable part;

"site" means the lands and other places to be made available and any other lands and places made available to the Contractor by the Principal for the purpose of the Contract;

"Specification" means the Specification for work to be carried out as existing at the date of acceptance of tender and any modification of such Specification thereafter directed or the use of which has been permitted by the Superintendent pursuant to his powers in that behalf contained in the Contract;

"Superintendent's Representative" means a person appointed in writing from time to time by the Superintendent pursuant to clause 24;

"Temporary Works" means the works on the site (other than Constructional Plant) which are required for the execution of the work under the Contract but which do not form part of the Works to be handed over to the Principal;

"the Contract" means the document which constitutes or evidences or, as the case may be, all the documents which constitute or evidence the final and concluded agreement between the Principal and the Contractor concerning the execution of the work under the Contract;

"the Contractor" means the person who as a party to the Contract is bound to execute the work under the Contract in accordance with the Contract and includes that person's heirs, executors, administrators and permitted assigns and in the case of a corporate body its successors and permitted assigns;

"the Principal" means the Principal stated in the Annexure hereto;

"the Superintendent" means the person named in the Annexure hereto as the Superintendent or other person from time to time appointed in writing by the Principal to be the Superintendent for the purposes of the Contract, and notified as such in writing to the Contractor by the Principal;

"the Works" means the whole of the work to be executed in accordance with the Contract, including all variations provided for by the Contract, which by the Contract are to be handed over to the Principal;

"work under the Contract" means the work which the Contractor is or may be required to execute under the Contract and includes all variations, remedial work, Constructional Plant and Temporary Works.

The clause headings and sub-clause heading in these General Conditions of Contract shall not be deemed to be part thereof and shall not be used in the interpretation or construction thereof or of the Contract.

Words in the singular shall include the plural and words in the plural shall include the singular, according to the requirements of the context.

Words importing the masculine gender shall include the feminine gender or the neuter gender, as the case may require.

3. NATURE OF CONTRACT

3.1 DESCRIPTION

The Contractor shall be paid either on a Lump Sum basis or on a Schedule of Rates basis or partly on a Lump Sum basis and partly on a Schedule of Rates basis as stated in the Annexure hereto.

Sub-clause 3.2 shall apply to payments on a Lump Sum basis and sub-clause 3.3 shall apply to payments on a Schedule of Rates basis.

Unless otherwise stated in the Contract, the Contract shall not be subject to adjustment for rise and fall in costs.

3.2 LUMP SUM

- (a) Where payment is to be made on a Lump Sum basis the Contractor shall execute the work and perform his obligations under the Contract and the sum payable by the Principal to the Contractor therefore shall be the lump sum accepted by the Principal adjusted by any additions or deductions pursuant to the Contract.
- (b) A Bill of Quantities shall not form part of the Contract except to the extent provided for in the Contract.

3.3 SCHEDULE OF RATES

(a) Moneys Payable

Where payment is to be made on a Schedule of Rates basis the Contractor shall execute the work and perform his obligations under the Contract and the Principal shall pay the Contractor for the measured quantity of each section or item of work actually carried out under the Contract at the rate therefore set out in the Schedule of Rates as adjusted by any additions or deductions pursuant to the Contract.

The rates and lump sums in the Schedule of Rates are deemed to include the cost of the whole of the work under the Contract, services and other incidentals associated with or necessary for the execution of the work under the Contract and the performance of the obligations of the Contractor under the Contract. Where a section or item does not appear in the Schedule of Rates the cost thereof shall be deemed to be included in the rate or price for the section or item associated with that section or item but where there is no section or item associated with that section or item the cost thereof shall be deemed to be included in the rates or prices generally. Where any section or item in the Schedule of Rates is unpriced by the Contractor all costs applicable to that section or item shall be deemed to be included elsewhere in the Schedule of Rates.

An order shall not be required to be given by the Superintendent by reason of the actual quantity of a section or item being greater than or less than the quantity shown in the Schedule of Rates for that section or item.

(b) Quantities

The quantities in the Schedule of Rates issued by the Principal are estimated quantities only and are not to be taken as actual or correct quantities of work to be carried out.

(c) Adjustment of Rate

When limits of accuracy are set out in the Contract, if the actual quantity of a section or item of work carried out proves to be greater than the upper limit or less than the lower limit of the limits of accuracy set out in the Contract either party to the Contract may notify the other party to the Contract in writing that he considers that in respect only of quantities greater than the upper limit or less than the lower limit of the limits of accuracy set out in the Contract an adjustment in the rate for that section or item should be made, setting forth his reasons therefore. Any adjustment to the rate shall be as agreed between the Contractor and the Superintendent or, in the event of failure to agree, as determined by the Superintendent PROVIDED HOWEVER that if the actual quantity is greater than the upper limit of the limits of accuracy set out in the Contract the Superintendent may direct that the portion of the section or item of work which is greater than that upper limit shall be carried out by the Contractor as Daywork and payment will be made as for Daywork under sub-clause 40.3.

4. BILL OF QUANTITIES

4.1 LODGMENT

Where a Bill of Quantities was issued to tenderers by the Principal the Contractor shall lodge with the Superintendent a priced copy of that Bill of Quantities on or before the expiration of the time for lodgment set out in the Annexure hereto, or within such further time as the Superintendent may direct.

Notwithstanding any other provision of the Contract, the Contractor shall not be entitled to a payment under the Contract until such time as he has lodged his priced copy of the Bill of Quantities.

4.2 PRICING

All items included in a Bill of Quantities shall be priced and extended by the Contractor and the prices as extended shall, on addition, equal the lump sum accepted by the Principal for the execution of the whole of the work to which the Bill of Quantities relates.

Any errors in extension or addition or both, or correction of incorrect or inconsistent rates or prices (including the insertion of rates or prices wrongly omitted and the deletion of rates or prices wrongly included) discovered by the Principal or the Contractor in the priced copy of the Bill of Quantities lodged by the Contractor or in the Priced Bill of Quantities shall be corrected in a manner agreed to between the Contractor and the Superintendent or, in the event of failure to agree, as determined by the Superintendent so that the total of all items in the Priced Bill of Quantities continues to equal the lump sum accepted by the Principal for the execution of the whole of the work to which the Bill of Quantities relates.

4.3 ERRORS IN QUANTITIES

If it is shown to the satisfaction of the Superintendent that the Priced Bill of Quantities is in error in that it:-

- (a) contains an incorrect quantity in relation to any item included therein and the extent of the error exceeds five per centum of the value of that item as shown therein or \$2,000; or
- (b) contains an item which should not have been included therein; or
- (c) omits an item which should have been included therein then:-
 - (i) in a case of (a) where the item is deficient in quantity or in the case of (c) - upon application in writing to the Superintendent by the Contractor; or
 - (ii) in a case of (a) where the item is excessive in quantity or in the case of (b) - upon notification in writing to the Contractor by the Superintendent;

the lump sum accepted by the Principal for the execution of the whole of the work to which the Bill of Quantities relates shall, except when the value of the error is less than \$400, be adjusted by such amount as is required to correct the error, determined in the manner provided by sub-clause 40.2 for the valuation of variations as if the correction were a variation under sub-clause 40.1.

The Priced Bill of Quantities shall be deemed to be in error as aforesaid to the extent that the items and quantities included in it differ from those required for the execution of the Works in accordance with the Drawings and Specifications as existing at the date of acceptance of tender, measured in accordance with the method of measurement evidenced by the Contract.

If the description of the work associated with an item in the Priced Bill of Quantities is repeated in another item because of a difference in the location of the work or the method of measurement of the work, or if the quantity of an item in the Priced Bill of Quantities is multiplied in a trade or other summary, the lump sum accepted by the Principal for the execution of the whole of the work to which the Bill of Quantities relates shall be adjusted by an amount determined by the Superintendent who shall take into account the aggregation of the descriptions associated with those items or the multiplication of those quantities, as the case may require.

5. SECURITY, RETENTION MONEYS AND OTHER PERFORMANCE UNDERTAKINGS

5.1 PURPOSE

Security, retention moneys and performance undertakings shall, when the same or any of them are required, be provided and given for the purpose of ensuring the due and proper performance of the Contract and of satisfying the obligations of the Contractor under the Contract.

5.2 PROVISION OF SECURITY

If security is required the Contractor shall provide it in accordance with this clause in the amount set out in the Annexure hereto.

5.3 FORM OF SECURITY

The security shall be in the form of cash, Government Bonds or Inscribed Stock, or an unconditional undertaking or certificate in a form approved in writing by the Principal and given by a bank approved in writing by the Principal.

If the security is not transferable by delivery it shall be accompanied by an executed transfer thereof to the Principal and the costs and expenses (including all stamp or other duties) of and incidental to the said transfer shall be borne and paid by the Contractor.

5.4 TIME FOR LODGMENT OF SECURITY

The security shall be lodged by the Contractor with the Principal within fourteen days after the date of acceptance of tender or within such further time as is approved in writing by the Principal.

Failure on the part of the Contractor to lodge the security within the time so allowed is to be deemed to constitute a breach going to the root of the Contract so that notwithstanding anything to the contrary in the Contract:

- (a) if he so elects the Principal may give to the Contractor a notice in writing that the Principal treats himself as discharged from all further obligations on his part under the Contract; and
- (b) he may
 - (i) institute proceedings in any court of competent jurisdiction to recover any damages that he may have sustained by reason of the breach;
 - (ii) exercise all or any other rights or remedies conferred on him whether at Common Law or under the provisions of the Contract.

5.5 CONVERSION OF SECURITY

If the Principal becomes entitled to exercise all or any of his rights under the Contract in respect of the security the Principal may convert into money the security that does not consist of money. The Principal shall not be liable for any loss occasioned by such a conversion.

5.6 RETENTION MONEYS

Any retention moneys will be retained by the Principal from moneys due under progress certificates issued by the Superintendent pursuant to sub-clause 42.1.

5.7 REDUCTION OF SECURITY AND RETENTION MONEYS

The Principal may, at any time after the Superintendent has issued a Certificate of Practical Completion under sub-clause 42.2 in respect of the Works or a separable part of the Works, make or allow a reduction of the amount of the security or the retention moneys by an amount which, in his opinion, is just and equitable PROVIDED HOWEVER that the reduction shall not reduce the amount of the security and retention moneys below fifty per centum of the security and retention moneys held by the Principal at the time the reduction is made or allowed by him.

Any reduction under this sub-clause shall not operate so as to waive, prejudice, release or discharge any of the conditions of the Contract or any of the obligations imposed on the Contractor by the Contract.

5.8 RELEASE OF SECURITY AND RETENTION MONEYS

The Principal shall account to the Contractor for the security and any retention moneys as provided in sub-clause 42.7, subject to the rights of the Principal under the Contract.

5.9 INTEREST ON SECURITY

Interest will not be payable by the Principal on any cash security or on the cash proceeds of any security converted into money pursuant to sub-clause 5.5 or on any retention moneys.

5.10 DEED OF GUARANTEE, UNDERTAKING AND SUBSTITUTION

Where the Contractor is a corporation that is a subsidiary of another corporation or is a corporation that is related to another corporation, the Contractor shall, if so requested in writing by the Principal, lodge with the Principal at the time of execution of the Formal Instrument of Agreement a Deed of Guarantee, Undertaking and Substitution for the performance of the obligations and the discharge of the liabilities of the Contractor under the Contract in a form approved in writing by the Principal, duly executed by the Contractor and that other corporation.

For the purpose of this sub-clause -

- (a) a corporation is a subsidiary of another corporation if, under the Act of the State or the Act or Ordinance of the Territory under which the first-mentioned corporation is incorporated or registered, it is to be deemed to be, for the purposes of that Act or that Ordinance, a subsidiary of that other corporation; and
- (b) a corporation is related to another corporation if, under the Act of the State or the Act or Ordinance of the Territory under which the first-mentioned corporation is incorporated or registered, it and the other corporation are to be deemed to be, for the purpose of that Act or that Ordinance, related to each other.

6. EVIDENCE OF CONTRACT

6.1 CONTRACT IN ABSENCE OF FORMAL INSTRUMENT OF AGREEMENT

Until the Formal Instrument of Agreement referred to in the next succeeding sub-clause is executed by the parties, the agreement in writing between the Contractor and the Principal for the execution of the Works, including the documents or the parts of the documents to which reference may properly be made in order to ascertain the rights and obligations of the parties in relation to the work under the Contract, shall constitute the Contract between them.

6.2 FORMAL INSTRUMENT OF AGREEMENT

- (a) As soon as practicable after the date of acceptance of tender the Principal shall prepare in duplicate a Formal Instrument of Agreement.
- (b) Within fourteen days after being requested in writing by the Principal so to do the Contractor shall execute both copies of the Formal Instrument of Agreement at the place and in the manner directed in writing by the Principal and shall return both copies to the Principal duly executed by the Contractor.
- (c) On receipt from the Contractor of the two copies of the Formal Instrument of Agreement duly executed by the Contractor the Principal shall as soon as practicable execute both copies of the Formal Instrument of Agreement, and thereafter as soon as practicable shall have both copies duly stamped unless an exemption from such requirement applies by Act of Parliament or Act or Ordinance of a Territory, as the case may be, and shall forward one of such copies to the Contractor.
- (d) If the Contractor fails to duly execute the Formal Instrument of Agreement within the time and in the form prescribed in paragraph (b) of this sub-clause the Principal shall be entitled to treat such failure as a default under clause 44.

