

**Standard Bid Documents**

**For Limited Tenders**

**For the Contracts of Executing the  
General Works**

**Second Phase**

## **Introduction**

These tender documents of the government contracts were prepared to execute works thru limited tenders for projects which its full technical documents are available to the employer (plans, bills of quantity, technical specifications), and the responsibility of the contractor shall be supplying execution equipment, execution of works, installing, conduct examinations, delivery tests, and deliver the works to the employer and maintenance.

## **A Brief Description:**

These standard bid documents of work execution by adopting (turnkey) contracts are prepared to be adopted on the general competitive tenders if the prequalification is not carried out, and we list hereunder a brief description of these documents.

The standard documents of works execution include the following:

### **Part One - Contracting Procedures**

Contains the following sections:

#### **Section One– Instructions to Bidders**

This section contains the information related to the contracting procedures in order to facilitate the mission of bidders in preparation of their bid, and also include the information of procedures of submitting, opening and evaluation of bids, and the information of contract awarding. This section contains conditions that cannot be amended by the bidder.

#### **Section Two - Bid Data Sheet**

This section contains the conditions of each tender and they are considered complementary to the information and requirements stated in the first section (Instructions to Bidders).

#### **Section Three - Evaluation and Comparison Criteria to evaluate the tenders whose bidders were not pre-qualified.**

This section contains the adopted criteria to determine the lowest bid price, along with fulfilling the required qualifications by the bidder, which confirm his eligibility to execute the contract.

#### **Section Four - Bid Forms**

This section contains the forms that the bidders shall fill out and submit as part of bid.

## **Section Five- Eligible Countries**

This section contains the information of the eligible countries:

## **Part Two - Work Requirements**

This section contains the following:

## **Section Six– Work Requirements**

This section contains the specifications, plans, bill of quantities and additional information that describe the works required to be executed.

## **Part Three–Contract Conditions and Contract Forms**

It contains the following sections:

## **Section Seven– General Conditions**

This section contains the general conditions that must be applied in all contracts and no amendment on texts of these conditions is allowed by the bidder.

## **Section Eight– Special Conditions**

This section consists of the First Chapter which includes the contract data that contains the special data of contract, and

Second Chapter: includes the special condition of each contract.

The contents of this section are considered complementary to the general conditions and shall be prepared by the employer.

## **Section Nine– Annex to Special Conditions/ Contract Forms**

This section contains the form that when filled out will form a part of the contract, and the forms for the bank guarantee for the good performance guarantee and the bank letter of guarantee for the advance payment shall be filled out by the winner bidder only after the award of contract.

## **Bid Documents**

Issued on:

For executing works  
(insert works definition)

No of limited competitive tender: [Insert name of project]

Employer: [Insert name of employer]

## Invitation Form of Bid Submission

[Insert name of country]  
[Insert name of employer]

No.:

Date:

**To / Insert Name of Bidder**

**Sub. / Insert Name and Number of Tender**

1. [Insert name of the contracting party / name of employer] is pleased to invite the qualified and experienced bidders who conducted the prequalification to submit their bids of special work [insert a brief description of works required to be executed].
2. The qualified bidders who want to obtain additional information shall call [Insert name of contracting party, name and email of the person in charge] [Insert hours of attendance] as shown in the instructions to bidders.
3. Interested bidders can buy bid documents in [Insert language of the bid] language, after submitting written request to the address specified in the instructions to bidders, and after paying the selling value of documents amounted to [Insert amount in Dinar] or [Insert value in other transferrable currency]. The method of payment shall be by [Insert method of payment], and the documents shall be sent by [Insert method of sending the documents].
4. The bids are delivered to the following address [Specify the address aforementioned in the instructions to the bidders] at the specified date [Insert submission date and time]. All bids must include a bid guarantee [Insert letter of bank guarantee and date of submission or certified cheque] in the amount of [Insert amount in dinar] or the equivalent transferrable currency.
5. The bids will be opened by the attendance of the bidders or their representatives who want to attend in the following address [Insert the address specified in the instructions to the bidders] at the time and date [Insert time and date].

**Note:** The contracting party can add additional data that are suitable with the value of the tender provided it does not conflict with the legal legislations that regulate the government contracting in Iraq.

Signature

Insert name of the authorized representative for the contracting party

Insert the position title of the authorized representative for the contracting party

Part One – Contracting  
Procedures

**Part One – Contracting Procedures**

Section One– Instructions to Bidders

Section Two– Bid Data Sheet

Section Three– Evaluation and Qualification Criteria (without prequalification)

Section Four - Bid Forms

Section Five – Eligible Countries

**Part Two – Work Requirements**

Section Six - Work Requirements

**Part Three – Contract Conditions and Contract Forms**

Section Seven– General Conditions of Contract

Section Eight– Special Conditions of Contract

Section Nine– Annexes of the Special Conditions of Contract and Contract  
Forms

**Part One – Contracting Procedures for  
The Contracts of Executing the Works**



**Section One – Instructions to Bidders for  
The Contracts of Executing the Works**

## Section One – Instructions to the Bidders for

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# Instructions to Bidders

## A. Introduction

### 1. Scope of bid

**1-1** In reference to the invitation to bidders the "employer" that has been identified in section two "**Bid Data Sheet**", has issued these documents for the executing of works as set put in section six "Work requirements". The name and number of tender shall be included in **Bid Data Sheet** and Special conditions of the contract.

**1-2** The following shall be adopted in the tender documents:

- A. "Written" shall mean any means of written communication (post, email, fax) with confirmation of their receipt.
- B. Unless the context otherwise requires, the singular form shall be used to describe the plural and vice versa.
- C. "Day" shall mean calendar day.

### 2. Sources of Finance

**2-1** The federal budget of the Government of Iraq

### 3. Fraud and Corruption

**3-1** Employer shall require from bidders, contractors and their subcontractors, suppliers and consultants contracted to adhere to the highest standards of ethics during the contracting process and contract implementation. And to achieve this policy:

- A. The employer shall adopt the following definitions for the purpose of these texts:
  - 1. "Corrupt practices" shall mean provide or give or receive or solicitation of, directly or indirectly, anything of value to influence the work of an official in a position of public responsibility during the supply process or contract implementation.
  - 2. "Fraudulent practices" shall mean any misrepresentation or deletion of any facts in order to influence the supply process or contract implementation.

3. "Collusion practices" shall mean any planning or coordination between two or more bidders, with or without the knowledge of the employer in order to set fake and uncompetitive prices.
4. "Coercive practices" shall mean harm or threat to harm, directly or indirectly, the persons or their properties to influence their participation on the supply process or to influence the contract implementation.
5. "Hindrance practices" shall mean the following:

**First** - The deliberate destruction or forgery or change in documents or withholding evidence necessary for investigation or give false testimony to investigators to hinder the investigation by the employer concerning administrative corruption practices or fraud or collusion or coercive practices or threat or harassment or obstruction of any party and prevent him from providing any information relating to the investigation or to prevent him from pursuing the investigation.

**Second** – Practices that hinder the employer from pursuing the audit and review procedures pursuant to clause (3-1-e) of Instructions to bidders.

- B. Award of contract proposal shall be rejected if it was found out that the bidder who submitted it who has been chosen to be awarded the contract has involved, directly or through an agent, in corrupt or fraudulent or collusion or coercive practices or hindrance during his competing for the contract in question.
- C. Penalties shall be imposed on any institution or individual that has been chosen to be awarded the bid, including the announcement of ineligibility, for limited or unlimited period, if it is found at any time that the institution has been involved, either directly or through an agent, in corrupt, fraudulent, collusive or coercive practices or hindrance during the competition for the contract and / or during the implementation of that contract.
- D. Adding a condition in the contract documents, and the contract funded by the employer states that the bidders or suppliers or contractors or consultants shall allow the employer to carry checks on their accounts, records and documents related to contracting procedures and to implement the contract and to allow to be audited by auditors appointed by the employer.

**3-2** In addition to the foregoing, the bidder shall become familiar with the conditions mentioned in Paragraph (15-6) of the general conditions of the contract.

#### 4. Eligible Bidders

4-1 The bidder shall be either a natural person, private company or state company (owned by the government) or consortium (partnership) according to partnership contracts certified according to the rules, submitted with the bid, if the contracting party does not request to be submitted after the award of tender) ((taking into account the limitations in Paragraph (4-5) of these instructions)), and in case of joint venture and consortium.

A. Unless otherwise stated in the bid data sheet, all partners in the joint venture shall assume full and joint liability for the implementation of the contract under its conditions.

B. The joint venture and consortium shall name a representative acting on behalf of all contributors' partners and he shall be authorized with the powers necessary to implement the contract, starting from the preparation and submission of bid, and then bid award, and through the period of contract implementation.

4-2 Bidders and all partners of a joint venture of nationality holders of any State shall have the right to participate in tenders under the order of the provisional coalition authority (disbanded) No. 87 for the year 2004 or any law that replaces it and instruction in force, provided that Determinants (limitation) indicated chapter five of these documents (Eligible Countries) shall be acted upon.

The bidder holder a nationality of a state, shall either be a citizen in it or has established or participated or registered the company in it and worked under the requirements and conditions of the law of that State. This definition shall be relied on to determine the nationality of any subcontractor or supplier participated in implementation of part of the contract.

4-3 Bidders shall not have any conflict of interests, where any bidder found to be involved in any of the conflict of interest situations listed below shall be excluded and consider to be ineligible:

A. If one of the main partners is a shareholder in more than one company participating in the tender.

B. If the bidder received or will receive any aids directly or indirectly from any other companies participating in the tender.

C. If more than one bidder has one mutual legal representative who acts on their behalf in pursuing bid submission procedures.

D. If there is a relation between bidders directly or through a mutual third party that allows each of them to obtain any information or influence the bid submission to another bidder, or influence the decisions of the employer during the contracting procedures.

- E. If it found out that the bidder has participated in more than one bid in the same tender, bid participated in shall all be considered ineligible. But this shall not include subcontractors to contribute more than one bid.
- F. The bidder who participated previously as a consultant in preparing plans and technical specifications for the works represented by the tender.
- G. If contracting has been made or suggesting contracting with the bidder or any of its affiliates by the employer to carry out the tasks of the engineer to manage the contract.

**4-4** Any ineligible bidder shall be excluded by the employer according to Paragraph (3) of instructions to bidders, upon contract award and list of the excluded institutions is available on the website provided in the bid data sheet.

**4-5** State companies in the Republic of Iraq are considered only eligible if they have proven that they are (1) legally and financially autonomous, and (2) operate according to trade law, and these companies shall not be agencies of the employer.

**4-6** Bidders shall prove the continuation of their eligibility to the satisfaction of the employer whenever the employer requested.

**4-7** Bidders shall be excluded in one of the two following cases:

- A. The existence of laws or instructions issued by the employer's state prohibiting trade deal with bidder's state; and
- B. Based on Security Council resolutions of the United Nations under chapter seven of the United Nations Declaration, which prohibits the employer from importing or contracting for works or services, or payment to individuals or institutions in the state of the bidder.

## **5. Eligible Materials, equipment and services**

5-1 Materials, equipment and services provided under this contract funded by the employer shall be of eligible (qualified) origins (eligible countries according to the determinants (limitations) indicated in chapter five). And that all amounts disbursed shall not be inconsistent with this. Bidder shall provide

evidences that prove the true origins of materials, equipment and services as soon as required by the employer.

## **B) Contents of Tender Documents**

### **6. Parts of tender documents**

**6-1** Tender documents are those parts 1, 2, 3 listed hereinafter and shall be read with the additions referred in Paragraph (8) of instructions to bidders.

#### **Part One – Contracting Procedures**

- Section One – Instructions to Bidders
- Section Two – Bid Data Sheet
- Section Three – Evaluation and Qualification Criteria
- Section Four – Tender Documents
- Section Five – Eligible Countries

#### **Part Two - Work Requirements**

- Section Six - Work Requirements

#### **Part Three – Contract**

- Section Seven – General Conditions of Contract
- Section Eight – Special Conditions of Contract
- Section Nine – Annexes of the Special Conditions of Contract

**6-2** Invitation from issued by the employer to submit the bid shall not be considered tender documents.

**6-3** The employer shall not be responsible for the completeness of tender documents and their annexes if they were not been received directly from sources specified by the employer in the Invitation to submit the bid.



**6-4** The bidder shall check (audit) all instructions, forms, expressions and specifications contained in the bidding documents. And that the lack of commitment to provide the required information and documents may lead to the exclusion of Bid.

