



**AstraZeneca UK Limited**

**General Conditions of Contract  
AZ 1-02a**

**ENGINEER, PROCURE AND CONSTRUCT**

**This Document Comprises 67 Pages**

**Issued on behalf of AstraZeneca UK Limited by:**

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**Revision History:**

November 2009 Revised Issue  
November 2005 Third Issue  
May 2001 Second Issue  
January 2000 First Issue

*These conditions are based upon the ICE Conditions of Contract 6<sup>th</sup> Edition 1991 together with the amendments set out in the Corrigenda (August 1993) at Appendix 2 of the Guidance Notes for the ICE Conditions and the amendments to the ICE Conditions dated March 1998.*

*Modifications to the ICE 6<sup>th</sup> Edition are highlighted in bold.*

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## Definitions

1 (1) 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.

(a) "Employer" means the person or persons firm company or other body **identified as such in the Contract** and includes the Employer's personal representatives successors and permitted assigns.

(b) "Contractor" means the person or persons firm or company to whom the Contract has been awarded by the Employer and includes the Contractor's personal representatives successors and permitted assigns.

(c) "Engineer" means the person firm or company appointed by the Employer to act as Engineer for the purposes of the Contract and named in the **Contract Agreement or, where no Contract Agreement has been executed by the parties, named elsewhere in the Contract**, or such other person firm or company so appointed from time to time by the Employer and notified in writing as such to the Contractor.

(d) "Engineer's Representative" means a person **named in the Contract Agreement or, where no Contract Agreement has been executed by the parties, named elsewhere in the Contract**, or notified as such from time to time by the Engineer under Clause 2(3)(a).

(e) "**Contract**" means the legally binding agreement entered into by the Employer and the Contractor comprising the **Contract Agreement and the documents listed therein, or, where a Contract Agreement has not been executed by the parties, the Purchase Order and the documents listed therein. In the event of a discrepancy between the documents listed in the Contract Agreement or, where applicable, the Purchase Order, the said documents shall take precedence in the order in which they are listed.**

(f) "Specification" means the specification referred to in the Tender and any modification thereof or addition thereto as may from time to time be furnished or approved in writing by the Engineer.

(g) "Drawings" means the drawings referred to in the Specification and any modification of such drawings approved in writing by the Engineer and such other drawings as may from time to time be furnished or approved in writing by the Engineer.

(h) "**Schedule of Works**" means the **Schedule of Works referred to in the Contract and which may comprise bills of quantities, daywork schedules, schedules of rates and/or schedules of lump sum items which when priced by the Contractor at the date of acceptance of his tender for the Works shall provide the rates and prices to be used in ascertaining the Contract Price.**

(i) "**Tender Total**" means the **total of the priced Schedule of Works at the date of the award of the Contract.**

(j) "Contract Price" means the sum to be ascertained and paid

in accordance with the provisions hereinafter contained for the construction and completion of the Works in accordance with the Contract.

(k) "Prime Cost (PC) Item" means an item in the Contract which contains (either wholly or in part) a sum referred to as Prime Cost (PC) which will be used for the execution of work or the supply of goods materials or services for the Works

(l) "Provisional Sum" means a sum included and so designated in the Contract as a specific contingency for the execution of work or the supply of goods materials or services which may be used in whole or in part or not at all at the direction and discretion of the Engineer.

(m) "Nominated Sub-contractor" means any merchant tradesman specialist or other person firm or company nominated in accordance with the Contract to be employed by the Contractor for the execution of work or supply of goods materials or services for which a Prime Cost has been inserted in the Contract or ordered by the Engineer to be employed by the Contractor to execute work or supply goods materials or services under a Provisional Sum.

(n) "Permanent Works" means the permanent works **(including without limitation all installed plant, controls and interfaces)** to be **designed, procured, constructed, installed, tested, commissioned** and completed in accordance with the Contract.

(o) "Temporary Works" means all temporary works of every kind required in or about the construction and completion of the Works.

(p) "Works" means the Permanent Works together with the Temporary Works.

(q) "Works Commencement Date" —as defined in Clause 41(1).

(r) "Certificate of Substantial Completion" means a certificate issued under Clause 48(2)(a) 48(3) or 48(4).

(s) "Defects Correction Period" means that period stated **elsewhere in the Contract or, if no such period is stated, the period of twelve months** from the date on which the Contractor becomes entitled to a Certificate of Substantial Completion for the Works or any Section or part thereof.

(t) "Defects Correction Certificate"—as defined in Clause 61(1).

(u) "Section" means a part of the Works separately identified in the **Contract**.

(v) "Site" means the lands and other places on under in or through which the Works are to be executed and any other lands or places provided by the Employer for the purposes of the Contract together with such other places as may be designated in the Contract or subsequently agreed by the Engineer as forming part of the Site.

(w) “Contractor’s Equipment” means all appliances or things of whatsoever nature required in or about the construction and completion of the Works but does not include materials or other things intended to form or forming part of the Permanent Works.

(x) “Contract Agreement” means, where applicable, the document of that name executed by both the Employer and the Contractor and forming part of the Contract.

(y) “Purchase Order” means the document of that name issued by the Employer to the Contractor and forming part of the Contract.

(z) “Group Company” means in relation to the Employer, another body corporate which is a Subsidiary of or a Holding Company of the Employer.

(aa) “Holding Company” and “Subsidiary” shall have the meanings ascribed to those expressions by Section 736 of the Companies Act 1985 (as amended) save that the condition in Section 736(1)(a) shall be deemed to be satisfied if that other company holds more than one quarter of the voting rights in it.

(bb) “Design Contractor’s Appointment” means the document of that name executed by both the Employer and the Contractor for the provision of services relating to the Works.

(cc) “Project Data” means any and all documents, designs, calculations, programmes, models, data and/or information in whatever form or format relating to or in any way touching upon the Works.

(dd) “Construction Industry Scheme” means the scheme for the taxation of sub-contractors in the construction industry in the United Kingdom pursuant to sections 559 to 567 of the Income and Corporation Taxes Act 1988 and the Income Tax (Sub-Contractors in the Construction Industry) Regulations 1993 S.I. No. 743, as amended by the Income Tax (Sub-Contractors in the Construction Industry) (Amendment) Regulations 1998 S.I. No. 2622 or any statutory re-enactment or amendment to the same that is made from time to time.

**Singular and plural**

(2) Words importing the singular also include the plural and vice-versa where the context requires.

**Headings and marginal notes**

(3) The headings and marginal notes in the Conditions of Contract shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction thereof or of the Contract.

**Clause references**

(4) All references herein to clauses are references to clauses numbered in the Conditions of Contract and not to those in any other document forming part of the Contract.

**Cost**

(5) The word “cost” when used in the Conditions of Contract means all expenditure properly incurred or to be incurred whether on or off the Site including overhead finance and other charges properly allocable thereto but does not include any allowance for profit.

**Communications in writing** (6) Communications which under the Contract are required to be "in writing" **are to be made in accordance with Clause 68.**

## **ENGINEER AND ENGINEER'S REPRESENTATIVE**

**Duties and authority of Engineer** 2 (1) (a) The Engineer shall carry out the duties specified in or necessarily to be implied from the Contract.

(b) The Engineer may exercise the authority specified in or necessarily to be implied from the Contract. If the Engineer is required under the terms of his appointment by the Employer to obtain the specific approval of the Employer before exercising any such authority particulars of such requirements shall be those set out **elsewhere in the Contract**. Any requisite approval shall be deemed to have been given by the Employer for any such authority exercised by the Engineer.

(c) Except as expressly stated in the Contract the Engineer shall have no authority to amend the Terms and Conditions of the Contract nor to relieve the Contractor of any of his obligations under the Contract.

**Named individual** (2) (a) Where the Engineer as defined in Clause 1(1)(c) is not a single named **individual** the Engineer shall within 7 days of the award of the Contract and in any event before the Works Commencement Date notify to the Contractor in writing the name of the **individual** who will act on his behalf and assume the full responsibilities of the Engineer under the Contract

(b) The Engineer shall thereafter in like manner notify the Contractor of any replacement of the named **individual**.

**Engineer's Representative** (3) (a) The Engineer's Representative shall be responsible to the Engineer who shall notify his appointment to the Contractor in writing.

(b) The Engineer's Representative shall watch and supervise the construction and completion of the Works. He shall have no authority

(i) to relieve the Contractor of any of his duties or obligations under the Contract

nor except as expressly provided hereunder

(ii) to order any work involving delay or any extra payment by the Employer or

(iii) to make any variation of or in the Works.

**Delegation by Engineer** (4) The Engineer may from time to time delegate to the Engineer's Representative or any other person responsible to the Engineer any of the duties and authorities vested in the Engineer and he may at any time revoke such delegation. Any such delegation

(a) shall be in writing and shall not take effect until such time as a copy thereof has been delivered to the Contractor or his agent appointed under Clause 15(2)

(b) shall continue in force until such time as the Engineer shall notify the Contractor in writing that the same has been revoked

(c) shall not be given in respect of any decision to be taken or certificate to be issued under Clauses 12(6) 44 46(3) 48 60(4) 61 63 or 66.

#### **Assistants**

(5) (a) The Engineer or the Engineer's Representative may appoint any number of persons to assist the Engineer's Representative in the carrying out of his duties under sub-clause (3)(b) or (4) of this Clause. He shall notify to the Contractor the names duties and scope of authority of such persons.

(b) Such assistants shall have no authority to issue any instructions to the Contractor save insofar as such instructions may be necessary to enable them to carry out their duties and to secure their acceptance of materials and workmanship as being in accordance with the Contract. Any instructions given by an assistant for these purposes shall where appropriate be in writing and be deemed to have been given by the Engineer's Representative.

(c) If the Contractor is dissatisfied by reason of any instruction of any assistant of the Engineer's Representative appointed under sub-clause (5)(a) of this Clause he shall be entitled to refer the matter to the Engineer's Representative who shall thereupon confirm reverse or vary such instruction.

#### **Instructions**

(6) (a) Instructions given by the Engineer or by any person exercising delegated duties and authorities under sub-clause (4) of this Clause shall be in writing. Provided that if for any reason it is considered necessary to give any such instruction orally the Contractor shall comply with such instruction.

(b) Any such oral instruction shall be confirmed in writing as soon as is possible under the circumstances. Provided that if the Contractor shall confirm in writing any such oral instruction and such confirmation is not contradicted in writing by the Engineer or the Engineer's Representative forthwith it shall be deemed to be an instruction in writing by the Engineer.

(c) Upon the written request of the Contractor the Engineer or the Engineer's Representative exercising delegated duties or authorities under sub-clause (4) of this Clause shall specify in writing under which of his duties and authorities any instruction is given.

#### **Impartiality**

(7) The Engineer shall except in connection with matters requiring the specific approval of the Employer under sub-clause (1)(b) of this Clause act impartially within the terms of the Contract having regard to all the circumstances.

### **ASSIGNMENT AND SUB-CONTRACTING**

#### **Assignment**

**3 (1) The Employer shall be entitled to assign the benefit of the Contract to another Group Company without the consent of the Contractor.**

**(2) The Contractor shall not assign or charge or purport to assign or charge the Contract or any part or parts thereof or any**

benefit or interest therein or thereunder without the prior written consent of the Employer.

**Rights of Third Parties**

(3) This Contract is for the sole benefit of the parties to the Contract. Terms which make reference to third parties are not to be construed as terms purporting to confer a benefit upon such third parties. It is not the intention of the parties to this Contract that any term hereof should be enforceable by anyone other than the parties to the Contract.

**Sub-contracting**

4 (1) The Contractor shall not sub-contract the whole of the Works without the prior written consent of the Employer.

(2) Except where otherwise provided the Contractor or any sub-contractor shall not sublet any part of the Works without the written consent of the Engineer to:

(a) the extent of the work to be sub-let; and

(b) the proposed sub-contractor.

(3) The employment of labour-only sub-contractors requires the consent of the Engineer under sub-clause (2) of this Clause.

(4) The Contractor shall be and remain liable under the Contract for all work sub-contracted under this Clause and for acts defaults or neglects of any sub-contractor his agents servants or workpeople.

(5) The Engineer shall be at liberty after due warning in writing to require the Contractor to remove from the Works any sub-contractor who misconducts himself or is incompetent or negligent in the performance of his duties or fails to conform with any particular provisions with regard to safety which may be set out in the Contract or persists in any conduct which is prejudicial to safety or health and such sub-contractor shall not be again employed upon the Works without the permission of the Engineer.

(6) The Contractor shall supply to the Engineer a copy of any sub-contract documentation which the Engineer may request.

## CONTRACT DOCUMENTS

**Documents mutually explanatory**

5 The several documents forming the Contract shall take the precedence in the order in which they are listed in the Contract Agreement, or the Purchase Order, whichever is applicable, and in case of ambiguities or discrepancies the same shall be explained and adjusted by the Engineer who shall thereupon issue to the Contractor appropriate instructions in writing which shall be regarded as instructions issued in accordance with Clause 13.

**Supply of documents**

6 (1) Save where the Works, or elements of the Works have been or are being, designed and/or specified by the Contractor upon award of the Contract the following shall be furnished to the Contractor free of charge

(a) two copies of the Conditions of Contract Specification and (unpriced) Schedule of Works and

(b) the number and type of copies as identified elsewhere in the Contract, or, in default of any such provision, two full

**size copies** of all Drawings listed in the Specification.

(2) Upon approval by the Engineer in accordance with Clause 7(6) the Contractor shall supply to the Engineer four copies of all Drawings Specifications and other documents submitted by the Contractor. In addition the Contractor shall supply at the Employer's expense such further copies of such Drawings Specifications and other documents as the Engineer may request in writing for his use.

(3) Copyright in **all Project Data recorded in whatsoever form** supplied by the Employer or the Engineer shall not pass to the Contractor but the Contractor may obtain or make at his own expense any further copies required by him for the purposes of the Contract. **The Contractor as beneficial owner hereby grants to the Employer an irrevocable, royalty-free, non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion or termination of the Contractor's obligations under the Contract) to copy and use any and all Project Data, whether in hard copy versions or held or stored on electronic media, which are produced by, or on behalf of, the Contractor in the course of performing its obligations under the Contract for any purpose whatsoever connected with the Works. The copyright licence granted by this sub-clause shall include the right to reproduce the designs contained in the Project Data and the purposes for which the Project Data may be used shall include, but not be limited to, the design, procurement, construction, installation, completion, testing, commissioning, reinstatement, replacement, reconstruction, use, operation, repair, maintenance, modification, extension, demolition, disposal, advertisement, letting and/or sale of the Works and/or any part or parts thereof. The Employer shall have the right to grant sub-licences in the same terms as this licence and to transfer the licence to third parties without requiring the consent of the Contractor.**

**The Contractor will not be liable for any use of the Project Data prepared or provided by the Contractor for any purpose other than that for which it was originally prepared and such other uses as are reasonably foreseeable unless the Contractor authorises such use and confirms that the Project Data is suitable for such use.**

(4) **The Project Data together with all other information in whatsoever form relating to the Works or to the Employer's business which comes into the Contractor's possession, (the "Information") shall be regarded as secret and confidential and shall not be disclosed by the Contractor except to the extent that it becomes necessary to furnish Information to others solely for the purposes of the execution of the Works. The Contractor shall impose the same obligations of secrecy and confidentiality on those parties to whom the Information is passed. These obligations will continue in full force and effect notwithstanding the termination of this Contract or the Contractor's employment under it but shall not in any event apply to Information which the Contractor can show:**

**(a) was already in the Contractor's possession prior to its disclosure by the Employer; or**

**(b) was lawfully acquired by the Contractor at any time**

from a third party who holds such information free of any obligation of confidentiality; or

(c) is or comes into the public domain otherwise than through the fault of the Contractor.

**Further Drawings Specifications and instructions**

- 7 (1) **Save in relation to elements of the Works which have been, or are being designed and/or specified by the Contractor,** the Engineer shall from time to time during the progress of the Works supply to the Contractor such modified or further Drawings Specifications and instructions as shall in the Engineer's opinion be necessary for the purpose of the proper and adequate construction and completion of the Works and the Contractor shall carry out and be bound by the same.

If such Drawings Specifications or instructions require any variation to any part of the works the same shall be deemed to have been issued pursuant to Clause 51.

**Contractor to provide further documents**

- (2) Where sub-clause (6) of this Clause applies the Engineer may require the Contractor to supply such further documents as shall in the Engineer's opinion be necessary for the purpose of the proper and adequate construction completion and maintenance of the Works and when approved by the Engineer the Contractor shall carry out and be bound by the same.

**The Contractor shall rectify immediately:**

(a) any errors or omissions contained in any information provided by him, and

(b) any part of the Works affected by such error or omission.