7. SERVICE OF DOCUMENTS

7.1 SERVICE OF DOCUMENTS ON CONTRACTOR

Subject to clause 25, any document which is to be or may be issued or given to or served upon the Contractor under the Contract shall be deemed to have been sufficiently issued or given to or served upon the Contractor if it is handed to the Contractor or is sent by prepaid post to or is left at the address of the Contractor stated in the tender of the Contractor for the Works or at such other address as is notified in writing by the Contractor to the Principal.

7.2 SERVICE OF DOCUMENTS ON PRINCIPAL OR SUPERINTENDENT

Any document which is to be or may be issued or given to or served upon the Principal or the Superintendent under the Contract shall be deemed to be sufficiently issued or given to or served upon the Principal or the Superintendent, as the case requires, if it is handed to the Principal or the Superintendent or is sent by prepaid post to or is left at the address of the Principal or of the Superintendent stated in the Annexure hereto.

7.3 SERVICE BY POST

Any document sent by prepaid post shall be deemed to have been issued or given to or served upon the Contractor or the Principal or the Superintendent, as the case may be, at the time at which it would normally arrive in the ordinary course of the post at the address to which it is directed.

8. DOCUMENTS GENERALLY AND DRAWINGS AND SPECIFICATION

8.1 DISCREPANCIES IN DOCUMENTS

The several documents which constitute or evidence the Contract shall be taken as mutually explanatory and anything contained in one but not in another shall be equally binding as if contained in all. Any ambiguity, discrepancy or inconsistency shall be explained by the Superintendent upon reference thereof in writing to him by the Contractor or on discovery thereof by the Superintendent, who shall thereupon direct the Contractor as to the interpretation to be followed. If the Contractor finds any such ambiguity, discrepancy or inconsistency he shall immediately refer it in writing to the Superintendent.

Minor items not expressly mentioned in the Contract but which are necessary for the satisfactory completion and performance of the work under the Contract shall be supplied and executed by the Contractor without adjustment to the contract sum.

8.2 DRAWINGS AND SPECIFICATION

The Drawings, if any, and the Specification represent generally the forms, dimensions and descriptions of work to be carried out. The Contractor shall make allowance for slight variations in dimensions shown on Drawings which may be caused by unavoidable inequalities in the sizes of materials and any such variations shall be as agreed upon between the Contractor and the Superintendent or, failing such agreement, as decided by the Superintendent. Where any discrepancy exists between figured and scaled dimensions, the figured dimensions shall prevail.

Drawings made to larger scales and those showing details of particular parts of any work shall be taken as correct in preference to those made to smaller scales and for more general purposes.

8.3 DOCUMENTS TO BE SUPPLIED BY PRINCIPAL AND SUPERINTENDENT

Except as otherwise provided in the Contract, the Principal shall issue, or cause to be issued, to the Contractor free of charge five copies of the Drawings, Specification, Bill of Quantities (if any) and other written information required by the Contract to be supplied to the Contractor by the Principal.

The Superintendent shall, if requested in writing by the Contractor at a reasonable point in the progress of the work under the Contract, supply to the Contractor such additional drawings and other written information as the Superintendent shall decide are necessary for the execution of such work and such additional drawings or other written information so supplied by the Superintendent to the Contractor shall be deemed to be part of the original documents which constitute or evidence the Contract.

All documents supplied to the Contractor under this clause shall remain the property of the Principal and shall be returned by the Contractor to the Principal on demand in writing. Such documents shall not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the work under the Contract.

8.4 DOCUMENTS TO BE SUPPLIED BY CONTRACTOR

The Contractor shall supply to the Superintendent free of charge five copies, or such other number as may be specified in the Contract, of such Drawings and other written information as he is required by the Contract to so supply, together with such further copies as the Contractor requires for his own use.

If the Superintendent considers that such Drawings and other written information are suitable for use for the purposes of the Contract, he shall give the Contractor permission so to use them and shall return the Contractor's copies to him. The copies supplied for retention by the Superintendent shall remain the property of the Principal.

Notwithstanding the grant of permission to use any such Drawings or other written information referred to in the preceding paragraph of this sub-clause the Contractor shall be bound to carry out and complete the work under the Contract strictly in accordance with the Contract. Permission for the use of any such Drawings or other written information shall not relieve the Contractor from the full responsibility for the correctness of such Drawings or other written information except in so far as any error in or omission from such Drawings or other written information has been caused by an error in or omission from any document which the Principal has issued, or caused to be issued, to the Contractor or which the Superintendent has issued to the Contractor for the purposes of the Contract.

8.5 AVAILABILITY OF DOCUMENTS

During the execution of the work under the Contract one complete set of the Drawings, Specification and other written information issued or supplied by the Principal, the Superintendent and the Contractor shall be kept by the Contractor at the site or other location approved in writing by the Principal and shall be available at all times for reference by the Principal, the Superintendent and any persons nominated in writing by either of them.

9. ASSIGNMENT AND SUB-CONTRACTING

9.1 ASSIGNMENT

The Contractor shall not, without the prior written approval of the Principal and except on such terms and conditions as are determined in writing by the Principal, assign, mortgage, charge or encumber the Contract or any part thereof or any benefit or moneys or interest hereunder.

9.2 SUB-CONTRACTING

The Contractor shall not sub-contract the whole of the work under the Contract. The Contractor shall not sub-contract any part of the work under the Contract unless -

- (a) he has made prior application in writing to the Principal giving full particulars of the part of the work under the Contract he wishes to sub-contract and of the proposed sub-contractor and he has obtained the written approval of the Principal, which approval shall not be unreasonably withheld, to the application; or
- (b) he is specifically authorised by the Contract to sub-contract that part of the work under the Contract.

9.3 CONTRACTOR'S RESPONSIBILITY

- (a) An approval to sub-contract any part of the work under the Contract given by the Principal in pursuance of sub-clause 9.2 shall not relieve the Contractor from any of his liabilities or obligations under the Contract.
- (b) Notwithstanding any such approval to sub-contract the Contractor shall be liable to the Principal for the acts, defaults and neglects of any sub-contractor or any employee or agent of the sub-contractor as fully as if they were the acts, defaults or neglects of the Contractor or the employees or agents of the Contractor.

10. NOMINATED SUB-CONTRACTORS

10.1 NOMINATION BY PRINCIPAL

Where provisional sums are included in the Contract (whether so described or described as prime-cost sums or as prime-cost items or otherwise) as sums payable to persons to be nominated or selected in writing by the Principal to supply and fix, or to supply or fix, materials or goods or to carry out work on the site -

- (a) All sums which, pursuant to any contract between the Contractor and any person so nominated or selected, become actually payable in respect of any such provisional sum shall be paid by the Contractor to such person in the manner provided by sub-clause 10.4 and all specialists or others who have been so nominated or selected by the Principal are hereby declared to be sub-contractors employed by the Contractor and are referred to in this clause as "Nominated Sub-Contractors", provided that no Nominated Sub-Contractor shall be employed upon or in connection with the work under the Contract against whom the Contractor shall make any objection which the Principal decides to be reasonable. Any objection to a nomination or selection shall be made by the Contractor by notice in writing served upon the Principal within fourteen days after notice in writing of the nomination or selection has been given by the Principal to the Contractor; otherwise the right to object shall be deemed to have been waived.
- (b) Neither the provisions contained in this clause nor the exercise of any of the powers contained herein nor anything else contained in these General Conditions of Contract shall render the Principal in any way liable to any action, suit or other proceeding or any claim or demand for payment of provisional sums by a Nominated Sub-Contractor.
- (c) where the Contractor in the ordinary course of his business directly carries out the type of work for which provisional sums are included in the contract sum, the Contractor, provided he has intimated in writing to the Principal his desire to do so, shall be permitted to tender for the same or any of them without prejudice to the Principal's right to reject the lowest or any tender. If the Contractor's tender is accepted he shall not sub-contract the work without the approval of the Superintendent.

10.2 DIRECTIONS OF SUPERINTENDENT

The Superintendent shall give to the Contractor, and in sufficient time to prevent delay being occasioned in the progress of the work under the Contract, all necessary directions regarding the performance of the work and the selection and supply therefore of the materials or goods referred to in sub-clause 10.1.

10.3 CONTRACTOR TO ENTER INTO A CONTRACT WITH NOMINEE

The Contractor shall, within one month after notice in writing of the nomination or selection of a Nominated Sub-Contractor has been given by the Principal to the Contractor or within such further time as is approved in writing by the Principal, enter into a sub-contract with the Nominated Sub-Contractor which binds the Nominated Sub-Contractor to observe, perform and comply with all the provisions of the Contract on the part of the Contractor to be observed, performed and complied with so far as they relate and apply to the work to be carried out or the materials or goods to be supplied and fixed or supplied or fixed by the Nominated Sub-Contractor as if all the said provisions of the Contract were severally set out in the sub-contract. The Contractor shall, as soon as practicable after he has entered into the sub-contract with the Nominated Sub-Contractor, notify the Principal in writing of the date on which he entered into that sub-contract.

The nomination or selection by the Principal shall not relieve the Contractor of any of his liabilities or obligations under the Contract.

Notwithstanding any such nomination or selection the Contractor shall be liable to the Principal for the acts, defaults and neglects of any Nominated Sub-Contractor or any employee or agent of the Nominated Sub-Contractor as fully as if they were the acts, defaults or neglects of the Contractor or the employees or agents of the Contractor.

The sub-contract between the Contractor and the Nominated Sub-Contractor shall allow the Nominated Sub-Contractor to lodge security in a form provided by sub-clause 5.3 and shall provide that security and retention moneys shall be calculated on the same scale and on the same basis respectively as apply in the Contract between the Contractor and the Principal by virtue of clause 5.

10.4 PAYMENT OF NOMINATED SUB-CONTRACTOR

Where a payment to the Contractor includes an amount for materials or goods supplied and fixed, or supplied or fixed, or work carried out by a Nominated Sub-Contractor, the Contractor shall, within seven days after receiving that payment, pay to the Nominated Sub-Contractor an amount equal to the amount included as aforesaid unless the Contractor satisfies the Superintendent that, under the terms of his sub-contract with the Nominated Sub-Contractor, the whole or part of that amount is not immediately payable by him to the Nominated Sub-Contractor. In the latter event any part of that amount which is immediately payable shall be paid by the Contractor to the Nominated Sub-Contractor within the seven days aforesaid and the balance or, if none of that amount is immediately payable as aforesaid, the whole of that amount shall be paid by the

Contractor to the Nominated Sub-Contractor within seven days after its becoming payable to the Nominated Sub-Contractor under the terms of the sub-contract.

10.5 CONTRACTOR TO FURNISH PROOF OF PAYMENT TO NOMINATED SUB-CONTRACTOR

Notwithstanding the giving of a progress certificate by the Superintendent pursuant to sub-clause 42.1 in respect of any work carried out, the Contractor shall not be entitled to a progress payment or a final payment, as the case may be, in respect of the work unless the Contractor furnishes to the Superintendent proof satisfactory to the Superintendent that all amounts which have accrued due and payable by the Contractor to any Nominated Sub-Contractor in accordance with the last preceding sub-clause have been duly paid.

The Superintendent may, before the issue of the Final Certificate pursuant to sub-clause 42.7, direct the Contractor to produce to the Superintendent proof satisfactory to the Superintendent that all amounts accrued due and payable to Nominated Sub-Contractors have been duly paid.

10.6 RIGHT OF PRINCIPAL TO PAY NOMINATED SUB-CONTRACTOR DIRECT

If the Contractor does not furnish proof satisfactory to the Superintendent in accordance with the first paragraph of the last preceding sub-clause, the Principal may pay to the Nominated Sub-Contractor the whole or any part of such amount as is required to be so paid by the Contractor under sub-clause 10.4 and any moneys so paid shall be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 46.

10.7 BALANCE OF PAYMENT TO BE MADE TO CONTRACTOR

Where payment is made by the Principal to a Nominated Sub-Contractor in accordance with the last preceding sub-clause, the Contractor shall be entitled to be paid, by way of progress payment or final payment, as the case may be, in respect of the work referred to in sub-clause 10.5 an amount, if any, equal to the amount he would have received had he complied with sub-clause 10.4, less the amount paid by the Principal to the Nominated Sub-Contractor under the last preceding sub-clause.

10.8 BANKRUPTCY OF NOMINATED SUB-CONTRACTOR

Where a Nominated Sub-Contractor -

- (a) being a person, commits an act of bankruptcy or presents against himself or has presented against him a petition in bankruptcy or a sequestration order is made against him or he enters into any Scheme of Arrangement or any composition with his creditors or executes as a debtor a deed of arrangement or a deed of assignment; or
- (b) being a company, takes or has taken or instituted against it any action or proceeding whether voluntary or compulsory which has as an object or which may result in the winding up of the company, other than a voluntary winding up by members for the purpose of reconstruction or amalgamation, or is placed under official management or enters into a compromise or other arrangement with its creditors or a Receiver or Receiver and Manager is appointed to carry on its business for the benefit of its creditors or any of them;

and, as a consequence thereof, the contract between the Contractor and the Nominated Sub-Contractor is terminated or is disclaimed or is rescinded by an order of a Court, whether pursuant to its terms or to the provisions of the legislation relating to bankruptcy or to the liquidation or official management of companies the Principal may, on written notification by the Contractor and provision of proof of termination, disclaimer or rescission of contract satisfactory to the Principal, make a further nomination or selection.