## **7. Clarification of Tender documents, the site visit and pre-bid conference:**

**7-1** In case of need to clarify or interpret any of the information contained in the tender documents, the bidder shall communicate with the employer mentioned in bid data sheet or present his inquiries in the pre-bid conference referred in Paragraph (7-4) of Instructions to bidders. The latter shall answer in inquiries he receives provided that they shall be received by an appropriate date not less than (15) days of the deadline for submission of bids, or as stipulated in the bid data sheet and the employer shall send a copy of the inquiry with his answer to each who received the tender documents directly under Paragraph (6-3) of the Instructions to bidders without reference to the inquired party. And if it results from the inquiries the need to amend the basic tender documents, The employer shall make the amendments and issue an annex under the procedures specified in Paragraphs (8) and (22-2) of the Instructions to bidders.

**7-2** It's preferable that bidders visit the worksite and the surrounding sites to obtain on his responsibility any necessary information to assist him in preparing his bid for the implementation of Works. And bidders shall bear the costs resulting from securing such visit.

**7-3** The bidder and any of his representatives or agents shall have the right to access to the work site after obtaining employer's approval in order to identify the site conditions, provided that the bidder's agents and representatives undertakes to exempt and compensate employer's representatives or agents from any liability or claim for death or injury or damages or any financial loss realized as a result of this visit.

**7-4** The authorized bidder's representatives shall be invited to attend the pre-bid conference if referred to this in the bid data sheet. The aim of this conference is to clarify and answer any inquiries presented during this phase.

**7-5** Bidder shall present his questions in writing in an appropriate period not more than one week from the date of conference.

**7-6** Conference minutes containing the inquiries (without mentioning their sources) and the answers in their regard shall be sent to all bidders who bought tender documents under Paragraph (6-3) of the Instructions to bidders, and any amendments necessary on the tender documents resulted from such inquiries presented in the conference, an annex for tender documents shall be sent there under and provided to all bidders, pursuant to the provisions of Para (8) of the Instructions to bidders and not through the conference minutes.

**7-7** Failure to attend the pre-bid conference shall not be a cause to consider the bidder ineligible.

## **8. Amendment of Tender Documents**

**8-1** The employer shall have the right to amend tender documents at any time prior to the deadline for submission of bid by issuing annexes of amendments.

**8-2** Any annex to the tender documents shall be part of the tender documents and shall be issued and distributed in writing to all bidders who bought the tender documents under Paragraph (6-3) of the Instructions to bidders.

**8-3** The employer shall extend the deadline for submission of bids pursuant to Paragraph (22-2) of the Instructions to bidders and give bidders sufficient time to take into account the amendments marked in the bid annex when preparing their bid.

## **C) Preparation of Bids**

## **9. Cost of Tender Documents**

**9-1** The bidder shall bear the total cost resulting from the preparation and submission of his bid and the employer shall bear no responsibility for this regardless of the procedures and results of the tender.

## **10. Language of Bid**

**10-1** The bid and all the correspondence and the documents exchanged between the bidder and the contracting party must be prepared in the language referred to in the paper of bid data. The bidder submit and of the literature related thereto which constitute part of his bid in another language, provided that it must be accompanied with an accurate translation for its texts to the language of the bid. Hence the translation will be accepted for the purpose of interpreting the bid.

## **11. Documents Comprising the Bid**

**11-1** The bid consists of the following documents: A.

- A. Bid letter and bid annex ;
- B. Complete schedules required including the priced tables under articles (12) and (14) of the Instructions to bidders;
- C. Bid Guarantee under article (19) of the Instructions to bidders;
- D. Alternative tender if allowed under article (13) of the Instructions to bidders;
- E. A written authorization to the bidder's representative to sign the bid under Paragraph (20-2) of the Instructions to bidders;
- F. Documents approved by authorities specified in the bid data sheet which confirm the continued eligibility of the bidder under article (17) of the Instructions to bidders, or documents of subsequent eligibility under the forms included in section four to verify the eligibility of the bidder, whose bid has been accepted;
- G. Technical proposal under article (16) of the Instructions to bidders. H.
- H. Any other documents stipulated in the bid data sheet.

**11-2** In addition to the documents aforementioned in Para (11-1), the bid submitted from the joint venture must accompanied by the agreement of establishing the joint venture **partnership contract certified according to the rules, unless the contracting party requests this agreement after the award of tender.**

## **12. Bid letter and schedules**

**12-1** Bid letter and schedules including bills of quantities shall be made by adopting standard documents referred in chapter four (Bids Forms). The forms shall be completed without any amendments or replacements of its texts unless as specified in Para (20-2) of instructions to bidders and all blank spaces must be filled.

## **13. Alternative bids**

**13-1** Alternative bids are not accepted unless otherwise specified in the bid data sheet.

**13-2** When bidders are requested to provide extended terms to complete the Works, that will be included in the bid data sheet with a detailed presentation for the manner in which be followed in the provision of various extended terms.

**13-3** Except what is mentioned in Paragraph (13-4) of Instructions to bidders listed hereinafter, the bidder shall have the right, in case of his wish to provide an alternative technical bid, to submit his bid according to tender documents and design prepared by the employer; and his alternative bid shall be submitted and enhanced by all necessary information of designs, technical specifications, price analysis and the methodology that shall be adopted in the execution of work (if any) to enable the employer to adopt it by comparison. Employer shall compare the alternative bids with those least costly under the main tender documents in the tender documents.

**13-4** If so provided in the bid data sheet, the bidders shall have the right to submit their alternative technical solutions to implement some parts of the works and to determine the methodology that to be adopted in the analysis and comparison as described in chapter six (Work Requirements).

## **14. Bid Prices and Discounts**

**14-1** The prices and discounts submitted in the bid letter to the bidder along with the bills of quantities priced by him are subject to the following:

**14-2** The bidder shall fill unit prices and amounts in all items of bill of quantities, and the value of items which unit prices or amounts were not filled in the bill of quantities shall not be paid upon implementing it. And its amounts are considered covered within other prices and amounts of other items in the bill of quantities.

**14-3** The price specified in the bid letter shall be according to Para (12-1) of instructions to bidders which will be the final price of bid excluding any advance discounts.

**14-4** The bidder can suggest any unconditioned discounts and the applicable method in the bid letter in accordance with the provisions of Para (12-1) of instructions to bidders.

**14-5** The prices and wages submitted by the bidder to amend during the implementation of the contract shall be according to the provisions of general conditions of the contract, unless otherwise specified in the bid data sheet and contract. In this case, the bidder has to provide the employer with price indications and its relative weight for each component of implementation items components specified in the price adjustment equation aforementioned in the schedule of adjusting data supported by the documents which supports that. The employer can request from the bidder to submit his justifications for the level of indicators.

**14-6** If it was referred to adopting retail principal in awarding according to Para (1-1) of instructions to bidders, the bidders wishing to obtain part or several parts of works have to submit their proposals in the percentage of discount proposed against each part or group of parts. The percentage of discount is submitted according to Para (14-4) of instructions to bidders, provided to submit the bids and open them for all works in one day.

**14-7** The prices of the bid includes all taxes, custom duties, fees and wages related to the contract applicable in the period that precede the deadline of bid submission in (28) days, unless it stated to exempt the prices of bid from taxes, custom duties and fees in the bid data sheet.

## **15. Currency of Bid and Payment**

**15-1** The (currency/ currencies) of the bid and payments shall be as specified in bid data sheet.

**15-2** The employer has the right to request the bidder, for purposes of checking (auditing), to specify his need of local and foreign currency and submit the evidences enhanced by analyzing the prices and wages of items to clarify the rationality of need, with details of items of the required foreign currency.

## **16. Documents comprising the technical Proposal**

**16-1** The bidder has to submit his technical proposal which includes the methodology and work plan that he will follow in executing the works, describing the staffs, used equipment and executing program as shown in section four and any details that support the success of the technical proposal in achieving work requirements and accomplishing them at the deadline of completion.

## **17. Documents Supporting the Eligibility of the Bidder**

**17-1** Pursuant to the provisions of section three (Evaluation and Qualification Criteria), bidder in the limited bids shall submit updated document of eligibility including any changes occurred on his qualifications during the period following the prequalification procedures when announcing the limited bid in accordance with the forms thereon in section four.

These documents must be issued by the competent authorities in the state of the bidder and ratified by the Ministry of Foreign Affairs in the state of the bidder and diplomatic missions of the Republic of Iraq in that State.

If the principle of granting Margin of Preference to local bidders pursuant to the provisions of Paragraph (33) of Instructions to bidders, then the local bidders participating in the bid individually or through a joint venture who are hoping to obtain Preference Right shall provide all information required in Paragraph (33) of the Instructions to bidders that qualifies them to obtain Margin of Preference.

## **18. Period of Validity of Bids**

**18-1** The bid shall remain in force for the period specified in bid data sheet and for the period extended after the deadline for submission of bids as specified by the employer in Para (22-1) of instructions to bidders, any bid includes a validity period less than the period specified above shall be refused and shall be considered unresponsive.

**18-2** In exceptional circumstances and before the expiration of the period of validity of bids and the request shall be submitted and bidder's response in writing, and if the documents include the submission of bid guarantee under the provisions of Paragraph (19-1) of the Instructions to bidders, the bidder that his period of validity has been extended has the right to extend the period of bid guarantee till 28 after the expiry date of the amended period of validity of bids. The bidder shall have the right to refuse the request for the extension of period of validity of bids without seizure of his bid's guarantee . The bidder , whose request to extend the period of validity of his bids has been accepted, shall not have the right to request to amend his bid except what is mentioned in Paragraph (18-4) of Instructions to bidder.

### **18-3**

If contracting procedures delayed to a period more than (56) day after the date of Period of Validity of the initial Bid, then bid amount shall be determined as follows:

- A. In case of fixed price contracts, the contract amount shall be the bid price multiplied by coefficient (factor) fixed in the bid data sheet;
- B. In case of contracts in which prices are adjustable, and for the purpose of determining the contract amount of its parts that are not included in price adjustment, the price shall be adjusted by multiplying the price of such parts by the coefficient (factor) specified in bid data sheet; and
- C. In any of these cases, bids references shall be made based on the bid price without taking into consideration the adjustment referred to above.

## **19. Bid Guarantee**

**19-1** Bidder shall include in his bid the bid guarantee in the form, amount and currency specified in the bid data sheet.

**19-2** If the bid guarantee was required under Paragraph (19-1) of Instructions to bidders, it shall be payable immediately upon written order from the employer in one of the following forms chosen by the bidder:

- A. Unconditioned bank guarantee from accredited bank.
- B. Certified check issued by an accredited bank.
- C. Any other form referred to in the bid data sheet.

And that bid guarantee shall be issued from a banking institution of an accredited reputation and from an eligible country, and if the institution that issued the bank guarantee exists outside the employer's country, it shall have a correspondent banking institution in the employer's country to activate the guarantee. It is possible to adopt the forms (templates) set out in chapter four within the tender documents. Or any other form agreed upon with the employer before bid submission. And whatever the form agreed upon, it shall include the name of bidder and shall be valid for a period of (28) day after the date of the original deadline for bid validity or after date of extension of bid validity if made under Paragraph (18-2) of the Instructions to bidders.

**19-3** If bid guarantee is requested pursuant to the provisions of Paragraph (19-1) of the Instructions, then any bid that does not include bid guarantee in the required form shall be considered unresponsive.

**19-4** If the bid guarantee is requested pursuant to the provisions of Paragraph (19-1) of Instructions to bidders, then bid guarantee shall be returned immediately to unsuccessful bidders, as soon as the winning bidder submits the performance guarantee under Paragraph (41) of Instructions to bidders and the signing of the contract under Paragraph (40) of Instructions to bidders.

**19-5** The bid guarantee shall be confiscated if:

- A. The bidder withdraws his bid during the bid validity period specified by him in the Bid Letter.
- B. The winning bidder fails in:

**First:** signing the contract under Paragraph (40) of Instructions to bidders.

**Second:** submitting performance guarantee under Paragraph (41) of Instructions to bidders.



**19-6** The bid guarantee for the joint venture shall be in the name of the joint venture submitting the bid and if the joint venture still not established legally at the time of bid submission then bid guarantee shall be in the name of all future partners as mentioned in the Invitation Letter referred in Paragraph (4-1) of the Instructions to bidders.

**19-7** The employer has the right, if stated in the bid data sheet, the announcement of non-qualification of the contractor in awarding any work to him for the period from the time specified in the bid data sheet in the following cases:

A. If the bid guarantee was not as requested in Paragraph (19-1) of the

Instructions to bidders and:

B. If the winning bidder fails in signing the contract under article (40) of the Instructions to bidders and in submitting the performance guarantee under article (41) of the Instructions to bidders.