**The Contractor shall satisfy himself that the information provided by the Employer and/or Engineer, whether contained within the Contract, Project Data or otherwise provided by the Employer or Engineer is accurate and sufficient and will not prejudice the performance of any of the Contractor's obligations under the Contract. The Contractor shall inform the Engineer immediately of any inaccuracy, discrepancy or insufficiency in such information and the Engineer shall reconcile such inaccuracy or discrepancy and/or provide further information/data to the reasonable satisfaction of the Contractor within a reasonable time of being requested so to do. The Contractor shall not be entitled to any extension of time or additional payment in respect of such clarification.**

**Notice by Contractor**

- (3) The Contractor shall give adequate notice in writing to the Engineer of any further Drawing or Specification that the Contractor may require for the construction and completion of the Works or otherwise under the Contract.

**Delay in issue**

- (4) (a) If by reason of any failure or inability of the Engineer to issue at a time reasonable in all the circumstances Drawings Specifications or instructions requested by the Contractor and considered necessary by the Engineer in accordance with sub-clause (1) of this Clause the Contractor suffers delay or incurs cost then the Engineer shall take such delay into account in determining any extension of time to which the Contractor is



entitled under Clause 44 and the Contractor shall subject to Clause 52(4) be paid in accordance with Clause 60 the amount of such cost as may be reasonable.

(b) If the failure of the Engineer to issue any Drawing Specification or instruction is caused in whole or in part by the failure of the Contractor after due notice in writing to submit drawings specifications or other documents which he is required to submit under the Contract the Engineer shall take into account such failure by the Contractor in taking any action under sub-clause (4)(a) of this Clause.

**One copy of documents to be kept on Site**

(5) One copy of the Drawings and Specification furnished to the Contractor as aforesaid and of all Drawings Specifications and other documents required to be provided by the Contractor under sub-clause (6) of this Clause shall at all reasonable times be available on the Site for inspection and use by the Engineer and the Engineer's Representative and by any other person authorised by the Engineer in writing.

**Permanent Works designed by Contractor**

(6) Where the Contract expressly provides that **all or any part or parts** of the Permanent Works shall be designed by the Contractor he shall submit to the Engineer for approval

(a) such drawings specifications calculations and other information as shall be necessary to satisfy the Engineer as to the suitability and adequacy of the design, and

(b) operation and maintenance manuals together with as completed drawings of that part of the Permanent Works in sufficient detail to enable the Employer to operate maintain dismantle reassemble and adjust the Permanent Works incorporating that design. No certificate under Clause 48 covering any part of the Permanent Works designed by the Contractor shall be issued until manuals and drawings in such detail have been submitted to and approved by the Engineer.

**Responsibility unaffected by approval**

(7) Approval by the Engineer in accordance with sub-clause (6) of this Clause shall not relieve the Contractor of any of his responsibilities under the Contract.

## **GENERAL OBLIGATIONS**

**Contractor's general responsibilities**

8 (1) The Contractor shall subject to the provisions of the Contract

**(a) design, procure, construct, install, test, commission and complete the Works.**

(b) provide all labour materials Contractor's Equipment Temporary Works transport to and from and in or about the Site and everything whether of a temporary or permanent nature required in and for such construction and completion so far as the necessity for providing the same is specified in or reasonably to be inferred from the Contract.

**Design  
responsibility**

(2) (a) The Contractor will design the Works in accordance with the requirements of the Contract and the instructions of the Engineer. In so doing, the Contractor warrants to the Employer that he has exercised and will continue to exercise in the design of the Works under the Contract all the skill, care and diligence to be expected of a properly qualified and competent contractor experienced in carrying out such design in relation to projects of similar scope, nature and complexity to the Works and that the design can and will be completed in accordance with the programme furnished in accordance with Clause 14.

(b) So far as the Contractor has already designed the Works either pursuant to the terms of the Design Contractor's Appointment or otherwise he warrants that he has carried out such design in accordance with the standards of skill, care and diligence required by the Contract and in compliance with all warranties, undertakings and all other terms and conditions set out in the Design Contractor's Appointment and the Contract.

(c) The Contractor shall submit Project Data to the Engineer for approval in accordance with the programme furnished in accordance with Clause 14 or where the programme does not specify a date or dates for submission as soon as reasonably practicable.

(d) If in the opinion of the Engineer any Project Data prepared or provided by the Contractor does not comply with the requirements of the Specification or with any other provision of the Contract he shall so inform the Contractor in writing giving his reasons and may withhold his approval thereof until the Contractor has re-submitted the Project Data in the required form with appropriate modifications.

(e) The Contractor shall immediately notify the Engineer if he later wishes to modify any design which the Engineer has previously approved and shall submit the modified design or drawing to the Engineer for consideration and approval.

(f) Should the Engineer fail within a reasonable period following the submission or re-submission of any Project Data under this Clause to notify the Contractor either that he approves the data or that he is withholding his approval, the Engineer shall take such delay into account when determining any revision of the programme and/or claim for additional costs from the Contractor.

(g) The Contractor shall be responsible for the sufficiency of and any discrepancies (including errors and inaccuracies) in the Project Data supplied by it whether or not such Project Data has been approved by the Engineer under sub-clause (2)(c) of this Clause and the Contractor shall make good any deficiencies and/or rectify such discrepancies as soon as possible at his own expense.

(h) The Contractor shall provide for the safe storage of the Project Data in his possession and protect the same against loss or damage. The Contractor shall indemnify the

**Employer against all demands, damages, costs, charges and expenses arising in connection with any claims against the Employer for any such loss or damage.**

**Contractor responsible for safety of site operations**

(3) The Contractor shall take full responsibility for the adequacy stability and safety of all site operations and methods of construction.

**In addition the Contractor shall:**

(a) **comply with the operating works rules and Safety Health and Environmental Procedures (SHEPs) applicable to the premises where the Works are to be carried out;**

(b) **comply with the Employer's safe systems of working which includes permits to work and clearance notes;**

(c) **obtain copies of the operating works rules and relevant SHEPs from the Engineer and failure by the Contractor in obtaining copies of these works rules will not relieve him of the responsibilities and obligations imposed by them;**

(d) **obtain from the Engineer copies of the operating works rules and relevant SHEPs applicable to all Contractor's employees relevant to the particular sites and issue a copy to all personnel (including sub-contractors and agents) prior to them entering into the Employer's premises; and**

(e) **comply with any requirement of the Engineer to require any personnel to attend safety induction courses.**

**Contractor's Equipment**

(4) **The Contractor shall take full responsibility for the suitability and safety of the Contractor's Equipment used in the carrying out of the Works and no Contractor's Equipment shall be so used which may be unsuitable unsafe or liable to cause damage to the Works or damage to existing buildings, plant or property.**

**Engineer's Right to Inspect**

(5) **Without prejudice to the provisions of sub-clause (4) above the Contractor shall permit the Engineer to inspect the Contractor's Equipment at any time and if in the Engineer's opinion it is unsuitable it shall not be used on the Works. The additional cost (if any) incurred by the replacement of such equipment shall be borne by the Contractor.**

**Advertisements**

(6) **The Contractor shall not display any advertisement on the Site or elsewhere in connection with the Works without the prior written approval of the Engineer.**

**Photographs**

(7) **The Contractor shall not take photographs nor make films or video recordings of the Works or any section or part thereof or of any property of the Employer without the prior written consent of the Engineer.**

**Secrecy**

(8) **The Contractor and its agents, servants or workmen shall keep secret and shall not disclose to any third party (except sub-contractors accepting like obligations as to secrecy and then only to the extent necessary for the performance of the sub-contract in question) any matters relating to the existence or the performance, variation, cancellation or termination of the Contract (either actual or projected) except with the prior written**

consent of the Employer.

- Confidentiality** (9) The Contractor shall do everything necessary to comply with his obligations as to confidentiality under Clause 6(4) and sub-clauses (6), (7) and (8) of this Clause and if required by the Employer the Contractor and its individual personnel shall sign a confidentiality agreement approved by the Employer.
- Contract Agreement** 9 The Contractor shall if called upon so to do enter into a Contract Agreement in the form annexed.
- Performance security** 10 (1) If the Contract requires the Contractor to provide security for the proper performance of the Contract he shall obtain and provide to the Employer such security in a sum not exceeding 10% of the Tender Total within 28 days of the award of the Contract. The security shall be provided by a body approved by the Employer and be in the Form of Bond annexed to these Conditions. The Contractor shall pay the cost of such security unless the Contract provides otherwise.
- Arbitration upon security** (2) For the purposes of the arbitration provisions in such security
- (a) the Employer shall be deemed a party to the said security for the purpose of doing everything necessary to give effect to such provisions and
- (b) any agreement decision award or other determination touching or concerning the relevant date for the discharge of such security shall be wholly without prejudice to the resolution or determination of any dispute or difference between the Employer and the Contractor under Clause 66.
- Provision and interpretation of information** 11 (1) The Employer shall be deemed to have made available to the Contractor before the submission of his tender all information on
- (a) the nature of the ground and subsoil including hydrological conditions and
- (b) pipes and cables in on or over the ground
- obtained by or on behalf of the Employer from investigations undertaken relevant to the Works.
- The Contractor shall be responsible for the interpretation of all such information for the purposes of constructing the Works and for any design which is the Contractor's responsibility under the Contract.
- Inspection of Site** (2) The Contractor shall be deemed to have inspected and examined the Site and its surroundings and information available in connection therewith and to have satisfied himself so far as is practicable and reasonable before submitting his Tender as to
- (a) the form and nature thereof including the ground and sub-soil
- (b) the extent and nature of work and materials necessary for constructing and completing the Works and
- (c) the means of communication with and access to the Site and the accommodation he may require
- and in general to have obtained for himself all necessary information

as to risks contingencies and all other circumstances which may influence or affect his Tender (**including without limitation, all existing structures and plant and machinery which are adjacent to or may impact upon the Site or the Works**).

**Basis and sufficiency of Tender**

- (3) The Contractor shall be deemed to have
- (a) based his Tender on the information made available by the Employer and on his own inspection and examination all as aforementioned and
  - (b) satisfied himself before submitting his Tender as to the correctness and sufficiency of the rates and prices stated by him in the **Schedule of Works** which shall (unless otherwise provided in the Contract) cover all his obligations under the Contract.

**Adverse physical conditions and artificial obstructions**

- 12 (1) If during the execution of the Works the Contractor shall encounter physical conditions (other than weather conditions or conditions due to weather conditions) or artificial obstructions which conditions or obstructions could not in his opinion reasonably have been foreseen by an experienced contractor the Contractor shall as early as practicable give written notice thereof to the Engineer.

**Intention to claim**

- (2) If in addition the Contractor intends to make any claim for additional payment or extension of time arising from such condition or obstruction he shall at the same time or as soon thereafter as may be reasonable inform the Engineer in writing pursuant to Clause 52(4) and/or Clause 44(1) as may be appropriate specifying the condition or obstruction to which the claim relates.

**Measures being taken**

- (3) When giving notification in accordance with sub-clauses (1) and (2) of this Clause or as soon as practicable thereafter the Contractor shall give details of any anticipated effects of the condition or obstruction the measures he has taken is taking or is proposing to take their estimated cost and the extent of the anticipated delay in or interference with the execution of the Works.

**Action by Engineer**

- (4) Following receipt of any notification under sub-clauses (1) or (2) or receipt of details in accordance with sub-clause (3) of this Clause the Engineer may if he thinks fit inter alia
- (a) require the Contractor to investigate and report upon the practicality cost and timing of alternative measures which may be available
  - (b) give written consent to measures notified under sub-clause (3) of this Clause with or without modification
  - (c) give written instructions as to how the physical conditions or artificial obstructions are to be dealt with
  - (d) order a suspension under Clause 40 or a variation under Clause 51.

**Conditions reasonably foreseeable**

- (5) If the Engineer shall decide that the physical conditions or artificial obstructions could in whole or in part have been reasonably foreseen by an experienced contractor he shall so inform the Contractor in writing as soon as he shall have reached that decision but the value of any variation previously ordered by him pursuant to sub-clause (4)(d) of this Clause shall be ascertained in accordance

with Clause 52 and included in the Contract Price.

**Delay and extra cost**

(6) Where an extension of time or additional payment is claimed pursuant to sub-clause (2) of this Clause the Engineer shall if in his opinion such conditions or obstructions could not reasonably have been foreseen by an experienced contractor determine the amount of any costs which may reasonably have been incurred by the Contractor by reason of such conditions or obstructions together with a reasonable percentage addition thereto in respect of profit and any extension of time to which the Contractor may be entitled and shall notify the Contractor accordingly with a copy to the Employer. The Contractor shall subject to Clause 52(4) be paid in accordance with Clause 60 the amount so determined.

**Work to be to satisfaction of Engineer**

13 (1) Save insofar as it is legally or physically impossible the Contractor shall construct and complete the Works in strict accordance with the Contract to the satisfaction of the Engineer and shall comply with and adhere strictly to the Engineer's instructions on any matter connected therewith (whether mentioned in the Contract or not). The Contractor shall take instructions only from the Engineer or (subject to the limitations referred to in Clause 2) from the Engineer's Representative.

**Mode and manner of construction**

(2) The whole of the materials Contractor's Equipment and labour to be provided by the Contractor under Clause 8 and the mode manner and speed of construction of the Works are to be of a kind and conducted in a manner acceptable to the Engineer.

**Delay and extra cost**

(3) If in pursuance of Clause 5 or sub-clause (1) of this Clause the Engineer shall issue instructions which involve the Contractor in delay or disrupt his arrangements or methods of construction so as to cause him to incur cost beyond that reasonably to have been foreseen by an experienced contractor at the time of tender then the Engineer shall take such delay into account in determining any extension of time to which the Contractor is entitled under Clause 44 and the Contractor shall subject to Clause 52(4) be paid in accordance with Clause 60 the amount of such cost as may be reasonable except to the extent that such delay and extra cost result from the Contractor's default. Profit shall be added thereto in respect of any additional permanent or temporary work. If such instructions require any variation to any part of the Works the same shall be deemed to have been given pursuant to Clause 51.

**Programme to be furnished**

14 (1) (a) Within 21 days after the award of the Contract the Contractor shall submit to the Engineer for his acceptance a programme showing the order in which he proposes to carry out the Works having regard to the provisions of Clause 42(1).

(b) At the same time the Contractor shall also provide in writing for the information of the Engineer a general description of the arrangements and methods of construction which the Contractor proposes to adopt for the carrying out of the Works.

(c) Should the Engineer reject any programme under sub-clause (2)(b) of this Clause the Contractor shall within 21 days of such rejection submit a revised programme.

**Action by Engineer**

(2) The Engineer shall within 21 days after receipt of the Contractor's programme

(a) accept the programme in writing or

(b) reject the programme in writing with reasons or

(c) request the Contractor to supply further information to clarify or substantiate the programme or to satisfy the Engineer as to its reasonableness having regard to the Contractor's obligations under the Contract.

Provided that if none of the above actions is taken within the said period of 21 days the Engineer shall be deemed to have accepted the programme as submitted.

**Provision of further information**

(3) The Contractor shall within 21 days after receiving from the Engineer any request under sub-clause (2)(c) of this Clause or within such further period as the Engineer may allow provide the further information requested failing which the relevant programme shall be deemed to be rejected.

Upon receipt of such further information the Engineer shall within a further 21 days accept or reject the programme in accordance with sub-clauses (2)(a) or (2)(b) of this Clause.

**Revision of programme**

(4) Should it appear to the Engineer at any time that the actual progress of the work does not conform with the accepted programme referred to in sub-clause (1) of this Clause the Engineer shall be entitled to require the Contractor to produce a revised programme showing such modifications to the original programme as may be necessary to ensure completion of the Works or any Section within the time for completion as defined in Clause 43 or extended time granted pursuant to Clause 44. In such event the Contractor shall submit his revised programme within 21 days or within such further period as the Engineer may allow. Thereafter the provisions of sub-clauses (2) and (3) of this Clause shall apply.

**Design criteria**

(5) The Engineer shall provide to the Contractor such design criteria relevant to the Permanent Works or any Temporary Works design supplied by the Engineer as may be necessary to enable the Contractor to comply with sub-clauses (6) and (7) of this Clause.

**Methods of construction**

(6) If requested by the Engineer the Contractor shall submit at such times and in such further detail as the Engineer may reasonably require information pertaining to the methods of construction (including Temporary Works and the use of Contractor's Equipment) which the Contractor proposes to adopt or use and calculations of stresses strains and deflections that will arise in the Permanent Works or any parts thereof during construction so as to enable the Engineer to decide whether if these methods are adhered to the Works can be constructed and completed in accordance with the Contract and without detriment to the Permanent Works when completed.

**Engineer's consent**

(7) The Engineer shall inform the Contractor in writing within 21 days after receipt of the information submitted in accordance with sub-clauses (1)(b) and (6) of this Clause either

(a) that the Contractor's proposed methods have the consent of the Engineer or

(b) in what respects in the opinion of the Engineer they fail to meet the requirements of the Contract or will be detrimental to the Permanent Works.

In the latter event the Contractor shall take such steps or make such changes in the said methods as may be necessary to meet the Engineer's requirements and to obtain his consent. The Contractor shall not change the methods which have received the Engineer's consent without the further consent in writing of the Engineer which shall not be unreasonably withheld.