A further nomination or selection (if made) shall be made in accordance with the provisions of this clause and if the cost of the work is necessarily increased or decreased because of the further nomination or selection, the amount of such increase or decrease shall be taken into account in determining the final contract sum.

If the Principal makes a further nomination or selection of a Nominated Sub-Contractor pursuant to the provisions of this sub-clause, any moneys whether by way of security or retention which by virtue of the terms of the contract between the Contractor and the original Nominated Sub-Contractor are forfeited or are liable to become forfeited to the Contractor, shall be taken into account in determining the final contract sum.

11. ADJUSTMENT OF PROVISIONAL SUMS AND PROVISIONAL QUANTITIES

11.1 ADJUSTMENT OF PROVISIONAL SUMS

In the event of the amount included in the Contract in respect of any provisional sum (whether so described or described as prime-cost sums or as prime-cost items or otherwise) not being expended or being greater or less than the amount directed in writing by the Principal to be expended by the Contractor against the provisional sum, the amount unexpended or the amount of the difference, as the case may be, shall be certified by the Superintendent and shall be taken into account in determining the final contract sum.

Where any adjustment is made pursuant to the preceding provisions of this sub-clause, that adjustment, unless the Superintendent otherwise determines, shall not include any amount on account of profit to or attendance on the part of the Contractor. Any variation to the work to which the provisional sum relates shall be dealt with in accordance with clause 40.

11.2 ADJUSTMENT OF PROVISIONAL QUANTITIES

If, in respect of any work for which a provisional quantity is included in the Contract, the Superintendent directs that a greater or lesser quantity than the provisional quantity shall be carried out, or that no work shall be carried out, the value of the difference between the provisional quantity and the quantity carried out pursuant to that direction, calculated at the rate for that work stated in the Contract, shall be certified by the Superintendent and shall be taken into account in determining the final contract sum.

11.3 SUMS SPECIFIED TO BE NETT COST

Provisional sums as defined in sub-clause 10.1 with respect to materials or goods to be supplied are to be taken to be the Nett Cost to the Contractor (disregarding any deduction of cash discount for prompt payment) to the point of delivery indicated in the Specification. The Contractor is responsible for all other costs, including costs of carriage and fixing.

11.4 PRINCIPAL'S RIGHT TO EXPEND PROVISIONAL SUMS

If the Principal does not nominate or select pursuant to sub-clause 10.1 a person to supply and fix, or to supply or fix, materials or goods or to carry out work on the site in respect of a provisional sum referred to in that sub-clause he may contract with or arrange with such persons as he may determine to carry out any work or to supply and fix, or to supply or fix, any materials or goods included in that provisional sum. If the Principal pursuant to the preceding provisions of this sub-clause expends any amount, the sum included in the Contract in respect of the relevant item shall not be included in the final contract sum, or if the work carried out or materials or goods supplied and fixed, or supplied or fixed, is part only of the provisional sum, then the sum to be included in the final contract sum shall be determined by the Superintendent.

12. CONTRACTOR TO INFORM HIMSELF

The Contractor shall be deemed to have -

- (a) examined carefully and to have acquired actual knowledge of the contents of the Drawings, Specification, Schedules, Bills of Quantities (if any), Conditions of Tendering, these General Conditions of Contract and the Special Conditions (if any) and any other information made available in writing by the Principal to the Contractor for the purpose of tendering; and
- (b) examined all information relevant to the risks, contingencies and other circumstances having an effect on his tender and which is obtainable by the making of reasonable enquiries; and
- (c) examined the site and its surroundings; and
- (d) satisfied himself as to the correctness and sufficiency of his tender for the work and that his price covers the cost of complying with all his obligations under the Contract and of all matters and things necessary for the due and proper performance and completion of the Contract.

Failure by the Contractor to do all or any of the things he is deemed to have done under this clause will not relieve the Contractor of his liability to perform and complete the Contract in accordance with the terms and conditions thereof.

13. ROYALTIES, PATENT AND OTHER INDUSTRIAL PROPERTY RIGHTS AND FEES

Unless otherwise provided for in the Contract, all payments (whether or not accrued due and payable at the date of the Contract) for royalties and patent rights, registered designs, trade marks or names, copyright and other protected rights and all fees then or thereafter to become payable for or in connection with any land, matter or thing used or required to be used in performance of the Contract or to be supplied under the Contract, shall be the responsibility of the Contractor and shall be paid by him to those to whom and at the time at which they become payable.

The Contractor shall indemnify the Principal against any action, suit, proceeding or claim or demand, in respect of all costs or expenses arising whether directly or indirectly from or incurred by reason of any infringement or alleged infringement of letters patent, registered design, trade mark or name, copyright or other protected rights in respect of any machine, equipment, work, material or thing, system or method of using, fixing of or working, or any arrangement used or fixed or supplied by the Contractor for the purposes of the Contract.

The indemnity shall not cover any infringement or alleged infringement of any letters patent, registered design, trade mark or name, copyright or other protected right -

- (a) due to the use of the Works or part thereof otherwise than in accordance with the Contract; or
- (b) resulting of necessity from the Contractor's compliance with the Contract unless -
- (c) the Principal has clearly indicated that such compliance will result in an infringement if the appropriate permission or licence is not obtained from the person lawfully able to grant the same; or
- (d) the Contractor was aware at any time prior to compliance that such compliance would result in an infringement.

In the event of any claim or demand being made or action, suit or proceeding being brought against the Principal in respect of any matters covered by the indemnity, the Principal shall immediately notify the Contractor in writing thereof, and the Contractor shall, with the assistance of the Principal, if he makes a request in writing for such assistance, but at the sole expense of the Contractor, conduct any litigation that may arise therefrom and all negotiations for the settlement of the claim, demand, action, suit or proceeding. The Contractor shall not make any settlement or consent to any judgment order or verdict against the Principal without first obtaining the Principal's written consent thereto.

The Principal shall not make any admission in relation to any claim, demand, action, suit or proceeding against the Principal with respect to any matter covered by the indemnity unless within seven days after the date of the receipt by him of the notification in writing from the Principal referred to in the preceding paragraph of this clause the Contractor fails to open negotiations for the settlement of the claim, demand, action, suit or proceeding or to take all necessary and proper steps to defend any claim, demand, action, suit or proceeding.

The Superintendent may, before the issue of the Final Certificate pursuant to sub-clause 42.7, direct the Contractor to furnish to the Superintendent a signed statement or a statutory declaration that all payments and all fees referred to in the first paragraph of this clause have been paid or satisfied.

14. REQUIREMENTS OF STATUTES AND SUBORDINATE LEGISLATION

14.1 COMPLYING WITH STATUTORY REQUIREMENTS

The Contractor shall comply with the requirements of all Acts of the Parliament of the Commonwealth and with the requirements of the provisions of all acts of the Parliament of the State or Acts or Ordinances of the Territory in which the work under the Contract or any part thereof is carried out and with the requirements of all ordinances, regulations, by-laws, orders and proclamations made or issued under any such Act or Ordinance and with the lawful requirements of public and other authorities in any way affecting or applicable to the Works or the execution of the work under the Contract.

If, in the opinion of the Contractor, the provisions of any document forming part of the Contract are at variance with any such requirements, the Contractor shall give written notice to the Superintendent specifying the departure from such provisions which he considers necessary to comply with such requirements and the reasons therefore, and applying for instruction thereon. The Superintendent shall, as soon as practicable after receiving the Contractor's written notice, give to the Contractor such lawful instructions as he thinks fit and the Contractor shall comply with those instructions.

14.2 NOTICES AND FEES

The Contractor shall give all notices necessary to comply with the aforesaid requirements and shall pay and bear all fees payable in connection therewith.

14.3 SURRENDER OF DOCUMENTS EVIDENCING APPROVAL OF AUTHORITIES

Prior to the issue of the Certificate of Practical Completion for the Works, or upon demand in writing by the Principal or the Superintendent at any time and from time to time, the Contractor shall surrender to the Principal any documents in his possession issued by or evidencing the approval of public or other authorities in connection with the work under the Contract.

15. PROTECTION OF PERSONS AND PROPERTY

The Contractor shall provide, erect and maintain all barricades, guards, fencing, temporary roadways, footpaths, signs and lighting and provide and maintain all watching and traffic flagging lawfully required by any public or other authority or necessary for the protection of the work under the Contract or of other property or for the safety and convenience of the public and others and shall remove the same when no longer required.

The Contractor shall avoid obstruction or damage to roadways and footpaths, drains and water-courses and public utility and other services on or adjacent to the site which are visible or the location of which can be ascertained by the Contractor from the appropriate authority or from the Contract and shall have any obstruction removed immediately and at his own cost shall have made good all damage caused by him, his employees, agents or sub-contractors or the employees of any such agents or sub-contractors. In the event of the Contractor's failure to do so, the Principal may have the remedial work carried out and the cost incurred shall be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 46.

The Contractor shall avoid interference with or damage to property on or adjacent to the site and shall provide temporary protection for and shall repair and reinstate all damage caused thereto by him, his employees, agents or sub-contractors or the employees of any such agents or sub-contractors, either directly or indirectly.

The Contractor shall prevent nuisance to the owners, tenants or occupiers of properties adjacent to the site and to the public generally.

16. CARE OF THE WORKS

16.1 LIABILITY OF THE CONTRACTOR TO DATE OF PRACTICAL COMPLETION OF THE WORKS

From the commencement of the Contract to the Date of Practical Completion of the Works (as defined in sub-clause 42.2) the Contractor shall be solely liable for the care of the Works, the Temporary Works and all materials, Constructional Plant and other things that are brought on to the site by or on behalf of the Contractor or any of his sub-contractors for the purpose of carrying out the work under the Contract or that are entrusted to him by the Principal for that purpose.

The Contractor shall at his own cost make good to the satisfaction of the Superintendent any loss of or damage to the Works, the Temporary Works or the aforesaid materials, Constructional Plant and other things resulting from any cause whatsoever (save and except the Excepted Risks as defined in sub-clause 16.2) when such making good is necessary for the satisfactory completion of the Works. When so ordered by the Superintendent any such loss or damage caused by any of the Excepted Risks as defined in sub-clause 16.2 shall be made good by the Contractor as a variation to the Contract and dealt with pursuant to clause 40.

If a Certificate of Practical Completion is issued for a separable part of the Works pursuant to sub-clause 42.2, then the Contractor's liability for the care of that separable part of the Works as defined above shall cease on the Date of Practical Completion of that separable part of the Works, except for his liability during the Defects Liability Period for that separable part of the Works, or for any Operational Maintenance Period specified in the Contract for that separable part of the Works, as stated in sub-clause 16.3.

Nothing contained in this sub-clause shall relieve the Contractor of his responsibilities or liabilities under clause 18.

16.2 EXCEPTED RISKS

The Excepted Risks are -

- (a) Any negligent act or omission of the Principal, the Superintendent or the employees, professional consultants or agents of the Principal.
- (b) Any risk specifically excepted in the Specification.
- (c) War, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority.
- (d) Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion or nuclear fuel not caused by the Contractor or his employees or agents or sub-contractors.

16.3 LIABILITY OF THE CONTRACTOR AFTER DATE OF PRACTICAL COMPLETION

- (a) After the Date of Practical Completion of the Works or a separable part of the Works the Contractor shall, subject to the provisions of paragraphs (b), (c) and (d) respectively in this sub-clause, indemnify and keep indemnified the Principal against all loss or damage to the Works or the separable part of the Works or to the relevant Temporary Works arising out of or resulting directly or indirectly from any negligent act or omission of the Contractor or any sub-contractor or any employee or agent of the Contractor or of any sub-contractor or out of any default of the Contractor under the Contract; and for the purposes of this sub-clause the word "default" shall be construed, but without restricting its generality of meaning, as including faulty design, workmanship or materials.
- (b) If a Certificate of Practical Completion is issued for the Works and no Certificate of Practical Completion has been issued for any separable part of the Works the indemnity shall extend to the Works and the Temporary Works during the period commencing on the Date of Practical Completion of the Works and ending on the day on which the Defects Liability Period for the Works, or the Operational Maintenance Period specified in the Contract for the Works, as the case may be, expires.
- (c) If a Certificate of Practical Completion is issued for a separable part of the Works the indemnity shall extend to that separable part of the Works during the period commencing on the Date of Practical Completion of that separable part of the Works and ending on the day on which the Defects Liability Period for that separable part of the Works, or the Operational Maintenance Period specified in the Contract for that separable part of the Works, as the case may be, expires.
- (d) If a Certificate of Practical Completion is issued for the Works and a Certificate of Practical Completion has been issued for a separable part of the Works the indemnity shall, without limiting or affecting the indemnity applicable in relation to the separable part of the Works, extend to the Works and the Temporary Works other than the separable part of the Works.