## **20. Format and Signing of Bid**

**20-1** Bidder shall prepare one original copy of documents constituting the bid as shown in the Instructions to bidders in Article (11) and the envelop that contain it shall be marked in by the words (original copy) clearly. And if alternative bids under article (13) of the Instructions to bidders were accepted, and to mark the envelope with the words (alternative bid), the bidder shall submit additional copy of the bid in accordance to what the bid data sheet states and mark the envelope with the words (additional copy). In the case of a difference between the original and additional copies, the original version shall be relied on.

**20-2** The original bid and all additional copies shall be printed or written in an ink that is hard to erase and shall be signed by the authorized to sign in behalf of the bidder, and the Authorization Letter shall be attached as mentioned in bid data sheet and attached to the bid. The name and position of the authorized persons shall be printed under their signatures. And that tender documents in which the required information is written in them or being amended shall all be signed by the person who has signed the bid.

**20-3** The bid submitted by the joint venture shall meet the following requirements:

- A. Unless required under Paragraph (4-1) of the Instructions to bidders, it shall be signed to be binding on all partners; and
- B. Attach an authorization of the joint venture's representatives signed by authorized Legal representatives of all partners in the joint venture certified by a notary public.

**20-4** Any marking or deletion or words adding on the bid shall be enhanced by the signature of the bid's signatory in order to consider it in force (valid).

## **D) Submission and Opening of Bids**

### **21. Sealing and Marking of Bids**

21-1 Bidder shall place original and reproduced copy of the his bid as well as the alternative bid (if allowed under Paragraph (13-4) of the Instructions to bidders) in seParate envelopes and marked by the words (original copy) or (additional copy) or (alternative bid) and then the envelopes that contain the original and the reproduced copies shall be placed in one envelop.

**21-2** The outer and inner envelopes shall be marked by the following:

- A. Name and address of bidder;
- B. Name and address of employer under Paragraph (22-1) of the Instructions to bidders;
- C. Name and number of tender under the Paragraph (1-1) of bid data sheet; and
- D. Warning not to be opened before the deadline for the opening of bids.

**21-3** Employer shall not bear any responsibility for any loss or shortage in bids that are submitted without closing, sealing, signing and marking them as required by the instructions.

## **22. Deadline for Submission of Bids**

**22-1** Bids shall be submitted to the employer's address at a date not exceeding the date and time specified in the bid data sheet. The bidders shall have the right to submit their bids online if stated in the bid data sheet and they shall at that time adopt the procedures set out for that in the bid data sheet.

**22-2** The employer shall have the right to extend the deadline for submission of bids through amending the documents under article (8) of the Instructions to bidders, and in this case, the rights and obligations of both parties specified in previous date shall be included in the extension.

## **23. Late bids**

**23-1** Employer shall not receive any bid submitted after the deadline for submission of bids under article (22) of the Instructions to bidders, and that any bid received after the deadline shall be considered late and shall be rejected and returned unopened to the bidder.

## **24. Withdrawal, Replacement and Amendment of Bids**

**24-1** Bidder may withdraw or replace or amend his bid by written notice signed by the authorized person under Paragraph (20-2) of the Instructions to bidders before the deadline provided that a copy of the authorization (except in withdrawal cases) to submit the bid to shall be attached to the notice. And that notices of replacement or amendment or withdrawal shall:

- A. Be prepared and submitted under articles (20) and (21) of Instructions to bidders (except notice of withdrawal, it shall not require a copy of the authorization) and envelopes of notices shall be marked by the word (withdrawal) or (replacement) or (amendment) clearly; and
- B. Be delivered before the deadline for submission of bid under article (22) of the Instructions to bidders.

**24-2** Bids that are a notice of withdrawal is submitted thereto shall be returned to bidders unopened.

**24-3** It is not allowed to withdraw or replace or amend any bid after the deadline for submission of bids and till the expiry of the bid specified by the bidder in his Bid Letter or any extension thereof.

## 25. Opening of Bids

**25-1** Employer (**committee for opening bids**) shall open the bids publically in the presence of bidders or their (**authorized**) representatives at the address, time and date specified in bid data sheet and that any procedures of electronic opening, if applicable, under Paragraph (22-1) will be referred to in bid data sheet.

**25-2** Enveloped entitled (withdrawal) shall be opened and read first and the bids it represent shall be returned to bidders unopened. It is not allowed to withdraw any bid unless the notice of withdrawal given by the final authorized person to submit the bid is read. Following is the opening of the envelopes entitled (replacement) and reading it and the bid that has been replaced shall be returned to the bidder and the replaced bid shall be read. It is not allowed to replace any bid in which no notice thereof is given by the deadline of submission of bids, and this will be followed by opening of enveloped entitled (amendment) and the previous bid shall be returned to the bidder and the amended bid shall be read, no amended bid shall be accepted unless a notice thereon is given by the person authorized before the deadline for submissions of bids, and shall be taken into consideration hereinafter in the bids that are opened and read.

**25-3** Employer (**committee for opening bids**) shall start opening bids by reading the bidders' names and the amount of their bids and any discount or amendment presented. As well as reading the alternative bids and determining whether bidders have attached bid guarantee or not if that was required and any other details that the employer may deem appropriate, and that the alternative bids and those containing a discount that have been read during bid opening shall be examined when comparing and evaluating the bids if stated in bid data sheet. Signing of Bid Letter and all tables (schedules) shall be made by the Bids Opening Committee and no bid shall be rejected except those delayed under Paragraph (23-1) of the Instructions to bidders.

**25-4** Employer (**committee for opening bids**) shall prepare a minute of bids opening procedures which shall include, as minimum, the name of the bidder and if the bid has been withdrawn or replaced or amended, the amount of the bid (according to each part if required), and any discounts proposed on the bid, and alternative bids, and to attach bid guarantee to the bid if was required, and all bidders present shall be asked to sign the minute, and the delete of the signature of any bidders shall not affect the content of the minute and shall be circulated to all bidders.

## E) Evaluation and Comparison of Bids

### 26. Confidentiality

**26-1** Information relating to the examination, clarification, evaluation and comparison of bids and recommendations for award of the contract to bidders or anyone else officially irrelevant to this process will not be announced until the declaration of contract award to the winning bidder and inform all bidders thereof.

**26-2** Any attempt by the bidder to influence the employer (committee of evaluating and analyzing the bids ) in his bids' processing or in award decision might result in rejecting his bid.

**26-3** Notwithstanding in Paragraph (26-2) of the Instructions to bidders, if any bidder wished to contact the employer about any matter related to the bidding process in the period between bid opening and contract award, he can do so in writing.

### 27. Clarification of Bids

**27-1** To facilitate the bids auditing process and their evaluation and comparison, employer (committee of evaluating and analyzing the bids ) may ask any bidder to clarify his bid including units' price details.

Any clarification provided by the bidder which not a result of answering an inquiry from the employer shall not be taken into account. The request for clarification and the answer shall be made in writing without incurring any change in the price or the essence of the bid submitted, or proposing this or allowing it only within the limit of correcting calculation mistakes discovered by the employer (committee of evaluating and analyzing the bids ) during the bid evaluation under article (31) of the Instructions to bidders.

**27-2** If the bidder did not answer on any substantial clarifications about his bid in time and date specified by the employer (committee of evaluating and analyzing the bids ) that would make the bid unresponsive and / or incomparable, then his bid shall be excluded.

### 28. Deviations, Reservations and Omission

During the bids evaluation process, the following definitions shall be adopted:

- a) **Deviations:** shall mean deviations from requirements specified in tender documents;
- b) **Reservations:** is setting specified conditions or lack of full acceptance of the requirements specified in tender documents of the bidder; and
- c) **Omission:** shall mean bidder's failure in providing part or all information and documents required in tender documents.

### 29. Determining the response

**29-1** The employer's determination to the response to any bid shall be made according to the content of its bid and as described in article (11) of the Instructions to bidders.

**29-2** The responsive bid is basically the bid that meet the requirement in tender documents without any deviations or reservations or omission, **as for the meaning of important deviations, they are:**

a) If accepted they shall:

**First:** Mainly affect the quality and performance of works specified in the contract.

**Second:** Basically determining is not compatible with the tender documents, the rights or obligations of the employer or the bidder in the proposed contract.

b) If amended it shall unfairly affect the competition status of the rest of bidders who mainly submit responsive bids.

**29-3** The employer shall examine the technical indicators referred in the technical proposal of the bid under article (16) of the Instructions to bidders specifically in regard to meeting work's requirements referred in chapter six without any significant deviation or reservations or omission.

**29-4** If the bid was unresponsive mainly to the requirements of tender documents, it shall be rejected by the employer and it is not allowed to render it responsive hereinafter through making any modification on the significant variations or reservations or omission.

### **30. Non-Important and Non-Conforming Bids**

**30-1** If the contract is responsive mainly, employer shall have the right to dismiss any non-conformity in the bid that does not constitute a significant variation or reservation or omission

**30-2** If the bid is responsive mainly, employer may request the bidder to provide any information or documents necessary within a reasonable time to remedy any insignificant errors or non-conformity in his bid, provided that it shall not have impact on prices. And that the non-responsiveness of the bidder to employer's request to remedy this will lead to the rejection of his bid.

**30-3** If the bid is responsive mainly, the employer shall correct the non-conformity or any insignificant errors measurable in the bid amount resulting from the non-pricing of some Paragraphs or non-conformity, amendment shall be carried out by adopting the mechanism referred in the analysis and qualification methodology in chapter three of tender documents.

### **31. Correcting Bids Arithmetical Errors**

**31-1** If the bid is responsive mainly, the employer shall correct the arithmetical errors by adopting the following:

A. If there is a discrepancy between the unit price and the item' amount, the unit price is relied on and item's amount shall be adjusted in the light of this, only if there is an error in the location of the decimal point in the unit price from the viewpoint of the employer, then the amount shall be approved and the price shall be corrected.

- B. If there was an error in gross total of the lists of the bills of quantities as a result of addition and subtraction measures of the totals submenus in the bills of quantities, the totals submenus shall be approved and gross total shall be adjusted.
- C. If there is a discrepancy between the values of the amount of any item that is written in figure and in writing, the number specified in writing shall be adopted, unless there was an arithmetic error in determining the value of the amount as a result of Paragraphs A and B above. The specified in figure (number) shall be adopted.

**31-2** If the bidder of underbid refused the amendment of mathematical errors in his bid, his bid shall be rejected.

### **32. Conversion to Single Currency**

**32-1** For the purposes of comparison and analysis, the currency (currencies) mentioned in the bid shall be converted to a single currency as specified in the bid data sheet.

### **33. Margin of Preference**

The margin of preference shall not be adopted for bids submitted by local bidders, unless stated otherwise in the bid data sheet, and with the value determined in bid data sheet.

### **34. Evaluation of Bids**

**34-1** The employer (**committee of evaluating and analyzing the bids** ) shall adopt the methodology and mechanism listed in this article for the purpose of analyzing and evaluating the bids and no other methodology and mechanism shall be accepted.

**34-2** For the purposes of evaluating the bids, employer (**committee of evaluating and analyzing the bids**) shall note the following:

- A. Excluding the reserve amounts (amounts of reserve items in the bills of quantities) from the bid amount, and keep the items of priced daily work for competitive purposes.

- B. Price adjustment due to correcting arithmetical errors under Paragraph (31-1) of the Instructions to bidders;
- C. Price adjustment due to any discounts specified in the bid under (14-4) of the Instructions to bidders;
- D. Amending the final amounts of the bid in light of Paragraphs (A – C) abovementioned to one currency according to article (32) of instructions to bidders.
- E. Price adjustment for any insignificant errors or non-measurable conformity according to Para (30-3) of instructions to bidders.
- F. The evaluation formalities specified in chapter three in the qualification and evaluation criteria.

**34-3** The expected effects arising from the conditions of reviewing the prices during the period of execution mentioned in the general conditions of the contract, and it will not have an impact on bid evaluation.

**34-4** If the bidding documents stated the possibility of segmentation of Works and the right of bidder to submit his prices for parts of the Works or a group of parts, then determining the best bid price for a group of parts including any reduction proposed in Bid Letter to this effect shall be made under part three (Evaluation and Qualification Criteria).