**Delay and Cost**

- (8) If the Contractor unavoidably incurs delay or cost because
- (a) the Engineer's consent to the proposed methods of construction is unreasonably delayed or
  - (b) the Engineer's requirements pursuant to sub-clause (7) of this Clause or any limitations imposed by any of the design criteria supplied by the Engineer pursuant to sub-clause (5) of this Clause could not reasonably have been foreseen by an experienced contractor at the time of tender

the Engineer shall take such delay into account in determining any extension of time to which the Contractor is entitled under Clause 44 and the Contractor shall subject to Clause 52(4) be paid in accordance with Clause 60 such sum in respect of the cost incurred as the Engineer considers fair in all the circumstances. Profit shall be added thereto in respect of any additional permanent or temporary work.

**Responsibility unaffected by acceptance or consent**

- (9) Acceptance by the Engineer of the Contractor's programme in accordance with sub-clauses (2), (3) or (4) of this Clause and the consent of the Engineer to the Contractor's proposed methods of construction in accordance with sub-clause (7) of this Clause shall not relieve the Contractor of any of his duties or responsibilities under the Contract.

**Contractor's superintendence**

- 15 (1) The Contractor shall give or provide all necessary superintendence during the construction and completion of the Works and as long thereafter as the Engineer may consider necessary. Such superintendence shall be given by sufficient persons having adequate knowledge of the operations to be carried out (including the methods and techniques required the hazards likely to be encountered and methods of preventing accidents) as may be requisite for the satisfactory and safe construction of the Works.

**Contractor's agent**

- (2) The Contractor or a competent and authorised agent or representative approved of in writing by the Engineer (which approval may at any time be withdrawn) is to be constantly on the Works and shall give his whole time to the superintendence of the same. Such authorised agent or representative shall be in full charge of the Works and shall receive on behalf of the Contractor directions and instructions from the Engineer or (subject to the limitations of Clause 2) the Engineer's Representative. The Contractor or such authorised agent or representative shall be responsible for the safety of all operations.

**Removal of Contractor's employees**

- 16 The Contractor shall employ or cause to be employed in and about the construction and completion of the Works and in the superintendence thereof only such persons as are careful skilled and experienced in their several trades and callings.

The Engineer shall be at liberty to object to and require the



Contractor to remove or cause to be removed from the Works any person employed thereon who in the opinion of the Engineer misconducts himself or is incompetent or negligent in the performance of his duties or fails to conform with any particular provisions with regard to safety which may be set out in the Contract or persists in any conduct which is prejudicial to safety or health and such persons shall not be again employed upon the Works without the permission of the Engineer.

**Setting-out**

17 (1) The Contractor shall be responsible for the true and proper setting out of the Works and for the correctness of the position levels dimensions and alignment of all parts of the Works and for the provision of all necessary instruments appliances and labour in connection therewith.

(2) If at any time during the progress of the Works any error shall appear or arise in the position levels dimensions or alignment of any part of the Works the Contractor on being required so to do by the Engineer shall at his own cost rectify such error to the satisfaction of the Engineer unless such error is based on incorrect data supplied in writing by the Engineer or the Engineer's Representative in which case the cost of rectifying the same shall be borne by the Employer.

(3) The checking of any setting-out or of any line or level by the Engineer or the Engineer's Representative shall not in any way relieve the Contractor of his responsibility for the correctness thereof and the Contractor shall carefully protect and preserve all benchmarks sight rails pegs and other things used in setting out the Works.

**Boreholes and  
exploratory  
excavation**

18 If at any time during the construction of the Works the Engineer shall require the Contractor to make boreholes or to carry out exploratory excavation such requirement shall be ordered in writing and shall be deemed to be a variation under Clause 51 unless a Provisional Sum or Prime Cost Item in respect of such anticipated work shall have been included in the **Schedule of Works**.

**Safety and security**

19 (1) The Contractor shall throughout the progress of the Works have full regard for the safety of all persons entitled to be upon the Site and shall keep the Site (so far as the same is under his control) and the Works (so far as the same are not completed or occupied by the Employer) in an orderly state appropriate to the avoidance of danger to such persons and shall inter alia in connection with the Works provide and maintain at his own cost all lights guards fencing warning signs and watching when and where necessary or required by the Engineer or the Engineer's Representative or by any competent statutory or other authority for the protection of the Works or for the safety and convenience of the public or others.

**Employer's  
responsibilities**

(2) If under Clause 31 the Employer shall carry out work on the Site with his own workmen he shall in respect of such work

(a) have full regard to the safety of all persons entitled to be upon the Site and

(b) keep the Site in an orderly state appropriate to the avoidance of danger to such persons.

If under Clause 31 the Employer shall employ other contractors on the Site he shall require them to have the same regard for safety and avoidance of danger.

Care of the Works

20 (1) For the purposes of Clauses 20 and 21 “damage” means actual physical damage or loss to property and any pecuniary losses resulting therefrom.

(a) The Contractor shall save as in paragraph (b) hereof and subject to sub-clause (2) of this Clause take full responsibility for the care of the Works and materials plant and equipment for incorporation therein from the Works Commencement Date until the date of issue of a Certificate of Substantial Completion for the whole of the Works when the responsibility for the said care shall pass to the Employer.

(b) If the Engineer issues a Certificate of Substantial Completion for any Section or part of the Permanent Works the Contractor shall cease to be responsible for the care of that Section or part from the date of issue of such Certificate of Substantial Completion when the responsibility for the care of that Section or part shall pass to the Employer **provided always that the Contractor shall remain responsible for any damage to such completed work caused by or as a result of his other activities on the Site.**

(c) The Contractor shall take full responsibility for the care of any outstanding work and materials plant and equipment for incorporation therein which he undertakes to finish during the Defects Correction Period until such outstanding work has been completed.

Excepted Risks

(2) The Excepted Risks for which the Contractor is not liable are loss or damage to the extent that it is due to

(a) the use or occupation by the Employer his agents servants or other contractors (not being employed by the Contractor) of any part of the Permanent Works

(b) any fault defect error or omission in the design of the Works (other than a design provided **approved or accepted** by the Contractor pursuant to his obligations under the Contract)

(c) riot war invasion act of foreign enemies or hostilities (whether war be declared or not)

(d) civil war rebellion revolution insurrection or military or usurped power

(e) ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel radioactive toxic explosive or other hazardous properties or any explosive nuclear assembly or nuclear component thereof and

(f) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

Rectification of loss or damage

(3) (a) In the event of any loss or damage to

(i) the Works or any Section or part thereof or

(ii) materials plant or equipment for incorporation therein

while the Contractor is responsible for the care thereof (except as provided in sub-clause (2) of this Clause) the

Contractor shall at his own cost rectify such loss or damage so that the Permanent Works conform in every respect with the provisions of the Contract and the Engineer's instructions. The Contractor shall also be liable for any loss or damage to the Works occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations under Clauses 49 and 50.

(b) Should any such loss or damage arise from any of the Excepted Risks defined in sub-clause (2) of this Clause the Contractor shall if and to the extent required by the Engineer rectify the loss or damage at the expense of the Employer.

(c) In the event of loss or damage arising from an Excepted Risk and a risk for which the Contractor is responsible under sub-clause (1)(a) of this Clause then the Engineer shall when determining the expense to be borne by the Employer under the Contract apportion the cost of rectification into that part caused by the Excepted Risk and that part which is the responsibility of the Contractor.

Insurance of Works  
etc.

**21 (1) Except as provided in sub-clause (3) of this Clause the Employer shall, without limiting his or the Contractor's obligations and responsibilities under Clause 20, insure to protect the Contractor and all his sub-contractors against their legal liabilities:**

**(a) to make good any damage to the Works or materials, plant or equipment for incorporation therein whilst on the Site;**

**(b) to make good any damage to the Works or materials, plant or equipment for incorporation therein which may arise whilst they are in transit;**

**(c) arising from damage to any other property belonging to the Employer or any Group Company in excess of the amounts specified under Clause 23 (3).**

Extent of cover

**(2) (a)** The insurance required under sub-clause (1) of this Clause shall cover the Employer and the Contractor against all loss or damage from whatsoever cause arising other than the Excepted Risks defined in Clause 20 (2) **and the risks specified in Clause 21 (3)** from the Works Commencement Date until the date of issue of the relevant Certificate of Substantial Completion.

(b) The insurance shall extend to cover any loss or damage arising during the Defects Correction Period from a cause occurring prior to the issue of any Certificate of Substantial Completion and any loss or damage occasioned by the Contractor in the course of any operation carried out by him for the purpose of complying with his obligations under Clauses 49 and 50.

(c) Nothing in this Clause shall render **the Employer or** the Contractor liable to insure against the necessity for the repair or reconstruction of any work constructed with materials or workmanship not in accordance with the requirements of the Contract unless the **Schedule of Works** shall provide a special

item for this insurance.

(d) Any amounts not insured or not recovered from insurers whether as excesses carried under the policy or otherwise shall be borne by the Contractor or the Employer in accordance with their respective responsibilities under Clause 20.

**Extent of Cover**

**(3) The Employer's insurance will not cover the following risks;**

(a) such amount as may be stated elsewhere in the Contract (or if no amount is stated the first £5,000 (five thousand pounds sterling) of each and every claim for damage to the Works or materials, plant or equipment for incorporation therein;

(b) the cost of replacement, rectification or redesign rendered necessary by defective materials, workmanship or design but only insofar as such costs relate to that part of the Works immediately affected and not the cost of making good any other loss or damage resulting from the defect;

(c) damage to the Works or materials, plant or equipment for incorporation therein during manufacture elsewhere than on Site;

(d) damage to the Contractor's Equipment, personal effects, or any other property of the Contractor, any sub-contractor, their servants or agents;

(e) the Contractor's liability arising out of the ownership or use by or on behalf of the Contractor of any motor vehicle, water craft or aircraft other than as stated in Clause 21(1)(b);

(f) the Contractor's liability to his employees and third parties other than as stated in Clause 21(1) (c); or

(g) damage to any property of the Employer including without limitation the Works or materials, plant or equipment for incorporation therein resulting from a deliberate or reckless act or omission by the Contractor or his servants or agents.

**Contractor to give notice**

(4) (a) The Contractor shall give notice as soon as possible and in any event by the next working day following the occurrence of an incident likely to form the subject of a claim under the Employer's insurance and shall give all the information and assistance in respect thereof that the Employer's insurers may require and shall not negotiate pay settle or admit or repudiate any claim without such insurer's written consent and shall permit the insurers to take proceedings in the name of the Contractor to recover compensation or secure an indemnity from any third party in respect of any matters covered by the said insurance.

(b) Any notice to be given under sub-clause (a) above shall be sent to AstraZeneca Risk and Insurance Services, 1 Adam Street, London WC2N 6AW; Telephone 0171-930-9766; Telefax 0171-839-7479 and to the Employer.

**Design Indemnity**

(5) The Contractor shall use its best endeavours to maintain, with reputable insurers carrying on business in the United Kingdom, from the date hereof and for a period expiring no earlier than twelve years after the date of the Contract design indemnity insurance in the amount of £2,000,000 (two million pounds) for each and every claim arising out of any one event in respect of any negligence omission or default on the part of the Contractor provided that such insurance is generally available to contractors carrying out work of a similar nature to the Works. The Contractor shall notify the Employer in writing from time to time of any change in its professional indemnity insurance arrangements and, within 7 days of the Employer's request at any time, the Contractor shall produce for inspection documentary evidence as to its compliance with this Clause.

**Damage to persons and property**

22 (1) The Contractor shall except if and so far as the Contract provides otherwise and subject to the exceptions set out in sub-clause (2) of this Clause indemnify and keep indemnified the Employer against all losses and claims in respect of

(a) death of or injury to any person or

(b) loss of or damage to any property (other than the Works)

which may arise out of or in consequence of the execution of the Works and the remedying of any defects therein and against all claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto.

**Exceptions**

(2) The exceptions referred to in sub-clause (1) of this Clause which are the responsibility of the Employer are

(a) damage to crops being on the Site (save in so far as possession has not been given to the Contractor)

(b) the use or occupation of land (provided by the Employer) by the Works or any part thereof or for the purpose of executing and maintaining the Works (including consequent losses of crops) or interference whether temporary or permanent with any right of way light air or water or other easement or quasi-easement which are the unavoidable result of the construction of the Works in accordance with the Contract

(c) the right of the Employer to construct the Works or any part thereof on over under in or through any land

(d) damage which is the unavoidable result of the construction of the Works in accordance with the Contract and

(e) death of or injury to persons or loss of or damage to property resulting from any act neglect or breach of statutory duty done or committed by the Employer his agents servants or other contractors (not being employed by the Contractor) or for or in respect of any claims demands proceedings damages costs charges and expenses in respect thereof or in relation thereto.

**Indemnity by Employer**

(3) The Employer shall subject to sub-clause (4) of this Clause indemnify the Contractor against all claims demands proceedings damages costs charges and expenses in respect of the matters

referred to in the exceptions defined in sub-clause (2) of this Clause.

**Shared  
responsibility**

- (4) (a) The Contractor's liability to indemnify the Employer under sub-clause (1) of this Clause shall be reduced in proportion to the extent that the act or neglect of the Employer his agents servants or other contractors (not being employed by the Contractor) may have contributed to the said death injury loss or damage.
- (b) The Employer's liability to indemnify the Contractor under sub-clause (3) of this Clause in respect of matters referred to in sub-clause (2)(e) of this Clause shall be reduced in proportion to the extent that the act or neglect of the Contractor or his sub-contractors servants or agents may have contributed to the said death injury loss or damage.

**Third party  
insurance**

- 23** (1) The Contractor shall without limiting his or the Employer's obligations and responsibilities under Clause 22 insure in the joint names of the Contractor and the Employer against liabilities for death of or injury to any person (other than any operative or other person in the employment of the Contractor or any of his sub-contractors) or loss of or damage to any property (other than the Works) arising out of the execution of the Contract other than the exceptions defined in Clause 22(2)(a) (b) (c) and (d).

**Contractor's  
insurances**

- (2) The Contractor shall at all times have in force and shall require any sub-contractor employed by him to have in force the following insurances;**

**(a) insurance for employer's liability which shall extend to indemnify the Employer against any claim for which the Contractor or any sub-contractor may be legally liable under the contract;**

**(b) insurance of the Contractor's Equipment to its full value in respect of any accidental loss or damage; and**

**(c) in so far as insurance is obtainable, insurance for the risks referred to in Clause 21 (3).**

**Amount of  
insurance**

- (3) Such insurance shall be for at least the amount stated in the Contract or if no amount is stated £6,000,000 (six million pounds) sterling for each and every incident.**

**Accident or injury to  
workpeople**

- 24** The Employer shall not be liable for or in respect of any damages or compensation payable at law in respect or in consequence of any accident or injury to any operative or other person in the employment of the Contractor or any of his sub-contractors save and except to the extent that such accident or injury results from or is contributed to by any act or default of the Employer his agents or servants and the Contractor shall indemnify and keep indemnified the Employer against all such damages and compensation (save and except as aforesaid) and against all claims demands proceedings costs charges and expenses whatsoever in respect thereof or in relation thereto.

**Evidence and  
terms of insurance**

- 25** (1) The Contractor shall provide satisfactory evidence to the Employer prior to the Works Commencement Date that the insurances required under the Contract have been effected and shall if so required produce the insurance policies for inspection. The terms of all such insurances shall be subject to the approval of the

Employer (which approval shall not unreasonably be withheld). The Contractor shall upon request produce to the Employer receipts for the payment of current insurance premiums.

**Excesses**

(2) Any excesses on the policies of insurance effected under Clauses 21 and 23 shall be **notified by the Contractor to the Employer**.

**Remedy on Contractor's failure to insure**

(3) If the Contractor shall fail upon request to produce to the Employer satisfactory evidence that there is in force any of the insurances required under the Contract then and in any such case the Employer may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or which may become due to the Contractor or recover the same as a debt due from the Contractor.

**Compliance with policy conditions**

(4) Both the Employer and the Contractor shall comply with all conditions laid down in the insurance policies. In the event that the Contractor or the Employer fails to comply with any condition imposed by the insurance policies effected pursuant to the Contract each shall indemnify the other against all losses and claims arising from such failure.

**Giving of notices and payment of fees**

**26** (1) The Contractor shall give all notices and pay all fees required to be given or paid by any Act of Parliament or any Regulation or Bye-law of any local or other statutory authority in relation to the construction and completion of the Works and by the rules and regulations of all public bodies and companies whose property or rights are or may be affected in any way by the Works.

**Repayment by Employer**

(2) The Employer shall repay or allow to the Contractor all such sums as the Engineer shall certify to have been properly payable and paid by the Contractor in respect of such fees and also all rates and taxes paid by the Contractor in respect of the Site or any part thereof or anything constructed or erected thereon or on any part thereof or any temporary structures situated elsewhere but used exclusively for the purposes of the Works or any structures used temporarily and exclusively for the purposes of the Works.