17. INSURANCE OF THE WORKS

Before commencing work under the Contract, the Contractor shall take out an insurance policy to cover his liabilities as set out in clause 16 against any loss of or damage resulting from any cause whatsoever to the Works, the Temporary Works and all materials and other things that are brought on to the site by or on behalf of the Contractor or any of his sub-contractors for the purpose of carrying out the work under the Contract or that are entrusted to him by the Principal for that purpose; and for the purpose of this clause the expression "materials and other things" shall be construed, but without restricting its generality of meaning, as including Constructional Plant (unless otherwise insured to the satisfaction of the Superintendent).

The insurance cover may exclude -

- (a) the cost of making good fair wear and tear or gradual deterioration but not the loss or damage resulting therefrom;
- (b) the cost of making good faulty design, workmanship and materials but not the loss or damage resulting therefrom;
- (c) consequential loss of any kind, but not loss of or damage to the Works;
- (d) damages for delay in completing or for the failure to complete work;
- (e) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause;
- (f) loss or damage resulting from the excepted risks (b) and (c) defined in sub-clause 16.2.

- (g) The insurance cover shall extend to the Contractor's liabilities and obligations as set out in sub-clause 16.3.

Unless otherwise specified elsewhere in the Contract, and subject to such reductions as are appropriate having regard to the next succeeding paragraph, the insurance cover shall be for an amount not less than the contract sum to which shall be added a further sum not less than the total of the respective amounts stated in the Annexure hereto for the value of materials to be supplied by the Principal for the purpose of the work under the Contract and the assessments for insurance purposes of architects', engineers' and surveyors' fees and of costs of demolition and removal of debris relating to and necessarily incurred in the reinstatement of loss or damage to the Works.

The insurance policy shall be in the joint names of the Principal, the Contractor and all sub-contractors employed from time to time in relation to the Works for their respective rights, interests and liabilities and unless otherwise specified elsewhere in the Contract, shall be effected with an insurer or insurers approved in writing by the Principal and in terms approved in writing by the Principal, which approvals shall not be unreasonably withheld. The policy shall be maintained until the Contractor's liabilities and obligations respectively stated in sub-clause 16.3 cease.

18. PROPERTY DAMAGE AND PUBLIC RISK

Subject to the next succeeding paragraph of this clause, the Contractor shall indemnify and keep indemnified the Principal against all loss of or damage to the property of the Principal (other than the Works and the Temporary Works or a separable part of the Works but including existing property in or upon which the work under the Contract is being carried out) and from and against any claim, demand, action, suit or proceeding that may be made or brought by any person against the Principal, the Superintendent or the employees, professional consultants or agents of the Principal or any of them in respect of personal injury to or the death of any person whomsoever or loss of or damage to any property whatsoever arising out of or as a consequence of the construction or maintenance of the Works by the Contractor or his employees, agents or sub-contractors and also from any costs and expense that may be incurred in connection with any such claim, demand, action, suit or proceeding.

The Contractor shall not, under the last preceding paragraph of this clause, be rendered liable for or in respect of personal injury to or the death of any person or loss of or damage to property resulting from any breach by the Principal of any provision of the Contract or any negligent act or omission of the Principal, the Superintendent or the employees, professional consultants or agents of the Principal or for or in respect of any claims, demands, actions, suits or proceedings, costs and expenses whatsoever in respect thereof or in relation thereto.

19. PUBLIC LIABILITY INSURANCE

Before commencing work under the Contract, the Contractor shall take out a Public Liability Policy of Insurance in the joint names of the Principal, the Contractor and all sub-contractors employed from time to time in relation to the Works for their respective rights and interests to cover their liabilities to third parties, including the liabilities as set out in clause 18.

The Public Liability Policy of Insurance shall include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action that he may have or acquire against all or any of the persons comprising the insured and for the purpose of which the insurer accepts the term "insured" as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

The Public Liability Policy of insurance shall be for an amount not less than the sum stated in the Annexure hereto and, unless otherwise specified elsewhere in the Contract, shall be effected with an insurer or insurers approved in writing by the Principal and in terms approved in writing by the Principal, which approvals shall not be unreasonably withheld. The policy shall be maintained during the currency of the Contract.

20. ACCIDENT OR INJURY TO EMPLOYEES

The Contractor shall indemnify and keep indemnified the Principal against liability for all loss or damage resulting from personal injury to or the death of (other than such injury or death resulting from any breach by the Principal of any of the provisions of the Contract or any negligent act or omission of the Principal, the Superintendent, or the employees, professional consultants or agents of the Principal) the Contractor or any sub-contractor or any employee or agent of the Contractor or of any sub-contractor occurring during the currency of the Contract and arising out of or in connection with the execution of the work under the Contract

or the performance of the Contract and against all claims, demands, actions, suits or proceedings, costs and expenses whatsoever in respect thereof or in relation thereto, whether at Common Law or under any statute.

21. INSURANCE OF EMPLOYEES

Before commencing work under the Contract, the Contractor shall ensure that a suitable insurance policy is taken out giving cover to himself and all sub-contractors against any liability, loss, damage, claim, demand, action, suit or proceeding, costs and expenses whatsoever arising at Common Law or under any statute or other legislative provision, including any statute or such provision relating to workmen's compensation, as a result of personal injury to or the death of any person employed by the Contractor or by any sub-contractor in or about the execution of the work under the Contract or the performance of the Contract.

Insurance effected by the Contractor pursuant to the last preceding paragraph of this clause shall be extended to cover all liabilities of the Principal at Common Law and under any applicable statute or other legislative provision.

The insurance cover in respect of the liabilities of the Principal at Common Law shall be for an amount not less than the sum stated in the Annexure hereto and, unless otherwise specified elsewhere in the Contract, the policy shall be effected with an insurer or insurers approved in writing by the Principal, which approval shall not be unreasonably withheld. The policy shall be maintained during the currency of the Contract.

22. INSPECTION AND PROVISIONS OF INSURANCE POLICIES

Before commencing work under the Contract and whenever requested in writing at any time and from time to time thereafter so to do by the Principal, the Contractor shall produce evidence to the satisfaction and approval in writing of the Principal of the insurances effected and maintained by the Contractor and his sub-contractors for the purposes of clauses 17, 19 and 21 or any of them.

If, after being requested in writing by the Principal so to do, the Contractor fails to produce evidence of compliance with his insurance obligations under clauses 17, 19 and 21 or any of them which is to the satisfaction and approval of the Principal, the Principal may effect and keep in force any such insurance and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 46, or the Principal may refuse payment upon any certificate until evidence of compliance with his insurance obligations under clauses 17, 19 and 21 or any of them is produced by the Contractor to the satisfaction and approval of the Principal.

The Contractor shall ensure that each policy of insurance effected as required by clauses 17, 19 and 21 or any of them shall contain provisions acceptable to the Principal that will -

- (a) require the insurer, whenever the insurer gives to or serves upon the Contractor or a sub-contractor a notice of cancellation or any other notice under or in relation to the policy, at the same time to inform the Principal in writing that the notice has been given to or served upon the Contractor or the sub-contractor; and
- (b) provide that a notice of claim given to the insurer by the Principal or the Contractor or a sub-contractor shall be accepted by the insurer as a notice of claim given to the insurer by the Principal and the Contractor or by the Principal and the sub-contractor, as the case may require.

The Contractor shall, as soon as practicable, inform the Principal in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by clauses 17, 19 and 21 and shall ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim. The Contractor shall take such steps as are necessary or appropriate to ensure that a sub-contractor will, in respect to an event or claim of a like nature arising out of or relating to the operations or responsibilities of the sub-contractor, take in relation to the Principal the like action to that which the Contractor is required to take under this paragraph.

The effecting of insurance as required by clauses 17, 19 and 21 or any of them shall not in any way limit the liabilities or obligations of the Contractor under other provisions of the Contract.

23. SUPERINTENDENT

The work under the Contract shall be executed in accordance with the Contract and in accordance with any directions of the Superintendent pursuant to the provisions of the Contract.

For the purposes of this clause the word "direction" includes any agreement, approval, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, notification, order,

permission, rejection, request or requirement which the Superintendent may make, give or issue pursuant to the provisions of the Contract.

Any direction which may be or is given to the Contractor by the Superintendent pursuant to the provisions of the Contract may, unless the Contract expressly provides otherwise, be given either orally or in writing. When any such direction is in the first instance given orally the Superintendent shall as soon as practicable after it is so given confirm it in writing addressed to and issued or given to or served upon the Contractor.

24. SUPERINTENDENT'S REPRESENTATIVES

The Superintendent may from time to time in writing appoint persons named by him to exercise such of the powers, duties, discretions and authorities vested in him as he may think fit and shall give notice to the Contractor of the name of each person so appointed and the extent of the powers, duties, discretions and authorities exercisable by that person.

Upon receipt of such notice, the Contractor shall recognise and accept each person so appointed as lawfully entitled to exercise for the purposes of the Contract the powers, duties, discretions and authorities referred to in the notice.

The Superintendent shall not at any time appoint more than one person to exercise a particular power, duty, discretion or authority vested in him.

An appointment under this clause does not prevent the exercise of a power, duty, discretion or authority by the Superintendent and the Superintendent may at any time revoke any such appointment by notice to the Contractor.

Where the word "Superintendent" is used in these General Conditions of Contract or elsewhere in the Contract, it shall, so far as concerns the powers, discretions and authorities exercisable by the Superintendent's Representative by virtue of his appointment under this clause, be deemed to include a Superintendent's Representative.

25. CONTRACTOR'S REPRESENTATIVES

The Contractor shall personally superintend the execution of the work under the Contract or have during the currency of the Contract a competent representative acceptable to the Principal present on the site at all times during which any activities relating to the execution of the work under the Contract are taking place and if required by the Superintendent at such other times and at such other places at or in which any activities relating to the execution of the work under the Contract are taking place.

The Contractor shall notify the Superintendent in writing of the name of his representative on the site and of the name of any other representative at any other place in which any activities relating to the execution of the work under the Contract are taking place, and of any subsequent changes. Any direction as defined in clause 23 shall -

- (a) if given to the representative on the site in respect of the execution of the work under the Contract on the site be deemed to be a direction issued or given to or served upon the Contractor in respect of the execution of the work under the Contract on the site; or
- (b) if given to the representative at any other place in respect to the execution of part of the work under the Contract in that place shall be deemed to be a direction issued or given to or served upon the Contractor in respect to the execution of that part of the work under the Contract at that place.

Matters within the knowledge of a representative of the Contractor shall be deemed to be within the knowledge of the Contractor.

In the absence from the site of the Contractor and his representative, the Superintendent may take such action as he considers necessary to prevent loss of or damage to the whole or any part of the work under the Contract or to any property or to prevent personal injury to any person. The cost of any action so taken by the Superintendent shall, if the Superintendent determines that the action is of a kind that the Contractor would have been liable to take at his own expense if he or his representative had not been absent, be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 46.

Any action taken by the Superintendent under this clause shall not relieve the Contractor of any of his liabilities or obligations under the Contract.

26. CONTROL OF CONTRACTOR'S EMPLOYEES AND SUB-CONTRACTORS

The Contractor shall employ and ensure that his sub-contractors employ in connection with the work under the Contract only such persons as are careful, skilled and experienced in their respective trades and callings.

The Superintendent may object to and direct the Contractor to remove or have removed from the site or from any activity connected with the work under the Contract within such time as the Superintendent directs any person employed by the Contractor or by any sub-contractor who, in the opinion of the Superintendent, misconducts himself or is incompetent or negligent in the performance of his duties; and the Contractor shall comply with such direction any such person shall not be employed on the site or on activities connected with the work under the Contract without the prior approval of the Superintendent.

27. SITE

27.1 POSSESSION OF SITE

The Principal shall on or before the expiration of the time stated in the Annexure hereto give to the Contractor possession of sufficient of the site to enable him to commence work in accordance with sub-clause 35.1, and thereafter to execute the work under the Contract in accordance with the requirements of the Contract.

Should any delay take place in giving the Contractor such possession of the site the delay shall be deemed not to constitute a breach of contract but shall be a ground for an extension of the time for completion pursuant to sub-clause 35.4.

Possession of the site shall confer on the Contractor a right only to such use and control as shall be necessary to enable him to execute the work under the Contract in accordance with the Contract; but the Principal may at any time after reasonable notice take possession of any portion of the site for the purpose of carrying out any other work or for any purpose whatsoever. The Contractor shall permit the execution of work by contractors, artists, tradesmen and other persons engaged by the Principal or the Superintendent whose names have been previously notified to the Contractor by the Superintendent and shall fully cooperate with the contractors, artists, tradesmen and other persons so engaged by the Principal or the Superintendent and with the Principal and shall carefully co-ordinate his own work with that being carried out or to be carried out by such contractors, artists, tradesmen and other persons or by the Principal.