**34-5** If resulted from the analysis, receiving a bid that is significantly less than the true cost from employer's viewpoint, the employer shall have the right to ask the bidder to submit details of calculating cost components and the method of calculation and implementation schedules for an item or items of bills of quantities and after evaluating and analyzing the prices taken into account the estimated cost approved in the plan, the employer shall have the right to increase the letter of guarantee on account of bidder to the level that ensures the protection of employer from any financial loss in the event of contractor's failure to implement his obligations under the contract.

### **35. Comparison of bids**

**35-1** The employer (**committee of evaluating and analyzing the bids**) shall compare all responsive bids mainly under Paragraph (34-2) of the Instructions to bidders to determine best suitable bid.

### **36. Eligibility of the Bidders**

**36-1** Employer (**committee of evaluating and analyzing the bids**) shall decide, with conviction, that the underbid bidder and responsive mainly, still have the qualifications specified in the previous qualification, if the work has been done in accordance with the limited bids or has met the requirements of the subsequent qualification specified in section three (Qualification & Evaluation Criteria).



**36-2** Determining the winning candidate by the employer shall be made after examining all documents related to proving his qualifications that are provided by him under Paragraph (17-1) of the Instructions to bidders.

**36-3** The positive decision in the selection of the candidate is the basis for the conclusion of the contract and that the negative decision would result in the disqualification of bid and in the light of this, an employer shall resort to the following underbid, to adopt the same mechanism to verify the availability of the eligibility requirements for the bidder.

### **37. Employer's right to accept or refuse the bid**

37-1 Employer shall reserve the right to accept any bid or to cancel contracting procedures and to reject all bids at any time before contract award without any obligations to bidders. And in the event of cancelling a bid, all bids and bids guarantee shall be returned to bidders

## **F) Award of contract**

### **38. Awarding Methodology**

**38-1** Employer shall award the contract on an bidder that the results of the underbid analysis showed that his bid was responsive mainly to tender documents under the provisions of Paragraph (37-1) of the Instructions to bidders and after he is completely convinced of the bidder's ability to implement the contract satisfactorily.

### **39. Announcement of Award**

**39-1** Employer shall, and prior to the expiry of period of validity of bids, announce in writing the winning bidder by accepting his bid. And that the notification letter identified hereinafter in the Acceptance Letter (Award Letter) in each of the form of contract and the general conditions of the contract shall include the amount payable by the employer to the contractor for the implementing, completing the Works and their maintenance (identified hereinafter in the form of contract and in the general conditions of the contract as Contract Amount), at the same time, employer shall give notice to all bidders of the result of the bid, and to publish on his website or the website of the (UNDB) and (dg Market) as well as the results of bids analysis and contracts concluded and information listed below:

- A. Names of all participating bidders;
- B. Bid prices of each of them upon bids opening;
- C. Name and price of bid evaluated for each bid that has been evaluated;
- D. Names of bidders whose bids have been rejected and the reasons lead to the rejection; and
- E. The name of winning bidder, the amount of his bid, a summary of awarded Works and time set for implementation.

**39-2** Till the preparation of contracts and its signature, notification of award (letter of acceptance) shall be considered a binding contract.

**39-3** Employer shall, as soon as the Notification of Award (Acceptance Letter) is issued, respond to inquiry requests received in writing from bidders that weren't fortunate and inform them the reasons for not being selected.

#### **40. Signing the Contract**

**40-1** As soon as the Notification of Award (Acceptance Letter) is issued, employer shall provide the winning bidder with (Form of Contract).

**40-2** The bidder shall, within a period no more than (28) day from his receipt of Form of Contract, sign the contract and fix its date and returned it to the employer.

#### **41. Good Performance Guarantee of the Contract**

**41-1** Bidder shall, within a period no more than (28) day from the date of Notification of Award (Acceptance Letter) is issued by the employer, provide a performance guarantee according to the general conditions of the contract with using the forms referred in the special conditions' annexes in section 9 (Contract Documents forms) or any forms approved by the employer. The good performance guarantee shall be issued by an accredited bank in the employer's country or any foreign bank that has a correspondent bank in the employer's country.

**41-2** In case of winning bidder's failure in providing the good performance guarantee referred above, or signing the contract, it will result in canceling of the award and confiscating the bid guarantee and then the employer shall have the right to award the contract to the second bidder whose bid was responsive mainly, and employer is convinced that he has the qualifications to perform the contract satisfactorily, and bear the abstaining bidder the difference between the award price and new price.

**Section Two – Bid Data Sheet**

**For Turnkey Contract to Execute the Works**

**A. General**

1-1 Instructions to bidders	Invitation number for the submission of bid: --- -----
1-1 Instructions to bidders	Employer's name: -----
1-1 Instructions to bidders	Tender name: ----- Tender number: ----- Number and description of bills of quantities of the tender: -----
2-1 Instructions to bidders	Project's name (party of financing): -----
4-1-A Instructions to bidders	All members of the joint venture or institution (insert who bear or not bear) the full and Joint liability in the implementation of the contract.
4-4 Instructions to bidders	There is a list of names of companies that are unqualified or prohibited to work in the Ministry of Planning & Development Cooperation/ Department of General Government Contracts {Insert their website}

**B. Bid Documents**

7-1 Instructions to bidders	For the purpose of clarifying procedures only, the employer's address is: Name  of authorized person: Floor &  room No.:  Street No.: City:  Country: P.O.  Box: Phone No.:  Fax No.: Email:
7-4 Instructions to bidders	Pre-bid conference shall be held at the time, date and place:  Time: Date:  Place:  A visit to the site shall be organized by the employer on: -----

**C. PrePARation of Bids**

10-1 Instructions to bidders	Language of Bid shall be -----
11-1 Instructions to bidders	Bidder shall provide the additional documents with his bid -----
13-1 Instructions to bidders	Alternative bids: [insert allowed or not allowed]
13-2 Instructions to bidders	Alternative period for project implementation: [insert allowed or not allowed] provide alternative period for project implementation. If alternative period for project implementation is approved, the preference methodology shall be determined for this purpose in section three (Evaluation & Comparison Criteria)
13-4 Instructions to bidders	the bidder may provide alternative technical solutions for parts of the Works shown hereinafter: If the bidder is allowed to provide alternative technical solutions, the preference methodology shall be adopted for this purpose as specified in section three of the documents (Evaluation & Comparison Criteria)
14-5 Instructions to bidders	The prices submitted by the bidder <b>upon the execution of contract</b> / [insert adjustable or non-adjustable]
14-7 Instructions to bidders	Contract prices to be exempted from taxes and customs duties [insert Yes or No]
15-1	The currency or currencies for bids and payments according to one of the alternatives shown later ----- as follows:  First alternative (the bidders shall submit their bids fully in Iraqi dinar) <ul style="list-style-type: none"> <li>a- The unit prices and amounts of items priced by the bidder in the bills of quantities in Iraqi dinar (hereinafter referred to as local currency), and in case the bidder expected the need to another currency to cover the supplying of some materials included in the works from foreign countries (hereinafter referred to as foreign currency requirements) and he has to specify that according to (schedule "C" in the bid annex) average or averages of what is represented by the amounts required for this purpose from the bid amount (without reserve amounts) to cover the cost of buying it in foreign currencies, provided that the number of currencies submitted above shall not be more than three.</li> <li>b- The bidder has to include the exchange prices of foreign currencies in Iraqi dinar, as well as the averages required for amounts in foreign currency from the amount of the bid aforementioned in (a) above, in schedule (C) from the bid annex, and adopt it in all payments according to the contract so that the bidder will not bear the responsibility of any risks for currency exchange.</li> </ul>

	<p>Second alternative (allow the bidders to submit their prices in Iraqi and foreign currencies)</p> <p>a- The contractor has to price the units and amounts of the items of bill of quantities separately by the following currencies:</p> <ol style="list-style-type: none"> <li>1- The materials included in the works by which the bidder expects to be supplied from inside Iraq and it shall be in Iraqi dinar, and it shall be named later in local currency.</li> <li>2- The materials included in the works by which the bidder expects to be supplied by foreign countries and it shall be in foreign currency specified by the bidder provided it is not more than three.</li> </ol>
18-1 Instructions to bidders	Period of validity of Bid ----- day
18-4- A Instructions to bidders	<p>In case of allowing to review and adjust the price to the fixed price bid, the coefficient adjustment adopts -----</p> <p>(applicable , not applicable)</p>
18-4 - B Instructions to bidders	<p>Allow to review and adjust the prices for parts of contracts with fixed price, for the contracts with adjustable price by adopting the coefficient -----</p> <p>(applicable , not applicable)</p>
19-1 Instructions to bidders	<p>Bid guarantee [insert required or not required]  [inset type of guarantee, letter of bank guarantee or certified cheque or other to be specified] [insert amount and currency of bid guarantee]</p>
D-19-2 Instructions bidders	Insert any other required guarantees
20-1 Instructions to bidders	In case of requesting additional copies of the bid [insert the required number of additional copies]
20-2 Instructions to bidders	The authorization letter of the bidder to sign the contract shall contain the following:
21-6	If the bidder is a joint venture, they shall submit the bid guarantee in the name of the joint venture (insert any other conditions)
<b>D. Submission and Opening of Bids</b>	

22-1 Instructions to bidders	<p>For the purposes of bid submission, bid shall be submitted to the employer's address shown hereinafter only.</p> <p>Name of person authorized to receive: Floor &amp; room No.:</p> <p>Street No.: City: Country:</p> <p>Deadline for submission of bids: Time:</p> <p>Date:</p> <p>Submission of bids online (insert allowed or not allowed)</p> <p>In the case of allowing the submission of bids online, the procedures will be as follows:----- -----</p>
25-1 Instructions to bidders	<p>Bids opening shall be at the following address:</p> <p>Street No.:</p> <p>Floor &amp; room No.:</p> <p>City:</p> <p>Country:</p> <p>Time: Date:</p> <p>In the case of allowing the submission of bids online, the opening procedures will be as follows:-----</p>
25-3 Instructions to bidders	<p>Signing of Bid Letter and bill of quantities of the bidder by employer's representatives (Bid Opening Committee) [insert required or not required] if it was required, the following procedures shall be adopted: -----</p>
<b>E. Evaluation and Comparison of Bids</b>	
32-1 Instructions to bidders	<p>The Iraqi currency shall be adopted in the evaluation and comparison of bids, and foreign currencies adopted in the bid shall be converted to it for this purpose. The source of conversion rate shall be those mentioned in the bulletin issued by [insert the bulletin issuer]</p> <ul style="list-style-type: none"> <li>- The date of the conversion rate shall be the date of the bulletin issued on [insert the specified date]</li> <li>- The foreign currencies mentioned in the bid shall be converted to the Iraqi dinar by adopting one of the alternatives mentioned hereinafter for the purposes of bid comparison</li> </ul> <p><b>First alternative:</b> <u>whenthebidamountisinIraqidinarinfull</u> : First step: the employer shall be segmenting the bid amount after correcting the amount under article 31 to the amounts specified to it in foreign currencies by adopting the exchange rate specified by the bidder under article (15-1).</p>

	<p>Second step: the employer shall convert the amounts which their payment is determined in foreign currencies (after excluding the reserved amounts with keeping the amount of the Paragraphs quoted by daily wages when they are required for the purposes of competition) to the Iraqi dinar according to the selling price of foreign currencies and at the date specified for them above.</p> <p><b>Second alternative:</b> <u>when the bid amount is in Iraqi dinar and foreign currencies:</u>  The employer shall, after correcting the bid amount under article (31), convert the amounts specified in various foreign currencies (after excluding the reserved amounts with keeping the amount of the Paragraphs quoted by daily wages when they are required for the purposes of competition) to the Iraqi dinar according to the selling price of foreign currency in the foreign currency exchange bulletin and at date specified above</p>
35 Instructions to Bidders	Preference margin for local bidders is allowed [insert Yes or No] and if Yes [ insert the amount of the margin] as well as the methodology to be followed: -----
36-5	Insert (permitted , not permitted) to review the prices
36-6	Insert ( it is permitted, not permitted) to segment the works and right of the bidder to submit his prices for segments of his works or a group of segments

## **Section Three: Evaluation and Qualification Criteria**

### **For the Contracts of Executing the Works**

**(Subsequent to pre-qualification)**

This part includes the criteria required to be adopted by the employer to evaluate bids and qualify the bidders according to Para (34) and (36) of instructions to bidders, and it will not use any other methodology or criteria. The bidder has to provide all the information required according to the forms mentioned in section four (bid forms).



