

# **General Conditions of Contract for Use in the Procurement and Erection of Plant at Site in the United Kingdom**

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# OS 1

## General Conditions of Contract for Use in the Procurement and Erection of Plant at Site in the United Kingdom

Conditions governing contracts to be executed by contractors on any of the premises of Outokumpu Stainless Ltd. and/or any of its subsidiary companies.

### 1. Definition of Terms

Unless the context otherwise requires the following expressions shall have the meanings set against them, that is to say:-

**The "Contract"** means the Agreement between the Purchaser and the Contractor for the execution of the Works and all other things in writing (including these General Conditions, the Specification and the Drawings), whenever made, which properly should be referred to in determining the rights and obligations of the Purchaser and of the Contractor.

**The "Purchaser"** means the person named as such in the Agreement and his legal personal representatives, successors and assigns.

**The "Contractor"** means the firm or company named as such in the Agreement and his legal personal representatives, successors and permitted assigns.

**"Sub-Contractor"** means any person (other than the Contractor) to whom any part of the Works has been sub-contracted in accordance with Clause 10 (Assignment and Sub-contracting) irrespective of whether the Contractor is in direct contract with that person.

**The "Engineer"** means the person nominated as such in the Contract, or the person for the time being or from time to time notified in writing by the Purchaser to the Contractor as the Engineer for the Contract, or in default of nomination or notification the Purchaser.

**The "Contract Price"** means the sum named in the Agreement as the Contract Price as may be altered upward or downward in accordance with any specific term of the Contract.

**The "Contract Value"** means that part of the Contract Price at any time and from time to time properly apportionable to the whole or part of the Works.

**The "Specification"** means the specification annexed to or issued with these General Conditions as and if from time to time amended in accordance with the Contract.

**The "Drawings"** means the drawings referred to in the Specification and any amendment to the drawings or commented on in writing by the Engineer and any other drawings as may from time to time be either furnished or commented on in writing by the Engineer.

**The "Plant"** means those items of plant, equipment, machinery, apparatus, materials, articles and other things of all kinds to be designed, manufactured, supplied, erected, commissioned and maintained at the Site under the Contract other than the Contractor's Equipment.

**The "Works"** means the Plant to be designed, manufactured, supplied, erected, commissioned and maintained together with all the work to be done under the Contract.

**The "Contractor's Equipment"** means any equipment, sheds, materials, tools, stores, machinery, apparatus, articles and other things of all kinds brought onto the Site by or on behalf of the Contractor for the execution of, but not for permanent incorporation in the Works.

**The "Temporary Works"** means all works of an impermanent nature used during the execution of the Works.

**The "Site"** means the land which is identified by the Contract plan called "Site Plan" and on which the Works are to be erected and commissioned together with such of the surrounding area as the Contractor may, with the consent of the Engineer, actually use in connection with the Works otherwise than for the purpose of access.

**"Completion Tests"** means those tests made by the Contractor on completion of erection for commissioning the Works as are initially specified in the Contract or later agreed between the Engineer or the Purchaser and the Contractor.

**"Acceptance Tests"** means those tests made on acceptance of the Works relating to the performance of the Works as are initially specified in the Contract or later agreed between the Engineer or the Purchaser and the Contractor.

**"Month"** means calendar month.

**"Writing"** means any recorded particular in words or figures not being merely a spoken particular.

Words importing persons include firms and corporations.

The singular includes the plural and the plural the singular where appropriate.

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<b>2. Interpretation and Effective Date of the Contract</b>	2.1	Should there be any ambiguity between these General Conditions and any other part of the Contract referable to the execution of the Works the ambiguity shall be referred by the Contractor to the Engineer for his decision before (whenever possible) the Contractor continues with the execution of the Works.
	2.2	The marginal notes to these General Conditions are for the purposes of easy reference only and shall not effect interpretation.
	2.3	The Contract shall be effective as from the date stated in the First Appendix hereto.

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<b>3. Contractor to inform himself fully</b>	The Contractor shall be deemed to have informed and satisfied himself fully as to the nature and extent of the Works including (but not by way of limitation) the physical condition of and around the Site so far as is practicable and the necessity for the Works meeting the performances and being suitable for the purposes referred to in Clause 12.2 (Contractor's Proper Execution of the Works) and therefore to have provided, unless expressly otherwise specified in the Contract, for all reasonably foreseeable eventualities in the Contract Price.
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<b>4. Things found on Site</b>	All minerals, metals, objects and other things found or discovered on under or around the Site shall as between the Contractor and the Purchaser be the property of the Purchaser and shall be dealt with as the Engineer shall direct.
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<b>5. Programme for Execution and Termination of the Work</b>	5.1	The Contractor will furnish the Purchaser, by the date specified in the First Appendix, the outline programme for execution of the Works for approval both in format and content by the Engineer. The programme will relate to any contractual dates fixed for overall completion of the whole of the Works or completion of any part of the Works and in particular to contractual dates fixed for Completion Tests and (if any dates are then agreed) for Acceptance Tests.
	5.2	The outline programme in Clause 5.1 will include and clearly indicate (so far as is practicable) <ul style="list-style-type: none"><li>(a) the periods required for the design (including the supply of drawings required by Clause 7.1), manufacture, delivery, erection and commissioning of all principal items of Plant and the dates by which the same will be completed; and</li><li>(b) the dates by which the Contractor will have supplied to the Engineer required design parameters for foundations, loadings and the like, and the dates by which all other major requirements on which satisfactory completion of the Works depend, whether to be provided by the Contractor or others, have to be ready and</li></ul>

available.

- 5.3 Within the number of days stated in the First Appendix hereto from the Effective Date of the Contract the Contractor shall submit a detailed version of the outline programme for the approval both in format and content of the Engineer. The detailed programme will include and clearly indicate.
- (a) the periods and dates as in Clause 5.2 (a) but for all items of Plant and
  - (b) the dates as in Clause 5.2(b) but for all requirements upon which satisfactory completion of the Works depends.
- 5.4 The Contractor shall allow in the programme under Clause 5.3 sufficient time, as agreed with the Engineer, for the Engineer to approve that programme.
- 5.5 The Purchaser or the Engineer may during progress of the Works review the detailed programme and for any reason may by order in writing direct delay, acceleration, suspension or alteration of the Works (in whole or in part) or alteration of the sequence of the Works (in whole or in part). The Contractor shall comply with any reasonable order so directed which order shall where appropriate be subject to the provisions of Clause 28 (Extension of Time for Completion of the Works) and of Clause 6 (Additional Expenses of the Contractor).
- 5.6 The Purchaser may for any reason (not limited to progress of the Works) by order in writing terminate the remaining Works (in whole or in part).

In the event of termination of part only of the Works, the Engineer shall by notice in writing abridge the time (or if it has already been extended, the extended time) fixed for completion of the Works by such period as shall in all the circumstances be reasonable.

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**6. Additional Expenses of the Contractor**

- 6.1 Subject to Clause 6.2 all reasonable and proper additional expenses incurred by the Contractor by reason of
- (a) a direction of the Purchaser or the Engineer to the Contractor under Clause 5.5 or Clause 5.6 above, or
  - (b) the Contractor being prevented from or delayed in proceeding with the Works in consequence of some act, default or omission of the Purchaser
- shall be added to the Contract Price and may be included in any invoice submitted under Clause 36 (Payment).
- 6.2 Clause 6.1 shall not apply where the circumstances giving rise to any such direction of the Purchaser or the Engineer or to any such prevention or delay by the Purchaser shall have been due to any act, default or omission of the Contractor or shall have been outside the reasonable control of the Purchaser (not being the default of another contractor of the Purchaser).
- 6.3 The Contractor shall mitigate any additional expenses incurred by him due to any such direction of the Purchaser or the Engineer so far as he may properly be able so to do.
- 6.4 No claim shall be made under this Clause 6 unless the Contractor has, within 14 days after the event giving rise to the claim, given notice in writing to the Engineer of his intention to make a claim.
- 6.5 If a termination is given under Clause 5.6 then the Contractor shall be entitled to payment of such sum as is fair and reasonable in all the circumstances (such circumstances including the rates specified in the Schedule of Prices insofar as they may be applicable) for work done prior to such termination and for which no invoice has previously been submitted provided that nothing herein shall prejudice any right or remedy of the Purchaser including, without limitation, any right of setoff or counterclaim.

6.6 A direction or termination given under Clause 5.5 or under Clause 5.6 above shall not entitle the Contractor to any loss of profit howsoever arising.

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**7. Drawings and Patterns and Software**

7.1 The Contractor shall submit to the Engineer for comment:

- (a) within the period specified in the Programme and before issue for manufacture all (save as otherwise agreed) assembly and sub-assembly drawings in sufficient detail to show all points of design; and
- (b) as soon as possible after being requested by the Engineer so to do, such further detailed drawings as the Engineer may reasonably require for the purpose of his examination of the assembly and sub-assembly drawings.

7.2 So that the Programme fixed in accordance with Clause 5 (Programme for Execution and Termination of the Works) may be adhered to, within the number of days stated in the First Appendix hereto after receiving any drawings for comment the Engineer shall signify in writing his comment to the Contractor. No comment given by the Engineer shall release the Contractor from his responsibility for the satisfactory design and performance of the Works to which those drawings relate.