27.2 EXTRA LAND REQUIRED BY CONTRACTOR

The Contractor shall procure for himself and at his own cost the occupation or use of or relevant rights over any land in addition to the site which he may deem requisite or necessary for the execution of the work under the Contract or for the purposes of the Contract and shall, as a condition precedent to the issue of the Final Certificate, if so required by the Superintendent, provide a properly executed release from all claims or demands (whether for damages or otherwise howsoever) from the owner or occupier of and from other persons having an interest in such land.

27.3 ACCESS TO WORK

The Contractor shall at all reasonable times give to the Principal and to the Superintendent and to any other persons authorised in writing by the Principal or by the Superintendent access to the work under the Contract and shall provide every reasonable facility necessary for the supervision, examination and testing of any work or materials for the Contract at any place where any such work is being or is to be carried out or materials are being prepared.

27.4 DELIVERY OF MATERIALS TO OR WORK ON SITE BEFORE POSSESSION

Until possession of the site is given in accordance with sub-clause 27.1, no materials shall be delivered to or work performed on the site by or on behalf of the Contractor unless approval is given by the Superintendent.

27.5 USE OF SITE BY CONTRACTOR

The Contractor shall not without the prior written approval of the Principal or unless the Contract so provides, use the site or permit or suffer the site to be used for camping or any residential purpose.

27.6 FINDING OF MINERALS, FOSSILS AND RELICS

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the site during the execution of the work under the Contract shall as between the parties be and remain the Property of the Principal and the Contractor, immediately upon the discovery thereof, shall take precautions to prevent the loss or removal of or damage to any such article or thing and notify the Superintendent of its discovery. The extra costs, if any, incurred by the Contractor in taking such precautions which the Superintendent determines were reasonable shall be borne by the Principal.

28. SETTING OUT OF THE WORKS

28.1 INFORMATION TO BE SUPPLIED TO CONTRACTOR

The Superintendent shall supply the information necessary to enable the Contractor to set out the Works and shall provide the Contractor with such survey marks as are specified in the Contract, or if not so specified, as the Superintendent determines to be necessary for setting out the Works.

28.2 CONTRACTOR TO SET OUT THE WORKS

Subject to the last preceding sub-clause, the Contractor shall at his own expense set out the Works correctly in accordance with the Contract and shall provide all instruments and materials necessary for that purpose.

28.3 CARE OF SURVEY MARKS

The Contractor shall preserve and maintain in their true positions all survey marks referred to in sub-clause 28.1.

Should any survey mark be disturbed or obliterated, the Contractor shall immediately notify the Superintendent and shall, unless the Superintendent otherwise determines, rectify such disturbance or obliteration to the satisfaction of the Superintendent. Unless the disturbance or obliteration has been caused by the Principal, his employees or agents, the cost of rectification shall be borne by the Contractor.

28.4 ERRORS IN SETTING OUT

If at any time during the progress of the work under the Contract, any error is discovered in the position, level, dimensions or alignment of any part thereof, the Contractor shall immediately on his discovery of the error notify the Superintendent and shall, unless the Superintendent otherwise directs, rectify the error. Unless the error has been caused by incorrect data issued by the Superintendent, the cost of rectification shall be borne by the Contractor.

The Superintendent may check the setting out of the work under the Contract by the Contractor but the fact that the Superintendent may have carried out such checks shall not relieve the Contractor of any responsibility for the correct setting out of the work.

28.5 SURVEY MARK

The term "survey mark" used in this clause means a survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark used or intended to be used for the purpose of setting out, checking or measuring the work under the Contract.

29. MATERIALS, LABOUR AND CONSTRUCTIONAL PLANT

29.1 PROVISION OF MATERIALS, LABOUR AND CONSTRUCTIONAL PLANT

The Contractor shall, unless the Contract otherwise provides, supply at his own cost and expense everything necessary for the proper completion of the work under the Contract and the proper performance of his obligations under the Contract.

29.2 CONSTRUCTIONAL PLANT

All Constructional Plant shall comply with the requirements in relation thereto of the relevant laws in operation in the State or Territory in which the work under the Contract is being carried out.

29.3 CONTRACTOR NOT TO REMOVE MATERIALS OR DESIGNATED CONSTRUCTIONAL PLANT

No Constructional Plant that is from time to time designated in writing by the Superintendent and no materials shall be removed from the site without the prior written approval of the Superintendent, which approval shall not be unreasonably withheld where they are no longer immediately required for the proper completion of the work under the Contract.

29.4 MANUFACTURE AND SUPPLY OF MATERIALS

The Contractor shall give the Superintendent upon request full particulars of the mode and place of manufacture and source of supply and the performance capacities and such other information as the Superintendent considers necessary in respect of any of the material, machinery or other equipment to be used in connection with the Contract. The Contractor shall before he arranges manufacture off site of any works or fabricated material to be used in connection with the Contract give the Superintendent reasonable written notice of his intention to do so.

30. MATERIALS AND WORK

30.1 QUALITY OF MATERIALS AND WORK

Materials used in the work under the Contract and standards of workmanship shall be in conformity with the provisions of the Contract. In the absence of any such provision in the Contract in respect of any material or standard of workmanship that material or standard of workmanship, as the case may be, shall be of a kind which is suitable for its purpose and is consistent with the nature and character of the Works.

Unless otherwise specified in the Contract, any materials to be incorporated in the Works shall be new and, where applicable, materials and workmanship shall be in accordance with the relevant standard of the Standards Association of Australia.

30.2 PROTECTION OF MATERIALS

The Contractor at his own cost provide adequate storage and protection for all materials so as to preserve their quality and fitness for the Works.

30.3 MATERIALS OR WORK NOT COMPLYING WITH THE CONTRACT

The Superintendent may, at any time before the issue of the Final Certificate pursuant to sub-clause 42.7, reject any material or work which is not in accordance with the Contract and may direct its replacement, correction or removal whether it has been the subject of a payment or not and such rejection or direction shall be made or given as soon as practicable after the discovery by the Superintendent of its non-compliance with the Contract. If the Superintendent directs the Contractor to replace or correct any material or work, the Contractor shall commence the work of replacement or correction within seven days after the receipt by him of the direction and shall complete the work promptly and to the satisfaction of the Superintendent. If the Superintendent directs the Contractor to remove from the site any material which is not in accordance with the Contract, the Contractor shall do so promptly. All such replacements, corrections and removals shall be at the Contractor's cost.

If the Contractor fails to comply with the preceding paragraph of this sub-clause the Principal may have the work of replacement, correction or removal carried out by other persons and the cost incurred by the Principal in having the works so carried out shall be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 46.

31. EXAMINATION AND TESTING OF MATERIALS AND WORK

31.1 MATERIALS AND WORK TO BE SUBJECT TO EXAMINATION AND TESTING

The Superintendent may at any time and from time to time direct that any materials or work to be used in or forming any part of the work under the Contract and specified in the direction shall be examined or tested or shall be examined and tested.

Where a Superintendent gives any such direction the Contractor shall promptly prepare and make available for examination or testing or, as the case may be, examination and testing the materials or work specified in the said direction and shall give the Superintendent prompt notice that the same are so available.

31.2 COVERING UP OF WORK

Where the Contract provides or the Superintendent directs that any part of the work under the Contract shall not have further work placed thereon or shall not be covered up or put out of view without the prior approval of the Superintendent, that part of the work shall not have further work placed thereon or be covered up or put out of view without that approval.

31.3 OPENING UP FOR EXAMINATION AND TESTING

The Superintendent may at any time and from time to time before the issue of the Final Certificate pursuant to sub-clause 42.7, direct the Contractor to open up or pull down for examination or testing or for examination and testing any part of the work under the Contract.

The Contractor shall comply promptly with such a direction and, when the Superintendent has completed his examination or testing or his examination and testing, as the case may be, shall reconstruct and make good to the satisfaction of the Superintendent the part of the work so opened up or pulled down.

If the part of the work referred to in the first paragraph of this sub-clause has been covered up or put out of view in contravention of a provision of the Contract or in contravention of a direction given by the Superintendent pursuant to sub-clause 31.2 or is found by the Superintendent not to be in accordance with the Contract, the whole of the cost of opening up, pulling down, reconstruction and making good shall be borne by the Contractor.

If the part of the work referred to in the first paragraph of this sub-clause has not been covered up or put out of view in contravention of a provision of the Contract or in contravention of a direction given by the Superintendent pursuant to sub-clause 31.2 and it is found to be in accordance with the Contract, the whole of the cost of opening up, pulling down, reconstruction and making good shall be borne by the Principal.

31.4 TESTING

Unless otherwise provided for in the Contract, testing shall be carried out by the Superintendent or by a testing authority approved by him. Subject to the provisions of this clause, the costs of tests which are carried out by the Superintendent and the costs of tests that are not provided for in the Contract but are carried out by a testing authority employed by the Contractor at the direction of the Superintendent shall be borne by the Principal. The cost of all other tests shall be borne by the Contractor.

31.5 REPRESENTATION AT TESTS

The Superintendent and the Contractor shall have the right to be present at or to have a representative present at all tests. Each shall give the other reasonable notice of and facilitate the attendance of that other or his representative at tests which are carried out by or on behalf of the person giving the notice. If any test is carried out other than in the presence of the Superintendent or his representative the Superintendent may reject the result of that test and may direct that the test be repeated. The costs of such a repeat test shall be borne by the Contractor except where the rejection arises from the non-attendance of the Superintendent or his representative at a test in respect to which reasonable notice has been given to the Superintendent pursuant to this sub-clause in which case the costs of the repeat test shall be borne by the Principal. If a test is carried out by the Superintendent or his representative without reasonable notice having been given to the Contractor and the Superintendent orders that the test be repeated the costs of the repeat test shall be borne by the Principal.

For the purposes of this sub-clause, the word "test" shall include the taking of samples and specimens and the preparation of materials and work for testing. Where in pursuance of this sub-clause the costs of a

repeat test are to be borne by the Principal, such costs shall include the costs of packing and handling samples and specimens and transporting them to the place where they are to be tested.

31.6 COST AND PREPARATION OF SAMPLES AND SPECIMENS

Except as otherwise provided in sub-clause 31.5, the cost of taking samples and specimens and preparing materials and work for testing and the cost of packing, handling and transporting them to the place where they are to be tested shall, in respect of all tests specified by the Contract, be borne by the Contractor.

31.7 PRINCIPAL'S RIGHT TO USE THE WORKS BEFORE TESTING

If the Contractor fails to carry out within the time prescribed by the Contract, or where there is no time prescribed by the Contract within a reasonable time after a direction pursuant to sub-clause 31.3 is given to or served upon him, any test including a test of the completed Works which is required to be carried out by him and which is a test the passing of which would under the Contract be followed by the issue of a Certificate of Practical Completion, the Principal may carry out the test and may take samples and specimens and prepare materials and work for testing or give the Contractor seven days notice in writing of his intention to use the Works.

Any amounts expended by the Principal in carrying out the test or taking samples and specimens or preparing materials and work for testing shall be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 46. At the expiration of the period of notice referred to in this sub-clause the Principal may use the Works and, provided he uses the Works in a proper and normal manner, the Works shall remain at the Contractor's risk until the expiration of the Defects Liability Period or any Operational Maintenance Period, as the case may be, referred to in clause 37.

31.8 RE-TESTING OF WORK FAILING UNDER TEST AND ALTERED, RENEWED OR REPLACED

If under a test any part of the Works fails to fulfil the requirements of the Contract, tests on the remedial work of that part and tests on all other parts of the Works affected by the remedial work shall be repeated in accordance with the requirements of the Contract. The costs of such repeat tests shall be borne by the Contractor.

32. WORKING HOURS

Subject to the provisions of the third paragraph of this clause, no work outside the customary working hours or on other than ordinary working days, or outside such other working hours or working days as are provided in the Contract, will be allowed without the prior approval of the Superintendent.

All costs attributable to the supervision by or on behalf of the Principal of work approved pursuant to the last preceding paragraph shall be borne by the Principal.

If in the interests of safety of the Works or to protect life or property the Contractor finds it necessary to carry out, without the prior approval of the Superintendent, work outside customary working hours or on other than ordinary working days or outside such other working hours or working days as are provided in the Contract, he shall inform the Superintendent in writing of the circumstances as early as possible.

For the purposes of this clause -

"customary working hours" means ordinary hours of work fixed by or under any statute, ordinance or subordinate legislation or by any relevant award, determination, judgment or order of any competent court, board, commission or other industrial tribunal or by any relevant industrial agreement that is in force in the State or Territory in which the Works are being carried out or, where hours of work are not so fixed, means the hours of work normally observed in the relevant trade or industry in that State or Territory;

"ordinary working days" means ordinary days of work fixed by or under any statute, ordinance or subordinate legislation or by any relevant award, determination, judgment or order of any competent court, board, commission or other industrial tribunal or by any relevant industrial agreement that is in force in the State or Territory in which the Works are being carried out or, where days of work are not so fixed, means the days of work normally observed in the relevant trade or industry in that State or Territory but does not include a day that is a public holiday in that State or Territory.

33. PROGRAMMING OF THE WORKS

33.1 CONSTRUCTION PROGRAMME

If the Contract neither includes nor requires the Contractor to supply a construction programme showing the dates by which or the times within which the various stages or parts of the work under the Contract are to be executed or completed, the Superintendent may direct the Contractor to supply to him such a construction programme. The Contractor shall, within the time stated in the direction, supply to the Superintendent such a construction programme and the Contractor shall, subject to clause 34, adhere to that construction programme unless a deviation therefrom is directed by the Superintendent pursuant to sub-clause 33.2.