**Contractor to conform with Statutes etc.**

(3) The Contractor shall ascertain and conform in all respects with the provisions of any general or local Act of Parliament and the Regulations and Bye-laws of any local or other statutory authority which may be applicable to the Works and with such rules and regulations of public bodies and companies as aforesaid and shall keep the Employer indemnified against all penalties and liability of every kind for breach of any such Act Regulation or Bye-law. Provided always that

(a) the Contractor shall not be required to indemnify the Employer against the consequences of any such breach which is the unavoidable result of complying with the Contract or instructions of the Engineer

(b) if the Contract or instructions of the Engineer shall at any time be found not to be in conformity with any such Act Regulation or Bye-law the Engineer shall issue such instructions including the ordering of a variation under Clause 51 as may be necessary to ensure conformity with such Act Regulation or Bye-law and

- (c) the Contractor shall not be responsible for obtaining any planning permission which may be necessary in respect of the Permanent Works or any Temporary Works design supplied by the Engineer and the Employer hereby warrants that all the said permissions have been or will in due time be obtained.
- New Roads and Street Works Act 1991 – Definitions**
- 27 (1) (a) In this Clause “the Act” shall mean the New Roads and Street Works Act 1991 and any statutory modification or re-enactment thereof for the time being in force.
- (b) For the purpose of obtaining any licence under the Act required for the Permanent Works the undertaker shall be the Employer who for the purposes of the Act will be the licensee.
- (c) For all other purposes the undertaker under the licence shall be the Contractor.
- (d) All other expressions common to the Act and to this Clause shall have the same meaning as those assigned to them by the Act.
- Licences**
- (2) (a) The Employer shall obtain any street works licence and any other consent licence or permission that may be required for the carrying out of the Permanent Works and shall supply the Contractor with copies thereof including details of any conditions or limitations imposed.
- (b) Any condition or limitation in any licence obtained after the award of the Contract shall be deemed to be an instruction under Clause 13.
- Notices**
- (3) The Contractor shall be responsible for giving to any relevant authority any required notice (or advance notice where prescribed) of his proposal to commence any work. A copy of each such notice shall be given to the Employer.
- Patent rights**
- 28 (1) **The Contractor shall indemnify the Employer against any claims for or in respect of infringement of any patent, registered design, trademark, copyright or any other intellectual property rights arising out of or in connection with the Works or the use by the Employer of Project Data prepared and/or provided by the Contractor or in respect of any Contractor’s Equipment used for or in connection with the Works or materials, plant and equipment for incorporation into the Works and against all costs, losses, damages and expenses which the Employer may incur in any action or threatened action for such infringement or settlement thereof or for which the Employer may become liable in any such action provided that this indemnity will not apply where the infringement arises as a result of and in relation to any documentation provided by the Employer in circumstances where the Contractor has properly discharged his duty to warn under Clause 7(2).**
- Inventions**
- (2) **Any inventions made or created by the Contractor or by its employees in carrying out the Works shall belong to the Employer absolutely. The Contractor shall give or procure the giving of such assistance including the execution of all necessary documents to procure the vesting of any patent (or right to apply for the same) for such inventions in the Employer as absolute owner.**



- Interference with traffic and adjoining properties**      29      (1) All operations necessary for the construction and completion of the Works shall so far as compliance with the requirements of the Contract permits be carried on so as not to interfere unnecessarily or improperly with
- (a) the convenience of the public, or
  - (b) the access to public or private roads footpaths or properties whether in the possession of the Employer or of any other person and with the use or occupation thereof.
- The Contractor shall save harmless and indemnify the Employer in respect of all claims demands proceedings damages costs charges and expenses whatsoever arising out of or in relation to any such matters.
- Noise disturbance and pollution**      (2) All work shall be carried out without unreasonable noise or disturbance or other pollution.
- Indemnity by Contractor**      (3) To the extent that noise disturbance or other pollution is not the unavoidable consequence of constructing and completing the Works or performing the Contract the Contractor shall indemnify the Employer from and against any liability for damages on that account and against all claims demands proceedings damages costs charges and expenses whatsoever in regard or in relation to such liability.
- Indemnity by Employer**      (4) The Employer shall indemnify the Contractor from and against any liability for damages on account of noise disturbance or other pollution which is the unavoidable consequence of carrying out the Works and from and against all claims demands proceedings damages costs charges and expenses whatsoever in regard or in relation to such liability.
- Avoidance of damage to highways etc.**      30      (1) The Contractor shall use every reasonable means to prevent any of the highways or bridges communicating with or on the routes to the Site from being subjected to extraordinary traffic within the meaning of the Highways Act 1980 or in Scotland the Roads (Scotland) Act 1984 or any statutory modification or re-enactment thereof by any traffic of the Contractor or any of his sub-contractors and in particular shall select routes and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of Contractor's Equipment and materials or manufactured or fabricated articles from and to the Site shall be limited as far as reasonably possible and so that no unnecessary damage or injury may be occasioned to such highways and bridges.
- Transport of Contractor's Equipment**      (2) Save insofar as the Contract otherwise provides the Contractor shall be responsible for and shall pay the cost of strengthening any bridges or altering or improving any highway communicating with the Site to facilitate the movement of Contractor's Equipment or Temporary Works required in the execution of the Works and the Contractor shall indemnify and keep indemnified the Employer against all claims for damage to any highway or bridge communicating with the Site caused by such movement including such claims as may be made by any competent authority directly against the Employer pursuant to any Act of Parliament or other Statutory Instrument and shall negotiate and pay all claims arising solely out of such damage.
- Transport of materials**      (3) If notwithstanding sub-clause (1) of this Clause any damage shall occur to any bridge or highway communicating with the Site

arising from the transport of materials or manufactured or fabricated articles in the execution of the Works the Contractor shall notify the Engineer as soon as he becomes aware of such damage or as soon as he receives any claim from the authority entitled to make such claim.

Where under any Act of Parliament or other Statutory Instrument the haulier of such materials or manufactured or fabricated articles is required to indemnify the highway authority against damage the Employer shall not be liable for any costs charges or expenses in respect thereof or in relation thereto.

In other cases the Employer shall negotiate the settlement of and pay all sums due in respect of such claim and shall indemnify the Contractor in respect thereof and in respect of all claims demands proceedings damages costs charges and expenses in relation thereto. Provided always that if and so far as any such claim or part thereof shall in the opinion of the Engineer be due to any failure on the part of the Contractor to observe and perform his obligations under sub-clause (1) of this Clause then the amount certified by the Engineer to be due to such failure shall be paid by the Contractor to the Employer or deducted from any sum due or which may become due to the Contractor.

**Facilities for other contractors**

- 31** (1) The Contractor shall in accordance with the requirements of the Engineer or Engineer's Representative afford all reasonable facilities for any other contractors employed by the Employer and their workmen and for the workmen of the Employer and of any other properly authorised authorities or statutory bodies who may be employed in the execution on or near the Site of any work not in the Contract or of any contract which the Employer may enter into in connection with or ancillary to the Works. **The Engineer may set off any loss damage or expense which may flow from breach of the Contractor's obligations under this sub-clause from amounts owed by the Employer to the Contractor.**

**Delay and extra cost**

(2) If compliance with sub-clause (1) of this Clause shall involve the Contractor in delay or cost beyond that reasonably to be foreseen by an experienced contractor at the time of tender then the Engineer shall take such delay into account in determining any extension of time to which the Contractor is entitled under Clause 44 and the Contractor shall subject to Clause 52(4) be paid in accordance with Clause 60 the amount of such cost as may be reasonable. Profit shall be added thereto in respect of any additional permanent or temporary work.

**Fossils etc.**

- 32** All fossils coins articles of value or antiquity and structures or other remains or things of geological or archaeological interest discovered on the Site shall as between the Employer and the Contractor be deemed to be the absolute property of the Employer and the Contractor shall take reasonable precautions to prevent his workmen or any other persons from removing or damaging any such article or thing and shall immediately upon discovery thereof and before removal acquaint the Engineer of such discovery and carry out at the expense of the Employer the Engineer's orders as to the disposal of the same.

**Clearance of Site on completion**

- 33** **The Contractor shall at all times throughout the performance of the Contract and at his own cost maintain the Site in a clean and tidy condition and shall remove all rubbish progressively as the Works proceed unless otherwise agreed in writing by the**

**Engineer. All surplus materials and debris arising out of the Works shall, if so instructed by the Engineer, be removed from the site or taken to a place nominated by the Engineer at the Contractor's cost. The Contractor shall comply with all relevant waste management and other environmental requirements. For the avoidance of doubt, compliance with such requirements is not a cause of delay for the purposes of Clause 44.**

On the completion of the Works the Contractor shall clear away and remove from the Site all Contractor's Equipment surplus material rubbish and Temporary Works of every kind and leave the whole of the Site and Permanent Works clean and in a workmanlike condition to the satisfaction of the Engineer.

**Rates and  
Conditions of  
Labour**

**34 (1) The Contractor and his sub-contractors shall in the carrying out of the Works pay rates of wages and observe the hours and conditions of employment of operatives not less favourable than those established for the time being by the national trade unions for the applicable industries or trades.**

**(2) The Contractor shall not except with the prior written consent of the Engineer vary the rates or basis of payment to his site labour other than increases due to national pay awards. The Contractor shall satisfy the Engineer that he and his sub-contractors are complying with this sub-clause.**

**(3) The Contractor shall keep proper records and time sheets showing the wages paid and the time worked by his employees and such records and time sheets shall be produced whenever required for the inspection of the Engineer.**

**Returns of labour  
and Contractor's  
Equipment**

**35** The Contractor shall if required by the Engineer deliver to the Engineer or the Engineer's Representative a return in such form and at such intervals as the Engineer may prescribe showing in detail the numbers of the several classes of labour from time to time employed by the Contractor on the Site and such information respecting Contractor's Equipment as the Engineer may require. The Contractor shall require his sub-contractors to observe the provisions of this Clause.

## **WORKMANSHIP AND MATERIALS**

**Quality of  
materials and  
workmanship  
and tests**

**36 (1) All materials and workmanship shall be of the respective kinds described in the Contract and where not expressly provided otherwise in the Contract in accordance with appropriate standards and codes of practice and in accordance with the Engineer's instructions and shall be subjected from time to time to such tests as the Engineer may direct at the place of manufacture or fabrication or on the Site or such other place or places as may be specified in the Contract. The Contractor shall provide such assistance instruments machines labour and materials as are normally required for examining measuring and testing any work and the quality weight or quantity of any materials used and shall supply samples of materials before incorporation in the Works for testing as may be selected and required by the Engineer.**

**Cost of samples**

**(2) All samples shall be supplied by the Contractor at his own cost if the supply thereof is clearly intended by or provided for in the Contract but if not then at the cost of the Employer.**

**Cost of tests**

(3) The cost of making any test shall be borne by the Contractor if such test is clearly intended by or provided for in the Contract and (in the cases only of a test under load or of a test to ascertain whether the design of any finished or partially finished work is appropriate for the purposes which it was intended to fulfil) is particularised in the Specification or **Schedule of Works** in sufficient detail to enable the Contractor to have priced or allowed for the same in his Tender. If any test is ordered by the Engineer which is either

- (a) not so intended by or provided for or
- (b) (in the cases above mentioned) is not so particularised

then the cost of such test shall be borne by the Contractor if the test shows the workmanship or materials not to be in accordance with the provisions of the Contract or the Engineer's instructions but otherwise by the Employer.

**Free Issue Materials**

**(4) Plant equipment goods or materials provided by the Employer for incorporation in the Works shall remain the property of the Employer.**

**On receipt of such plant equipment goods or materials the Contractor shall:**

- (a) carry out a reasonable visual examination to check that such plant equipment goods or materials are free from defects or deficiencies and accord with the specification within seven days of receipt and notify the Engineer as soon as practicable where any such defects or deficiencies are discovered.**
- (b) notify the Engineer as soon as practicable where any other defects or deficiencies are discovered during the execution of the Works.**
- (c) provide secure storage, protect and maintain them in good order.**
- (d) use them only in connection with the Works.**
- (e) make good deficiencies arising from the Contractor's uneconomic methods of construction or bad workmanship.**

**Free Issue Materials**

**(5) Where defects or deficiencies occur in plant equipment goods or materials provided by the Employer the Employer shall be responsible for rectifying such defects or deficiencies and if this shall involve the Contractor in delay or cost beyond that reasonably to be foreseen by an experienced contractor at the time of tender then the Engineer shall take such delay into account in determining any extension of time to which the Contractor is entitled under Clause 44 and the Contractor shall subject to Clause 52(4) be paid in accordance with Clause 60 the amount of such cost as may be reasonable.**

**Access to Site**

**37** The Engineer and any person authorised by him shall at all times have access to the Works and to the Site and to all workshops and places where work is being prepared or whence materials manufactured articles and machinery are being obtained for the Works and the Contractor shall afford every facility for and every assistance in obtaining such access or the right to such access.

- Examination of work before covering up**
- 38** (1) No work shall be covered up or put out of view without the consent of the Engineer and the Contractor shall afford full opportunity for the Engineer to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon. The Contractor shall give due notice to the Engineer whenever any such work or foundations is or are ready or about to be ready for examination and the Engineer shall without unreasonable delay unless he considers it unnecessary and advises the Contractor accordingly attend for the purpose of examining and measuring such work or of examining such foundations.
- Uncovering and making openings**
- (2) The Contractor shall uncover any part or parts of the Works or make openings in or through the same as the Engineer may from time to time direct and shall reinstate and make good such part or parts to the satisfaction of the Engineer. If any such part or parts have been covered up or put out of view after compliance with the requirements of sub-clause (1) of this Clause and are found to be executed in accordance with the Contract the cost of uncovering making openings in or through reinstating and making good the same shall be borne by the Employer but in any other case all such cost shall be borne by the Contractor.
- Removal of unsatisfactory work and materials**
- 39** (1) The Engineer shall during the progress of the Works have power to instruct in writing the
- (a) removal from the Site within such time or times specified in the instruction of any materials which in the opinion of the Engineer are not in accordance with the Contract
  - (b) substitution with materials in accordance with the Contract and
  - (c) removal and proper re-execution notwithstanding any previous test thereof or interim payment therefor of any work which in respect of
    - (i) material or workmanship or
    - (ii) design by the Contractor or for which he is responsible
- is not in the opinion of the Engineer in accordance with the Contract.
- Default of Contractor in compliance**
- (2) In case of default on the part of the Contractor in carrying out such instruction the Employer shall be entitled to employ and pay other persons to carry out the same and all costs consequent thereon or incidental thereto as determined by the Engineer shall be recoverable from the Contractor by the Employer and may be deducted by the Employer from any monies due or to become due to him and the Engineer shall notify the Contractor accordingly with a copy to the Employer.
- Failure to disapprove**
- (3) Failure of the Engineer or any person acting under him pursuant to Clause 2 to disapprove any work or materials shall not prejudice the power of the Engineer or any such person subsequently to take action under this Clause.
- Suspension of work**
- 40** (1) The Contractor shall on the written order of the Engineer suspend the progress of the Works or any part thereof for such time

or times and in such manner as the Engineer may consider necessary and shall during such suspension properly protect and secure the work so far as is necessary in the opinion of the Engineer. Subject to Clause 52(4) the Contractor shall be paid in accordance with Clause 60 the extra cost (if any) incurred in giving effect to the Engineer's instructions under this Clause except to the extent that such suspension is

- (a) otherwise provided for in the Contract or
- (b) necessary by reason of weather conditions or by some default on the part of the Contractor or
- (c) necessary for the proper execution or for the safety of the Works or any part thereof in as much as such necessity does not arise from any act or default of the Engineer or the Employer or from any of the Excepted Risks defined in Clause 20(2).

Profit shall be added thereto in respect of any additional permanent or temporary work.

The Engineer shall take any delay occasioned by a suspension ordered under this Clause (including that arising from any act or default of the Engineer or the Employer) into account in determining any extension of time to which the Contractor is entitled under Clause 44 except when such suspension is otherwise provided for in the Contract or is necessary by reason of some default on the part of the Contractor.

**Suspension lasting more than three months**

(2) If the progress of the Works or any part thereof is suspended on the written order of the Engineer and if permission to resume work is not given by the Engineer within a period of 3 months from the date of suspension then the Contractor may unless such suspension is otherwise provided for in the Contract or continues to be necessary by reason of some default on the part of the Contractor serve a written notice on the Engineer requiring permission within 28 days from the receipt of such notice to proceed with the Works or that part thereof in regard to which progress is suspended. If within the said 28 days the Engineer does not grant such permission the Contractor by a further written notice so served may (but is not bound to) elect to treat the suspension where it affects part only of the Works as an omission of such part under Clause 51 or where it affects the whole Works as an abandonment of the Contract by the Employer.

**COMMENCEMENT TIME AND DELAYS**

**Works Commencement Date**

- 41 (1) The Works Commencement Date shall be
- (a) the date specified in the **Contract** or if no date is specified
  - (b) a date within 28 days of the award of the Contract to be notified by the Engineer in writing or
  - (c) such other date as may be agreed between the parties.

**Start of Works**

(2) The Contractor shall start the Works on or as soon as is reasonably practicable after the Works Commencement Date. Thereafter the Contractor shall proceed with the Works with due expedition and without delay in accordance with the Contract.