7.3 All drawings submitted to the Engineer in accordance with Clause 7.1 shall be submitted in the number of copies stated in the First Appendix hereto.

7.4 The Contractor shall not depart from any drawing without the prior consent of the Engineer in writing.

7.5 The Engineer shall have the right at all reasonable times to inspect at the premises of the Contractor or his Sub-Contractors all detailed drawings of the whole or any part of the Works.

7.6 The Contractor shall supply to the Purchaser, in the number of copies stated in the First Appendix hereto, and by the date indicated in the Programme under Clause 5 (which shall not be later than 90 days after the commencement of the Defects Liability Period), durable reproducible transparent drawings of the Works as finally completed in sufficient detail to enable the Purchaser to maintain, dismantle, reassemble and adjust all parts of the Works.

7.7 All drawings shall be prepared and submitted on sheets of a size designated by the Engineer unless other specific arrangements are agreed at the request of the Contractor by the Engineer in writing.

7.8 (a) Any drawings or the like provided to the Purchaser in connection with the Works shall be the property of the Purchaser but shall remain the copyright of the Contractor. Such drawings and the like may be copied and amended and used by the Purchaser or any successor in title to the Works for the operation, maintenance (including repair or replacement improvement and modification of the Works including the manufacture of parts for such purposes.

(b) Any patterns, jigs or the like made by the Contractor specifically and solely for the execution of the Works shall remain the property of the Contractor but shall be made available to the Purchaser or successor in title to the Works and may be copied and used by the Purchaser and any such successor in title for the operation, maintenance (including repair or replacement), improvement and modification of the Works including the manufacture of parts for such purposes.

(c) Any patterns, drawings, jigs or the like provided to the Contractor by the Purchaser for the execution of the Works shall remain the copyright and property of the Purchaser. The Contractor shall not copy or use the same for any purpose other than for the execution

of the Works and shall return them to the Purchaser in good order and condition on issue of the Final Certificate relating to the Works.

- 7.9 The Contractor shall ensure that all patterns from whatever source shall comply with the related drawings having particular reference to the intended process of manufacture.
- 7.10 For any standard software delivered as part of the Works the Purchaser is granted a non exclusive licence to use the software. If the software is developed for the Purchaser as part of the Works the copyright (including the right to change and transfer the software) to the software is transferred to the Purchaser and the source code shall be handed over to the Purchaser.

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**8. Plant Lists and Operating Manuals**

- 8.1 The Contractor shall have included with his tender a complete list of all individual units of Plant with leading dimensions and weights. In addition, he shall by the date stated in the First Appendix provide a detailed list of components giving drawing and part reference numbers and a proper description of each item including its size and weight. The Contractor will comply with the reasonable requirements of the Purchaser in this respect.
- 8.2 The Contractor will provide not later than the commencement of the Defects Liability Period all information reasonably necessary to enable the Purchaser to operate and maintain the Works and by the date specified in the First Appendix full maintenance and operating manuals or instructions for each unit of Plant.
- 8.3 The Contractor will also provide by the date specified in the First Appendix a complete priced list of recommended spares for the Works so that those spares designated by the Purchaser may be manufactured and supplied by the Contractor prior to the carrying out of Completion Tests. Such list shall include all proprietary items together with the manufacturer's name and component reference number.
- 8.4 The Contractor will also provide by the date specified in the First Appendix complete Hazard Lists being all appropriate information under The Health and Safety at Work etc. Act 1974 (or any amendment or re-enactment thereof) or other relevant health and safety legislation to enable the Purchaser to use the Works without danger to health and safety.

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**9. Inaccurate Information**

- 9.1 The Contractor shall be responsible for any discrepancies, errors or omissions in the drawings and information supplied by him, whether they have been commented on or not by the Engineer, provided that those discrepancies, errors or omissions are not due to inaccurate drawings or information furnished to the Contractor by the Purchaser or the Engineer.
- 9.2 The Contractor shall at his own expense carry out any alterations or remedial work necessitated by reason of those discrepancies, errors or omissions and shall modify the drawings and information accordingly, or if the same be done by or on behalf of the Purchaser shall bear all costs reasonably incurred thereby.
- 9.3 The Purchaser shall be responsible for drawings and information supplied in writing by the Purchaser or the Engineer and for the details of special work specified by either of them. The Purchaser shall pay the extra cost reasonably incurred by the Contractor due to alterations of the work necessitated by reason of inaccurate drawings or information so supplied provided those inaccuracies are not caused by any inaccurate drawings or information supplied by the Contractor, but no other compensation.
- 9.4 Any payments under this Clause shall be added to or deducted from the Contract Price as the case may be.

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**10. Assignment and Sub-contracting (Including Nominated Sub-**

- 10.1 The Contractor shall not, without the consent in writing of the Purchaser, which shall not be unreasonably withheld, assign or transfer any of the benefits or obligations under the Contract to any other person except that the Contractor may without consent assign, either absolutely or by way of charge,

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any moneys due or to become due to him under the Contract.

- 10.2 The Contractor shall not, without the consent in writing of the Engineer which shall not be unreasonably withheld, sub-contract the Contract either in whole or in part except
- (a) for materials, or
  - (b) for minor details, or
  - (c) where the makers are named in the Contract.
- 10.3 Any consent given by the Purchaser under Clause 10.1 or 10.2 shall not relieve the Contractor from his responsibilities to the Purchaser for the efficient and proper performance of work carried out by his assignees or Sub-Contractors.
- 10.4 The Contractor shall prohibit in every sub-contract further assignment or further sub-contract (save in respect of the excepted categories of subcontract listed in Clause 10.2) without the written consent of the Engineer.
- 10.5 The Contractor shall bind his Sub-contractor to observe these General Conditions and any Special Conditions incorporated in the Contract so far as the same are applicable to the sub-contracted Works.
- 10.6 Subject to Clause 10.7 and Clause 10.8 the Purchaser shall have the right of directing that any part of the Works be carried out by Sub-Contractors nominated by the Engineer and that nomination shall not relieve the Contractor from his responsibility to the Purchaser for the efficient and proper performance of work carried out by the nominated Subcontractors. In the event that any nominated sub-contractor ceases to perform his obligations under his sub-contract or repudiates or otherwise fails to complete the same, the Engineer shall on the written request of the Contractor nominate another Subcontractor to complete such sub-contract and the succeeding provisions of this Clause 10 shall apply to such renomination. On such renomination the rights and the obligations of the Contractor under the Contract shall be modified if the circumstances shall justify to such extent as may be so justified.
- 10.7 Upon receipt of a nomination under Clause 10.6, the Contractor may within 28 days of that nomination and before entering into any sub-contract notify the Engineer:
- (a) that compliance with the nomination would, in the Contractor's opinion, prevent or prejudice him from or in fulfilling any of his obligations under the Contract in the respects specified, or
  - (b) that the person nominated by the Engineer is unwilling in the respects specified to enter into a sub-contract with the Contractor on terms compatible with the Contract providing the Contractor with reasonable remedies in the event of a breach of Contract by that person, or
  - (c) that the person nominated by the Engineer is in the Contractor's opinion unlikely for the reasons specified to be reliable or competent in his performance of the sub-contract.
- 10.8 Upon receipt of any notification under Clause 10.7 the Engineer shall:-
- (a) withdraw any nomination and nominate some fresh person, or
  - (b) withdraw the nomination and issue a variation order omitting the work or plant in question, or
  - (c) confirm the nomination.

If the Engineer adopts course (a), then the provisions of this Clause shall apply to the fresh nomination. If the Engineer adopts course (b) then the Purchaser shall enter into a direct contract with the person nominated for the work or plant in question. If the Engineer adopts course (c) then the Contractor shall enter into a sub-contract with the person nominated on the most nearly compatible terms with this Contract as are obtainable. If the Engineer adopts either of course (b) or (c)



then the obligations of the Contractor under the Contract shall be modified as the Engineer and the Contractor may agree or in default of agreement as may be fair and reasonable.

- 10.9 If any payment to a Sub-Contractor nominated by the Engineer has been improperly withheld then the Purchaser shall be entitled
- (a) to pay that payment direct to the Sub-Contractor and
  - (b) to set off that payment against any payment that becomes due to the Contractor.

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**11. Patent and other Protected Rights**

- 11.1 The Contractor shall indemnify the Purchaser against actions, claims, demands, costs, charges and expenses arising from any infringement or alleged infringement of any patent, registered design, trademark, copyright or other like right protected by law by the use or repair of the Works or production of spare parts.
- 11.2 The Indemnity given by the Contractor in Clause 11.1 shall only extend to the use of the Works for the purposes
- (a) indicated by or to be reasonably inferred from the Specification and
  - (b) as may be made known in writing by the Purchaser to the Contractor prior to the Contract being entered into such writing being specifically incorporated in the Contract.
- 11.3 On any claim being made or proceedings begun against the Purchaser which is covered by the Indemnity Clause in 11.1 the Purchaser shall in writing promptly notify the Contractor of the claim or the proceedings and the Contractor may, on giving reasonable security to the Purchaser, deal with or conduct the same in the name of the Purchaser.
- 11.4 The Purchaser shall not, unless the Contractor fails to deal with the claim or conduct the proceedings, make any admission prejudicial thereto.
- 11.5 The Contractor's failure referred to in Clause 11.4 shall inter alia be deemed to have occurred if the Contractor shall not have taken over any negotiations or proceedings within 14 days of the Purchaser's written notification of the same.
- 11.6 The Purchaser shall, at the request of the Contractor, afford the Contractor all available assistance for the purpose of contesting any claim or proceedings and shall be repaid his expenses incurred in so doing.