Where the Contract neither includes nor requires the Contractor to supply a construction programme and the Superintendent has not directed the Contractor to supply to him such a construction programme the Contractor may, within a reasonable time after the date of acceptance of tender, supply a construction programme showing the dates by which or the times within which the various stages or parts of the work under the Contract are to be executed or completed. If such a construction programme is supplied by the Contractor he shall, subject to clause 34, adhere to that construction programme unless a deviation therefrom is directed by the Superintendent pursuant to sub-clause 33.2.

33.2 DEVIATION FROM CONSTRUCTION PROGRAMME

The Superintendent may from time to time direct a deviation from a construction programme included in the Contract or supplied by the Contractor pursuant to a requirement of the Contract or a direction of the Superintendent under sub-clause 33.1 and, in any such event, the Superintendent may direct the Contractor to supply to him a further construction programme. The Contractor shall, within the time stated in any such direction, supply such a further construction programme.

Any such further construction programme shall have effect and be subject to the same conditions as if it were a construction programme included in the Contract or supplied by the Contractor pursuant to a requirement of the Contract or a direction of the Superintendent under sub-clause 33.1.

The supply of a construction programme or of a further construction programme under this clause shall not relieve the Contractor of any of his obligations under the Contract.

33.3 ORDER OF WORK

If a construction programme has not been provided pursuant to any preceding provision of this clause the Superintendent shall have full power to direct in what order and at what time the various stages or parts of the work under the Contract shall be performed.

33.4 EXTRA COSTS

The Contractor shall not be entitled to any extra cost resulting from -

- (a) a deviation from a construction programme directed by the Superintendent pursuant to sub-clause 33.2; or
 - (b) a direction given by the Superintendent pursuant to sub-clause 33.3;
- unless the need for the deviation or the direction was due to an act, default or omission of the Principal or the Superintendent.

34. PROGRESS AND SUSPENSION OF THE WORKS

34.1 RATE OF PROGRESS

The Contractor shall proceed with the work under the Contract at a rate of progress and in a manner satisfactory to the Superintendent.

34.2 SUSPENSION BY SUPERINTENDENT

Where the suspension of the whole or any part of the work under the Contract becomes necessary -

- (a) because of an act, default or omission of :

- (i) the Principal or an employee or professional consultant or agent of the Principal; or
 - (ii) the Contractor or an employee or agent of the Contractor; or
 - (iii) a sub-contractor or an employee or agent of that sub-contractor; or
- (b) for the protection or safety of:
- (i) the employees or agents of the Contractor or of a sub-contractor or the employees, professional consultants or agents of the Principal or any other person concerned in the performance of the whole or any part of the work under the Contract; or
 - (ii) the executed work or any part of the executed work; or
 - (iii) the public or any property;

the Superintendent shall order the Contractor to suspend the progress of the whole or any part of the work under the Contract specified in the order for such time or times as the Superintendent may think fit.

34.3 SUSPENSION BY CONTRACTOR

Should the Contractor wish to suspend the progress of the whole or any part of the work under the Contract he shall in writing notify the Superintendent and explain the reasons for the suspension. The Superintendent shall thereupon, if he thinks it necessary or reasonable so to do, grant permission for a suspension of the whole or any part of the work under the Contract for such time or times as he may think fit.

34.4 RECOMMENCEMENT OF WORK

The Superintendent shall, when the reason for any suspension no longer exists, direct the Contractor to recommence work on the whole or on the relevant part of the work under the Contract and the Contractor shall comply with the direction promptly.

34.5 COST OF SUSPENSION

The extra cost, if any, of completing the Works incurred by the Contractor by reason of any suspension under sub-clause 34.2 or sub-clause 34.3 shall be borne and paid for by the Contractor PROVIDED HOWEVER that if the suspension is due to an act, default or omission of the Principal or an employee, professional consultant or agent of the Principal the Contractor shall be entitled to payment of the amount of any extra cost of completing the Works incurred by him that is attributable to such an act, default or omission.

34.6 EFFECT OF SUSPENSION

The suspension of the progress of the whole or any part of the work under the Contract under this clause shall not affect the obligation of the Contractor to execute the work under the Contract to Practical Completion of the Works or a separable part of the Works within the period or by the date stated in the Annexure hereto with reference to sub-clause 35.2 or within any extended time allowed by the Superintendent pursuant to sub-clause 35.4.

35. TIMES FOR COMMENCEMENT AND COMPLETION

35.1 TIME FOR COMMENCEMENT OF WORK ON THE SITE

Subject to clause 27 and save as otherwise provided in the Contract, the Contractor shall commence work on the site within fourteen days after the Principal has given to the Contractor possession of sufficient of the site for the commencement of such work by him, or within such further time as may be approved by the Superintendent, and thereafter the Contractor shall execute the work under the Contract in accordance with the Contract.

The Contractor shall before commencing work on the site give the Superintendent notice in writing of the commencement of not less than seven days or of such lesser period as may be acceptable to the Superintendent.

35.2 TIME FOR COMPLETION OF THE WORKS

The Contractor shall execute the work under the Contract to Practical Completion of the Works within the period or by the date stated in the Annexure hereto or within any extended time granted or allowed by the Superintendent pursuant to sub-clause 35.4.

Where the Contract specifies that a separable part of the Works shall be executed to Practical Completion within a period or by a date different from the period or date fixed by the Contract for the Practical Completion of the Works the Contractor shall execute that separable part of the Works to Practical Completion within the period or by the date so specified or within any extended time granted or allowed by the Superintendent in relation thereto pursuant to sub-clause 35.4.

Upon the Date of Practical Completion of the Works or a separable part of the Works the Contractor shall deliver up the Works or that separable part of the Works to the Principal.

35.3 USE OF PARTLY COMPLETED WORKS

The Principal shall have the right to use or occupy any part of the Works that the Superintendent certifies to be usable notwithstanding that that part of the Works or some other part of the Works has not been completed. The use or occupation in a proper and normal manner of any part of the Works by the Principal under this sub-clause shall not limit or affect the Contractor's rights and obligations under the Contract.

35.4 EXTENSION OF TIME FOR COMPLETION

Where the Contractor is delayed in the execution of the Works by any cause arising out of any breach of the provisions of the Contract or out of any other act or omission on the part of the Principal, the Superintendent or the employees, professional consultants or agents of the Principal or by any other cause (except a cause arising out of any breach of the provisions of the Contract or any other act or omission on his own part or on the part of his employees, agents or sub-contractors or their employees or agents) which he considers to be such as to justify an extension of the time fixed by the Contract for Practical Completion of the Works, the Contractor shall, if he desires to claim an extension of time for Practical Completion of the Works, give to the Superintendent not later than twenty eight days after the cause of delay arose notice in writing of his claim for an extension of time for Practical Completion of the Works, together with a statement of the facts on which he bases his claim.

If the Superintendent determines that the cause of the delay is such as to justify an extension of time for Practical Completion of the Works, the Superintendent shall grant the Contractor such extension of time for Practical Completion of the Works as the Superintendent thinks fit and shall, as soon as practicable after he has granted that extension of time, notify the Contractor thereof.

If the Superintendent determines that the cause of the delay is not such as to justify an extension of time for Practical Completion of the Works, the Superintendent shall, as soon as practicable thereafter notify the Contractor of that determination.

Notwithstanding that the Contractor has not given notice of a claim for an extension of time for Practical Completion of the Works pursuant to this sub-clause, the Superintendent may, at any time and from time to time and for any reason he thinks sufficient, by notice addressed to the Contractor extend the time for Practical Completion of the Works by nominating a date specified in the notice as the date for Practical Completion of the Works and the date so specified in the notice shall, for the purpose of the Contract, be deemed to be the date for Practical Completion of the Works.

Where the Contract specifies that a separable part of the Works shall be executed to Practical Completion within a period or by a date different from the period or date provided for Practical Completion of the Works the provisions of this sub-clause shall apply to and with respect to the extension of time for Practical Completion of that separable part of the Works; and for that purpose references in this sub-clause to the Works shall be read as references to that separable part of the Works.

Any extension or extensions of time granted or allowed by the Superintendent pursuant to this sub-clause may be granted or allowed at any time before the issue of the Final Certificate.

No claim for extra costs incurred by the Contractor by reason of or as a result of or arising from the exercise by the Superintendent of the power to grant or allow any extension of time under this sub-clause shall be entertained by the Principal unless the need for the extension of time was due to any breach of the provisions of the Contract by or any other act or omission on the part of the Principal, the Superintendent or the employees, professional consultants or agents of the Principal.

35.5 LIQUIDATED DAMAGES FOR DELAY IN COMPLETION

If the Contractor fails to reach Practical Completion of the Works or of a separable part of the Works, as the case may be, within the relevant time referred to in sub-clause 35.2 or within any extended time granted or allowed pursuant to sub-clause 35.4, the Contractor shall be liable to the Principal, by way of pre-estimated and liquidated damages and not as a penalty, for the amount or amounts stated or referred to in the Annexure hereto for every week and a proportionate part of that amount or of those amounts for every part of a week that shall elapse after that time or the extended time until the whole of the Works of the separable part of the Works, as the case may be, has been executed to Practical Completion or taking over or cancellation under sub-clause 44.1 occurs, whichever is the sooner and that amount or those amounts shall be respectively a debt or debts due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 46.

Where the Principal has used or occupied any part of the Works pursuant to sub-clause 35.3, the amount of pre-estimated and liquidated damages for which the Contractor is liable to the Principal by virtue of this sub-clause may be reduced to an amount determined by the Superintendent and notified by him to the Contractor.

36. CLEANING UP BY CONTRACTOR

The Contractor shall keep the work under the Contract clean and tidy as it proceeds, and regularly remove from the site rubbish and surplus material arising from the execution of the work under the Contract including any work performed during the Defects Liability Period for the Works or during any Operational Maintenance Period for the Works specified in the Contract. Within fourteen days after the Date of Practical Completion of the Works, including tests on completion, the Contractor shall remove all buildings, workshops, Temporary Works, Constructional Plant and equipment which he may have constructed or brought on the site for carrying out the work under the Contract except such as are required by the Contractor for the purpose of performing work during the Defects Liability Period for the Works or during any Operational Maintenance Period for the Works specified in the Contract, and which with the approval of the Superintendent remain on the site. All buildings, workshops, Temporary Works, Constructional Plant and equipment required by the Contractor for the purpose of performing work during the Defects Liability Period for the Works or during any Operational Maintenance Period for the Works specified in the Contract shall be removed by the Contractor on completion of that work and he shall ensure that, within fourteen days after the completion of that work, the site is left clean and tidy and free of rubbish and surplus material.

If the Contractor fails to comply with any obligation imposed on him by this clause the Principal may, after giving notice in writing to the Contractor, have the work of cleaning and tidying up carried out by other persons and the cost incurred by the Principal in having the work so carried out shall be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 46.

37. DEFECTS LIABILITY

37.1 TIMES OF COMMENCEMENT AND PERIODS

If a Certificate of Practical Completion is issued for the Works and no Certificate of Practical Completion has been issued for any separable part of the Works, the Defects Liability Period for the Works shall commence on the Date of Practical Completion of the Works and shall end on the day on which the Defects Liability Period for the Works set forth in the Annexure hereto expires.

If a Certificate of Practical Completion is issued for a separable part of the Works, the Defects Liability Period for that separable part of the Works shall commence on the Date of Practical Completion of that separable part of the Works and shall end on the day on which the Defects Liability Period for that separable part of the Works specified in the Annexure hereto expires.

If a Certificate of Practical Completion is issued for the Works and a Certificate of Practical Completion has been issued for a separable part of the Works, the Defects Liability Period for the Works shall extend to those parts of the Works other than that separable part of the Works referred to in the last preceding paragraph.

If, pursuant to sub-clause 35.3, the Principal has used or occupied a part of the Works, the Defects Liability Period for that part of the Works shall commence on the day on which the Principal commenced to use or occupy that part of the Works.

37.2 CONTRACTOR'S RESPONSIBILITY

Any minor omissions and minor defects of the kind referred to in the definition of Practical Completion in clause 2 which existed at the commencement of a Defects Liability Period shall be rectified by the Contractor as soon as possible.

Any omissions and defects referred to in the preceding paragraph of this sub-clause that are not rectified by the Contractor and any other defects which become apparent during a Defects Liability Period under normal use of the Works or of a separable part of the Works and which are due to any cause, including design, workmanship or materials for which the Contractor is responsible shall be rectified by the Contractor when directed to do so by the Superintendent who, in that direction, shall state the minor omissions or minor defects or in what respect the Works or the separable part of the Works are otherwise defective and the date by which rectification shall be completed, but no such direction shall be given by the Superintendent later than fourteen days after the expiration of that Defects Liability Period.

If any omission or defect is not rectified within the time stipulated in the direction given by the Superintendent the Principal may rectify the omission or defect at the Contractor's expense but without prejudice to any other rights that the Principal may have against the Contractor in respect of that omission or defect and the cost incurred by the Principal in so rectifying the omission or defect shall be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 46.