## 1. Bids evaluations

In addition to the criteria listed in items (A – E from Para 2-34 of instructions to bidders) the following criteria is adopted:

**1-1- Comparing the technical proposal with the requirements specified in bid documents.**

**1-2- Multiple contracts.**

**1-3-** In case of approving the adoption of segmentation of works and award them in several contracts (upon the possibility of adopting this principle according to the project nature) , and allow the bidders to contract on one or more than one of them in accordance with the provisions of Para (34-4) of instructions to bidders, the methodology shown hereunder is adopted in bids evaluation.

**3-1- Alternative time for completion**

If it was allowed for bidders to suggest an alternative time to accomplish (the period of the contract), in accordance with the provisions of article (13-2), and adopt the methodology shown hereunder in comparing the bids.

.....  
.....

**4-1- Alternative technical proposal**

If it was allowed for bidders to suggest an alternative technical proposal to accomplish (the period of the contract), in accordance with the provisions of article (13-4), and adopt the methodology shown hereunder in comparing the bids.

.....  
.....

**2- Qualification**

**2-1- Updating the information**

The bidder has to continue achieving the criteria required in the previous qualification.

**2-2- Financial Resources**

By using the related forms No. .... listed in section four (Bid Forms), the bidder has to demonstrate the ownership or availability of the financial resources such as cash liquidity, non-mortgaged properties, debts realized to him or any other financial resources, excluding advance payments expected to be received.

- Insert the balances of the current account required for this contract:

.....

- Insert the balances of his current accounts for this contract and the other contractual obligations

.....

**2-3- Staffs**

The bidder has to demonstrate the availability of staffs for key positions to implement the contract and achieve the following requirements:

<b>Ser.</b>	<b>Position</b>	<b>Total experience from executing the works for ( ) years</b>	<b>Specialized experience in similar works ( ) years</b>
1.			
2.			
3.			
4.			
5.			

The bidder shall submit the details of the staffs proposed to be used in implementing the contract, specifying their pervious experiences according to the forms set out in part four (bid forms).

## 2-4- Equipment

The bidder shall demonstrate his ownership or possession of the main equipment listed later on:

<b>Ser.</b>	<b>Type of Equipment and its Specifications</b>	<b>Quantity Required</b>
1.		
2.		
3.		
4.		
5.		
6.		
7.		

The bidder shall submit additional details of the equipment suggested to be used in implementing the contract according to the forms set out in section four (bid forms).

**Chapter Four / Bid Forms**  
**For the Contracts of Executing the Works**

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**Form of Bid Submission**

Date: Tender No.:  
Invitation Letter No.:

To: (Name and Address of Employer)

We, the undersigned, declare that:

- a- We confirm that we have studied and checked the bid documents and we have no reservations regarding it and to any of the amendments that were concluded according to article (8) of the instructions to bidders .....
  
- b- We submit our offer to execute the works described later on according to what is specified in the bid documents  
.....  
.....
  
- c- The total price of our bid, after excluding any discounts stated in our bid, and described in Para (D) hereunder, amount to:  
.....  
.....
  
- d- The discounts stated in our bid and its method of application is as shown below  
.....  
.....
  
- e- Our bid is valid for ..... days as from the final date specified to deliver the bid, in the bid documents, and it remains binding and accepted by us until completion of its period of validity.
  
- f- In case of accepting our bid, we undertake to submit the good performance guarantee aforementioned in the bid documents
  
- g- We confirm that we, our subcontractors or suppliers hold or will hold nationality certificates from the eligible countries according to the provisions of article (4-2) of the instructions to bidders.
  
- h- We confirm that there is no conflict of interests to us or to any of our subcontractors or suppliers to any part of the contract aforementioned in article (4-3) of the instructions to bidders.

- i- We confirm our non-participation in any other bid except for this one, in any capacity whether for the bidder or a subcontractor, pursuant to the provisions of article (4-3) of the instructions to bidders except the alternate bids submitted by us according to article (13) of the instructions to bidders.
- j- We confirm that no decision was issued by **the Ministry of Planning or any other legally authorized party binding to the State of Iraq including our ineligibility**, or placing us in the black list, and our subcontractors or suppliers have no right to any part of the contract, as well as no decision was issued by the United Nations / Security Council in this regard.
- k- We confirm that we are not a governmental entity / or we are a governmental entity which fulfills the requirements specified in article (4-5) of the instructions to bidders.
- l- We state that we have paid / or will pay gifts or fees related to the contracting procedures or implementing the contract.

Name of Recipient	Address	Reason	Amount

(If payment was not made or will not be made to anyone, then mark that with "none")

- m- We are aware that this bid and your written approval thereof according to the letter of acceptance (awarding) which will be issued later, shall be as a contract binding us until preparing an official contract text and implement it. **it (an in case that we refrain from signing the contract, we shall be bound to bear the legal and financial consequences incurred upon us as a result of that, according to the professional provisions in this regard, which are stipulated in the legal legislations of the government contracts and their procedures in the provisions of this document).**
- n- We are aware that you are not obliged to accept the lowest bids or any other bid received by you.
- o- We undertake to take all actions to ensure, that our employees or any person works for us, will not practice bribery.

Name of Bidder:

Position:

Signature:

Name of the Authorized Person to Sign on our Behalf:

Dated:

Day/Month/Year

## **Annex of the Bid**

### **Price Adjustment Data Schedules**

In schedules (A), (B) and (C), listed later on, the bidder has to specify the following (A) its amount payable in Iraqi currency, (B) the suggested sources, basic value and indicators of these components in various currencies, (C) the weight proposed for each component in the payable Iraqi and foreign currency, (D) the adopted conversion factor for the purposes of transferring the amounts into foreign currency, in large and complex contracts, it might be required to use several equations to adjust the prices according to the nature of works clauses.

**Schedule (A) – Payment in Iraqi Currency**

<b>Code of Indicators for Para Cost Components</b>	<b>Description of Indicators</b>	<b>Source of Indicators Cost</b>	<b>Basic Value and Date</b>	<b>Amount in Bidder's Currency</b>	<b>Weight of Components Proposed by the Bidder</b>
					a-
					b-
					c-
					d-
					e-
<b>Total</b>					1



**Schedule (B) – Payment in Foreign Currency**

<b>Code of Indicators for Para Cost Components</b>	<b>Description of Indicators</b>	<b>Source of Indicators Cost</b>	<b>Basic Value and Date</b>	<b>Amount in Bidder's Currency</b>	<b>Amount Payable in Foreign Currency</b>	<b>Weight of Components Proposed by the Bidder</b>
						a-
						b-
						c-
						d-
						e-
<b>Total</b>						1

### Schedule (C) – Summary of Payment Currencies

Alternative (A) – In case the bid was in Iraqi Dinar

For the part of the work ..... [Insert the name of the part of works]

Name of Payment Currency	(A) Amount of Foreign Currency	(B) Exchange Rate (Dinar against what is represented by the Foreign Currency Unit)	(C) Equivalent in Dinar A x B	(D) Percentage of What it Represent of the Bid Net Amount
				$100 * C$ Bid Net Amount
Iraqi Currency		<b>1.00</b>		
Foreign Currency No. (1)				
Foreign Currency No. (2)				
Foreign Currency No. (3)				
Bid Net Amount				100.00
Reserve Amount in Iraqi Dinar				
Bid Amount				

**Schedule: Summary of Payment Currencies**

Alternative (B) – In case of paying in several currencies

(According to article (15-1) of the instruction to the bidders)

Summary of payment in currencies: ..... [Insert the name of the part of works included therein]

<b>Name of Currency</b>	<b>Amount Required to be Paid according to the Bid</b>
Iraqi Currency	
Foreign Currency (1)	
Foreign Currency (2)	
Foreign Currency (3)	

## Bill of Quantities



**Work Schedule by Daily Wage no. (1) (Fees of Workers)**

<b>Item No.</b>	<b>Item Description</b>	<b>Unit</b>	<b>Average of Productivity</b>	<b>Wages Per Hour in figure and writing</b>	<b>Amount in figure and writing</b>
<b>Total</b>					
Adding a percentage of ..... for the administrative charges and due profits for the contractor according to Para (3B)					
The Final Total (Carried forward to the summary page .....					

The mentioned percentage is filled in the schedule by the bidder

**Work Schedule by Daily Wage no. (2) (Prices of Materials)**

<b>Item No.</b>	<b>Item Description</b>	<b>Unit</b>	<b>Required Quantity</b>	<b>Price in figure and writing</b>	<b>Amount in figure and writing</b>
<b>Total</b>					
Adding a percentage of ..... for the administrative charges and profits					
The Final Total (Carried forward to the summary page .....					



### Abstract of Work Cost by Daily Wage

<b>Summary</b>	<b>Amount in figure and writing</b>	<b>Percentage of Amount in Foreign Currency in figure and writing</b>
1- Total Items of Work by Daily Wage (Fees of Workers)		
2- Total Items of Work by Daily Wage (Prices of Materials)		
3- Total Items of Work by Daily Wage (Equipment of the Contractor)		
<b>Items Total of Work by Daily Wage (Carried forward to the summary page ....)</b>		



**Summary of Reserve Items Cost**

<b>Bill of Quantities No.</b>	<b>Item No.</b>	<b>Description</b>	<b>Amount in figure and writing</b>
1.			
2.			
3.			
4.			
<b>Total of Reserve Items Amounts in figure and writing (Carried forward to the summary page .....)</b>			

## Final Summary

Name of Contract:

Number of Contract:

<b>General Summary</b>	<b>Page No.</b>	<b>Amount in figure and writing</b>
Schedule No. (1)		
Schedule No. (2)		
Schedule No. (3)		
..... Etc		
Total of the above schedules with the reserve amounts	(a)	
Total of work by daily wage	(b)	
General reserve	(c)	
Final total of (a + b + c)		

## **Technical Suggestion**

- Organizational Structure of the Site
- Work Methodology
- Preparation Methodology
- Execution Methodology
- Staffs
- Equipment
- Specialized Schedule for Equipment
- Technical Literature Issued by the Manufacturer of the Equipment and Items
- Other

## Organizational Structure of the Site

## Work Methodology

## Preparation Methodology

## **Execution Methodology**

## Staffs

Form of Staffs no. (1): Proposed names of the leading staff, the bidders have to submit a list of the efficient leading staffs to fulfill the requirements specified in section three, and submit the information regarding their experiences according to the following schedule:

1	Name:
	Position:
	Scientific Qualification:
	Experience:
2	Name:
	Position:
	Scientific Qualification:
	Experience:
3	Name:
	Position:
	Scientific Qualification
	Experience
4	Name:
	Position:
	Scientific Qualification:
	Experience:

As specified in section three



## Form of Staffs no. (2): Experience of the Leading Staffs

Name of Bidder:

Position		
Personal Information	Name	Date of Birth
	Work Experience	
Current Position	Name of Employer (Work Owner):	
	Work Address:	
	Telephone:	Person in Charge (Director / Employee / Personnel)
	Fax:	Email:
	Position Title:	Employer's (Work Owner) Years of Service

Hereunder is the summary of work experience for the past (20) years as from the current date, explaining any technical and administrative experiences related to the current project.

From	To	Company / Project / Position / The Related Technical and Administrative Experiences

**Schedule of Required Equipment for Work and its Ownership**

**Form of Equipment**

Type of Equipment		
Information About the Equipment	Name of Manufacturer	Model and Horsepower
	Productivity	Manufacturing Year
Current Status	Current Work Address	
	Current Work Description	
Its Source	Insert the Source of the Equipment or Machinery Owned by the bidder    Rented    Leased    Specifically Manufactured for	

The bidder has to submit the information to demonstrate accurately the possibility of insuring the needs of the main equipment required to implement the contract mentioned in section three (Evaluation and Comparison Criteria), which requires filling a separate form for each equipment listed or proposed by the bidder.

**Omit the following information of equipment belonging to the bidder**

Ownership of Equipment	Name of Owner of the Equipment	
	Owner's Address	
	Telephone: Fax:	Name and position of the Owner:
		Email:
Agreement	Details of Leasing , Renting and Manufacturing the equipment required for the project	

## **Specialized Schedules for Equipment**

**Technical Literature Issued by the Manufacturer of the Equipment and Items**

**Other**

## **Qualifications of bidder subsequent to the previous qualification**

The bidder has to update the information submitted in the prequalification phase to demonstrate the continuity of achieving the criteria used at that time upon conducting the prequalification as much as it concerns the following:

- (a) Legal position
- (b) Unresolved lawsuits
- (c) Financial position

For this purpose, the bidder has to use the related forms in this section.