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**12. Contractor's Proper Execution of the Works**

- 12.1 The Contractor shall execute the Works in accordance with the Contract and, in any event, to the reasonable satisfaction of the Engineer.
- 12.2 The Contractor shall ensure that the Works when executed in accordance with the Contract shall meet the Specification of the Works and shall be suitable for the purposes
- (a) indicated by or to be reasonably inferred from the Specification, and
  - (b) as may be made known in writing by the Purchaser to the Contractor prior to the Contract being entered into such writing being specifically incorporated in the Contract.

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**13. Site Conditions**

- 13.1 The Contractor shall, at his own expense, provide all the Temporary Works and the Contractor's Equipment and other materials, labour, haulage, power, tools, tackle and apparatus necessary for the proper execution of the Works.
- 13.2 The Contractor shall be responsible for the proper provision and maintenance of fencing, guarding, lighting and watching of all the Works on the Site until taken over under Clause 31 (Take Over) and for the proper provision and maintenance during the same period of temporary roadways, footways, guards and fences as

far as the same may be rendered necessary by reason of the Works for the accommodation and protection of the Purchaser and other contractors engaged on the Purchaser's premises and the owners and occupiers of adjacent property, the public and others.

.3 13 No naked lights shall be used by the Contractor on the Site without permission in writing from the Engineer.

.4 13 The Contractor shall be permitted to use for the execution of the Works those supplies of electricity, water, gas and any other services as may be from time to time made available to the Contractor for that purpose on the Site and the Contractor shall pay to the Purchaser a fair and reasonable sum (except where the Contract or the Purchaser's Site Regulations otherwise provide) for their use. The Purchaser will not be liable for loss or damage caused by variations, cessation or diminution in pressure, quantity or quality or by the interruption, withdrawal or failure of such services. The Contractor shall at his own expense provide any apparatus and material necessary for utilising these supplies and shall be responsible for any loss or damage to persons or property caused by his use of these supplies.

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**14. Variation Orders**

14.1 The Contractor shall not vary add to or omit any of the Works, except as directed in writing by the Engineer, but the Engineer shall have full power from time to time during the execution of the Contract by notice in writing to direct the Contractor to vary, add to or omit in any manner any part of the Works, and the Contractor shall carry out those variations and be bound by these General Conditions, so far as applicable, and as though those variations were stated in the Specification.

14.2 In any case in which the Contractor has received a direction from the Engineer under this Clause the Contractor shall advise the Engineer in writing

- (a) within 14 days as to whether in principle there should be an increase or decrease in the Contract Price and /or time schedule of outline program and
- (b) within 28 days of the amount of that increase or decrease and/or change in time schedule of outline program.

Within 10 working days from receiving Contractors advice according to (b) the Engineer is entitled to withdraw his direction without cost.

The amount of that increase or decrease shall be ascertained and determined in accordance with the rates specified in the Schedule of Prices, so far as the same may be applicable, and where rates are not contained in those Schedules, or are not applicable, such amount as shall be fair and reasonable in the circumstances. The same will apply to change in the time schedule of outline program. Due account shall be taken to any part taken out from the Works by any variation order.

No increase of the Contract Price or time under this Clause 14.2 shall be made unless the Contractor shall have given the advices in writing referred to in this sub-clause within the time specified.

If the Engineer shall make any variation under this Clause in any part of the Works, reasonable notice in writing shall be given to the Contractor to enable him to make his necessary arrangements accordingly.

14.3 If in the opinion of the Contractor, any variation is likely to prevent or prejudice the Contractor from or in fulfilling any of his obligations under the Contract, he shall so notify the Engineer in writing, and the Engineer shall decide with all possible speed whether or not the same shall be carried out. If the Engineer confirms his instructions in writing, those obligations shall be modified to such an extent as may be justified and agreed with the Engineer. Until the Engineer so confirms his instructions they shall be deemed not to have been given.

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**15. Unforeseen Site Conditions**

If during the progress of the Works the Contractor shall encounter physical conditions (other than weather conditions or conditions due to weather) which could not reasonably have been foreseen by the Contractor through a thorough assessment of the physical conditions of and around the Site before he signing the Contract

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the Contractor shall in writing notify the Engineer with all possible speed of the conditions and how the Contractor proposes to deal with them. If the Engineer agrees that the physical difficulties couldn't have been foreseen and approves the action proposed by the Contractor, the Engineer shall certify any additional necessary costs which the Contractor may have incurred in dealing with those conditions.

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**16. Contractor's Default**

- 16.1 If the Contractor shall neglect to execute the Works with due diligence and expedition, or shall refuse or neglect to comply with any reasonable order given him in writing by the Engineer in connection with the Works, or shall contravene any provisions of the Contract, the Engineer may give seven days notice in writing to the Contractor to make good the failure, neglect, or contravention complained of.
- 16.2 Should the Contractor fail to comply with the notice referred to in Clause 16.1 within seven days from the date of its service, in the case of failure, neglect or contravention capable of being made good within that time, or otherwise within such time as may be reasonably necessary for making it good, then without prejudice to any other remedies (whether by way of termination damages or otherwise whatsoever) which he may have under the Contract or at common law the Purchaser may
- (a) employ other workmen to execute that part of the Works which the Contractor shall have neglected to execute, or
  - (b) take the Works in whole or in part out of the Contractor's hands and re-contract with any other person to complete the same.
- 16.3 In the event of Clause 16.2 applying the Purchaser shall have the free use of all tools, tackle, stores and other things (whether the same be owned or hired (Clause 20, Ownership of Plant, Temporary Works and Contractor's Equipment) by the Contractor) that may be at any time on the Site in connection with the Works, without being responsible to the Contractor for fair wear and tear and to the exclusion of any right of the Contractor over the same.
- 16.4 The Purchaser shall be entitled without prejudice to any other rights he may have to retain and apply any balance of the Contract Price in whole or in part which may be otherwise due to the Contractor, towards the payment of the cost of carrying out any work referred to in Clause 16.2. If the cost of doing this work shall exceed the balance due to the Contractor, the Contractor shall pay the excess forthwith to the Purchaser.
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**17. Access to Contractor's Premises for Inspection of the Plant and Allied Purposes**

- 17.1 The Engineer or his agent shall be entitled at all reasonable times during manufacture and at any time before delivery to the Site to inspect, examine, test and assess on the Contractor's premises the materials, workmanship, performances and progress of all items of Plant and if part of the Plant is being manufactured on other premises the Contractor shall use his best endeavours to obtain for the Engineer permission to inspect, examine and test the same as if it was being manufactured on the Contractor's premises.
- 17.2 The Contractor shall submit to the Purchaser unpriced copies of all orders and sub-orders as soon as these are placed to enable the Engineer in good time to assess those items of work which may be the subject of inspection or the like at the premises of the Contractor or his Sub-Contractor, or to indicate to the Contractor those items which may not be so inspected, but will be subject to final inspection at the Contractor's premises on completion of unit assembly provided that where unit assembly is not normally completed at the Contractor's premises the Contractor shall apply to the Engineer for his consent to complete unit assembly at Site which consent shall not be unreasonably refused. If unit assembly shall be completed at Site or if the Engineer shall decide to inspect, examine, test and assess the Plant as detailed in Clause 17.1 but at Site, then the provisions of this Clause 17 shall apply where applicable to such inspection, examination, testing and assessment at Site.
- 17.3 The Contractor shall give the Engineer written notice of when and where any item of Plant is ready for testing. The Engineer shall if he wishes to see the tests attend at the place so notified within 10 days of receipt of notification otherwise the Contractor may carry out the tests and shall send certified copies of the tests

results immediately to the Engineer.

- 17.4 If after inspecting, examining, testing or assessing any Plant, the Engineer shall determine that it or part of it is defective or is not in accordance with the Contract, he may reject the same within ten days by notice in writing to the Contractor stating the grounds on which his rejection is based.
- 17.5 Where tests are to be carried out on the premises of the Contractor or his Sub-Contractor the Contractor shall provide free of charge all related support services and labour necessary to properly carry out those tests.
- 17.6 If re-testing of any item of Plant shall be necessary due to the default of the Engineer or the Contractor, the party in default (which in the case of the Engineer shall be deemed to be the Purchaser) shall bear any extra expenses thereby incurred which shall be added to or deducted from the Contract Price as the case may be.
- 17.7 Inspection, examination, testing or assessment or commenting or omission to do so, shall not release or limit the Contractor's obligation or liability under the Contract.