Notwithstanding the provisions of this sub-clause, the Contractor shall not be responsible for the effects of fair wear and tear during a Defects Liability Period.

37.3 REMEDIAL WORK BY CONTRACTOR

If it becomes necessary for the Contractor under sub-clause 37.2 to execute any remedial work the provisions of the Contract relating to the Works shall apply to the remedial work as if it were the Works and the Defects Liability Period for such remedial work shall be the Defects Liability Period that applies, by virtue of sub-clause 37.1, to the Works or, as the case may be, to the separable part of the Works on which the remedial work was executed and shall commence on the day on which the remedial work is completed, but the Superintendent may approve, in respect of any remedial work, a shorter Defects Liability Period.

37.4 TESTS ON REMEDIAL WORK

If any remedial work is of such a character as may affect the efficiency of the Works the Superintendent may, within one month after completion of that remedial work, notify the Contractor that further tests are to be made in accordance with clause 31. The costs of such further tests shall be borne by the Contractor.

37.5 CONTRACTOR'S RIGHTS OF ENTRY AND TEST

Until the Final Certificate is issued in accordance with sub-clause 42.7 the Contractor and each of his duly authorised representatives whose names have been previously communicated in writing to the Superintendent shall for the purposes of carrying out any remedial work or making any tests or inspecting the working records of the Works and taking notes therefrom and subject to the approval and requirements of the Superintendent have the right of entry in so far as it may be necessary for all or any of those purposes at his own risk and cost and at all reasonable times to the Works.

Any action taken by the Contractor for any of the purposes expressed in this sub-clause shall not disrupt or inconvenience the normal activities of the occupants of the Works.

37.6 USE OF THE WORKS BY PRINCIPAL

Subject to sub-clauses 37.5 and 44.3 and to any restrictions on the use of the Works that the Superintendent may determine to be necessary for the execution of remedial work by the Contractor, the Principal and any person or persons authorised by the Principal in that behalf shall have the full, free and unrestricted use of the Works without interference on the part of the Contractor during a Defects Liability Period or during any Operational Maintenance Period specified in the Contract and such use of the Works by the Principal and any person or persons so authorised by him shall not relieve the Contractor from any liability or obligation under the Contract.

38. WARRANTIES

The Contractor shall obtain warranties as specified in the Contract and shall ensure that the Principal will have the benefit of the warranties. The Contractor shall ensure that the Principal will have the benefit of any warranties specified in the Contract that are obtained by the sub-contractors of the Contractor.

39. URGENT REPAIRS

If, at any time during the currency of the Contract, the Superintendent determines that any remedial, protective, repair or other like work is urgently necessary to prevent loss of or damage to the work under the Contract or to any property or to prevent personal injury to or the death of any person the Superintendent shall, as soon as practicable thereafter, notify the Contractor of that determination and the Contractor shall carry out the work immediately on receipt of that notice and if the Contractor is unable or unwilling at once to do the work the Principal may, by his own or other workmen, do such work as the Superintendent may determine to be necessary. If the work so done by the Principal is work which the Superintendent determines to be work that the Contractor was liable to do at his own expense under the Contract all costs and charges properly incurred by the Principal in doing the work shall be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 46.

40. VARIATIONS

40.1 VARIATIONS TO THE WORK

If, at any time during the progress of the work under the Contract, the Superintendent determines that the form, quality or quantity of the work under the Contract should be varied, the Superintendent may order the Contractor to do all or any one or more of the following things -

- (a) increase, decrease or omit any part of the work under the Contract;
- (b) change the character or quality of any material or work;
- (c) change the levels, lines, positions or dimensions of any part of the work under the Contract;
- (d) execute additional work.

No variation shall be made by the Contractor without an order by the Superintendent.

No variation shall invalidate the Contract, but the value of the variation shall be taken into account in determining the final contract sum. Each variation shall be valued in accordance with sub-clause 40.2 and, unless otherwise directed by the Superintendent, such valuation shall be determined before the work to which the variation relates is commenced.

40.2 VALUATION OF VARIATIONS

A variation shall be valued in accordance with the rates included in the Priced Bill of Quantities or Schedule of Rates or in a schedule of prices if and in so far as the Superintendent determines that those rates are applicable to the variation. Where the Superintendent determines that the rates included in the Priced Bill of Quantities or Schedule of Rates or in a schedule of prices do not apply to a variation, the rate or price payable for the variation shall be determined by agreement between the Contractor and the Superintendent, but if the Contractor and the Superintendent fail to agree on the rate or price the Superintendent shall determine such rate or price as he considers reasonable or he may direct that the variation shall be carried out as Daywork.

40.3 DAYWORK

If the Superintendent directs that any work be carried out as Daywork, the Contractor shall record each day in a manner to be approved by the Superintendent the particulars of all resources used by the Contractor for the execution of the Daywork. At intervals of one month or at such shorter intervals as the Superintendent directs the Contractor shall furnish to the Superintendent his claim for payment in writing, together with these records and all time sheets, wages sheets, invoices, receipts and other vouchers that are necessary to support his claim. The Superintendent shall determine the amount to be paid to the Contractor in respect of each claim and in making his determination shall have regard to the following -

- (a) the amount of wages and allowances paid or payable by the Contractor at the rates obtaining on the site at the time as established by the Contractor to the satisfaction of the Superintendent or at such other rates as may be approved by the Superintendent;

- (b) the amount paid or payable by the Contractor in accordance with any statute or award applicable to day labour additional to the wages paid or payable under paragraph (a);
- (c) the amount of hire charges in respect of Constructional Plant approved by the Superintendent for use on the work in accordance with such hiring rates and conditions as may be agreed upon between the Superintendent and the Contractor or, in the absence of such an agreement, in accordance with such rates and conditions as may be determined by the Superintendent;
- (d) the amounts paid for services, sub-contracts and professional fees;
- (e) the actual cost to the Contractor at the site of all materials supplied and required for the work;
- (f) a charge agreed upon between the Superintendent and the Contractor to cover overheads, administrative costs, site supervision, establishment costs, attendance and profit, or, in the absence of such an agreement, a charge determined by the Superintendent.

The amounts payable for Daywork shall not be subject to adjustment for rise and fall in costs notwithstanding that the Contract may provide for adjustment for rise and fall in costs.

41. RESPONSIBILITY FOR AND NOTICE OF MEASUREMENT

The measurement of work as required for the purposes of the Contract shall be the responsibility of the Superintendent. The Superintendent shall give reasonable notice to the Contractor of his intention to measure work and the Contractor shall, if so directed by the Superintendent, be represented at and assist in the taking of measurements. If the Contractor is not represented at the time appointed by such notice for the taking of measurements the Superintendent may proceed in his absence and the measurements taken by the Superintendent shall be binding on the Contractor.

A record of the measurements shall be kept by the Superintendent and shall, on request by the Contractor, be made available to him.

42. CERTIFICATES AND PAYMENTS

42.1 PROGRESS CERTIFICATES AND PROGRESS PAYMENTS

Unless otherwise provided in the Contract, the Contractor shall submit to the Superintendent a detailed statement, in a form satisfactory to the Superintendent, every month showing the contract value of the work carried out in performance of the Contract and incorporated in the Works. Within twenty-one days after the receipt by the Superintendent of such a statement or, if the Contractor fails to submit any such statement, at such time as the Superintendent thinks fit, the Superintendent shall determine the value of the work so carried out and incorporated and issue a progress certificate.

Payment of moneys due under a progress certificate shall be made by the Principal within fourteen days after the issue of that progress certificate. The amount of the progress payment will be the total gross value shown in the progress certificate less -

- (a) any retention moneys as provided in the Annexure hereto; and
- (b) any progress payment already made in respect of work covered by that progress certificate; and
- (c) any other amount that the Principal may be entitled to deduct from the moneys due under that progress certificate.

The payment of moneys under a progress certificate shall not be taken as evidence against or as an admission by the Principal that any work or item of work specified in any progress certificate has been constructed or executed or of the value thereof or of any work having been constructed or executed in accordance with the Contract, but shall be taken to be payment on account only.

42.2 CERTIFICATES OF PRACTICAL COMPLETION

When the Superintendent is satisfied that Practical Completion of the Works or of a separable part of the Works has been reached he shall issue to the Contractor a Certificate of Practical Completion for the Works or for that separable part of the Works which shall state the date of practical completion of the Works or of that separable part of the Works, which date shall, for the purposes of the Contract, be known as the Date of Practical Completion of the Works or of that separable part of the Works.

42.3 PAYMENT ON CERTIFICATE OF PRACTICAL COMPLETION

Subject to clause 46 where the Contractor has supplied to the Superintendent all the information required to be supplied by him under the Contract in relation to the Works or in relation to a separable part of the Works, as the case may require, the Principal shall without undue delay after the issue of the Certificate of Practical Completion for the Works or for that separable part of the Works, as the case may be, pay to the Contractor by way of a progress payment all moneys then payable in terms of the Contract for the Works or for that separable part of the Works.

Notwithstanding the preceding paragraph of this sub-clause, if at the time when the Superintendent issues a Certificate of Practical Completion for the Works or for a separable part of the Works there are in relation to the Works or that separable part of the Works minor omissions or minor defects of the kind referred to in the definition of Practical Completion in clause 2 the Principal may withhold from the moneys payable to the Contractor pursuant to that Certificate of Practical Completion such amount as the Superintendent determines is the cost of rectifying those omissions or defects. As and when an omission or defect is rectified by the Contractor the Superintendent shall issue a progress certificate in respect of the omission or defect.

42.4 CORRECTION OF CERTIFICATES

The Superintendent may, by any certificate, correct any error which has been discovered in any previous certificate, or may modify any previous certificate, other than a Certificate of Practical Completion or the Final Certificate, which has been issued by him.

42.5 EFFECT OF CERTIFICATES

The issue of a progress certificate or a Certificate of Practical Completion issued pursuant to this clause shall not constitute approval of any work or other matter in respect of which it is issued nor shall it be taken as an admission of the due performance of the Contract or any part thereof or of the accuracy of any claim or demand made by the Contractor or of additional or varied work having been ordered by the Superintendent, nor shall any such certificate negate or prejudice any of the rights, powers and remedies of the Principal or the Superintendent.

The issue of the Final Certificate issued pursuant to sub-clause 42.7 shall constitute conclusive evidence that all work under the Contract has been finally and satisfactorily executed by the Contractor except in so far as it is proved in any proceedings in a court of competent jurisdiction or in an arbitration under the provisions of clause 45 that the said Final Certificate is, in any particular, erroneous by reason of -

- (a) fraud, dishonesty or deliberate concealment, on the part of the Contractor or any of his sub-contractors or of any of the employees or agents of the Contractor or of any of his sub-contractors, relating to the Works or any part thereof or to any matter dealt with in the said Final Certificate; or
- (b) any defect, including any omission, in the Works or any part thereof which reasonable inspection at the time of the issue of the said Final Certificate would not have disclosed; or
- (c) any accidental or erroneous inclusion or exclusion of any work, materials, goods or figure in any computation, or any arithmetical error in any computation.

42.6 FINAL STATEMENT BY CONTRACTOR

The Superintendent may, before the issue of the Final Certificate pursuant to sub-clause 42.7, direct the Contractor to furnish to the Superintendent a final statement of all the Contractor's claims against the Principal whether under the Contract or otherwise and no claim which is not included in that final statement shall thereafter be made by the Contractor against the Principal on any account whatsoever in relation to the performance and execution of the work under the Contract. The final statement shall be endorsed "Final Statement" by the Contractor.

If the Contractor fails to furnish to the Superintendent the final statement within twenty-eight days after he has been directed so to do by the Superintendent, the Superintendent shall assess the value of the Works and subject to sub-clause 42.7, shall issue the Final Certificate and no claim shall thereafter be made by the Contractor against the Principal on any account whatsoever in relation to the performance and execution of the work under the Contract.

42.7 FINAL CERTIFICATE AND RETURN OF SECURITY

When all work under the Contract has been finally and satisfactorily executed and the Contractor has fulfilled all his other obligations under the Contract, the Superintendent shall issue to the Contractor a Final Certificate.

Within twenty-eight days after the Final Certificate has been issued and the Contractor, if so directed by the Superintendent, has furnished the Superintendent with a release of all claims against the Principal, whether arising under or by virtue of the Contract or otherwise, the Principal shall pay to the Contractor all amounts then payable, including any retention moneys then held by the Principal, and shall return to the Contractor the security or such part of it as the Principal is then holding.

43. PAYMENT OF WORKMEN'S WAGES AND ALLOWANCES

43.1 STATEMENT OF WAGES AND ALLOWANCES PAID OR UNPAID

Save as in this clause otherwise provided, before paying any moneys to the Contractor under the Contract the Principal may require the Contractor to make and deliver to the Principal a statutory declaration that all workmen who are or at any time have been engaged on the work under the Contract have been paid in full all amounts which have become payable to them by virtue of their employment on the work under the Contract as wages and allowances of every kind required to be paid by or under any statute, ordinance or subordinate legislation, or by any relevant award, determination, judgment or order of any competent court, board, commission or other industrial tribunal or by any relevant industrial agreement that is in force in the State or Territory in which the work under the Contract is being or has been carried out and to the latest date at which such wages and allowances are payable. However when any wages or allowances which have become payable remain unpaid payment will be made by the Principal to the Contractor upon receipt of a statutory declaration made by the Contractor in which is set out details and amounts of such unpaid wages or allowances but sufficient money to satisfy such unpaid wages and allowances may be withheld from any money which may be then payable or thereafter become payable to the Contractor until he supplies a further statutory declaration that all such wages and allowances have been paid.