**Possession of**

- 42 (1) The Contract may prescribe

**Site and access**

- (a) the extent of portions of the Site of which the Contractor is to be given possession from time to time
  - (b) the order in which such portions of the Site shall be made available to the Contractor
  - (c) the availability and the nature of the access which is to be provided by the Employer
  - (d) the order in which the Works shall be constructed.
- (2) (a) Subject to sub-clause (1) of this Clause the Employer shall give to the Contractor on the Works Commencement Date possession of so much of the Site and access thereto as may be required to enable the Contractor to commence and proceed with the construction of the Works.
- (b) Thereafter the Employer shall during the course of the Works give to the Contractor possession of such further portions of the Site as may be required in accordance with the programme which the Engineer has accepted under Clause 14 and such further access as is necessary to enable the Contractor to proceed with the construction of the Works with due despatch.

**Failure to give possession**

- (3) If the Contractor suffers delay and/or incurs additional cost from failure on the part of the Employer to give possession in accordance with the terms of this Clause the Engineer shall determine
- (a) any extension of time to which the Contractor is entitled under Clause 44 and
  - (b) subject to Clause 52(4) the amount of any additional cost to which the Contractor may be entitled. Profit shall be added thereto in respect of any additional permanent or temporary work.

The Engineer shall notify the Contractor accordingly with a copy to the Employer.

**Access and facilities provided by the Contractor**

- (4) The Contractor shall bear all costs and charges for any access required by him additional to those provided by the Employer. The Contractor shall also provide at his own cost any additional facilities outside the Site required by him for the purposes of the Works.

**Possession not exclusive**

- (5) Possession of the Site shall not be exclusive to the Contractor who shall, as directed by the Engineer, allow others to work on the Site and afford them all reasonable access and facilities so to do.**

**Time for completion**

- 43** The whole of the Works and any Section required to be completed within a particular time as stated in the **Contract** shall be substantially completed within the time so stated (or such extended time as may be allowed under Clause 44 or revised time agreed under Clause 46(3)) calculated from the Works Commencement Date.

**Extension of time for completion**

- 44** (1) Should the Contractor consider that
- (a) any variation ordered under Clause 51(1) or

- (b) increased quantities referred to in Clause 51(4) or
- (c) any cause of delay referred to in these Conditions or
- (d) exceptional adverse weather conditions or
- (e) any delay impediment prevention or default by the Employer or
- (f) other special circumstances of any kind whatsoever which may occur

be such as to entitle him to an extension of time for the substantial completion of the Works or any Section thereof he shall within 28 days after the cause of any delay has arisen or as soon thereafter as is reasonable deliver to the Engineer full and detailed particulars in justification of the period of extension claimed in order that the claim may be investigated at the time.

**Assessment of delay**

(2) (a) The Engineer shall upon receipt of such particulars consider all the circumstances known to him at that time and make an assessment of the delay (if any) that has been suffered by the Contractor as a result of the alleged cause and shall so notify the Contractor in writing.

(b) The Engineer may in the absence of any claim make an assessment of the delay that he considers has been suffered by the Contractor as a result of any of the circumstances listed in sub-clause (1) of this Clause and shall so notify the Contractor in writing.

**Interim grant of extension of time**

(3) Should the Engineer consider that the delay suffered fairly entitles the Contractor to an extension of the time for the substantial completion of the Works or any Section thereof such interim extension shall be granted forthwith and be notified to the Contractor in writing. In the event that the Contractor has made a claim for an extension of time but the Engineer does not consider the Contractor entitled to an extension of time he shall so inform the Contractor without delay.

**Assessment at due date for completion**

(4) The Engineer shall not later than 14 days after the due date or extended date for completion of the Works or any Section thereof (and whether or not the Contractor shall have made any claim for an extension of time) consider all the circumstances known to him at that time and take action similar to that provided for in sub-clause (3) of this Clause. Should the Engineer consider that the Contractor is not entitled to an extension of time he shall so notify the Employer and the Contractor.

**Final determination of extension**

(5) The Engineer shall within 14 days of the issue of the Certificate of Substantial Completion for the Works or for any Section thereof review all the circumstances of the kind referred to in sub-clause (1) of this Clause and shall finally determine and certify to the Contractor with a copy to the Employer the overall extension of time (if any) to which he considers the Contractor entitled in respect of the Works or the relevant Section. No such final review of the circumstances shall result in a decrease in any extension of time already granted by the Engineer pursuant to sub-clauses (3) or (4) of this Clause.

**Hours of Work**

**45 The hours of work shall be as described in the Contract or as**



approved by the Engineer. The hours of work shall not be varied without the prior written consent of the Engineer.

- Rate of progress** 46 (1) If for any reason which does not entitle the Contractor to an extension of time the rate of progress of the Works or any Section is at any time in the opinion of the Engineer too slow to ensure substantial completion by the time or extended time for completion prescribed by Clause 43 and 44 as appropriate or the revised time for completion agreed under sub-clause (3) of this Clause the Engineer shall notify the Contractor in writing and the Contractor shall thereupon take such steps as are necessary and to which the Engineer may consent to expedite the progress so as substantially to complete the Works or such Section by that prescribed time or extended time. The Contractor shall not be entitled to any additional payment for taking such steps.
- Permission to work at night or on Sundays** (2) If as a result of any notice given by the Engineer under sub-clause (1) of this Clause the Contractor shall seek the Engineer's permission to do any work on Site at night or on Sundays such permission shall not be unreasonably refused.
- Provision for accelerated completion** (3) If the Contractor is requested by the Employer or the Engineer to complete the Works or any Section within a revised time being less than the time or extended time for completion prescribed by Clauses 43 and 44 as appropriate and the Contractor agrees so to do then any special terms and conditions of payment shall be agreed between the Contractor and the Employer before any such action is taken.

### LIQUIDATED DAMAGES FOR DELAY

- Liquidated damages for delay in substantial completion of the whole of the Works** 47 (1) (a) Where the whole of the Works is not divided into Sections the **Contract may** include a sum which represents the Employer's genuine pre-estimate (expressed per week or per day as the case may be) of the damages likely to be suffered by him if the whole of the Works is not substantially completed within the time prescribed by Clause 43 or by any extension thereof granted under Clause 44 or by any revision thereof agreed under Clause 46(3) as the case may be.
- (b) If the Contractor fails to complete the whole of the Works within the time so prescribed he shall pay to the Employer the said sum for every week or day (as the case may be) which shall elapse between the date on which the prescribed time expired and the date the whole of the Works is substantially completed.
- Provided that if any part of the Works is certified as complete pursuant to Clause 48 before the completion of the whole of the Works the said sum shall be reduced by the proportion which the value of the part so completed bears to the value of the whole of the Works.
- Liquidated damages for delay in substantial completion where the whole of the Works is divided into Sections** (2) (a) Where the Works is divided into Sections (together comprising the whole of the Works) which are required to be completed within particular times as stated in the **Contract** sub-clause (1) of this Clause shall not apply and the **Contract may** include a sum in respect of each Section which represents the Employer's genuine pre-estimate (expressed per week or per day as the case may be) of the damages likely to be suffered by him if that Section is not substantially completed within the time

prescribed by Clause 43 or by any extension thereof granted under Clause 44 or by any revision thereof agreed under Clause 46(3) as the case may be.

(b) If the Contractor fails to complete any Section within the time so prescribed he shall pay to the Employer the appropriate stated sum for every week or day (as the case may be) which shall elapse between the date on which the prescribed time expired and the date of substantial completion of that Section.

Provided that if any part of that Section is certified as complete pursuant to Clause 48 before the completion of the whole thereof the appropriate stated sum shall be reduced by the proportion which the value of the part so completed bears to the value of the whole of that Section.

(c) Liquidated damages in respect of two or more Sections may where circumstances so dictate run concurrently.

**Damages not a penalty**

(3) All sums payable by the Contractor to the Employer pursuant to this Clause shall be paid as liquidated damages for delay and not as a penalty.

**Limitation of liquidated damages**

(4) (a) The total amount of liquidated damages in respect of the whole of the Works or any Section thereof shall be limited to the appropriate sum stated in the **Contract**. If no such limit is stated therein then liquidated damages without limit shall apply.

(b) **Should the Contract not include a statement as to sums payable in respect of liquidated damages, the Employer's rights and remedies in respect of the recovery of damages for delay shall be preserved.**

**Recovery and reimbursement of liquidated damages**

(5) The Employer may

(a) deduct and retain the amount of any liquidated damages becoming due under the provision of this Clause from any sums due or which become due to the Contractor or

(b) require the Contractor to pay such amount to the Employer forthwith.

If upon a subsequent or final review of the circumstances causing delay the Engineer grants a relevant extension or further extension of time the Employer shall no longer be entitled to liquidated damages in respect of the period of such extension.

Any sum in respect of such period which may already have been recovered under this Clause shall be reimbursed forthwith to the Contractor together with interest compounded monthly at the rate provided for in Clause 60(7) from the date on which such sums were recovered from the Contractor.

**Intervention of variations etc.**

(6) If after liquidated damages have become payable in respect of any part of the Works the Engineer issues a variation order under Clause 51 or adverse physical conditions or artificial obstructions within the meaning of Clause 12 are encountered or any other situation outside the Contractor's control arises any of which in the Engineer's opinion results in further delay to that part of the Works

(a) the Engineer shall so inform the Contractor and the

Employer in writing and

(b) the Employer's entitlement to liquidated damages in respect of that part of the Works shall be suspended until the Engineer notifies the Contractor and the Employer in writing that the further delay has come to an end.

Such suspension shall not invalidate any entitlement to liquidated damages which accrued before the period of delay started to run and any monies deducted or paid in accordance with sub-clause (5) of this Clause may be retained by the Employer without incurring liability for interest thereon under Clause 60(7).

## CERTIFICATE OF SUBSTANTIAL COMPLETION

### Notification of substantial completion

- 48 (1) When the Contractor considers that
- (a) the whole of the Works or
  - (b) any Section in respect of which a separate time for completion is provided in the **Contract**

has been substantially completed and has satisfactorily passed any final test that may be prescribed by the Contract he may give notice in writing to that effect to the Engineer or to the Engineer's Representative. Such notice shall be accompanied by an undertaking to finish any outstanding work in accordance with the provisions of Clause 49(1).

### Certification of substantial completion

- (2) **Subject to the Contractor having discharged his obligations under Clause 48(6) to the Engineer's satisfaction**, the Engineer shall within 21 days of the date of delivery of such notice either

(a) issue to the Contractor (with a copy to the Employer) a Certificate of Substantial Completion stating the date on which in his opinion the Works were or the Section was substantially completed in accordance with the Contract or

(b) give instructions in writing to the Contractor specifying all the work which in the Engineer's opinion requires to be done by the Contractor before the issue of such certificate.

If the Engineer gives such instructions the Contractor shall be entitled to receive a Certificate of Substantial Completion within 21 days of completion to the satisfaction of the Engineer of the work specified in the said instructions.

### Premature use by Employer

- (3) If any substantial part of the Works has been occupied or used by the Employer other than as provided in the Contract the Contractor may request in writing and the Engineer shall issue a Certificate of Substantial Completion in respect thereof. Such certificate shall take effect from the date of delivery of the Contractor's request and upon the issue of such certificate the Contractor shall be deemed to have undertaken to complete any outstanding work in that part of the Works during the Defects Correction Period.

### Substantial completion of other parts of the Works

- (4) If the Engineer considers that any part of the Works has been substantially completed and has passed any final test that may be prescribed by the Contract he may issue a Certificate of Substantial Completion in respect of that part of the Works before completion of

the whole of the Works and upon the issue of such certificate the Contractor shall be deemed to have undertaken to complete any outstanding work in that part of the Works during the Defects Correction Period.

**Reinstatement of ground**

(5) A Certificate of Substantial Completion given in respect of any Section or part of the Works before completion of the whole shall not be deemed to certify completion of any ground or surfaces requiring reinstatement unless such certificate shall expressly so state.

**Operation and Maintenance Manuals**

**(6) Before the issue of a Certificate of Substantial Completion the Contractor shall submit to the Engineer one set of operation and maintenance manuals together with as-constructed record drawings in sufficient detail to enable the Employer to operate, maintain, dismantle, reassemble and adjust all or any relevant part of the Permanent Works.**

## **OUTSTANDING WORK AND DEFECTS**

**Work outstanding**

**49** (1) The undertaking to be given under Clause 48(1) may after agreement between the Engineer and the Contractor specify a time or times within which the outstanding work shall be completed. If no such times are specified any outstanding work shall be completed as soon as practicable during the Defects Correction Period.

**Execution of work of repair etc.**

(2) The Contractor shall deliver up to the Employer the Works and each Section and part thereof at or as soon as practicable after the expiry of the relevant Defects Correction Period in the condition required by the Contract (fair wear and tear excepted) to the satisfaction of the Engineer. To this end the Contractor shall as soon as practicable execute all work of repair amendment reconstruction rectification and making good of defects of whatever nature as may be required of him in writing by the Engineer during the relevant Defects Correction Period or within 14 days after its expiry as a result of an inspection made by or on behalf of the Engineer prior to its expiry.

**Cost of execution of work of repair etc.**

(3) All work required under sub-clause (2) of this Clause shall be carried out by the Contractor at his own expense if in the Engineer's opinion it is necessary due to the use of materials or workmanship not in accordance with the Contract or to neglect or failure by the Contractor to comply with any of his obligations under the Contract. In any other event the value of such work shall be ascertained and paid for as if it were additional work.

**Remedy on Contractor's failure to carry out work required**

(4) If the Contractor fails to do any such work as aforesaid the Employer shall be entitled to carry out such work by his own workpeople or by other contractors and if such work is work which the Contractor should have carried out at his own expense the Employer shall be entitled to recover the cost thereof from the Contractor and may deduct the same from any monies that are or may become due to the Contractor.

**Contractor to search**

**50** The Contractor shall if required by the Engineer in writing carry out such searches tests or trials as may be necessary to determine the cause of any defect imperfection or fault under the directions of the Engineer. Unless such defect imperfection or fault shall be one for which the Contractor is liable under the Contract the cost of the work carried out by the Contractor as aforesaid shall be borne by the Employer. But if such defect imperfection or fault shall be one for which the Contractor is liable the cost of the work carried out as

aforesaid shall be borne by the Contractor and he shall in such case repair rectify and make good such defect imperfection or fault at his own expense in accordance with Clause 49.

## ALTERATIONS, ADDITIONS AND OMISSIONS

- Ordered variations**      51 (1) The Engineer
- (a) shall order any variation to any part of the Works that is in his opinion necessary for the completion of the Works and
- (b) may order any variation that for any other reason shall in his opinion be desirable for the completion and/or improved functioning of the Works.

Such variations may include additions omissions substitutions alterations changes in quality form character kind position dimension level or line and changes in any specified sequence method or timing of construction required by the Contract and may be ordered during the Defects Correction Period.

- Ordered variations to be in writing**      (2) All variations shall be ordered in writing but the provisions of Clause 2(6) in respect of oral instructions shall apply.

- Variation not to affect Contract**      (3) No variation ordered in accordance with sub-clauses (1) and (2) of this Clause shall in any way vitiate or invalidate the Contract but the value (if any) of all such variations shall be taken into account in ascertaining the amount of the Contract Price except to the extent that such variation is necessitated by the Contractor's default.

- Changes in quantities**      (4) No order in writing shall be required for increase or decrease in the quantity of any work where such increase or decrease is not the result of an order given under this Clause but is the result of the quantities exceeding or being less than those stated in the **Schedule of Works**.

- Valuation of ordered variations**      52 (1) The value of all variations ordered by the Engineer in accordance with Clause 51 shall be ascertained by the Engineer after consultation with the Contractor in accordance with the following principles.

(a) Where work is of similar character and executed under similar conditions to work priced in the **Schedule of Works** it shall be valued at such rates and prices contained therein as may be applicable.

(b) Where work is not of a similar character or is not executed under similar conditions or is ordered during the Defects Correction Period the rates and prices in the **Schedule of Works** shall be used as the basis for valuation so far as may be reasonable failing which a fair valuation shall be made.

Failing agreement between the Engineer and the Contractor as to any rate or price to be applied in the valuation of any variation the Engineer shall determine the rate or price in accordance with the foregoing principles and he shall notify the Contractor accordingly.

- Engineer to fix rates**      (2) If the nature or amount of any variation relative to the nature or amount of the whole of the contract work or to any part thereof shall be such that in the opinion of the Engineer or the Contractor any rate or price contained in the Contract for any item of work is by reason of

such variation rendered unreasonable or inapplicable either the Engineer shall give to the Contractor or the Contractor shall give to the Engineer notice before the varied work is commenced or as soon thereafter as is reasonable in all the circumstances that such rate or price should be varied and the Engineer shall fix such rate or price as in the circumstances he shall think reasonable and proper.

**Daywork**

(3) The Engineer may if in his opinion it is necessary or desirable order in writing that any additional or substituted work shall be executed on a daywork basis in accordance with the provisions of Clause 56(4).