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**18. Delivery**

- 18.1 (a) The Contractor shall deliver the Plant, the Temporary Works and Contractor's Equipment to the Site to suit the Programme for the execution of the Works under Clause 5.3 but he shall first obtain permission from the Engineer to make delivery.
- (b) The Contractor shall comply with the Purchaser's reception and traffic regulations.
- 18.2 The Contractor shall be responsible for the safe reception, unloading and care of the Plant, the Temporary Works and the Contractor's Equipment on the Site and accordingly shall provide all necessary facilities for the storage, cover and security of the same.
- 18.3 If the Contractor shall be unduly delayed from delivering Plant to or from erecting Plant on the Site in accordance with the programme and that delay shall solely be caused by the Purchaser or by any other contractor employed by the Purchaser (other than a sub-contractor employed by the Contractor) then
- (a) those proper expenses incurred by the Contractor by reason of that delay as certified by the Engineer shall be added to the Contract Price.
- (b) the Contractor may be relieved of his responsibilities under the Contract in regard to that Plant in such manner as the Engineer may decide as being fair and reasonable.

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**19. Access to and Possession of the Site**

- 19.1 Subject to the following provisions of this Clause access to and possession of the Site shall be afforded to the Contractor by the Purchaser in proper time for the execution of the Works. The Contractor shall have that access by means only of those roadways and railway sidings of the Purchaser as agreed.
- 19.2 If a building, structure, foundation or access is under the Contract to be provided by the Purchaser, that building, structure, foundation or access shall be in a condition suitable for the efficient transport, reception, installation and maintenance of the Works.
- 19.3 In the execution of the Works on the Site no persons other than the Contractor, Sub-Contractors and his and their employees shall be allowed on the Site, except by the written permission of the Engineer, but facilities to inspect the Works on the Site at all reasonable times shall be afforded to the Engineer and his representatives and other authorised officials and representatives of the Purchaser. The Contractor, Sub-Contractors and his and their employees shall comply with the Purchasers Site regulation.
- 19.4 The access to and possession of the Site referred to in Clause 19.1 shall not be exclusive to the Contractor, but only such as shall enable the Contractor to exe-

ecute the Works. The Contractor shall afford to the Purchaser and to other contractors whose names shall have been previously communicated in writing to the Contractor by the Engineer every reasonable facility for the execution of other work concurrently with the Works and shall carry out the Works without undue interference with the operations of the Purchaser or of the other contractors.

- 19.5 Unless otherwise provided in the Specification the Purchaser shall give the Contractor facilities for carrying out the Works on the Site continuously during the normal working hours referred to under Clause 40.6 (Employment of Persons). The Engineer may, after consulting with the Contractor, direct that work shall be done at other times if it shall be practicable in the circumstances for work to be so done, and the Contract Price shall be increased accordingly by such amount as shall be reasonable in the circumstances unless that work has, by the default, of the Contractor, become necessary for the completion of the Works within the time fixed by the Contract, or if no time be fixed, within a reasonable time.
- 19.6 Subject to Clause 19.2 the Contractor shall be responsible for all claims, damages, proceedings, costs and expenses in respect of damage or injury to roads public or private, level crossings, bridges, drains, cables or any other services caused by traffic of the Contractor arising out of the execution of the Contract. Clause 34 (Payments due from the Contractor) shall without limiting the scope of that Clause apply to this Clause 19.6 and to Clause 19.7.
- 19.7 The movement of all traffic on the Site or on the railway sidings of the Purchaser shall be subject to the control of the Engineer and should the Contractor, after receiving reasonable notice from the Engineer to deal with specified traffic, fail to do so, the Purchaser may then take control of all the traffic and dispose of it on the Site or any other sidings of the Purchaser. In the event of the Purchaser exercising this right the Contractor shall pay the Purchaser the expenses incurred by him in doing so, including any demurrage charges.

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**20. Ownership of Plant, Temporary Works and Contractor's Equipment**

- 20.1 Subject to the provisions of Clause 7.8 (Drawings and Patterns), any Plant or thing supplied under the Contract (other than the Temporary Works or Contractor's Equipment) shall become the property of the Purchaser at whichever is the earlier of the following times, namely:-
- (a) when that Plant or thing is delivered to Site, or
  - (b) when the Plant or thing has been included in a progress payment certificate.
- 20.2
- (a) If before delivery to Site any Plant or any other thing is included in a progress payment certificate that Plant or thing shall then be set aside and identified by the Contractor as the property of the Purchaser and accordingly no other person shall have as against the Purchaser any charge or lien over it and any other person shall be so informed accordingly by the Contractor. In addition if Clause 16 (Contractor's Default) applies the Contractor shall
    - (i) permit or procure the Purchaser immediate entry onto the premises of the Contractor or his Sub-Contractors for the purpose of removing or otherwise dealing with that Plant or thing; or
    - (ii) otherwise deal with that Plant or thing as the Engineer shall direct.
  - (b) If Clause 20.2(a) applies the Contractor shall be the bailee of the Purchaser of the Plant or thing in which the property has passed to the Purchaser but nevertheless this shall not effect the liability of the Contractor to continue to insure that Plant or thing in accordance with Clause 25 (Insurance of the Works) and the Contractor shall make certain that the same shall be properly and adequately covered under those insurance provisions.
- 20.3 The Contractor shall supply the Engineer with a complete list of all materials for the Temporary Works and of all items of the Contractor's Equipment which on arrival on Site shall, unless hired (in which case Clause 20.5 shall apply), become the property of the Purchaser. All items of the Contractor's Equipment shall be

used solely for the purpose of the Works and shall not be taken away by the Contractor while they are required on the Site without the permission in writing of the Engineer.

- 20.4 All materials for the Temporary Works and all items of the Contractor's Equipment shall when brought onto the Site and throughout the progress of the Works be in good order and condition, shall be suitable for the proper execution of the Works and shall if required by the Engineer be made available for his inspection.
- 20.5 The Contractor shall not bring any thing under an agreement for hire on to the Site unless that agreement provides that in the event of the owner of that thing repossessing it due to the default or omission of the Contractor the owner will hire it to the Purchaser from the date when the right of repossession is exercisable on payment of all hire charges from that date and otherwise on the same terms as that thing was hired to the Contractor save that the Purchaser may allow any other of his contractors to use it to complete the Works under Clause 16 (Contractor's Default). Where the Contractor finds himself unable to negotiate these terms with the owner the Contractor shall not enter into any Contract with the owner without the written consent of the Engineer which consent shall not be unreasonably refused. All costs and expenses incurred under this Clause 20.5 may be deducted by the Purchaser from any payment due under the Contract to the Contractor. Any deduction may also include any sum paid by the Purchaser to the owner to avoid the owner exercising any right of seizure to which the owner may consider himself entitled.
- 20.6 The Contractor will insert appropriate conditions in his sub-contracts reflecting the provisions of Clause 20.1 to 20.5 inclusive.
- 20.7 The Contractor shall be liable for the loss or destruction of, or damage to, the Temporary Works and the Contractor's Equipment which may happen otherwise than through the default of the Purchaser.
- 20.8 The property in the Contractor's Equipment and all materials in the Temporary Works shall revert to the Contractor on the completion of the Works or the termination of the Contract whichever shall be the earlier.

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**21. Engineer's Supervision and Engineer's Representative**

- 21.1 After the Contract has been made all instructions and orders by the Purchaser to the Contractor shall, except as in the Contract otherwise provided, be given by the Engineer.
- 21.2 The Contractor shall be responsible for ensuring that the position, levels and dimensions for the Works are correct according to the drawings notwithstanding that he may have received the assistance or approval of the Engineer in setting out those positions, levels and dimensions.
- 21.3 All the Works shall be carried out in accordance with the Contract and under the direction and to the reasonable satisfaction of the Engineer.
- 21.4 The Engineer may from time to time delegate any of the powers, discretions, functions and authorities vested in him and may at any time revoke that delegation. Any delegation or revocation shall be in writing signed by the Engineer and, in the case of a delegation, shall specify the powers, discretions, functions and authorities thereby delegated and the person or persons to whom the same are delegated. No delegation shall have effect until a copy of it has been delivered to the Contractor. Any person to whom any delegation is made shall be entitled to exercise the powers, discretions, functions and authorities so delegated to him.
- 21.5 Any delegation made under Clause 21.4 to any person by the Engineer shall not relieve the Contractor from any obligation or liability to the Purchaser under the Contract and any decision made by that delegated person may be appealed against by the Contractor to the Engineer.

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**22. Engineer's Decisions**

- 22.1 Subject to Clauses 22.2 and 22.3 the Contractor shall proceed with the Works in accordance with decisions, instructions and orders given by the Engineer in accordance with these General Conditions.
- 22.2 If the Contractor shall, without undue delay after being given any decision, in-

struction or order otherwise than in writing, require it to be confirmed in writing, that decision, instruction or order shall not be effective until that written confirmation has been received by the Contractor.

- 22.3 If the Contractor shall, by written notice to the Engineer within 14 working days after receiving any decision, instruction or order of the Engineer in writing, intimate that he disputes or questions the decision, instruction or order, giving his reasons for so doing, either the Purchaser or the Contractor may refer the matter to arbitration under Clause 41 (Arbitration). The Contractor's intimation however shall not relieve him of his obligation to proceed with the Works in accordance with that decision, instruction or order of the Engineer. The Contractor shall state in his intimation to the Engineer so far as he is then able to his full reasons for disputing the Engineer's decision, but this shall not prejudice his right to present additional reasons as evidence at any arbitration proceedings.