**Form no. (1) / Information Form of the Qualifications of Bidders (Individual Company)**

<b>Information of the Bidder</b>	
Legal Name of the Bidder	
In case of joint venture / the legal name for each partner	
Country of Incorporation	
Date of Company's Incorporation	
Legal Address in the Country of Incorporation	
Authorized Representative of the Bidder / Legal (Name, Address, Telephone, Fax, Email Address)	
<p style="text-align: center;"><b>The Enclosures are Copies of the original Documents listed hereunder</b></p> <ol style="list-style-type: none"><li>1- In case of individual company, the items related to incorporation or legal companies federation of the company according to article (4-1), (4-2) of the instructions to bidders.</li><li>2- The authorization of the representative of the aforementioned joint venture according to article (20-2) of the instructions to bidders.</li><li>3- In case of joint venture, a joint venture agreement or a letter of willingness is submitted to establish a joint venture according to Para (4-1) of the instructions to bidders.</li><li>4- In case of a company owned by the country and any additional documents not inserted in Para (1) above, and conforming to Para (5-4) of the instructions to bidders.</li></ol>	

**Form no. (2) / Information Form of the Qualifications of Bidders (Joint Venture)  
Each Company participating in the Joint Venture has to fill this Form**

<b>Information of the Joint Venture or the Specialized Subcontractor</b>	
Legal Name of the Bidder	
Names of Companies in the Joint Venture or the Specialized Subcontractor	
Country of Incorporation of Joint Venture Establishing Company and the Specialized Subcontractor	
Year of Incorporation of Joint Venture Establishing Company and the Specialized Subcontractor	
Legal Address in the Country of Incorporation for Partners of the Joint Venture and the Specialized Subcontractor	
Name, Address, Telephone, Fax and Email Address of the Representative Authorized by the Joint Venture and the Specialized Subcontractor	
<b>The Enclosures are Copies of the original Documents listed hereunder</b>	
<input type="checkbox"/> 1- Documents of incorporating the companies federation or the legal joint venture named above according to Para (4-1) of the instructions to bidders.	
<input type="checkbox"/> 2- Letter of Authorization of the representative of the joint venture named above according to Para (20-2) of the instructions to bidders.	
<input type="checkbox"/> 3- In case the companies owned by the country and the documents that prove the legal and financial independence and work according to the commercial laws according to Para (5-4) of the instructions to bidders.	



## Form of Unresolved Lawsuits

This form is filled by each bidder, if it was an individual company or each partner in the joint venture.

<b>Unresolved Claims</b>			
<input type="checkbox"/> <b>There are no unresolved claims</b>			
<input type="checkbox"/> <b>There are unresolved claims</b>			
Year	Subject of Claim	Value of Unresolved Claim in Dollar <b>in figure and writing</b>	Percentage of Unresolved Claim Value from Net Capital <b>in figure and writing</b>

### Financial Form (1) Financial Position

This form is filled by each bidder, if it was an individual company or each partner in the joint venture.

<b>Financial Data for Three Years in Dollar</b>		
Year 1:	Year 2:	Year 3:

#### Information from the Balance Form

<b>Total Assets</b>			
<b>Total Debts</b>			
<b>Net Capital</b>			
<b>Current Assets</b>			
<b>Current Debts</b>			

#### Information from the Certificates of Financial Position

<b>Total Revenues</b>	
<b>Profits Before Tax Accounting</b>	
<b>Profits after Tax Accounting</b>	

Enclosures are copies of the financial position certificates (final balance including all the notes and income certificates for the past three years as shown in conformity with the following conditions:

- All these documents reflect the financial position of the bidder or the partners in the joint venture and it does not insert mother companies emanating therefrom.
- The previous financial position shall be issued by a legal auditor.
- The previous financial certificates shall be complete and include all the notes mentioned in the financial certificates.
- The previous financial certificates shall represent the previous accomplished items which a certificate of legal auditing was issued thereon (Interim Financial Certificates not required and will not be accepted).

**Financial Form (2) Average of Annual Revenues for Construction Works**

To be filled by the bidder and each partner in the joint venture

<b>Annual Revenues Date for Three Years (Construction)</b>			
<b>Year</b>	<b>Annual Revenues in the Adopted Currency</b>	<b>Percentage of Transfer to Dollar</b>	<b>Amounts in Dollar</b>
<b>Annual Revenues Average of Construction Works</b>			

The information of annual revenues submitted by the bidder (individual company) or each partner in the joint venture shall represent the amounts of accomplished works and by which advances were submitted to the employer each year for the continuous or accomplished works, after transferring it to dollar at the date of preparing the report.

### Financial Form (3) Financial Resources

Specify the proposed financial sources i.e. current accounts, non-mortgaged property assets, debts and any financial resources, the final receivables of current obligations which ensure securing cash liquidity for this contract or contracts as specified in section three (Evaluation and Comparison Criteria)

<b>Financial Resources</b>		
<b>Ser.</b>	<b>Financing Sources</b>	<b>Amount in Tender's currency or any other currency</b>
1		
2		
3		

**Financial Form (4) Current Contractual Obligations / Continuous Works**

Each bidder as an individual company or any partner in the joint venture shall submit the information of financial obligations of all concluded contracts or to which letters of awarding were issued or for contracts that are close to completion and to which no letter of acceptance was issued.

<b>Name of Contract</b>	<b>Address of Employer's Representative, Telephone, Fax and Email Address</b>	<b>Value of Unaccomplished Works in Tender's currency or any other currency equivalent to Dollar</b>	<b>Expected Date of Completion</b>	<b>Average of Paid Advances During the Past Six Months in Tender's currency or any other currency equivalent to Dollar /Month</b>
1.				
2.				
3.				
4.				
5.				

## **Bid Guarantee Form (Bank Guarantee)**

[If needed, the bank/bidder fills this bank guarantee form according to the instructions aforementioned between the brackets.]

\_\_\_\_\_

[Insert the Name of the Bank, Address of the Branch or the Issuing Bureau]

**Beneficiary:** [Insert the name and Address of the Employer]

**Date:** [Insert Date]

**Bid Guarantee No.:** [Insert Number]

We were informed that [Insert name of bidder, if it was joint venture then insert full legal names of partners] (hereinafter called "Bidder") has given you his bid dated [Insert Date] (hereinafter called "Bid") to implement [Insert Name of Contract] according to the invitation to the bidders no. [Insert Number].

Moreover, we are aware, according to your conditions that bids must be supported by a bid guarantee.

According to the request by the bidder, we [Insert Name of Bank] are committed according to this document to pay you any amount or amounts that does not exceed in total the amount of [Insert amount in numbers] ([Insert amount in writing]) Iraqi Dinar once we receive from you the first written request accompanied by a written affidavit stating that the bidder has violated his obligation (obligations) under the conditions of the bid, because the bidder:

- (A) Has withdrew his bid during the validity period of the bid specified in the bid form, or
- (B) Informing him that his bid was accepted by the employer during the validity period of the bid, (1) failure or refusal to implement the contract agreement, if required, or (2) failure or refusal to submit a good performance guarantee according to the instructions to bidders.

The validity period of this bid guarantee ends: A) if the bidder was awarded the bid, once we receive the contract copies signed by the bidder and good performance guarantee issued to you by the bidder, or B) if the bid was not awarded to the bidder, achieve the closest of the following two events:

- (1) Our receipt of a copy of your notification to the bidder that the bid was not awarded, or
- (2) After twenty eight days from the completion of validity period of the bidder's bid.

Therefore, any request of payment under this guarantee must be received by us in the bureau at that date or before it.

This guarantee is subject to the unified laws of the guarantees request, **issued in accordance with the Iraqi Law**

\_\_\_\_\_

[Signature (signatures) representative (representatives) authorized (authorized)]

**Section Five: Eligible Countries for  
The Contracts of Executing the Works**

Qualifying to provide commodities or execute the works or services in the contracts financed by the employer (work owner):

1. The employer has the right to allow organizations and personnel of all countries to supply commodities or execute the works or offer services to the projects financed by the Iraqi government, and as an exception, it prevents organizations in countries or the commodities manufactured in the countries from participating in tenders in the following cases:
  - A- **If the** legislations or prevailing regulations prohibit the bidder's country from establishing commercial relations with that country, provided, the employer is convinced that such prohibition will not prevent achieving fruitful competition to supply the commodities or execute the works.
  - B- In response to the decision issued by the United Nations / Security Council under chapter seven of the constitution of the United Nations which prohibit the country of the employer from contracting to import any commodities or execute the works or provide services with that country or pay any amounts to individuals or entities in that country.
  
2. For the review of the bidders thereon, the commodities, services and organizations in the countries mentioned below are prohibited from participating in this tender according to the mentioned instructions.

a) Regarding Para (1-A)

.....

.....

b) Regarding Para (1-B)

.....

## **Part Two**

### **Work Requirements for**

### **The Contracts of Executing the Works**

(To be filled by the contracting party accurately )



**Section Six: Work Requirements for  
The Contracts of Executing the Works**

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## Scope of Work

## Specifications

## Plans

## **Additional Information**

## **Part Three**

### **Contract Conditions and Contract Forms For the Contracts of Executing the Works**

**Section Seven**  
**General Conditions for**  
**The Contracts of Executing the Works**

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## Article One: General Provisions

### 1-1- Definition

Whenever mentioned in these Contract Conditions (General and Special, Parts A and B), the following words and terms shall have their assigned meanings below. Also, the words referring to individuals or parties include companies and other legal entities, unless the context requires otherwise.

#### 1-1-1- Contract:

##### 1-1-1-1- Contract

Means the Contract Agreement, Letter of Award, these General Conditions and Special Conditions, Specifications and Drawings, schedules, Bid's Letter and any other documents (if any) listed in the contract agreement.

##### 1-1-1-2- Contract Agreement

Means the Contract Agreement referred to in 1/6.

##### 1-1-1-3- Letter of Award

Means the Letter of Award for the Bid's Letter signed by the Bidder and including all notices agreed to and signed by the Parties. If the Letter of Award is not issued, then this term shall mean the "Contract Agreement", whereupon the date on which the Contract Agreement is signed shall be considered as the date of issuance of the Letter of Award.

##### 1-1-1-4- Bid's Letter

Means the Document named Bid's Letter (Tender's Offer Letter) made by the Contractor, including the offer related to the Works signed by the Contractor and submitted to the Employer.

##### 1-1-1-5- Specifications

Means the document named the "Specifications" which specifies the specifications of Works as stated in the Contract and any amendment and additions thereto to be made according to the provisions of the Contract.

##### 1-1-1-6- Drawings

Means the "Work Drawings" as included in the Contract, and any amended or additional drawings to be issued by the Employer (of his representative), as per the Contract provisions.

##### 1-1-1-7- Schedules

Means the document or documents named the "Schedules" as completed by the Contractor and submitted with the Bid's Letter, which shall be included in the Contract Documents in this capacity. These schedules may include the bills of quantities, information, invoices, price lists and/or compensations.

##### 1-1-1-8- Bid

Means the Bid's Letter all other documents submitted therewith by the Contractor, as stated in the Contractor.

##### 1-1-1-9- Bills of Quantities, Daily Work Schedules and Payment Marks Schedule

Means the documents so named, if any, and included within the Schedules.

##### 1-1-1-10- Contract Information

Means the pages supplemented by the Employer and named Contract Information which form Part A of the Special Conditions.

## **1-1-2- Parties and Individuals**

### **1-1-2-1- Party**

Means the Employer or the Contractor, as the context requires.

### **1-1-2-2- Employer**

Means the personality named the Employer in the Contract Information and includes its legal successors.

### **1-1-2-3- Contractor**

Means the personality (personalities) named the Contractor in the Bid's Letter who is approved by the Employer, and includes its legal successors.

### **1-1-2-4- Engineer**

Means the personality appointed by the Employer in the capacity of engineer for the purpose of this Contract and so named in the Bid's information, or any other personality which the Employer from time to time appoints as a substitute engineer. The Contractor shall be informed with such appointment according to 3/4 (substituting the engineer).

### **1-1-2-5- Contractor Representative**

Means the Personality nominated by the Contractor to represent it in the Contract, or who is from time to time appointed by it as per 3/4 to act on its behalf.

### **1-1-2-6- Employer's Personnel**

Means the Engineer and assistants mentioned in 3/2 and other employees and Workers of the Engineer and the Employer, as well as any persons whom the Engineer or the Employer notifies the Contractor that they are Employer's Personnel.

### **1-1-2-7- Contractor's Employees**

Means the Contractor's Rep. and all those who are employed by the Contractor onsite, to include the employees, Workers and other Contractor's or any Subcontractor's staff and other persons helping the Contractor in Work execution.