**Notice of claims**

(4) (a) If the Contractor intends to claim a higher rate or price than one notified to him by the Engineer pursuant to sub-clauses (1) and (2) of this Clause or Clause 56(2) the Contractor shall within 28 days after such notification give notice in writing of his intention to the Engineer.

(b) If the Contractor intends to claim any additional payment pursuant to any Clause of these Conditions other than sub-clauses (1) and (2) of this Clause or Clause 56(2) he shall give notice in writing of his intention to the Engineer as soon as may be reasonable and in any event within 28 days after the happening of the events giving rise to the claim. Upon the happening of such events the Contractor shall keep such contemporary records as may reasonably be necessary to support any claim he may subsequently wish to make.

(c) Without necessarily admitting the Employer's liability the Engineer may upon receipt of a notice under this Clause instruct the Contractor to keep such contemporary records or further contemporary records as the case may be as are reasonable and may be material to the claim of which notice has been given and the Contractor shall keep such records. The Contractor shall permit the Engineer to inspect all records kept pursuant to this Clause and shall supply him with copies thereof as and when the Engineer shall so instruct.

(d) After the giving of a notice to the Engineer under this Clause the Contractor shall as soon as is reasonable in all the circumstances send to the Engineer a first interim account giving full and detailed particulars of the amount claimed to that date and of the grounds upon which the claim is based. Thereafter at such intervals as the Engineer may reasonably require the Contractor shall send to the Engineer further up to date accounts giving the accumulated total of the claim and any further grounds upon which it is based.

(e) If the Contractor fails to comply with any of the provisions of this Clause in respect of any claim which he shall seek to make then the Contractor shall be entitled to payment in respect thereof only to the extent that the Engineer has not been prevented from or substantially prejudiced by such failure in investigating the said claim.

(f) The Contractor shall be entitled to have included in any interim payment certified by the Engineer pursuant to Clause 60 such amount in respect of any claim as the Engineer may consider due to the Contractor provided that the Contractor shall have supplied sufficient particulars to enable the Engineer to determine the amount due. If such particulars are insufficient

to substantiate the whole of the claim the Contractor shall be entitled to payment in respect of such part of the claim as the particulars may substantiate to the satisfaction of the Engineer.

## PROPERTY IN MATERIALS AND CONTRACTOR'S EQUIPMENT

### Vesting of Contractor's Equipment

53 (1) All Contractor's Equipment Temporary Works materials for Temporary Works or other goods or materials owned by the Contractor shall when on Site be deemed to be the property of the Employer and shall not be removed therefrom without the written consent of the Engineer which consent shall not unreasonably be withheld where the items in question are no longer immediately required for the purposes of the completion of the Works.

### Liability for loss or damage to Contractor's Equipment

(2) The Employer shall not at any time be liable save as mentioned in Clauses 22 and 65 for the loss of or damage to any Contractor's Equipment Temporary Works goods or materials

### Disposal of Contractor's Equipment

(3) If the Contractor fails to remove any of the said Contractor's Equipment Temporary Works goods or materials as required by Clause 33 within such reasonable time after completion of the Works as the Engineer may allow then the Employer may sell or otherwise dispose of such items. From the proceeds of the sale of any such items the Employer shall be entitled to retain any costs or expenses incurred in connection with their sale and disposal before paying the balance (if any) to the Contractor.

### Vesting of goods and materials not on Site

54 (1) With a view to securing payment under Clause 60(1)(c) the Contractor may (and shall if the Engineer so directs) transfer to the Employer the property in goods and materials listed in the **Contract** before the same are delivered to the Site provided that the goods and materials

(a) have been manufactured or prepared and are substantially ready for incorporation in the Works and

(b) are the property of the Contractor or the contract for the supply of the same expressly provides that the property therein shall pass unconditionally to the Contractor upon the Contractor taking the action referred to in sub-clause (2) of this Clause.

### Action by Contractor

(2) The intention of the Contractor to transfer the property in any goods or materials to the Employer in accordance with this Clause shall be evidenced by the Contractor taking or causing the supplier of those goods or materials to take the following actions.

(a) Provide to the Engineer documentary evidence that the property in the said goods or materials has vested in the Contractor.

(b) Suitably mark or otherwise plainly identify the goods and materials so as to show that their destination is the Site that they are the property of the Employer and (where they are not stored at the premises of the Contractor) to whose order they are held.

(c) Set aside and store the said goods and materials so marked or identified to the satisfaction of the Engineer.

(d) Send to the Engineer a schedule listing and giving the value of every item of the goods and materials so set aside and stored and inviting him to inspect them.

**Vesting in Employer**

(3) Upon the Engineer approving in writing the transfer in ownership of any goods and materials for the purposes of this Clause they shall vest in and become the absolute property of the Employer and thereafter shall be in possession of the Contractor for the sole purpose of delivering them to the Employer and incorporating them in the Works and shall not be within the ownership control or disposition of the Contractor.

Provided always that

(a) approval by the Engineer for the purposes of this Clause or any payment certified by him in respect of goods and materials pursuant to Clause 60 shall be without prejudice to the exercise of any power of the Engineer contained in this Contract to reject any goods or materials which are not in accordance with the provisions of the Contract and upon any such rejection the property in the rejected goods or materials shall immediately revert in the Contractor and

(b) the Contractor shall be responsible for any loss or damage to such goods and materials and for the cost of storing handling and transporting the same and shall effect such additional insurance as may be necessary to cover the risk of such loss or damage from any cause.

**Lien on goods or materials**

(4) Neither the Contractor nor a sub-contractor nor any other person shall have a lien on any goods or materials which have vested in the Employer under sub-clause (3) of this Clause for any sum due to the Contractor sub-contractor or other person and the Contractor shall take all such steps as may reasonably be necessary to ensure that the title of the Employer and the exclusion of any such lien are brought to the notice of sub-contractors and other persons dealing with any such goods or materials.

**Delivery to the Employer of vested goods or materials**

(5) Upon cessation of the employment of the Contractor under this Contract before the completion of the Works whether as a result of the operation of Clause 63 or otherwise the Contractor shall deliver to the Employer any goods or materials the property in which has been vested in the Employer by virtue of sub-clause (3) of this Clause and if he shall fail to do so the Employer may enter any premises of the Contractor or of any sub-contractor and remove such goods and materials and recover the cost of so doing from the Contractor.

**Incorporation in sub-contracts**

(6) The Contractor shall incorporate provisions equivalent to those provided in this Clause in every sub-contract in which provision is to be made for payment in respect of goods or materials before the same have been delivered to the Site.

**MEASUREMENT**

**Quantities**

**55** (1) **Where the Schedule of Works includes a bill of quantities these are** the estimated quantities of the work **and** they are not to be taken as the actual and correct quantities of the Works to be executed by the Contractor in fulfilment of his obligations under the Contract.

**Correction of errors**

(2) Any error in description in the **Schedule of Works** or omission



therefrom shall not vitiate the Contract nor release the Contractor from the execution of the whole or any part of the Works according to the Drawings and Specification or from any of his obligations or liabilities under the Contract. Any such error or omission shall be corrected by the Engineer and the value of the work actually carried out shall be ascertained in accordance with Clause 52. Provided that there shall be no rectification of any errors omissions or wrong estimates in the descriptions rates and prices inserted by the Contractor in the **Schedule of Works**.

**Measurement and valuation**

**56** (1) The Engineer shall except as otherwise stated ascertain and determine the value in accordance with the Contract of the work done in accordance with the Contract. **The method of evaluation shall be as stated in the Contract.**

**Increase or decrease of rate**

(2) Should the actual quantities executed in respect of any item be greater or less than those stated in the **Schedule of Works** and if in the opinion of the Engineer such increase or decrease of itself shall so warrant the Engineer shall after consultation with the Contractor determine an appropriate increase or decrease of any rates or prices rendered unreasonable or inapplicable in consequence thereof and shall notify the Contractor accordingly.

**Attending for measurement**

(3) The Engineer shall when he requires any part or parts of the work to be measured give reasonable notice to the Contractor who shall attend or send a qualified agent to assist the Engineer or the Engineer's Representative in making such measurement and shall furnish all particulars required by either of them. Should the Contractor not attend or neglect or omit to send such agent then the measurement made by the Engineer or approved by him shall be taken to be the correct measurement of the work.

**Daywork**

(4) Where any work is carried out on a daywork basis the Contractor shall be paid for such work under the conditions and at the rates and prices set out in the daywork schedule included in the Contract or failing the inclusion of a daywork schedule he shall be paid at the rates and prices and under the conditions contained in the "Schedule of Dayworks carried out incidental to Contract Work" issued by The Civil Engineering Contractors Association (formerly issued by The Federation of Civil Engineering Contractors).

The Contractor shall furnish to the Engineer such records receipts and other documentation as may be necessary to prove amounts paid and/or costs incurred. Such returns shall be in the form and delivered at the times the Engineer shall direct and shall be agreed within a reasonable time.

Before ordering materials the Contractor shall if so required submit to the Engineer quotations for the same for his approval.

**Method of measurement**

**57** **The Schedule of Works shall be deemed to have been prepared and measurements shall be made according to the procedures set out in the Contract as having been adopted in its preparation.**

**PROVISIONAL AND PRIME COST SUMS AND NOMINATED SUB-CONTRACTS**

**Use of Provisional Sums**

**58** (1) In respect of every Provisional Sum the Engineer may order either or both of the following.

- (a) Work to be executed or goods materials or services to be supplied by the Contractor the value thereof being determined in accordance with Clause 52 and included in the Contract Price.
- (b) Work to be executed or goods materials or services to be supplied by a Nominated Sub-contractor in accordance with Clause 59.
- Use of Prime Cost Items**
- (2) In respect of every Prime Cost Item the Engineer may order either or both of the following.
- (a) Subject to Clause 59 that the Contractor employ a sub-contractor nominated by the Engineer for the execution of any work or the supply of any goods materials or services included therein.
- (b) With the consent of the Contractor that the Contractor himself execute any such work or supply any such goods materials or services in which event the Contractor shall be paid in accordance with the terms of a quotation submitted by him and accepted by the Engineer or in the absence thereof the value shall be determined in accordance with Clause 52 and included in the Contract Price.
- Design requirements to be expressly stated**
- (3) If in connection with any Provisional Sum or Prime Cost Item the services to be provided include any matter of design or specification of any part of the Permanent Works or of any equipment or plant to be incorporated therein such requirement shall be expressly stated in the Contract and shall be included in any Nominated Sub-contract. The obligation of the Contractor in respect thereof shall be only that which has been expressly stated in accordance with this sub-clause.
- Nominated Sub-contractors—objection to nomination**
- 59** (1) The Contractor shall not be under any obligation to enter into a sub-contract with any Nominated Sub-contractor against whom the Contractor may raise reasonable objection or who declines to enter into a sub-contract with the Contractor containing provisions
- (a) that in respect of the work goods materials or services the subject of the sub-contract the Nominated Sub-contractor will undertake towards the Contractor such obligations and liabilities as will enable the Contractor to discharge his own obligations and liabilities towards the Employer under the terms of the Contract
- (b) that the Nominated Sub-contractor will save harmless and indemnify the Contractor against all claims demands and proceedings damages costs charges and expenses whatsoever arising out of or in connection with any failure by the Nominated Sub-contractor to perform such obligations or fulfil such liabilities
- (c) that the Nominated Sub-contractor will save harmless and indemnify the Contractor from and against any negligence by the Nominated Sub-contractor his agents workmen and servants and against any misuse by him or them of any Contractor's Equipment or Temporary Works provided by the Contractor for the purposes of the Contract and for all claims as aforesaid
- (d) that the Nominated Sub-contractor will provide the Contractor with security for the proper performance of the sub-contract

and

(e) equivalent to those contained in Clause 63.

**Engineer's action upon objection to nomination or upon termination of Nominated Sub-contract**

(2) If pursuant to sub-clause (1) of this Clause the Contractor declines to enter into a sub-contract with a sub-contractor nominated by the Engineer or if during the course of the Nominated Sub-contract the Contractor shall validly terminate the employment of the Nominated Sub-contractor as a result of his default the Engineer shall

(a) nominate an alternative sub-contractor in which case subclause (1) of this Clause shall apply or

(b) by order under Clause 51 vary the Works or the work goods materials or services in question or

(c) by order under Clause 51 omit any or any part of such works goods materials or services so that they may be provided by workmen contractors or suppliers employed by the Employer either

(i) concurrently with the Works (in which case Clause 31 shall apply) or

(ii) at some other date

and in either case there shall nevertheless be included in the Contract Price such sum (if any) in respect of the Contractor's charges and profit being a percentage of the estimated value of such omission as would have been payable had there been no such omission and the value thereof had been that estimated in the **Schedule of Works** or **set out elsewhere in the Contract** as the case may be or

(d) instruct the Contractor to secure a sub-contractor of his own choice and to submit a quotation for the work goods materials or services in question to be so performed or provided for the Engineer's consideration and action or

(e) invite the Contractor himself to execute or supply the work goods materials or services in question under Clause 58(1)(a) or Clause 58(2)(b) or on a daywork basis as the case may be.

**Contractor responsible for Nominated Sub-contractors**

(3) Except as otherwise provided in Clause 58(3) the Contractor shall be as responsible for the work executed or goods materials or services supplied by a Nominated Sub-contractor employed by him as if he had himself executed such work or supplied such goods materials or services.

**Nominated Sub-contractor's default**

(4) (a) If any event arises which in the opinion of the Contractor justifies the exercise of his right under any forfeiture clause to terminate the sub-contract or to treat the sub-contract as repudiated by the Nominated Sub-contractor he shall at once notify the Engineer in writing.

**Termination of Sub-contract**

(b) With the consent in writing of the Engineer the Contractor may give notice to the Nominated Sub-contractor expelling him from the Sub-contract works pursuant to any forfeiture clause or rescinding the Sub-contract as the case may be. If however the Engineer's consent is withheld the Contractor shall be entitled to

appropriate instructions under Clause 13.

**Engineer's action  
upon termination**

(c) In the event that the Nominated Sub-contractor is expelled from the Sub-contract works the Engineer shall at once take such action as is required under sub-clause (2) of this Clause.

**Recovery of  
Additional expense**

(d) Having with the Engineer's consent terminated the Nominated Sub-contract the Contractor shall take all necessary steps and proceedings as are available to him to recover all additional expenses that are incurred from the Sub-contractor or under the security provided pursuant to sub-clause (1)(d) of this Clause. Such expenses shall include any additional expenses incurred by the Employer as a result of the termination.

**Reimbursement  
Contractor's loss**

(e) If and to the extent that the Contractor fails to recover all his reasonable expenses of completing the Sub-contract works and all his proper additional expenses arising from the termination the Employer will reimburse the Contractor his unrecovered expenses.

**Consequent delay**

(f) The Engineer shall take any delay to the completion of the Works consequent upon the Nominated Sub-Contractor's default into account in determining any extension of time to which the Contractor is entitled under Clause 44.

**Provisions for  
payment**

(5) For all work executed or goods materials or services supplied by Nominated Sub-contractors there shall be included in the Contract Price

(a) the actual price paid or due to be paid by the Contractor in accordance with the terms of the sub-contract (unless and to the extent that any such payment is the result of a default of the Contractor) net of all trade and other discounts rebates and allowances other than any discount obtainable by the Contractor for prompt payment

(b) the sum (if any) provided in the **Schedule of Works** for labours in connection therewith and

(c) in respect of all other charges and profit a sum being a percentage of the actual price paid or due to be paid calculated (where provision has been made in the **Schedule of Works** for a rate to be set against the relevant item of prime cost) at the rate inserted by the Contractor against that item or (where no such provision has been made) at the rate **set out in the Contract or, in default of any such rate being set out, the rate to be determined by the Engineer following consultation with the Contractor.**

**Production of  
vouchers etc.**

(6) The Contractor shall when required by the Engineer produce all quotations invoices vouchers sub-contract documents accounts and receipts in connection with expenditure in respect of work carried out by all Nominated Sub-contractors.

**Payment to  
Nominated  
Subcontractors**

(7) Before issuing any certificate under Clause 60 the Engineer shall be entitled to demand from the Contractor reasonable proof that all sums (less retentions provided for in the Sub-contract) included in previous certificates in respect of the work executed or goods or materials or services supplied by Nominated Sub-contractors have been paid to the Nominated Sub-contractors or discharged by the Contractor in default whereof unless the Contractor shall

(a) give details to the Engineer in writing of any reasonable cause he may have for withholding or refusing to make such payment and

(b) produce to the Engineer reasonable proof that he has so informed such Nominated Sub-contractor in writing

The Employer shall be entitled to pay to such Nominated Sub-contractor direct upon the certification of the Engineer all payments (less retentions provided for in the Sub-contract) which the Contractor has failed to make to such Nominated Sub-contractor and to deduct by way of set-off the amount so paid by the Employer from any sums due or which become due from the Employer to the Contractor. Provided always that where the Engineer has certified and the Employer has made direct payment to the Nominated Sub-contractor the Engineer shall in issuing any further certificate in favour of the Contractor deduct from the amount thereof the amount so paid but shall not withhold or delay the issue of the certificate itself when due to be issued under the terms of the Contract.