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**23. Contractor's Representatives**

- 23.1 The Contractor shall employ one or more competent representatives, whose name or names shall have previously been communicated in writing to the Engineer by the Contractor, to superintend the carrying out of the Works on the Site.
- 23.2 At least one Contractor's representative shall at all times be present on the Site during working hours.
- 23.3 Any orders or instructions given by the Engineer to any one of the Contractor's representatives shall be deemed to have been given to the Contractor.

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**24. Care of the Works**

- 24.1 The Contractor shall at his own expense make good and indemnify Purchaser;
- (a) except as provided by Clause 24.2 any loss of, or damage to, the whole or any part of the Works or of the Temporary Works or of the Contractor's Equipment which in the case of the whole or any part of the Works occurs before a Taking-Over Certificate shall be issued for the same under Clause 31 (Take Over) or which in the case of the Temporary Works or the Contractor's Equipment occurs before the same are finally removed from the Site.
  - (b) Any loss of or damage to the whole or any part of the Works which occurs after a Taking-Over Certificate has been issued under Clause 31 (Take Over) but before the end of the last Period of Defects Liability under Clause 33 (Defects Liability Period) and which results from any act or omission of the Contractor or his Sub-Contractors or any employee or representative of the Contractor or his Sub-Contractors.
- 24.2 The Contractor shall not be liable to make good at his own expense any loss or damage that may result from any of the following excepted causes:
- (a) riot and radio-active contamination (in so far as either of them is uninsurable), war, invasion, act of foreign enemies, hostilities (whether or not war be declared), civil war, rebellion, revolution, insurrection, military or usurped power except Contractors Equipment (which the Contractor always is liable for);
  - (b) Loss or damage directly caused by design or information made available by the Purchaser for which the Contractor has before acting thereon disclaimed responsibility in writing; or
  - (c) loss or damage directly caused by any act or omission of the Purchaser or any employee or representative of the Purchaser.

The Contractor shall nevertheless comply with any variation order properly made under Clause 14 (Variation Orders) for making good loss or damage resulting from any of the excepted causes listed above.

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**25. Insurance of the Works**

- 25.1 The Contractor shall insure in the joint names of the Contractor and the Purchaser the whole and every part of the Works, the Temporary Works and the Contractor's Equipment at full replacement value against all loss or damage from any cause arising (other than any of the excepted causes referred to in Clause

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24.2(a)) with insurers and in terms approved by the Purchaser and shall maintain that insurance in full force and effect until subject to Clause 25.3 the Works shall have been completely taken over.

25.2 The Policy of Insurance shall be shown to the Purchaser whenever he requests together with satisfactory evidence of payment of premiums. If any Insurance is not effected or any premium not paid the Purchaser may effect or pay the same and deduct the cost of doing so from the Contract Price.

25.3 In particular the Contractor shall ensure that the insurance policy covers

(a) loss or damage occurring during any Defects Liability Period after a Taking-Over Certificate has been issued but from a cause occurring prior to the issue of that certificate, and

(b) loss or damage occurring during any Defects Liability Period of the kind referred to in Clause 24.1(b).

25.4 The provisions of this Clause shall not limit the obligations and liabilities of the Contractor under Clause 24 (Care of the Works).

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## **26. Liability**

26.1 The Contractor shall indemnify and keep the Purchaser fully indemnified against all actions claims proceedings liabilities costs expenses and losses (including but not limited to direct, indirect and consequential loss of profit or loss of production whether foreseeable or not) in relation to death or injury to persons (including but not limited to any employee of the Purchaser) or loss of or damage to property (including but not limited to property of the Purchaser but not including property being part of the Works) or a breach of contract by the Contractor to the extent that such death injury loss damage or breach is attributable to the acts or omissions of the Contractor its officers employees agents or sub-contractors.

The remedies contained in this Clause are without prejudice to and in addition to any warranties indemnities remedies or other rights provided by law and/or statute and/or under any other provision of this Agreement for the benefit of the Purchaser.

26.2 Except in respect of claims for personal injury or death or loss of or damage to third party property or wilful misconduct or intent by the Contractor the liability of the Contractor arising under Clause 26.1 for any one act or omission shall not exceed (unless otherwise stipulated in First Appendix) 200 % of Contract Price or £10 Million whichever is the greater.

26.3 The Contractor shall during the period of the Contract hold adequate insurance policies to cover the full amount of the Contractors potential liability under clause 26.1 and 26.2 unless otherwise stipulated in First Appendix. Satisfactory evidence of such insurance and payment of the premium shall be shown to the Purchaser upon request. If insurance is not effected or premiums not paid, the Purchaser may effect or pay the same and may deduct the cost of so doing from the Contract Price.

26.4 The Contractor shall hold employers' liability insurance in respect of his employees of at least a minimum of £10 million (ten million pounds sterling) in respect of any one event or series of connected events.

26.5 The Contractor will insert appropriate conditions in his sub-contracts reflecting the provisions of Clauses 24 to 26 inclusive. The terms of this Clause 26.5 do not limit the scope of Clause 10.5 (Assignment and Sub-contracting).

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## **27. Rejection and Replacement**

27.1 If at any time before the Works are accepted under Clause 32 (Acceptance) the Engineer shall:

(a) decide that any work done or Plant supplied or materials used by the Contractor or any Sub-Contractor is defective or not in accordance with the Contract or that the Works or any part of the Works is defective or does not fulfil the requirements of the Contract (all these matters being called in this Clause "defects"), and



	(b)	as soon as reasonably practicable give to the Contractor notice in writing of that decision specifying particulars of the defects alleged and of where the same are alleged to exist or to have occurred, and
	(c)	so far as may be necessary place the Plant at the Contractor's disposal then the Contractor shall at his own expense and with all possible speed make good the defects so specified. In case the Contractor shall fail so to do the Purchaser may, take, at the cost of the Contractor, any steps as may in all the circumstances be reasonable to make good the defects.
	27.2	All Plant provided by the Purchaser to replace defective Plant or Works shall comply with the Contract and shall be obtained at reasonable prices and where reasonably practicable under competitive conditions. The Contractor shall be entitled to remove and retain all Plant that the Purchaser may have so replaced at the Contractor's cost.
	27.3	All direct and indirect costs and expenses properly incurred by the Purchaser under this Clause in addition to those under Clause 27.2 shall be paid by the Contractor.
<b>28. Extension of Time for Completion of the Works</b>	28.1	If the Contractor shall have been delayed in his execution of the Works or any part of the Works by any cause whatsoever outside his reasonable control, he shall immediately give notice in writing of that delay to the Engineer and the Engineer shall then grant in writing to the Contractor such extension of time as shall in the circumstances be reasonable. Without prejudice to the generality of the foregoing, default actions or omissions of the Purchaser (including those of other contractors of the Purchaser) shall be deemed to be outside the reasonable control of the Contractor.
	28.2	Shortage of staff or workman or of any materials or things to be provided under the Contract shall not of itself be deemed a cause outside the reasonable control of the Contractor.
<b>29. Liquidated Damages</b>	29.1	If the Contractor fails to complete the Works or any part of the Works including the satisfactory carrying out of the Completion Tests within the time fixed by the Contract for that completion or any extension of that time then for so long as that failure continues the Contractor shall pay to the Purchaser the sum agreed as liquidated damages calculated in accordance with the First Appendix hereto.
	29.2	If the Works or any part of the Works fail to meet any performance guaranteed under Acceptance Tests in accordance with the Contract the Contractor shall pay to the Purchaser the sum agreed as liquidated damages stated in the First Appendix hereto.
	29.3	Liquidated damages under Clause 29.1 or 29.2 shall be in full satisfaction of the Contractor's liability for the relevant failure except that the Contractor shall not be paid any sum (whether under the terms of this Contract or otherwise) to which he would not have been entitled if he had completed the Works within the time fixed for completion or any extension thereof or (as the case may be) if the Works had met any performance guaranteed under Acceptance Tests in accordance with the Contract.
	29.4	If any failure under Clause 29.1 or 29.2 shall not be solely that of the Contractor because the Purchaser or a third party for whom the Contractor shall not have been responsible shall have contributed to the delay or shortfall in performance then the liquidated damages shall be adjusted to such extent as may be just and equitable having regard to the degree of the Contractor's responsibility for the delay or shortfall in performance.
<b>30. Completion</b>	30.1	As soon as the Works or any part of the Works is complete (except in minor respects which do not effect the carrying out of the Completion Tests) in accordance with the Contract the Contractor shall notify the Engineer in writing of the date when the Contractor will be ready to make the Completion Tests specified in the Contract or agreed between the Contractor and the Engineer as being necessary

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and unless otherwise agreed the tests shall take place on a day appointed by the Engineer within ten days after that date or on such day or days as the Engineer shall in writing notify the Contractor.