43.2 FAILURE OF CONTRACTOR TO PAY WAGES AND ALLOWANCES

If the wages or allowances referred to in sub-clause 43.1 of any workman who is employed or has been employed on the work under the Contract remain unpaid, the Principal may, upon the production to him of satisfactory evidence of a judgment or order of a court of competent jurisdiction in respect thereof, pay the amount of the judgment or order including any costs awarded thereby to the workman concerned and any amount so paid shall be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 46.

44. DEFAULT OR BANKRUPTCY OF CONTRACTOR

44.1 PROCEDURE ON DEFAULT OF CONTRACTOR

If the Contractor defaults in the performance or observance of any covenant, condition or stipulation in the Contract or refuses or neglects to comply with any direction as defined in clause 23 but being one which either the Principal or the Superintendent is empowered to give, make, issue or serve under the Contract and which is issued or given to or served or made upon the Contractor by the Principal in writing or by the Superintendent in accordance with clause 23, the Principal may suspend payment under the Contract and may call upon the Contractor, by notice in writing, to show cause within a period specified in the notice why the powers hereinafter contained in this clause should not be exercised.

The notice in writing shall state that it is a notice under the provisions of this clause and shall specify the default, refusal or neglect on the part of the Contractor upon which it is based.

If the Contractor fails within the period specified in the notice in writing to show cause to the satisfaction of the Principal why the powers hereinafter contained should not be exercised the Principal, without prejudice to any other rights that he may have under the Contract against the Contractor, may -

- (a) take over the whole or any part of the work remaining to be completed and for that purpose and in so far as it may be necessary exclude from the site the Contractor and any other person concerned in the performance of the work under the Contract; or

- (b) cancel the Contract, and in that case exercise any of the powers of exclusion conferred by sub-paragraph (a) of this paragraph.

If the Contractor notifies the Superintendent in writing that he is unable or unwilling to complete the Works, or to remedy the default, refusal or neglect stated in the notice in writing referred to in the first paragraph of this sub-clause, the Principal may act in accordance with the provisions of sub-paragraph (a) or sub-paragraph (b) of the last preceding paragraph, as he thinks fit.

44.2 DURATION OF SUSPENSION OF PAYMENT

If the Principal suspends payment under sub-clause 44.1 the suspension of payment may be continued until the default, refusal or neglect stated in the said notice has been remedied or the direction has been complied with.

44.3 ENGAGEMENT OF OTHERS

If the Principal elects to exercise the power conferred on him by sub-paragraph (a) of the third paragraph of sub-clause 44.1 he may complete the whole or any part of the work remaining to be completed and for that purpose may let a contract or contracts for the work remaining to be completed or, as the case may be, for any part of that work or may employ any person or persons other than the Contractor to carry out that work or, as the case may be, the part of that work.

The Principal may take possession of and permit other persons to use any materials, Constructional Plant and other things on or about the site which are owned by the Contractor and as are requisite and necessary for the purposes of any such contract or any such employment.

The Contractor shall have no right to any compensation or allowance for any action taken by the Principal pursuant to this sub-clause other than a right to require the Principal to maintain in good working order the Constructional Plant referred to in the preceding paragraph.

On completion of the work all Constructional Plant and the surplus of the materials and other things so taken possession of will be handed over to the Contractor, but without payment or allowances for the fair wear and tear they may have sustained in the meantime PROVIDED HOWEVER, that if there is a deficiency as referred to in sub-clause 44.4 and if the Contractor fails to make good that deficiency, the Principal may retain in his possession the said Constructional Plant, materials and other things until the deficiency is made good pursuant to the provisions of sub-clause 44.4.

44.4 ADJUSTMENT OF COSTS ON COMPLETION OF THE WORKS

On completion of the work in accordance with the Contract the Superintendent will ascertain the cost of the Works to the Principal, comprising payments to the Contractor and all losses, costs, charges and expenses incurred by the Principal in carrying out the whole or any part of the Works completed by him pursuant to sub-clause 44.3 and any sum or sums payable or due to the Principal as liquidated damages under the Contract and he will certify such amount to the Principal. A certificate signed by the Superintendent stating the cost of the Works to the Principal shall be prima facie evidence of the matters stated in the certificate.

Should the amount so certified be greater than the amount which would have been paid to the Contractor if the whole of the Works had been completed by him, the difference between the two amounts shall be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 46.

44.5 PRESERVATION OF RIGHTS OF PRINCIPAL

No action taken by the Principal under sub-clause 44.2 or sub-clause 44.3 shall invalidate the Contract or prejudice any of the rights, powers and remedies of the Principal, whether under the provisions of the Contract or otherwise.

44.6 CANCELLATION OF CONTRACT

If the Contract is cancelled under sub-clause 44.1 or under any other provision of the Contract it shall be deemed cancelled as from the date when notice of cancellation in writing under the hand of the Principal is served upon the Contractor, or upon any Official Receiver, Trustee in Bankruptcy, Liquidator, Official of Provisional Liquidator, Official Manager, or Receiver or Receiver and Manager of the Contractor or of the business of the Contractor.

On such cancellation of the Contract all or any sums of money which may be in the hands of the Principal in respect of the Contract and are not then payable to the Contractor under or pursuant to any provision of the Contract, and the whole or part of any security, including cash lodged or retained for the due and proper performance of the Contract and all or any sums of money named in the Contract as liquidated damages which have accrued due to the Principal may be declared by the Principal to be forfeited and all sums and the whole or part of any security that are so declared to be forfeited shall be forfeited and shall be retained by or become payable to or vested in the Principal.

On such cancellation of the Contract all moneys which have been previously paid together with all moneys then payable under or pursuant to any provision of the Contract to the Contractor shall be deemed to be in full satisfaction of all claims of the Contractor of any kind or description whatsoever under or in respect of the Contract.

44.7 BANKRUPTCY OF CONTRACTOR

If the Contractor -

- (a) being a person, commits an act of bankruptcy or presents against himself or has presented against him a petition in bankruptcy or a sequestration order is made against him or he enters into any Scheme of Arrangement or any composition with his creditors or executes as a debtor a deed of arrangement or a deed of assignment; or
- (b) being a company, takes or has taken or instituted against it any action or proceeding whether voluntary or compulsory which has as an object or may result in the winding up of the company, other than a voluntary winding up by members for the purpose of reconstruction or amalgamation, or is placed under official management or enters into a compromise or other arrangement with its creditors or a Receiver or Receiver and Manager is appointed to carry on its business for the benefit of its creditors or any of them;

the Principal may exercise the power conferred on him by sub-paragraph (a) or (b) of sub-clause 44.1 as he may elect.

45. SETTLEMENT OF DISPUTES

Notwithstanding the succeeding provisions of this clause, the Contractor shall if the work under the Contract has not been completed, at all times (subject as otherwise provided for in the Contract) proceed without delay to continue to execute the work under the Contract and perform his obligations under the Contract and in so doing shall comply with all directions as defined in clause 23 issued or given to or served or made upon the Contractor under or pursuant to the provisions of the Contract either by the Principal in writing or by the Superintendent in accordance with clause 23.

All disputes or differences arising out of the Contract or concerning the performance or the non-performance by either party of his obligations under the Contract whether raised before or after the execution of the work under the Contract shall be decided as follows -

- (a) The Contractor shall, not later than fourteen days after the dispute or difference arises, submit the matter in writing, specifying with detailed particulars the matter at issue, to the Superintendent for decision and the Superintendent shall, as soon as practicable thereafter, give his decision to the Contractor.
- (b) If the Contractor is dissatisfied with the decision given by the Superintendent, he may, not later than fourteen days after the decision of the Superintendent is given to him, submit the matter at issue in writing, specifying with detailed particulars the matter at issue, to the Principal for decision and the Principal shall, as soon as practicable thereafter, give his decision to the Contractor in writing.

If the Contractor is dissatisfied with the decision given by the Principal pursuant to the last preceding paragraph, he may, not later than twenty-eight days after the decision of the Principal is given to him, give notice in writing to the Principal requiring that the matter at issue be referred to arbitration and specifying with detailed particulars the matter at issue, and thereupon the matter at issue shall be determined by arbitration. If, however, the Contractor does not, within the said period of twenty-eight days, give such a notice to the Principal requiring that the matter at issue be referred to arbitration, the decision given by the Principal pursuant to the last preceding paragraph shall not be subject to arbitration.

Where a notice is given by the Contractor to the Principal pursuant to the last preceding paragraph requiring that the matter at issue be referred to arbitration no proceedings in respect of that matter at issue shall be instituted by either the Principal or the Contractor in any court unless and until the arbitrator has made his award in respect of that matter at issue.

Arbitration shall be effected -

- (a) by an arbitrator agreed upon in writing by the parties within twenty-eight days after the said notice is received by the Principal; or
- (b) in the absence of that agreement, by one of at least three persons, none of whom shall be an employee of the Principal or of the Contractor or have had any association with the work under the Contract, whose names are submitted in writing by the Principal for selection by the Contractor within a further period of twenty-eight days after expiry of that last mentioned period, being the person whose selection as arbitrator is notified in writing by the Contractor to the Principal within twenty-eight days after the names are so submitted; or in the absence of that selection, by an arbitrator appointed in accordance with the provisions of the laws relating to arbitration in force in the State or Territory named in the Annexure hereto.

A reference to arbitration under this clause shall be deemed to be a reference to arbitration within the meaning of the laws relating to arbitration in force in the State or Territory named in the Annexure hereto and the arbitration proceedings shall be conducted in that State or Territory. The arbitrator shall have all the powers conferred by those laws and it shall be competent for him to enter upon the reference without any further or more formal submission than is contained in this clause.

Moneys that are or become due and payable by the Principal in respect of work carried out under the Contract shall not be withheld because of arbitration proceedings but the Principal may, at his discretion, and pending the award of the arbitrator withhold payment of moneys in respect of any matter that is the subject of arbitration proceedings.

46. RIGHT OF PRINCIPAL TO RECOVER MONEYS

Without limiting the Principal's rights under any other provision in the Contract, any debt due from the Contractor to the Principal under or by virtue of any provision of the Contract may be deducted by the Principal from any moneys which may be or thereafter become payable to the Contractor by the Principal, including any retention moneys then held by the Principal, and, if such moneys are insufficient for this purpose, then from the Contractor's security under the Contract. Nothing in this clause shall affect the right of the Principal to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.

47. WAIVER OF CONDITIONS

Except as provided elsewhere in the Contract, none of the General Conditions or Special Conditions (if any) of the Contract shall be varied, waived discharged or released either at law or in equity except with the prior consent in writing of the Principal in each instance.

48. NOTIFICATION OF CLAIMS

The Principal shall not be liable upon any claim by the Contractor in respect of any matter arising out of the Contract unless the claim together with full particulars thereof, is lodged in writing with the Principal not later than twenty-eight days after the date of the occurrence of the events or circumstances on which the claim is based or written notice of intention to make the claim specifying the nature of the claim is lodged with the Principal within that time and the claim, together with full particulars thereof, is lodged in writing with the Principal before the issue of the Final Certificate.

ANNEXURE

The Contract shall be governed by and construed with reference to the laws for the time being in force in the State or Territory of:
(clauses 1 and 45)

All payments made under the Contract shall be made at:
(clause 1)

The Principal is:
(clause 2)

The Superintendent shall be:
(clause 2)

The Basis of Payment shall be:
(clause 3.1)

The time for lodgement of the priced copy of the Bill of Quantities is:
(clause 4.1)

The amount of the security is:
(clause 5.2)

The address of the Principal for service of documents is:
(clause 7.2)

The value of materials to be supplied by the Principal is:
(clause 17)

The assessment for insurance purposes of architects', engineers' and surveyors' fees is:
(clause 17)

The assessment for insurance purposes of the costs of demolition and removal of debris is:
(clause 17)

The amount of Public Liability Insurance shall be not less than:
(clause 19)

The amount of Common Law Liability Insurance shall be not less than:
(clause 21)

The time for giving possession of the site is:
(clause 27.1)

The time for Practical Completion of the Works shall be:
(clause 35.2)

*by

* Strike out whichever is inapplicable

*within

ANNEXURE (cont.)

The time for Practical Completion of each separable part of the Works shall be the time specified for that separable part of the Works in the:
(clause 35.2)

Liquidated Damages
(clause 35.5)
for the Works shall be:

for each separable part
of the Works shall be:

The Defects Liability Period for the Works shall be:
(clause 37.1)

The Defects Liability Period for each separable part of the Works shall be the Defects Liability Period specified in respect of that separable part in the:
(clause 37.1)

The amount of retention moneys is:
(clause 42.1)