## CERTIFICATES AND PAYMENT

**Monthly statements**      60 (1) Unless otherwise agreed the Contractor shall submit to the Engineer at monthly intervals commencing within one month after the Works Commencement Date a statement (in such form if any as may be prescribed in the Specification) showing

(a) the estimated contract value of the Permanent Works executed up to the end of that month

(b) a list of any goods or materials delivered to the Site for but not yet incorporated in the Permanent Works and their value

(c) a list of any of those goods or materials identified in the **Contract** which have not yet been delivered to the Site but of which the property has been vested in the Employer pursuant to Clause 54 and their value and

(d) the estimated amounts to which the Contractor considers himself entitled in connection with all other matters for which provision is made under the Contract including any Temporary Works or Contractor's Equipment for which separate amounts are included in the **Schedule of Works**

unless in the opinion of the Contractor such values and amounts together will not justify the issue of an interim certificate.

Amounts payable in respect of Nominated Sub-contracts are to be listed separately.

**Monthly payments**      (2) **Within 14 days of the date of delivery of the Contractor's monthly statement to the Engineer or Engineer's Representative in accordance with sub-clause (1) of this Clause the Engineer shall certify the amount due to the Contractor (after deducting any previous payments on account):**

(a) **the amount which in the opinion of the Engineer on the basis of the monthly statement is due to the Contractor on account of sub-clauses (1) (a) and (1) (d) of this Clause less a retention as provided in sub-clause (5) of this Clause and**

(b) such amount (if any) as the Engineer may consider proper or as is provided for in the Contract in respect of sub-clauses (1) (b) and (1) (c) of this Clause.

The Contractor shall submit an invoice dated no earlier than the end of the month in which the monthly statement was submitted and which agrees in all respects with the Engineer's Certificate.

It is agreed by the parties that the final date for payment shall be the date calculated in accordance with sub-clause (12) of this Clause.

The amounts certified in respect of Nominated Sub-Contracts shall be shown separately in the Engineer's certificate.

**Minimum amount of certificate**

(3) Until the whole of the Works has been certified as substantially complete in accordance with Clause 48 the Engineer shall not be bound to issue an interim certificate for a sum less than that stated in the **Contract (if such a sum is stated)** but thereafter he shall be bound to do so and the certification and payment of amounts due to the Contractor shall be in accordance with the time limits contained in this Clause.

**Final account**

(4) **Not later than three months after the date of the Certificate of Substantial Completion for the whole of the Works or for the last part of the Works to be completed as the case may be the Contractor shall submit to the Engineer a statement and supporting documentation showing in detail the value in accordance with the Contract of the work done in accordance with the Contract together with all further sums which the Contractor considers to be due to him under the Contract subject to the deduction of the amount of retention to be held until the issue of the Defects Correction Certificate. Within three months after receipt of the said statement and of all information reasonably required for its verification (or in default of such statement and information not later than 6 months after the date of the said Certificate of Substantial Completion) the Engineer shall issue a certificate stating the amount which in his opinion is due under the Contract up to the date of the said Certificate of Substantial Completion and (after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled under the Contract and subject to the deduction of the amount of retention to be held until the issue of the Defects Correction Certificate) the balance (if any) due from the Employer to the Contractor or from the Contractor to the Employer as the case may be.**

The Contractor shall not be entitled to claim and the Employer shall have no liability in respect of anything arising under the Contract which was not included in the said statement (or in default of the said statement not included in the said Engineer's certificate) save in respect of the rights and obligations of the parties to be observed and performed during the Defects Correction Period and thereafter.

All payments to be made under this sub-clause (4) of this Clause shall become due on certification. In the event of any balance owing from the Contractor to the Employer the final date for payment by the Contractor shall be the first working day after

the end of the month following the month in which the Engineer's certificate is dated.

In the event of any balance owing from the Employer to the Contractor, then the Contractor shall submit an invoice which agrees in all respects with the Engineer's certificate and it is agreed by the parties that the final date for payment shall be the date calculated in accordance with sub-clause (12) of this Clause.

**Retention**

(5) The retention to be made pursuant to sub-clause (2)(a) of this Clause shall be the difference between

(a) an amount calculated at the rate of **five per cent or such other rate as is stated in the Contract** upon the amount due to the Contractor on account of sub-clauses (1)(a) and (1)(d) of this Clause (**subject to any limit stated in the Contract**) and

(b) any payment which shall have become due under sub-clause (6) of this Clause.

**Payment of retention**

(6) (a) Upon expiry of the Defects Correction Period or if more than one the last of such periods the Contractor shall submit to the Engineer a statement showing the total amount of retention claimed.

(b) Within fourteen days of receipt of the Contractor's statement the Engineer shall certify the amount of retention due provided that if at that time there remains to be executed by the Contractor any outstanding work referred to under Clause 48 or any work ordered pursuant to Clauses 49 or 50 the Engineer may withhold issuing the certificate until the completion of the Works.

(c) The Contractor shall submit an invoice dated no earlier than the end of the month in which the statement was submitted and which agrees in all respects with the Engineer's certificate.

(d) The payment becomes due on certification. It is agreed by the parties that the final date for payment shall be the date calculated in accordance with sub-clause (12) of this Clause.

**Interest on overdue payments**

(7) In the event of

(a) failure by the Engineer to certify or the Employer to make payment in accordance with sub-clauses (2) (4) or (6) of this Clause or

(b) any finding of an arbitrator to such effect

the Employer shall pay to the Contractor interest compounded monthly for each day on which any payment is overdue or which should have been certified and paid at a rate equivalent to  $\frac{1}{2}\%$  per annum above **the London Interbank Overnight Lending Rate**. If in an arbitration pursuant to Clause 66 the arbitrator holds that any sum or additional sum should have been certified by a particular date in accordance with the aforementioned sub-clauses but was not so certified this shall be regarded for the purposes of this sub-clause as a failure to certify such sum or additional sum. Such sum or

additional sum shall be regarded as overdue for payment **42** days after the date by which the arbitrator holds that the Engineer should have certified the sum or if no such date is identified by the arbitrator shall be regarded as overdue for payment from the date of the Certificate of Substantial Completion for the whole of the Works.

**Correction and withholding of certificates**

(8) The Engineer shall have power to omit from any certificate the value of any work done goods or materials supplied or services rendered with which he may for the time being be dissatisfied and for that purpose or for any other reason which to him may seem proper may by any certificate delete correct or modify any sum previously certified by him. Provided that

(a) the Engineer shall not in any interim certificate delete or reduce any sum previously certified in respect of work done goods or materials supplied or services rendered by a Nominated Sub-contractor if the Contractor shall have already paid or be bound to pay that sum to the Nominated Sub-contractor and

(b) if the Engineer in the final certificate shall delete or reduce any sum previously certified in respect of work done goods or materials supplied or services rendered by a Nominated Sub-contractor which sum shall have been already paid by the Contractor to the Nominated Sub-contractor the Employer shall reimburse to the Contractor the amount of any sum overpaid by the Contractor to the Sub-contractor in accordance with the certificates issued under sub-clause (2) of this Clause which the Contractor shall be unable to recover from the Nominated Sub-contractor together with interest thereon at the rate stated in sub-clause (7) of this Clause from 28 days after the date of the final certificate issued under sub-clause (4) of this Clause until the date of such reimbursement.

**Copy of certificate for Contractor**

(9) Every certificate issued by the Engineer pursuant to this Clause shall be sent to the Employer and on the Employer's behalf to the Contractor. By this certificate the Employer shall give notice to the Contractor specifying the amount (if any) of the payment proposed to be made and the basis on which it was calculated.

**Payment advice**

(10) Where a payment under Clause 60(2) or (4) is to differ from that certified or the Employer is to withhold payment after the final date for payment of a sum due under the Contract the Employer shall notify the Contractor in writing not less than one day before the final date for payment specifying the amount proposed to be withheld and the ground for withholding payment or if there is more than one ground each ground and the amount attributable to it. **For the avoidance of doubt, the Employer may by operation of this Clause 60(10) set off any sum due to the Employer under the Design Contractor's Appointment against any sum due to the Contractor under the Contract and vice versa.**

**Valid Invoice**

**(11) All payments to be made by the Employer under this clause shall be conditional upon receipt of a valid invoice in accordance with the terms of this Clause 60.**

**Final date for payment**

**(12) The final date for payment of any payment to be made under this Clause shall be whichever is the later of the following**

**(a) the first working day after the end of the month following the month in which the Contractor's invoice is**



dated or

**(b) 14 days after the requirements of the Construction Industry Scheme have been complied with by the Contractor to the satisfaction of the Employer.**

**Defects Correction Certificate**

**61** (1) Upon the expiry of the Defects Correction Period or where there is more than one such period upon the expiration of the last of such periods and when all outstanding work referred to under Clause 48 and all work of repair amendment reconstruction rectification and making good of defects imperfections shrinkages and other faults referred to under Clauses 49 and 50 shall have been completed the Engineer shall issue to the Employer (with a copy to the Contractor) a Defects Correction Certificate stating the date on which the Contractor shall have completed his obligations to construct and complete the Works to the Engineer's satisfaction.

**Unfulfilled obligations**

(2) The issue of the Defects Correction Certificate shall not be taken as relieving either the Contractor or the Employer from any liability of the one towards the other arising out of or in any way connected with the performance of their respective obligations under the Contract.

**REMEDIES AND POWERS**

**Urgent repairs**

**62** If by reason of any accident or failure or other event occurring to in or in connection with the Works or any part thereof either during the execution of the Works or during the Defects Correction Period any remedial or other work or repair shall in the opinion of the Engineer or the Engineer's Representative be urgently necessary and the Contractor is unable or unwilling at once to do such work or repair the Employer may by his own or other workpeople do such work or repair. If the work or repair so done by the Employer is work which in the opinion of the Engineer the Contractor was liable to do at his own expense under the Contract all costs and charges properly incurred by the Employer in so doing shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor. Provided that the Engineer shall as soon after the occurrence of any such emergency as may be reasonably practicable notify the Contractor thereof in writing.

**Termination of the Contractor's employment**

**63** (1) If

- (a) the Contractor shall be in default in that he
  - (i) becomes bankrupt or has a receiving order or administration order made against him or presents his petition in bankruptcy or makes an arrangement with or assignment in favour of his creditors or agrees to carry out the Contract under a committee of inspection of his creditors or (being a corporation) goes into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction) or
  - (ii) assigns the Contract without the consent in writing of the Employer first obtained or
  - (iii) has an execution levied on his goods which is not stayed or discharged within 28 days

or

(b) the Engineer certifies in writing to the Employer with a copy to the Contractor that in his opinion the Contractor

- (i) has abandoned the Contract or
- (ii) without reasonable excuse has failed to commence the Works in accordance with Clause 41 or has suspended the progress of the Works for 14 days after receiving from the Engineer written notice to proceed or
- (iii) has failed to remove goods or materials from the Site or to pull down and replace work for 14 days after receiving from the Engineer written notice that the said goods materials or work have been condemned and rejected by the Engineer or
- (iv) despite previous warnings by the Engineer in writing is failing to proceed with the Works with due diligence or is otherwise persistently or fundamentally in breach of his obligations under Contract

then the Employer may after giving 7 days' notice in writing to the Contractor specifying the default enter upon the Site and the Works and expel the Contractor therefrom without thereby avoiding the Contract or releasing the Contractor from any of his obligations or liabilities under the Contract. Provided that the Employer may extend the period of notice to give the Contractor opportunity to remedy the default.

Where a notice of **termination** is given pursuant to this sub-clause it shall be given as soon as is reasonably possible after receipt of the Engineer's certificate.

**Completing the Works**

(2) Where the Employer has entered upon the Site and the Works as hereinbefore provided he may himself complete the Works or may employ any other contractor to complete the Works and the Employer or such other contractor may use for such completion so much of the Contractor's Equipment Temporary Works goods and materials which have been deemed to become the property of the Employer under Clauses 53 and 54 as he or they may think proper and the Employer may at any time sell any of the said Contractor's Equipment Temporary Works and unused goods and materials and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to him from the Contractor under the Contract.

**Assignment to Employer**

(3) By the said notice or by further notice in writing within 7 days of the date of expiry thereof the Engineer may require the Contractor to assign to the Employer and if so required the Contractor shall forthwith assign to the Employer the benefit of any agreement for the supply of any goods or materials and/or for the execution of any work for the purposes of this Contract which the Contractor may have entered into.

**Payment after termination**

(4) If the Employer enters and expels the Contractor under this Clause he shall not be liable to pay to the Contractor any money on account of the Contract until the expiration of the Defects Correction Period and thereafter until the costs of completion damages for delay in completion (if any) and all other expenses incurred by the Employer have been ascertained and the amount thereof certified by

the Engineer.

The Contractor shall then be entitled to receive only such sum or sums (if any) as the Engineer may certify would have been due to him upon due completion by him after deducting the said amount. But if such amount shall exceed the sum which would have been payable to the Contractor on due completion by him then the Contractor shall upon demand pay to the Employer the amount of such excess and it shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly. **All payments to be made under this Clause 63 (4) shall become due on certification and the final date for payment shall be 28 days thereafter.**

**Valuation at date of termination**

(5) As soon as may be practicable after any such entry and expulsion by the Employer the Engineer shall fix and determine as at the time of such entry and expulsion

(a) the amount (if any) which had been reasonably earned by or would reasonably accrue to the Contractor in respect of work actually done by him under the Contract and

(b) the value of any unused or partially used goods and materials and any Contractor's Equipment and Temporary Works which had been deemed to become the property of the Employer under Clauses 53 and 54

and shall certify accordingly.

The said determination may be carried out ex parte or by or after reference to the parties or after such investigation or enquiry as the Engineer may think fit to make or institute.

## FRUSTRATION

**Payment in event of frustration**

**64** In the event of the Contract being frustrated whether by war or by any other supervening event which may occur independently of the will of the parties the sum payable by the Employer to the Contractor in respect of the work executed shall be the same as that which would have been payable under Clause 65(5) if the Contract had been **terminated** by the Employer under Clause 65.

## WAR CLAUSE

**Works to continue for 28 days on outbreak of war**

**65** (1) If during the currency of the Contract there shall be an outbreak of war (whether war is declared or not) in which Great Britain shall be engaged on a scale involving general mobilisation of the armed forces of the Crown the Contractor shall for a period of 28 days reckoned from midnight on the date that the order for general mobilisation is given continue so far as is physically possible to execute the Works in accordance with the Contract.

**Effect of completion within 28 days**

(2) If at any time before the expiration of the said period of 28 days the Works shall have been completed or completed so far as to be usable all provisions of the Contract shall continue to have full force and effect save that

(a) the Contractor shall in lieu of fulfilling his obligations under Clauses 49 and 50 be entitled at his option to allow against the sum due to him under the provisions hereof the cost (calculated at the prices ruling at the beginning of the said period of 28 days) as certified by the Engineer at the expiration of the

Defects Correction Period of repair rectification and making good any work for the repair rectification or making good of which the Contractor would have been liable under the said Clauses had they continued to be applicable

(b) the Employer shall not be entitled at the expiry of the Defects Correction Period to withhold payment under Clause 60(6) of the retention money or any part thereof except such sum as may be allowable by the Contractor under the provisions of the last preceding paragraph which sum may (without prejudice to any other mode of recovery thereof) be deducted by the Employer from **the retention money**.

**Right of Employer to terminate Contract**

(3) If the Works shall not have been completed as aforesaid the Employer shall be entitled to **terminate** the Contract (with the exception of this Clause and Clauses 66 and 68) by giving notice in writing to the Contractor at any time after the aforesaid period of 28 days has expired and upon such notice being given the Contract shall (except as above mentioned) forthwith **terminate** but without prejudice to the claims of either party in respect of any antecedent breach thereof.

**Removal of Contractor's Equipment on termination**

(4) If the Contract shall be **terminated** under the provisions of the last preceding sub-clause the Contractor shall with all reasonable despatch remove from the Site all his Contractor's Equipment and shall give facilities to his sub-contractors to remove similarly all Contractor's Equipment belonging to them and in the event of any failure so to do the Employer shall have the like powers as are contained in Clause 53(3) in regard to failure to remove Contractor's Equipment on completion of the Works but subject to the same condition as is contained in Clause 53(2).

**Payment on termination**

(5) If the Contract shall be **terminated** as aforesaid the Contractor shall be paid by the Employer (insofar as such amounts or items shall not have been already covered by payment on account made to the Contractor) for all work executed prior to the date of **termination** at the rates and prices provided in the Contract and in addition

(a) the amounts payable in respect of any preliminary items so far as the work or service comprised therein has been carried out or performed and a proper proportion as certified by the Engineer of any such items the work or service comprised in which has been partially carried out or performed

(b) the cost of materials or goods reasonably ordered for the Works which have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery (such materials or goods becoming the property of the Employer upon such payment being made by him)

(c) a sum to be certified by the Engineer being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works in so far as such expenditure shall not have been covered by the payments in this sub-clause before mentioned

(d) any additional sum payable under sub-clauses (6)(b)(c) and (d) of this Clause and

(e) the reasonable cost of removal under sub-clause (4) of this Clause.