- 30.2 The Purchaser, except where otherwise agreed, shall provide free of charge such labour, materials, electricity, fuel, stores and apparatus as may be requested and as may be necessary to operate the Works and carry out the Completion Tests efficiently.
- 30.3 If the Engineer shall fail to appoint a date after being reasonably requested to do so or unreasonably fail to attend on the appointed day for making the Completion Tests the Contractor shall be entitled to proceed in his absence and the Completion Tests shall be deemed to have been made in the presence of the Engineer.
- 30.4 If in the opinion of the Engineer Completion Tests are being unduly delayed he may by notice in writing call upon the Contractor to make these tests within ten days from the receipt of that notice and the Contractor shall make the tests on such day within ten days as the Contractor may reasonably fix and of which he shall give notice to the Engineer. If the Contractor fails to make these tests within that time the Engineer may himself proceed to make the tests. All tests so made by the Engineer shall be at the risk and expense of the Contractor unless the Contractor shall establish that the tests were not being unduly delayed in which case tests so made shall be at the risk and expense of the Purchaser.
- 30.5 If the Works or any part of the Works on being tested in the agreed manner fails to pass the tests, then further Completion Tests of the Works or that part thereof, if required by the Engineer or by the Contractor, shall be repeated within a reasonable time or times on the same terms and conditions, save that all necessary expenses to which the Purchaser may be put by the repetition of those tests shall be deducted from the Contract Price.

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## **31. Take Over**

- 31.1 As soon as the Engineer through the Completion Tests has verified that the Works have been completed in accordance with the Contract except in minor respects which do not effect its operation and except under Clause 33 (Defects Liability Period) the Engineer shall issue to the Contractor a Certificate, called a "Taking-Over Certificate", in which he shall certify the date on which the Works have been so completed and have passed those tests and the Purchaser shall be deemed to have taken over the Works on the certified date.
- 31.2 The issue of a Taking-Over Certificate shall not operate as an admission that the Works have been completed in every respect.
- 31.3 If the Works are divided into two or more sections Clause 31.1 shall apply to each section as it applies to the Works. If by agreement between the Purchaser and the Contractor any part of the Works (other than a section or sections) shall be taken over in accordance with Clause 31.1 before the remainder of the Works, the Engineer shall issue a Taking-Over Certificate in respect of that part.
- 31.4 If by reason of any default of the Contractor a Taking-Over Certificate has not been issued in respect of the whole or any part of the Works within one month after the date agreed for Completion Tests, or if no time be fixed within a reasonable time, the Purchaser may use the same without this being deemed as Taking Over the Works. The Contractor shall be given reasonable opportunity to take any necessary steps permitting the issue of a Taking -Over Certificate.
- 31.5 If by reason of any default or omission of the Purchaser or the Engineer or some other contractor employed by the Purchaser the Contractor shall be prevented from carrying out the Completion Tests as provided in Clause 30 then, unless in the meantime the Works shall have been shown not to be substantially in accordance with the Contract, the Purchaser shall be deemed to have taken over the Works, and the Engineer shall issue a Provisional Taking-Over Certificate accordingly; nevertheless the Contractor shall make those tests during the period specified in the First Appendix hereto and when required by the Engineer by fourteen days' notice in writing to the Contractor and Clauses 30.2 to 30.5 inclusive shall then apply. Any additional and proper expense to which the Contractor may be put in making the tests shall be added to the Contract Price and reasonable allowance shall be made from the performances required to be attained in those tests having regard to any prior use of the Works by the Purchaser.

- 31.6 If the Works or any part of the Works shall fail to pass any Completion Tests as and when carried out under Clause 31.5 the Engineer shall issue to the Contractor and the Purchaser a Revocation Certificate and thereupon the Contractor shall repay all monies paid to him under the Provisional Taking-Over Certificate issued under Clause 31.5 and (if applicable) under the Final Certificate issued under Clause 33.7 and the rights and obligations of the Contractor and the Purchaser shall be as if the Purchaser had never taken over the Works or part of the Works provisionally taken over and accordingly the Provisional Take Over Certificate and any Final Certificate which may have been issued before issue of the Revocation Certificate shall also by the issue of the Revocation Certificate be deemed to be revoked.

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**32. Acceptance**

- 32.1 As soon as practicable after the Works or any part of the Works have been taken over in accordance with Clause 31 (Take Over) and at a date to be agreed with the Engineer the Acceptance Tests specified in the Contract or agreed between the Contractor and the Engineer as being necessary shall then take place. If the Engineer shall unreasonably fail to attend the Acceptance Tests on the appointed day the Contractor shall be entitled to proceed in his absence and the Acceptance Tests shall be deemed to have been made in the presence of the Engineer.
- 32.2 Acceptance Tests shall be carried out by the Purchaser/Contractor\* under the supervision of the Purchaser/Contractor\* in accordance with the operating manuals and instructions provided by the Contractor under Clause 8.2 (Plant Lists) and any other directions which the Contractor may give to the Purchaser.
- 32.3 As soon as the Engineer through the Acceptance Tests has verified that the Works operate in accordance with the Contract a Engineer shall issue to the Contractor a certificate called an Acceptance Certificate in which he shall certify the date on which that test has been so passed and the Purchaser shall be deemed to have accepted that part of the Works to which that certificate related on that date.
- 32.4 Clause 30.2, 30.4 and 30.5 (Completion) and clause 31.2 to 31.6 inclusive (Take Over) shall apply to this Clause 32 save that in those provisions "Acceptance" shall be read for all references to "Completion" or "Take Over" and "Clause 32" shall in the fourth line of Clause 31.5 be read for "Clause 30". If Clause 31.6 shall apply when the Defects Liability Period shall have expired the date of the Revocation Certificate shall also be deemed to begin again the Defects Liability Period for the period stated in the First Appendix hereto but from the date of the Revocation Certificate as opposed to the date of Take Over.

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**33. Defects Liability Period**

- 33.1 For the period stated in the First Appendix hereto from the date on which the Works or any part of the Works have been taken over under Clause 31 (Take Over) the Contractor shall be responsible for making good with all reasonable speed any defect or damage to the same or any other issue where the Works is not operating according to contract that may develop under the conditions provided for by the Contract and under proper use arising from
- (a) defective design (other than a design made, furnished or specified by the Purchaser and for which the Contractor has disclaimed responsibility in writing within a reasonable time after the receipt of the Purchaser's instructions), materials or workmanship, or
  - (b) any act or omission of the Contractor done or omitted during or before the Defects Liability Period.
- 33.2 If any defect or damage or other issue as in Clause 33.1 shall occur the Engineer shall inform the Contractor of it in writing stating its nature. If the Contractor replaces or renews any part of the Works, the provisions of this Clause shall apply to that part until the expiration of the period referred to in 33.1 from the date of that replacement or renewal.
- 33.3 If any defect or damage be not remedied within a reasonable time the Purchaser may do the work at the Contractor's risk and expense, but without prejudice to any other rights which the Purchaser may have against the Contractor in respect of the failure of the Contractor to remedy that defect or damage.

- 33.4 If any replacement or renewal is of such a character as may effect the efficiency of the Works or any part of the Works, the Purchaser may within one month of that replacement or renewal give to the Contractor notice in writing requiring that Completion or Acceptance Tests be made, in which case tests shall be carried out as provided in Clause 31 (Take Over) or in Clause 32 (Acceptance).
- 33.5 These General Conditions shall apply to all inspections, adjustments, replacements and renewals and to all related tests carried out by the Contractor during the Defects Liability Period.
- 33.6 Until the Final Certificate shall have been issued, the Contractor shall have the right of access, at all reasonable working hours, at his own risk and expense, by himself or his duly authorised representatives, whose names shall have previously been communicated in writing to the Engineer, to inspect all parts of the Works and take notes of their related working and performance records. Subject to the Engineer's approval, which shall not be unreasonably withheld, the Contractor may at his own risk and expense make any tests which he considers desirable.
- 33.7 On expiration of the last Period of Defects Liability under this Clause 33 the Engineer shall issue a Final Certificate certifying that the Works are finally complete.

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**34. Payments due from the Contractor**

Any sum due from the Contractor to the Purchaser in accordance with the Contract may be deducted by the Purchaser from any sum due or becoming due to the Contractor under the Contract without prejudice to any other rights the Purchaser may have.

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**35. Provisional Sums**

- 35.1 Any provisional or prime cost sum provided for in the Contract shall subject to Clause 10 (Assignment and Sub-Contracting) and Clause 14 (Variation Orders) be expended or used in whole or in part as the Engineer may in writing direct and not otherwise.
- 35.2 Any sum properly expended under Clause 35.1 may be included for payment in any interim or Final Certificate.

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**36. Payment**

- 36.1 The Contract Price as adjusted in accordance with the Conditions of this Contract shall be paid in instalments in accordance with the Payment Schedule being the Second Appendix hereto. The Payment Schedule will provide for installments to relate to work done, documents furnished and contractual dates achieved, namely to progress, to delivery of maintenance and operating manuals and drawings or other contract documents, to Taking Over, to Acceptance and to Final Certificates.
- 36.2 The Contractor may present an invoice to the Purchaser for each installment on or after its due date for presentation taking account of any additions or deductions to the Contract Price properly to be made in accordance with the Contract and each invoice shall show how the installment has been calculated.
- 36.3
- (a) If after the receipt of an invoice, the Works or any part of the Works shall not be in accordance with the Contract, the Purchaser may withhold the invoice to the extent of the Contract Value of making good the defect and require a credit note corresponding to the value of the work which is not in accordance with the Contract. Any installment withheld in whole or in part shall be paid to the Contractor on the defect being made good;
  - (b) If after the receipt of an invoice, without reasonable cause the Contractor falls behind the approved programme (or where no programme has been approved he fails to achieve the progress which in the reasonable opinion of the Engineer is necessary to complete the Works within the time fixed for Completion or any extension thereof), then the Purchaser may withhold from the invoice the value of the work which then has not been done but ought to have been done, and require a credit note corresponding to the value of that work which has not been done but ought to have been done. Any installment withheld in whole or in part shall be paid to the Contractor after the Contractor has made good his said failure or upon the issue

of the Taking Over Certificate, whichever is the earlier.