### **1-1-2-8- Subcontractor**

Means any person named in the Contract as Subcontractor.

### **1-1-2-9- Dispute Settlement Board**

Means the one person or three persons named in the Contract in this capacity or any other persons to be appointed as per 20/2 or 20/3.

### **1-1-2-10- Federation International des Ingerieurs - Conseils (FIDIC) means the International Federation of Consulting Engineers.**

## **1-1-3- Dates, Tests, Terms and Completion**

### **1-1-3-1- Primary Date**

Means the date preceding the bidding deadline by 28 days.

### **1-1-3-2- Date of Commencement**

Means the date specified for the commencement of Work which should be notified as per 1/8.

### **1-1-3-3- Period of Completion (Work Execution Time)**

Means the period specified for completing Works or any parts thereof, as the case may be, as per 8/2, counted from the Commencement Date, as specified in the Contract Information, with any extension to such period to be made as per 8/4.

**1-1-3-4- Tests on Completion**

Means the tests mentioned in the Contract or agreed to between the Parties, or those required under the change orders, that are conducted according to the provisions of Article 9 before taking over the Works or part thereof, as the case may be, by the Employer.

**1-1-3-5- Certificate of Primary Taking Over for Works**

Means the primary taking over certificate for the Works to be issued according to the provisions of Article 10.

**1-1-3-6- Tests After Completion**

Means the tests, if any, stipulated in the Contract, which are conducted according to the specifications, after handing over the Works or any part thereof, as the case may be, **by the** Employer.

**1-1-3-7- Maintenance Period**

Means the time period to be specified according to 11/1 for notice to rectify faults in Works or any part thereof, as the case may be, which shall be extended for 12 months, unless the Contract Information stipulate otherwise, with any extensions thereto to be made as per 11/3, counted from the date of completion of Works or any part thereof, as the case may be, as specified in the Certificate Primary Taking Over for Works as per 10/1.

**1-1-3-8- Certificate of Final Taking Over for Works**

Means the Certificate to be issued as per 11/9.

**1-1-3-9- Day**

Means solar day; year means 365 days.

**1-1-4- Amounts and Payments**

**1-1-4-1- Accepted Contract Price**

Means the Contract Price as accepted in the Letter of Award against the execution and completion of Works and rectify and faults therein.

**1-1-4-2- Contract Price (Actual Contract Price)**

Means the Contract Price defined in 14/1 including any amendments thereon to be done according to the Contract provisions.

**1-1-4-3- Cost**

Means all costs reasonably sustained or to be sustained by the Contractor, in or outside the site, to include the administrative and similar charges, but excluding the profit.

**1-1-4-4- Final Account Certificate**

Means the final acceptance certificate to be issued as per 14/13.



**1-1-4-5- Final Account Statement**

Means the summarized final account statement defined in 14/11.

**1-1-4-6- Foreign Currency**

Means any currency specified for the payment of part of or the whole Contract Price, other than the local currency.

**1-1-4-7- Certificate of Progress Payment**

Means any payment certificate to be issued as per the provisions of Article 14 other than the final account.

**1-1-4-8- Local Currency**

Means the Iraqi currency (Iraqi Dinar)

**1-1-4-9- Advance Payments**

Means any payment certificate to be issued as per the provisions of Article 14.

**1-1-4-10- Backup Amount**

Means any amount, if any, specified in the Contract in this capacity for the purpose of execution of a part of the Works or for the supply of Goods or Machinery or for the provisions of services as per 13/5.

**1-1-4-11- Monetary Deduction**

Means the total amounts to be withheld by the Employer as per 14/3 and refund the same as per 14/9.

**1-1-4-12- Statement of Executed Work**

Means any statement of executed Work to be submitted by the Contract as part of the request for advance payment, as per the provisions of Article 14.

**1-1-5- Works and Execution Requirements**

**1-1-5-1- Contractor's Equipments**

Means all the systems, equipments, vehicles and other things required for the execution and completion of Works and rectifying any damages or faults therein, but excluding the temporary Works, the Employer's equipments, if any, Machinery, materials or other things that constitute or intended to constitute part of the permanent Works.

**1-1-5-2- Execution Requirements**

Means the Contractor's equipments, materials, Machinery and temporary Works or any part thereof, as applicable.

**1-1-5-3- Materials**

Means all types of things (other than the Machinery) constitute or intended to constitute part of the permanent Works, to include the materials solely supplied, if any, which the Contractor is required to supply according to the Contract.

**1-1-5-4- Permanent Works**

Means permanent Works to be executed by the Contractor according to the Contract.

#### **1-1-5-5- Machinery**

Means the systems, equipments and vehicles that constitute or intended to constitute part of the permanent Works, to include the transportation means purchased by for the Employer for the purpose of execution or operation of the Project.

#### **1-1-5-6- Part**

Means any part of Goods stated in the Contract Information as part of the Works, if any.

#### **1-1-5-7- Temporary Works**

Means all temporary works of all types, excluding the Contractor's equipments, which should be available onsite for the execution and completion of permanent works and rectify any faults therein.

#### **1-1-5-8- Works**

Means Permanent Works and Temporary Works, or either, as applicable.

#### **1-1-6- Other Definitions**

##### **1-1-6-1- Contractor's Documents**

Means accounting notices, computer software, drawings, evidences, isometrics and other documents of technical type, if any, submitted by the Contractor under the Contract.

##### **1-1-6-2- Country**

Means the Republic of Iraq.

##### **1-1-6-3- Employer's Equipments**

Means the systems, equipments and vehicles, if any, provided by the Employer to be used by the Contractor in the execution of Works as specified in the Specifications, but excluding the Machineries not taken over by **the Employer** yet.

##### **1-1-6-4- Force Majeure**

As defined in Article 19.

##### **1-1-6-5- Law**

Means the Iraqi legislations, instructions, regulations and decrees issued by any legally constituted public authority in the Republic of Iraq.

##### **1-1-6-6- Good Performance Guarantee\_**

Means the guarantee (s), if any, required under 4/2.

##### **1-1-6-7- Site**

Means the places where the Permanent Works shall be executed to include the storage spaces, work spaces and sites where the Machineries and materials shall be delivered, as well as any other places which the Contract specifically stipulates considering the same part of the Site.

##### **1-1-6-8- Unforeseen**

Means what the prudent contractor could not reasonably expect on the date of Primary Date of submitting the Bid.

### **1-1-6-9- Change (Change Order)**

Means any change to the Works to which a Change Order is issued or approved as a Change according to the provisions of Article 13.

### **1-2- Interpretation**

Except where the context requires otherwise, in the Contract:

- a- Words importing one sex shall refer to both sexes.
- b- Words importing singular shall refer to plural and vice-versa.
- c- The provisions containing the word “agrees”, “agreed to” or “agreement” requires the agreement to be in writing.
- d- “In writing” or “written” means written in hand, typed, printed or computer generated so that the result is permanent record.

The marginal words and other headlines shall not be considered in the construction of these Conditions.

Unless the Contract Information stipulate otherwise, a profit margin of 5% of cost (cost plus profit margin) shall be considered whenever mentioned in these Conditions.

### **1-3- Communications**

Whenever these Conditions stipulate giving or issuance of any approvals, certificates, acceptance, estimates, notices or requests, such communications shall:

- a- Be in writing and delivered in hand, with acknowledgement receipt required, sent by mail or b person or electronically transmitted, as stipulated in the Contract Information, and
- b- Delivered, transmitted or sent at the recipient’s address stated in the Contract Information.

However:

- 1) If the recipient had given notice of address change they shall be sent according to such address.
- 2) Failure by the recipient to specify another address when it requests acceptance or approval, the may be sent to the address from which the request has been issued.

Such approvals, certificates, estimates or acceptance shall not be unreasonably withheld or delayed without good reason. Also, the Party who issued such notice to the other Party or to the Engineer shall send a copy thereof to the Engineer or the other Party, as the case may be.

### **1-4- Law and Language**

This Contract is subject to the Iraqi Law.

The language and communication of correspondences shall be as specified in the Contract Information. In the event more than one language is adopted in the Contract, shall be determined the applicable language when there’s disagreement on construction.

### **1-5- Priority of Documents**

The set of documents constituting the Contract shall construe each other. However, for Contract construction purposes, the priority of documents shall be in the following order:

- 1) Contract Agreement, if any.
- 2) Special Conditions (A).
- 3) Special Conditions (B).
- 4) General Conditions.
- 5) Letter of Award.
- 6) Drawings.
- 7) Schedules and any other documents constituting part of the Contract.
- 8) Specifications.
- 9) Bid’s Letter.

If ambiguity in the documents or contradiction between them is found, the Engineer shall issue instructions or the necessary clarification in this respect.

### **1-6- Contract Agreement**

The Parties shall enter into Contract Agreement within 28 days after receiving by the Contractor

the Letter of Award, unless the Contract Information state otherwise. Such Agreement shall be as per the form attached to the Special Conditions. Also, the Contractor shall pay the stamps fees and other similar costs, if any, that incur under the Law upon entering into such Agreement.

#### **1-7- Assignment**

No Party shall assign the Contract or any part thereof or any interest or benefit in or under the Contract. However, each Party may:

- a- Assign the Contract or part thereof with prior consent of the other Party, at the latter's sole discretion.
- b- Transfer the amounts due or to become due to it under the Contract as guarantee in favor of any bank or financial institution.

#### **1-8- Documents preservation and providing them**

The Employer is given custody of the specifications and drawings. Unless the Contract stipulates otherwise, the Contractor shall be provided with two copies of the Contract and any drawings to be issued later. The Contractor shall be charged with the costs of taking out any additional copies thereof.

All the Contractor's Documents shall be kept under the Contractor's care until they are **received by the Employer**. Unless the Contract stipulates otherwise, the contractor shall provide the Engineer with 6 copies of each of the Contractor's Documents.

The Contractor shall keep onsite a copy of the Contract, the publications mentioned in the specifications, Contractor documents, if any, drawings, changes and other communications connected to the Contract. The Employer's personnel may have access to all these documents at any reasonable time.

If either Party found an error or a fault in any of the documents that have been set up in order to be used in the execution of works, such Party shall promptly notify the other Party with such error or fault.

### **1-9- Delaying Issuance of Drawings or Instructions**

The Contractor shall submit to the Engineer a written notice whenever the execution of Works is to be delayed or hindered due to failure by the Engineer to supply it with drawings or instructions during specified time, provided that such period shall be reasonable and the notice shall contain the details of necessary drawings or instructions, the reasons for their issuance and the time they are required and shall state the possible consequences of delay in the issuance thereof such as obstruction or delay of the Work.

If the Contractor sustains delay and/or any cost due to failure by the Engineer in issuing any drawings or instructions within reasonable time which it was informed with, stating the reasons they are required, the Contractor shall submit another notice to the Engineer to estimate the Contractor's entitlements in such respect, considering the provisions of 20/1 on:

- a- Any extension to the execution period due to such delay if the execution is or will be delayed, as per 8-4.
- b- Any cost with reasonable profit margin (for some obstacles), to add the same to the contract price.

The Engineer shall, after receiving such notice, also agree on such matters or make its estimates in their respect according to 3-5.

However, delay by the Engineer in issuing the instructions due to error or delay on the Contractor's part, to include any error or delay in issuing the Contractor's Documents, then the Contractor shall, in such case, not be entitled to any extension in the period of execution or any reimbursement of any cost or profit.

### **1-10- Use by the employer of the contractor's documents**

In the relation between the Parties, the Contractor maintains the copyrights and intellectual property rights with respect to the Contractor's Documents and the designs it had set up, or were set up in its favor.

The Contractor, soon after signing the Contractor's agreement, is giving the Employer full, undiminished right to reproduce, use or handle the Contractor's Documents, to include introduction of amendments therein. Such right:

- a- Shall be applicable during the actual or the intended lifetime for the operation of the relevant parts of Works, whichever is greater.
- b- Entitles any person upon whom the property of such part of Work is devolved to copy, use and handle the Contractor's Documents until completion, operation, maintenance, modification, repair and demolition of the Works.
- c- Permits the use of the computerized documents and software of the Contractor using any computer onsite or any other places determined in the Contract, to include replacement of any computers provided by the Contractor.

The Employer (or its Rep.) shall not allow a third party to use, copy or circulate the Contractor's Documents or other design documents it set up, or were set up in its favor, without the Contractor's consent for other than their purposes intended in this Clause.