**Provisions to apply  
as from outbreak of  
war**

(6) Whether the Contract shall be **terminated** under the provisions of sub-clause (3) of this Clause or not the following provisions shall apply or be deemed to have applied as from the date of the said outbreak of war notwithstanding anything expressed in or implied by the other terms of the Contract viz

(a) The Contractor shall be under no liability whatsoever by way of indemnity or otherwise for or in respect of damage to the Works or to property (other than property of the Contractor or property hired by him for the purposes of executing the Works) whether of the Employer or of third parties or for or in respect of injury or loss of life to persons which is the consequence whether direct or indirect of war hostilities (whether war has been declared or not) invasion act of the Queen's enemies civil war rebellion revolution insurrection military or usurped power and the Employer shall indemnify the Contractor against all such liabilities and against all claims demands proceedings damages costs charges and expenses whatsoever arising thereout or in connection therewith.

(b) If the Works shall sustain destruction or any damage by reason of any of the causes mentioned in the last preceding paragraph the Contractor shall nevertheless be entitled to payment for any part of the Works so destroyed or damaged and the Contractor shall be entitled to be paid by the Employer the cost of making good any such destruction or damage so far as may be required by the Engineer or as may be necessary for the completion of the Works on a cost basis plus such profit as the Engineer may certify to be reasonable.

(c) In the event that the Contract includes a Contract Price Fluctuations Clause the terms of that Clause shall continue to apply but if subsequent to the outbreak of war the index figures therein referred to shall cease to be published or in the event that the Contract shall not include a Contract Price Fluctuations Clause the following paragraph shall have effect:

If under decision of the Civil Engineering Construction Conciliation Board or of any other body recognised as an appropriate body for regulating the rates of wages in any trade or industry other than the Civil Engineering Construction Industry to which Contractors undertaking works of civil engineering construction give effect by agreement or in practice or by reason of any Statute or Statutory Instrument there shall during the currency of the Contract be any increase or decrease in the wages or the rates of wages or in the allowances or rates of allowances (including allowances in respect of holidays) payable to or in respect of labour of any kind prevailing at the date of outbreak of war as then fixed by the said Board or such other body as aforesaid or by Statute or Statutory Instrument or any increase in the amount payable by the Contractor by virtue or in respect of any Scheme of State Insurance or if there shall be any increase or decrease in the cost prevailing at the date of the said outbreak of war of any materials consumable stores fuel or power (and whether for permanent or temporary works) which increase or increases decrease or decreases shall result in an increase or decrease of cost to the Contractor in carrying out the Works the net increase or decrease of cost shall form an addition or deduction as the case may be to or from the Contract Price and be paid to or allowed by the Contractor

accordingly.

(d) If the cost of the Works to the Contractor shall be increased or decreased by reason of the provisions of any Statute or Statutory Instrument or other Government or Local Government Order or Regulation becoming applicable to the Works after the date of the said outbreak of war or by reason of any trade or industrial agreement entered in to after such date to which the Civil Engineering Construction Conciliation Board or any other body as aforesaid is party or gives effect or by reason of any amendment of whatsoever nature of the Working Rule Agreement of the said Board or of any other body as aforesaid or by reason of any other circumstance or thing attributable to or consequent on such outbreak of war such increase or decrease of cost as certified by the Engineer shall be reimbursed by the Employer to the Contractor or allowed by the Contractor as the case may be.

(e) Damage or injury caused by the explosion whenever occurring of any mine bomb shell grenade or other projectile missile or munition of war and whether occurring before or after the cessation of hostilities shall be deemed to be the consequence of any of the events mentioned in sub-clause (6)(a) of this Clause.

## SETTLEMENT OF DISPUTES

### Avoidance of disputes

66 (1) In order to overcome where possible the causes of disputes and in those cases where disputes are likely still to arise to facilitate their clear definition and early resolution (whether by agreement or otherwise) the following procedure shall apply for the avoidance and settlement of disputes.

### Matters of dissatisfaction

(2) If at any time

(a) the Contractor is dissatisfied with any act or instruction of the **Engineer's Representative** or any other person responsible to the Engineer or

(b) the Employer or the Contractor is dissatisfied with any decision opinion instruction direction certificate or valuation of the Engineer or with any other matter arising under or in connection with the Contract or the carrying out of the Works

the matter of dissatisfaction **may** be referred to the Engineer who shall notify his written decision to the Employer and the Contractor within one month of the reference to him.

### Disputes

(3) The Employer and the Contractor agree that no matter shall constitute nor be said to give rise to a dispute **capable of reference to conciliation or arbitration under sub-clauses (5) and (9) of this Clause respectively** unless and until in respect of that matter

(a) **the matter has been referred to the Engineer under sub-clause (2) of this Clause** and the time for the giving of a decision by the Engineer has expired or the decision given is unacceptable or has not been implemented and in consequence the Employer or the Contractor has served on the other and on

the Engineer a notice in writing (hereinafter called the Notice of Dispute) or

(b) an adjudicator has given a decision on a dispute under **sub-clause (6) of this Clause** and the Employer or the Contractor **is not satisfied with the decision**, and in consequence the other has served on him and the Engineer a Notice of Dispute

and the dispute shall be that stated in the Notice of Dispute.

(4) (a) Notwithstanding the existence of a dispute following the service of a Notice **of Dispute** and unless the Contract has already been **terminated** or abandoned the Employer and the Contractor shall continue to perform their obligations.

(b) The Employer and the Contractor shall give effect forthwith to every decision of

(i) the Engineer on a matter of dissatisfaction given under **sub-clause (2) of this Clause** and

(ii) **an** adjudicator on a dispute given under **sub-clause (6) of this Clause**

unless and until that decision is revised by agreement of the Employer and Contractor or pursuant to this **Clause 66**.

### Conciliation

(5) The Employer or the Contractor may at any time before service of a Notice to Refer to arbitration under Clause **66(9)** by notice in writing seek the agreement of the other for the dispute to be considered under the Institution of Civil Engineers' Conciliation Procedure (1994) or any amendment or modification thereof being in force at the date of such notice.

If the other party agrees to this procedure any recommendation of the conciliator shall be deemed to have been accepted as finally determining the dispute by agreement so that the matter is no longer in dispute unless a Notice of Adjudication under **sub-clause (6) of this Clause** or a Notice to Refer to arbitration under **sub-clause (9) of this Clause** has been served in respect of that dispute not later than 1 month after receipt of the recommendation by the dissenting party. **Provided always that if the Notice of Dispute was served in respect of an adjudicator's decision then no Notice of Adjudication under sub-clause (6) of this Clause may be given.**

### Adjudication

(6) (a) The Employer and the Contractor each has the right to refer a dispute as to a matter under the Contract for adjudication and either party may give notice in writing (hereinafter called the Notice of Adjudication) to the other at any time of his intention so to do. The adjudication shall be conducted under the Institution of Civil Engineers' Adjudication Procedure (1997) **(the "Procedure")** or any amendment or modification thereof being in force at the time of the said Notice.

(b) Unless the adjudicator has already been appointed he is to

be appointed in accordance with the procedures for appointing an adjudicator set out in paragraphs 3.1 to 3.5 of the Procedure with the object of securing his appointment and referral of the dispute to him within 7 days of such notice.

(c) The adjudicator shall reach a decision within 28 days of referral or such longer period as is agreed by the parties after the dispute has been referred.

(d) The adjudicator may extend the period of 28 days by up to 14 days with the consent of the party by whom the dispute was referred.

(e) The adjudicator shall act impartially.

(f) The adjudicator may take the initiative in ascertaining the facts and the law.

(7) The decision of the adjudicator shall be binding unless and until the dispute is finally determined in accordance with this Clause 66.

(8) The adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith and any employee or agent of the adjudicator is similarly not liable.

#### Arbitration

(9) (a) All disputes arising under or in connection with the Contract or the carrying out of the Works other than failure to give effect to a decision of an adjudicator shall be finally determined by reference to arbitration. The party seeking arbitration shall serve on the other party a notice in writing (called the Notice to Refer) to refer the dispute to arbitration.

(b) Where an adjudicator has given a decision **under sub-clause (7) of this Clause** in respect of the particular dispute the Notice to Refer must be served within three months of the giving of the decision otherwise the adjudicator's decision shall be final as well as binding.

#### Appointment of Arbitrator

(10) (a) The arbitrator shall be a person appointed by agreement of the parties.

#### President or Vice-President to act

(b) If the parties fail to appoint an arbitrator within one month of either party serving on the other party a notice in writing (hereinafter called the Notice to Concur) to concur in the appointment of an arbitrator the dispute shall be referred to a person to be appointed on the application of either party by the President for the time being of the Institution of Civil Engineers.

(c) If an arbitrator declines the appointment or after appointment is removed by order of a competent court or is incapable of acting or dies and the parties do not within one month of the vacancy arising fill the vacancy then either party may apply to the President for the time being of the Institution of Civil Engineers to appoint another arbitrator to fill the vacancy.

(d) In any case where the President for the time being of the Institution of Civil Engineers is not able to exercise the functions conferred on him by this Clause the said functions shall be



exercised on his behalf by a Vice-President for the time being of the said Institution.

**Arbitration –  
Procedure and  
powers**

(11) (a) Any reference to arbitration under this Clause shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory re-enactment or amendment thereof for the time being in force. The reference shall be conducted in accordance with the **Institution of Civil Engineers Arbitration Procedure (1997)** or any amendment or modification thereof being in force at the time of the appointment of the arbitrator. Such arbitrator shall have full power to open up review and revise any decision opinion instruction direction certificate or valuation of the Engineer or an adjudicator.

(b) Neither party shall be limited in the arbitration to the evidence or arguments put to the Engineer or any adjudicator pursuant to **sub-clause (2) or sub-clause (6) of this Clause** respectively.

(c) The award of the arbitrator shall be binding on all parties.

(d) Unless the parties otherwise agree in writing any reference to arbitration may proceed notwithstanding that the Works are not then complete or alleged to be complete.

**Witnesses**

(12) (a) No decision opinion instruction direction certificate or valuation given by the Engineer shall disqualify him from being called as a witness and giving evidence before a conciliator adjudicator or arbitrator on any matter whatsoever relevant to the dispute.

(b) All matters and information placed before a conciliator pursuant to a reference under **sub-clause (5) of this Clause** shall be deemed to be submitted to him without prejudice and the conciliator shall not be called as witness by the parties or anyone claiming through them in connection with any adjudication arbitration or other legal proceedings arising out of or connected with any matter so referred to him.

**GOVERNING LAW**

**Governing Law**

67 **The construction validity and performance of this Contract shall be governed by the laws of England.**

**NOTICES AND COMMUNICATIONS**

**Notices and  
communications**

68 (1) **All notices and communications to be given or made under the Contract shall be given or made in writing and delivered either by hand, by post in a pre-paid letter, or by facsimile transmission confirmed by post in a pre-paid letter, addressed to the other party.**

(2) **Notices to be given to the Employer by the Contractor shall be addressed to the AstraZeneca UK Engineering Purchasing Manager, Alderley house, Alderley Park, Macclesfield, Cheshire SK10 4TF. Other communications shall be addressed as for notices or to such other address as is specified in the Contract or notified to the Contractor from time to time for the purpose of**

communications to the Employer and/or the Engineer.

(3) Notices and communications to be given or made to the Contractor by the Employer or the Engineer shall be addressed as specified from time to time by the Contractor for the purpose.

(4) The notices or other communications shall be deemed to be duly made or given on the day of delivery if delivered by hand, after two days for a letter or after four hours for a facsimile transmission, save that if a letter is returned as being undelivered within seven days of its despatch, or if a facsimile is reported as being received in incomplete or illegible form within two hours of transmission during normal office hours, that notice or communication shall not be deemed to have been made.

## TAX MATTERS

### Labour-tax fluctuations

69 (1) The rates and prices contained in the **Schedule of Works** shall be deemed to take account of the levels and incidence at the date for return of tenders of:

(a) the taxes levies contributions premiums or refunds (including national insurance contributions but excluding income tax and any levy payable under the Industrial Training Act 1982) which are by law payable by or to the Contractor and his sub-contractors in respect of their workpeople engaged on the Contract.

(b) any landfill tax payable by the Contractor or his Sub-contractors pursuant to the Finance Act 1996 (Sections 39-71 and Schedule 5) and the Landfill Tax Regulations 1996 or any statutory re-enactment thereof for the time being in force.

The rates and prices contained in the **Schedule of Works** do not, **unless otherwise stated to the contrary**, take account of any level or incidence of the aforesaid matters where at the date for return of tenders such level or incidence does not then have effect but although then known is to take effect at some later date.

(2) If after the date for return of tenders there shall occur any change in the level and/or incidence of any such taxes levies contributions premiums or refunds the Contractor shall so inform the Engineer and the net increase or decrease shall be taken into account in arriving at the Contract Price. The Contractor shall supply the information necessary to support any consequent adjustment to the Contract Price. All certificates for payment issued after submission of such information shall take due account of the additions or deductions to which such information relates.

### Value Added Tax

70 (1) The Contractor shall be deemed not to have allowed in his tender for the tax payable by him as a taxable person to the Commissioners of Customs and Excise being tax chargeable on any taxable supplies to the Employer which are to be made under the Contract.

### Engineer's certificates net of Value Added Tax

(2) All certificates issued by the Engineer under Clause 60 shall be net of Value Added Tax.

In addition to the payments due under such certificates the Employer shall separately identify and pay to the Contractor any Value Added Tax properly chargeable by the Commissioners of Customs and Excise on the supply to the Employer of any goods and/or services by the Contractor under the Contract.

**Disputes**

(3) If any dispute difference or question arises between either the Employer or the Contractor and the Commissioners of Customs and Excise in relation to any tax chargeable or alleged to be chargeable in connection with the Contract or the Works each shall render to the other such support and assistance as may be necessary to resolve the dispute difference or question.

**Clause 66 not applicable**

(4) Clause 66 shall not apply to any dispute difference or question arising under this Clause.

**SPECIAL CONDITIONS**

**CDM Regulations 1994**

71 (1) In this clause

(a) "The Regulations" means the Construction (Design and Management) Regulations 1994 or any statutory re-enactment or amendment thereof for the time being in force.

(b) "Planning Supervisor" and "Principal Contractor" means the persons so described in Regulation 2(1) of the Regulations.

(c) "Health and Safety Plan" means the plan prepared by virtue of Regulation 15 of the Regulations.

(2) Where and to the extent that the Regulations apply to the Works and

(a) the Engineer is appointed Planning Supervisor and/or

(b) the Contractor is appointed Principal Contractor

then in taking any action as such they shall state in writing that the action is being taken under the Regulations.

(3) (a) Any action under the Regulations taken by either the Planning Supervisor or the Principal Contractor and in particular any alteration or amendment to the Health & Safety Plan shall be deemed to be an Engineer's instruction pursuant to Clause 13. Provided that the Contractor shall in no event be entitled to any additional payment and/or extension of time in respect of any such action to the extent that it results from any action lack of action or default on the part of the Contractor.

(b) If any such action of either the Planning Supervisor or the Principal Contractor could not in the Contractor's opinion reasonably have been foreseen by an experienced Contractor the Contractor shall as early as practicable give written notice thereof to the Engineer.

**CODE OF CONDUCT**

- 72 (1) Supplier recognises AstraZeneca's commitment to working only with suppliers who embrace standards of ethical behaviour that are consistent with AstraZeneca's *Code of Conduct* (<http://www.astrazeneca.com/responsibility>), as described in AstraZeneca's document *Responsible Procurement Supplier Expectation (v0.3May09)* (a part of the AstraZeneca Global Standard –Responsible Procurement).
- (2) Supplier represents and warrants and undertakes that it:
- (a) shall perform this Agreement and operate its business in compliance with all applicable laws and regulations;
  - (b) has received and read AstraZeneca's *Code of Conduct* and AstraZeneca's *Responsible Procurement Supplier Expectation (v0.3May09)*; and
  - (c) shall perform this Agreement and operate its business to ethical standards consistent with those set out in AstraZeneca's *Code of Conduct* and as described in AstraZeneca's *Responsible Procurement Supplier Expectation (v0.3May09)*, and
  - (d) cause its suppliers and sub-contractors to operate their business in compliance with all applicable laws and regulations and in a manner consistent with AstraZeneca's *Responsible Procurement Supplier Expectation (v0.3May09)*.
- (3) In the event that Supplier fails to meet or maintain such ethical standards, the Parties shall agree upon what measures should be taken by Supplier to improve Supplier's performance (the "Improvement Plan"). If the Parties are unable to agree upon an Improvement Plan or Supplier does not implement the Improvement Plan within an agreed reasonable timescale (which shall in any event not be in excess of twelve (12) calendar months) AstraZeneca shall be entitled to terminate this Agreement with immediate effect, to be relieved of any obligations and to seek compensation from Supplier.
- (4) Supplier agrees that any material breach or violation by Supplier of the above representations, warranties and undertakings shall give AstraZeneca the right to terminate this Agreement according to Article [ ] *Term and Termination*.