- 36.4 Unless otherwise stated in the Contract the Purchaser will pay the Contractor the amount due in respect of the invoice on the thirtieth day of the second calendar month following the month in which the relevant event set out in the Second Appendix occurs provided that the invoice contains the Purchaser's order number and reaches the Purchaser on or before the fifth day of the first calendar month following the month in which the relevant event set out in the Seconds Appendix occurs.

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**37. Currency of Payment**

All payments under the Contract by the Purchaser to the Contractor and by the Contractor to the Purchaser shall be made in sterling money or in such currency as may be mutually agreed. All payments shall be made to such account as shall be nominated by the recipient thereof.

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**38. Contract Price Analysis**

If the Purchaser so requires in circumstances where he considers details furnished to him are inadequate the Contractor shall provide the Purchaser with a detailed analysis of the Contract Price in a form which will meet the reasonable requirements of the Purchaser.

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**39. Statutory and other Regulations**

- 39.1 The Contractor shall in all matters arising in the performance of the Contract conform at his own expense with all Acts of Parliament and with all orders, regulations and by-laws made with statutory authority by Government Departments or by local or other authorities that shall be applicable to the Works, but if by reason of the making after the date of the Contractor's tender of any Act, order, regulation or by-law which specifically relates only to the Works the cost to the Contractor of the performance of the Contract shall be increased or reduced the Contract Price shall be increased or decreased by the corresponding amount.
- 39.2 The Purchaser shall, when required, afford all reasonable assistance to the Contractor in obtaining information as to local conditions.
- 39.3 The Contractor shall not in the performance of the Contract in any manner endanger the safety of or unlawfully interfere with the convenience of the public.
- 39.4 The Contractor shall comply with, and shall ensure that his Sub-contractors comply with, the Purchaser's Site Regulations and in particular (but without limitation) those regulations relating to safety and health. In relation to safety it shall be the duty of the Contractor before beginning work on the Site and every month thereafter to obtain from the Engineer all codes instructions and regulations on safe methods of work issued by the Purchaser and in force during the whole period of the Contract. Before beginning work on the Site the Contractor shall also arrange a meeting with the Engineer to discuss these codes, instructions and regulations and shall sign a certificate provided by the Engineer stating that the Contractor has been made aware of the Purchaser's safety requirements and has received copies of the relevant documents and the Contractor will be responsible for communicating the contents of the same to all his own personnel and to his Sub-Contractors. The certificate will be retained by the Engineer and a copy of it shall be handed to the Contractor who shall make it available for inspection on request. The above detailed procedure shall be carried out every twelve months during the continuation of the Contract but if the Contractor leaves the Site or any premises of the Purchaser for more than three months then on his return he shall visit the Engineer for consultation before carrying out further work.

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- 39.5 It is a fundamental condition of the Contract and of the placing by the Purchaser of the business incorporated in the Contract with the Contractor that the Contractor shall have complied and shall at all times and in every respect comply with the Code of Conduct of the Purchaser as issued from time to time.

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**40. Employment of Persons**

- 40.1 In order to ensure that the best possible competence of the workforce and labour relations shall be associated with the Contract, the Contractor shall observe and comply with the provisions with regard to the employment of persons which are stated in this Clause 40. Except where otherwise indicated below these provisions shall apply to all persons employed by the Contractor in the performance of the

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Contract, either on the Purchaser's Site or in every factory or workshop used by the Contractor. The provisions shall be deemed to apply equally to persons employed directly by the Contractor and also to those persons employed by his Sub-Contractors. All above is below named "Persons Employed".

- 40.2 All Persons Employed shall:
- (a) have the necessary skills and experience to the best professional standards carry out the Works
  - (b) have sufficient, adequate and well maintained plant, equipment, (including, without limitation, safety clothing and safety equipment) machinery and tools to carry out the Works.
- 40.3 The contractor shall for all Persons Employed pay rates of wages and observe hours and conditions of labour in accordance with the relevant national or local agreement between the Contractor(s) and the Trade Union(s) for the trade or industry in the district or Site where the Works are being executed.
- 40.4 The Engineer shall be entitled if he so requires to have suitable certificates of competence from the Contractor for any Persons Employed. The Engineer shall be at liberty to object to any representative or Persons Employed in the execution of or otherwise about the Works either on the Site or in any other place who shall in the opinion of the Engineer misconduct himself or be incompetent or negligent. The Contractor shall remove that person from the Works and he shall not be again employed by the Contractor in connection with the Works without the permission of the Engineer. Any removal or withdrawal of labour under this Clause shall not constitute a valid reason for the Contractor's failure to complete the Works in accordance with the Contract.
- 40.5 The Contractor shall state in respect of his site employees and the employees of major Sub-Contractors:-
- (a) the name of Employer's association, Regional Affiliation (if appropriate) and National Agreement followed (and/or domestic Agreement)
  - (b) the normal total weekly working hours on which his tender was based
  - (c) an indication of the rates which he proposes to pay for his various grades of labour, with details of number of persons to be employed, together with details of how these rates are made up and the amount of any variation from the terms of the National Agreement stated in Clause 40.4(a) above (the ratio in each trade of craftsmen to apprentices employed by the Contractor on the Site shall not exceed such rate as may be agreed with the Engineer)
  - (d) details of his domestic procedure for dealing with labour disputes and of any variances from the procedure contained 'in the National Agreement referred to in Clause 40.4(a) above
  - (e) details of any variances in holiday and sick pay arrangements from those stated in the National Agreement referred to in Clause 40.4(a) above.

In the case of minor Sub-Contractors this information will be required before consent to the sub-contract may be given under the provisions of Clause 10.

- 40.6 The Contractor shall advise the Purchaser in good time before entering into any commitment materially to alter pay or other conditions of employment or methods of working for the Contractor's site workforce or those of any Sub-Contractors' site workforce.
- 40.7 The Contractor acknowledges that in preparing his tender he has allowed for Site Works to be carried out during a specified "standard working week" of the numbers of hours indicated in the First Appendix hereto. Should the Contractor for any reason whatsoever wish to deviate from the standard working week, the approval

in writing of the Engineer shall first be obtained. The cost of any additional premium time resulting from deviation from the standard working week shall be borne by the Contractor. Premium time means the difference between the number of hours paid to the employee and the number of hours actually worked by that employee.

- 40.8 The Contractor shall not be entitled to claim any extra payment or an extension of time for completing the Works by reason of any delay or increased cost to him through any failure or inability on the part of the Contractor to obtain sufficient suitable labour at the times required to comply with the programme.
- 40.9 The Contractor shall take part in and abide by the procedures of any consultative machinery set up by the Engineer to co-ordinate labour relations and conditions of employment. In particular the Contractor will:-
- (a) observe (and ensure that his Sub-Contractors observe) the terms and conditions of the National Agreement relevant to his trade
  - b) have access to external procedures for the avoidance of labour disputes concerning his site workforce, be a member of the relevant Federation, Association or other Employer Organisation relevant to his trade and place the same requirement on his Sub-Contractors
  - (c) supply regular information to the Purchaser concerning the Contractor's forecast site manpower requirements, actual manning, earnings analyses and disputes relating to his site workforce, and supply similar information concerning his Sub-Contractors
  - (d) co-operate fully in any confidential audit by the Purchaser or his Agent of the Contractor's site payrolls, method of payment and presence on Site of the Contractor's workforce or in any similar audit of his Sub-Contractors
  - (e) inform the Purchaser, through the Engineer, of the occurrence of any dispute on Site immediately and in writing within 24 hours of its incidence and of any significant dispute off Site which could adversely effect the Contract.

The Contractor shall also provide written information as may be called for by the Engineer on any matters which the latter may deem to be relevant to the dispute and its proper settlement. The Contractor will also hold himself freely available for consultations, discussions and negotiations relating to the dispute and its settlement.

- 40.10 The Contractor shall not without the consent of the Purchaser or of the contractor concerned knowingly take into employment workmen or other employees from the Purchaser or from any other contractor employed in connection with the Works by the Purchaser.

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- 40.11 The Contractor will provide during the period of the Contract all proper welfare and amenity facilities for his employees and will describe these in his tender.
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## **41. Dispute resolution**

- 41.1 If the Contractor is a company registered in United Kingdom any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall be referred to the resolution of the High Court, in Sheffield, England.

If the Contractor is a company registered in a country outside United Kingdom any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules (London Court of International Arbitration), which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three. The seat, or legal place, of arbitration shall be Sheffield, England. The language to be used in the arbitral proceedings shall be English.

- 41.2 A dispute relating to a decision, instruction or order of the Engineer shall not be referred to Court or Arbitration unless notice has been given in accordance with

Clause 22 (Engineer's Decisions).

41.3 Performance of the Contract shall continue pending the result of arbitration proceedings.

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**42. Photography, Publication and Visits**

The Contractor shall not take or permit to be taken any photographs of the Works in whole or in part or publish or consent to the publication of any description of the same or any other related matter without the previous written consent of the Purchaser. The Purchaser may charge a reasonable fee for and shall receive free copies of any photographs of or any publication of descriptions of the Works. The Purchaser may charge a reasonable fee for conducting approved visitors on tours of the Site.

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**43. Advertisements**

The Contractor shall not erect any advertisement or notice board (except for notices required to be displayed by statute or by these General Conditions) on the Site or on any other part of the Purchaser's premises without first applying for and obtaining the Purchaser's consent in accordance with the Purchaser's Site Regulations.

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**44. Temporary Buildings**

The Contractor shall not erect any office, mess room, stores or other temporary building without the previous written consent of the Engineer and shall indemnify the Purchaser from and against any general rate or other outgoings which may be charged or assessed on or in respect of the same. The Contractor shall keep all buildings so erected in good repair and in a tidy condition.

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**45. Safety**

The Contractor shall at all times adopt safe working practices and at the proper time supply and install within the original Contract Price such guards and safety devices as may at the time of completion and acceptance be necessary to comply with the provisions of all health and safety legislation (including the Factories Act, 1961, the Health and Safety At Work etc. Act, 1974, and any Orders and Regulations made under these) and the requirements of the Factory Inspectorate under such legislation.

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**46. Security for Bid and Performance**

46.1 The Contractor shall at his own expense if required by the Purchaser in the invitation to tender provide by way of guarantee of execution of the Works a bid bond and/or performance bond or other security from a surety or sureties and in a form and amount acceptable to the Purchaser. The amounts of the bonds are stated in the First Appendix hereto.

46.2 If proper security in accordance with Clause 46.1 shall not have been provided within the time allowed in the Contract and the Contractor shall not have complied within seven days with a written notice directing the Contractor to provide that security the Purchaser may then terminate the Contract by notice in writing to the Contractor. That termination shall not prejudice any other right or remedy the Purchaser may have against the Contractor and the Purchaser shall not be liable for any claim from the Contractor in respect of any work done under or in connection with the Contract but the Purchaser shall be entitled to be repaid by the Contractor all expenses properly incurred by the Purchaser incidental to the obtaining of new tenders.

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**47. Limitation of Liability**

47.1 Without prejudice to and except under Clause 11, Clause 26.1 and Clause 29, the Contractor shall not be liable to the Purchaser for loss of production or of profits or of contracts which the Purchaser may suffer as a result of any breach of contract by the Contractor or as a result of the breach of any duty owed at common law to the extent that the act, omission or default constituting such a breach of duty would also constitute a breach of any written term of the Contract.

47.2 Subject to Clause 47.1, and without prejudice to Clauses 11 and 26.1, the Contractor will indemnify and hold harmless the Purchaser from and against all loss, damage, cost, expense, claims, proceedings or liability which may arise in

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		consequence of any breach by the Contractor of this Contract or of any other duty (whether at common law or otherwise) owed by him in connection with the execution of the Works.
<b>48. Variation in Costs Formulas</b>		The Purchaser and the Contractor shall consult together on any appropriate proposed Contract to determine whether formulas relating to variations in costs of labour or materials should be applied to increase or decrease the Contract Price and if so which formulas shall be applied.
<b>49. Statutory Payments</b>		The Contractor shall be responsible for collection deduction (where appropriate) and payment to the responsible authority of all statutory payments (including National Insurance Contributions and Training Levy) in respect of all persons employed by or taken on or directed by the Contractor or by his Sub-Contractors in connection with the execution of the Works. The Contractor shall indemnify the Purchaser against all actions, claims, demands, costs, charges and expenses related to such statutory payments and suffered or incurred by the Purchaser.
<b>50. Bankruptcy</b>		<p>If the Contractor shall have a winding up or bankruptcy petition presented or enter into any form of voluntary arrangement with its creditors or become bankrupt or insolvent, or have a receiving order made against him, or compound with his creditors or enter into administration, or being a corporation commence to be wound up, not being a members' voluntary winding up for the purpose of reconstruction or amalgamation, or carry on its business under a receiver for the benefit of its creditors or any of them, the Purchaser shall be at liberty and at no cost to him, either:-</p> <p>(a) to terminate the Contract forthwith by notice in writing to the Contractor or to the receiver or liquidator or to any person in whom the Contract may become vested, and to act in the manner provided in Clause 16 (Contractor's Default) as though the last mentioned notice had been the notice referred to in Clause 16 and the Works had been taken out of the Contractor's hands, or</p> <p>(b) to give such receiver, liquidator or other person the option of carrying out the Contract subject to his providing a guarantee in a form and from a guarantor acceptable to the Purchaser for the due and faithful performance of the Contract up to an amount to be agreed.</p>
<b>51. Secrecy</b>	50.1	All information or design supplied by the Purchaser in connection with the Contract shall remain the property of the Purchaser and be kept confidential and shall not be disclosed (except to Sub-contractors accepting a like obligation of secrecy, and then only to the extent necessary for the performance of the sub-contract) or made use of by the Contractor, except as necessary for the Contract. The Contractor shall not make copies of the foregoing, except as necessary for the Contract, and on completion of his Contract he shall return all such material and all copies thereof to the Purchaser, including those supplied to Sub-Contractors.
	50.2	Process knowledge or application information gained by the Contractor in the course of performance of the Contract and applicable to the Works shall also be confidential and shall not be disclosed by the Contractor to a third party.
	50.3	The Contractor shall make all necessary special arrangements to comply with these requirements.
	50.4	If required by the Purchaser, the Contractor shall sign a Secrecy Agreement in such form as the Purchaser shall specify.
	50.5	This undertaking to keep information secret will not apply to information which: <p>(a) is obtained by the Contractor from a third party with good legal title thereto, or</p> <p>(b) is in or comes into the public domain otherwise than through the default of the Contractor.</p>
	50.6	The Contractor will not permit any person other than those employed by him for the purposes of the Contract to visit the Site or be employed on the Works without the written permission of the Purchaser.

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**52. Industrial Property**

All inventions developed for the Purchaser at or substantially at the Purchaser's expense and arising out of the performance of the Contract or out of the use and operation of the Works or out of developments of or improvements or modifications to the Works (whether made during or after the performance of the Contract) shall be the property of the Purchaser who shall be entitled to apply for and hold such patent or other registered protection therefore as the Purchaser thinks fit. The Contractor shall sign any documents needed to effect this Clause.

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**53. Law**

The Contract shall be governed by and construed in accordance with English Law.

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## Completion of Clause Detail

Clause		
2.3	Effective date of Contract	200
5.1	Outline programme to be submitted by the Contractor on	200
5.3	Number of days for Contractor's submission of detailed programme	200
7.2	Number of days for Engineer to comment upon drawings	200
7.3	Number of copies of drawings to be submitted by Contractor	200
7.6	Number of copies of final drawings to be submitted by Contractor	200
8.1	Date list of components to be supplied by	200
	Number of copies	.....
8.2	Date manuals to be supplied by	200
	Number of copies	.....
8.3	Date list of spares to be supplied by	200
	Number of copies	.....
8.4	Date hazard lists to be supplied by	200
	Number of copies	.....
26.2	Limit of liability for any one act or omission of the contractor to the purchaser	£.....
26.3	Minimum amount of damage and injury insurance	£.....
** 29.1	Amount of liquidated damages for late completion	£.....
	* Maximum Contract Value of any section or part	.....
	* Overall maximum of Contract Price	.....
*** 29.2	Amount of liquidated damages for failure to meet guaranteed performance	£.....
	* Maximum contract Value of any section or part	.....
	* Overall maximum of contract Price	.....
29.2	Amount of liquidated damages for failure to meet guaranteed utilities consumptions	£.....
31.5	Period during which the Engineer may require Completion Tests to be carried out under Clause 31.2	..... months from 200
31.5	Period during which the Engineer may require Acceptance Tests to be carried out under Clause 31.5 (as incorporated by clause 32.4)	.....months from 200
32.4		
33.1	Period of Defects Liability from Take Over	..... months

40.5 "Standard working Week"

Monday to Thursday ( )  
working hours a day

Fridays ( )  
working hours a day

Saturdays (.....)  
working hours a day

Sundays (.....)  
working hours a day

46.1 Amount of bond or other security (if any)

£.....

**Note:**

\* Delete if not applicable

\*\* Delete if not applicable

If deleted, replace with the words, "no liquidated damages for delay, therefore Clause 47 deemed deleted and shall not apply in relation to Contractor's liability for late completion"

\*\*\* Delete if not applicable

If deleted, replace with the words, "no liquidated damages against performance, therefore Clause 47 deemed deleted and shall not apply in relation to Contractor's liability for performance criteria/guaranteed utilities consumptions"

# Payment Schedule

Clause 36 (Payment) - delete items where inapplicable

Minimum sum in payment on Progress Payment Certificate £.....  
(or such other currency as may be agreed)

Maximum percentage payment on Progress Payment Certificate of the work done as detailed in certificate % of Progress Payment Certificate

Payment for maintenance and operating manuals and instructions/drawings/other contract documents as may be agreed

Payment on Taking-Over Certificate % of Contract Price

Payment on Acceptance Certificate % of Contract Price

Payment for Drawings as may be agreed

Payment for Final Certificate % of Contract Price

**Special Conditions** as annexed hereto