### **1-11- Use by the contractor of the employer's documents**

In the relation between the Parties, the Employer maintains the copyright and other intellectual property rights in all Specifications, Drawings and other documents set up by the Employer, or were in its favor. The Contractor, at its own expense, may use, copy or handle such documents for other purposes. Unless the Contract requires, the Contractor may not allow any third party to use, copy or handle such documents, except for what is required in the Contract.

### **1-12- Confidential Information**

The Contractor and the Employer's representatives shall disclose all the confidential and other information as reasonably required for the execution of Contract under the terms thereof.

Also, each shall handle the Contract Information confidentially and privately, only to the extent required for the fulfillment of the obligations of each under the Contract or the applicable law. None shall announce or disclose any works set up by the other Party without its consent. However, the Contractor may disclose any information publicly known or any other information required to prove its eligibility for competition for other projects.

### **1-13- Compliance with Law**

The Contractor, in the course of its execution of the Contract, shall comply with the applicable law. Unless the Special Conditions stipulate otherwise:

- a- The Employer shall obtain, or have obtained, the permits required with respect to the planning instructions, organization, building license, permanent works license and any other license specified in the Specifications. The Employer shall, in this respect, protect the Contractor from any damage due to failure by the Employer to conduct the same.
- b- The Contractor shall send notices, pay fees and taxes and obtain the licenses and approvals required by law with respect to the execution and completion of Works and rectify any fault therein, unless the Contractor is prevented from achieving that and provided evidence on its attempt at obtaining such licenses.

### **1-14- Individual and joint responsibilities**

If the Contractor, according to the applicable law, forms a joint venture or a consortium, different from company, of two or more personalities, the following shall be observed:

- a- Such personalities shall be jointly and severally liable to the Employer for the execution of Work.
- b- Such personalities shall inform the Employer with the name of the JV's head to have the powers of Contractor and directing such personalities forming the JV or the consortium.
- c- The Contractor shall not change the organization or legal structure of the JV or the consortium without prior consent of the Employer.

### **1-15- Inspection and Audit by the Employer**

The Contractor shall allow the Employer and/or his appointees to inspect site, accounts and records related to the execution of such contract in the contracts resulting from the contracting procedure which relied on the direct invitation or the single bid method, and shall allow checking such accounts and registers by the auditors appointed by the Employer, if applicable.

The Contractor shall, in general and for all contracts, pay attention to 15-6 which stipulates that in the event the Contractor makes any obstruction to the Employer's right of inspection and audit mentioned in 1-15 if it is proved that he is involved in any corrupt or fraudulent practice, and their consequent actions of Contract termination and disqualify the Contractor according to **the order of the provisional coalition authority (disbanded) No. 87 for the year 2004 or any law that replaces it.**

## Article Two: Employer

### 2-1- The right to access the site

The employer shall give the contractor right to enter to all parts of the site, and enable him to execute the works, at the time (or times) specified in the contract data, but the right to enter and possession shall not be exclusive to the contractor alone.

If stated in the contract that the employer shall give the contractor the right of to access and enablement of any foundations or construction or mechanical supplies or access road, then the employer shall do so on the dates and in the manner specified in the specification, but the employer may withhold the right to access and enablement until he receives the performance guarantee. If a date for the delivery of the site has not been specified in the tender attachment, the employer shall give the contractor the right to enter the site and its enablement within the timings which enable the contractor to commence the implementation of the works and proceed according to the work program referred in Paragraph (8-3).

If the Contractor incurs a delay and / or cost as a result of employer's failure to enable him to access the site or its enablement during that time, the contractor shall give notice to the engineer to assess the contractor's entitlements in this regard, taking into account the provisions of Paragraph (20-1) to decide:

- a- Any extension for the execution period due to such delay, if the execution was or will be suspended, as per the provisions of 8-4.
- b- Any cost with profit margin, to be added to the Contract Price.

The Engineer shall, after receiving such notice, set up the estimates incur therefrom as per 3-5, whether by agreement or giving its estimates thereon.

Delay by the Employer, to the extent that such delay results from error or delay by the Contractor, to include any error or delay in submitting the Contractor's Documents, then the Contractor shall not be entitled to any extension or and cost or profit reimbursement.

### 2-2- Declarations or licenses or approvals

The Employer shall give the Contractor, upon request, the reasonable assistance in obtaining the following:

- a- Copy the country's law related to the Contract that is not ordinarily available.
- b- License, permit and approval required according to the country law:
  - 1) On the requirements of 1-13: Compliance with Law.
  - 2) Outsource execution requirements, to include costumes clearance.
  - 3) Export Contractor's equipments when removed from site.

### 2-3- Employer's Personnel

The Employer is responsible for its personnel and the employees of other contractors working onsite to:

- a- Cooperate with the Contractor in its efforts as per the provisions of 4-6.
- b- Provide safety measures as required by the Contractor according to a, b, c/4-8 and environmental protection according to 4-18.

### 2-4- Employer's Financial Arrangements

The Employer shall, 28 days prior to the commencement date, give the necessary evidence that it has provided the necessary financial arrangements for the Contract that enable it to pay any demand by the Contractor promptly according to the provisions of Article 14: Contract Price and Payment. The Employer shall inform the Contractor in details with any changes it makes to such financial arrangements.

### 2-5- Employer's Requirements

If the Employer deems it is entitled to any payment, according to any condition hereof, or for another reason related to the Contract, and/or any extension to the maintenance period, then it, or the Engineer, shall inform the Contractor therewith and supply it with details. Notwithstanding the above, it is not required to send any notice related to the amounts due to it with respect of consumption of water, power and gas as per 4-19, or for the equipments and items provided by the Employer in pursuance to 4-20, or for any other services required by the Contractor.

The notice shall be sent as soon as practicable, no more than 28 days from the date on which the Employer knew or should have known about the occurrence or the circumstances that resulted in such demands to arise; the notice of extension of maintenance period shall be issued before expiry thereof.

Such details shall specify the Article and Clause of the Contract or other rules for demand, and shall include proving validity of the Employer's claim of such amounts and/or the extension periods which it deems it is entitled to pursuant to the Contract. The Engineer, in such case, shall consider such demands as per 3-5 to agree on or set up estimates on the following:

- a- Any amounts, if any, payable by the Contractor to the Employer.
- b- Any extensions, if any, to the maintenance period as per 11-3.

Such amounts may be included as deduction from the Contract Price and the Payment Certificates. The Employer may place withholding or make deduction only from the quantities approved in the advance payment, or otherwise make demand under this clause.



## Article Three: Engineer

### 3-1- Duties and Powers of the engineer

The Employer shall appoint the Engineer for the performance of duties specified thereto in the Contract. The engineers and technicians employed by the Engineer shall have adequate eligibility and be qualified for performance of such duties.

The Engineer shall have no power to amend the provisions of Contract.

The Engineer may use the powers entrusted to it specifically in the Contract or those that, by default, can be understood from the Contract. If the Engineer is required to obtain the Employer's consent before using a certain power, then such requirement shall be stipulated in the Special Conditions. The Employer shall promptly inform the Contractor with any changes it makes to the powers given to the Engineer.

In all cases, when the Engineer uses its powers that require obtaining the Employer's approval, then these shall be deemed as approved by the Employer for the purpose of this Contract.

Except for what is stated in these Conditions:

- a- The Engineer shall perform its duties or use its powers, whether expressly stipulated in the Contract or can be understood by implication therefrom, it shall conduct the same on behalf of the Employer.
- b- The Engineer shall have no right to exempt any Party from any of the duties, obligations or responsibilities stipulated in the Contract.
- c- Any approval, checking, certificate, acceptance, inspection or test or issuance of any instructions, notice and suggestion or inspection request or any similar action by the Engineer, **to include omission of non-approval**, shall not exempt the Contractor from any liability it assumes under the Contract, to include its responsibility for the errors, omissions, contradictions or the cases noncompliance with the Conditions.
- d- Any action by the Engineer in response to the Contractor's request shall be in writing and within 28 days as of the date of submitting the request, unless the Contract expressly stipulates otherwise. The following regulations shall be applied:

The Engineer shall obtain the Employers specific consent before taking any actions with respect to any of the actions mentioned in the following:

- a- Consent on time extension and/or cost increase under 4-12.
- b- Instruction on making any change as per 13-1, except for the other cases:
  - 1) States of emergency as identified by the Engineer.
  - 2) If the Change is to result in increasing the Contract Price agree on at a rate below what is specified in the Contract Information.
- c- Approval of the change proposal by the Contractor's in pursuance to the provisions of 13-3 and the change orders suggested by the Contractor under 13-1 and 13-2.
- d- To specify the amounts payable according to any of the currencies adopted in pursuance to 13-4. Without prejudice to the aforementioned obligations that the Engineer shall obtain the Employer's prior consent on the execution of the Work and if it is in the Engineer's opinion that there's a state of emergency related to the safety of labor, Works or neighboring properties, the Engineer shall be, without exempting the Contractor from any of its obligations and duties under the Contract, entitled to instruct the Contractor to execute any of the Works or necessary actions to ensure avoiding or minimizing the danger resulting from such state of emergency. The Contractor shall promptly execute such instructions issued by the Engineer notwithstanding failure to obtain the Employer's prior approval thereof; the Engineer shall specify the amount to be added to the Contract for the execution of the additional work in pursuance to the provisions of Article 13 and notify the Contractor and the Employer therewith in writing.

### 3-2- Authorization by the Engineer

The Engineer may, from time to time, entrust any of its assistants to perform any of the duties or authorize it with any of the powers devolved upon it, also it may cancel such entrustment or authorization. Those assistants include: the resident engineer and/or any independent inspectors appointed for inspection of or testing the Machineries or items supplied. The appointment, authorization or cancellation shall be in writing; such procedure shall not be applicable unless notices thereof are received by the Parties. However, the Engineer is not entitled to authorize its powers of setting up estimates in pursuance to 3-5, unless the Parties approve such authorization.

The assistants shall have adequate competence and competent to perform their duties and assume the powers entrusted to them, and they shall be efficient in using the language of communication specified in 1-4 of the Contract.

Each Engineer's assistant, to whom duties are entrusted or powers are given, shall issue instructions to the Contractor and shall act within the limits of power given to them in the authorization. Any approval, checking, certificate, consent, test or inspection or issuance of instructions, notice, suggestion, request or checking or conducting any similar action by either of them – within the limits of its authorization – shall be considered as issued by the Engineer. Notwithstanding the above:

- a- Any failure by the Asst. Engineer to reject any Work, Machineries or Goods shall not mean approval thereof, and thus shall not prevent the Engineer from using its right to reject such Works, Machineries or Goods.
- b- Objection by the Contractor on any estimates or instructions issued by the Asst. Engineer, the Contractor may refer the matter to the Engineer who shall promptly confirm, revoke or amend the content of the same.

### **3-3- Engineer's Instructions**

The Engineer shall, any time, issue to the Contractor additional or amended instructions of drawings, if these are necessary and required for the execution of Work and rectify any fault therein, in pursuance to the provisions of the Contract.

The Contract shall not take instructions from the Engineer, or from any of its assistants officially authorized according to the provisions of this Article. If any of such instructions constitute a change (change order), the provision of Article 13 shall apply thereon.

The Contractor shall comply with the instructions issued to it by the Engineer or its authorized assistance on any matter relates to the Contract. The instructions, whenever practicable, shall be in writing. While if the Engineer or its authorized assistant:

- a- Issues a verbal order, and
- b- Receives a written confirmation from the Contractor, or his representative, with respect to the verbal order within two business days of the date of issuance thereof,
- c- and he has not responded to him in writing and/or issue instructions concerning thereof within two working days from the date of his receipt of the contractor's notice.

Then the Contractor's confirmation on such verbal order shall be considered as written order issued by the Engineer or its authorized assistant, as the case may be.

### **3-4- Replacement the Engineer**

If the Engineer determines to substitute the Engineer, then it shall, during a period of no less than 21 days as of the date of substitution, notify the Contractor therewith, and shall specify in its notice the title and details of the substitute Engineer's experience. If the Contractor is not satisfied with the nominated substitute Engineer, it shall have the right to object thereon by giving the Employer a notice supported with the reasons; the Employer shall take the proper decision thereon.

### **3-5- Estimations**

Whenever such conditions require the Engineer to conduct the obligations for the purpose of agreement or setting up estimates for any matter, the Engineer shall consult both Parties in good will to reach agreement. If not agreement is reached, the Engineer shall set up its estimates fairly according to the provisions of the Contract, considering all the related circumstances.

Thereafter, the Engineer shall notify each of the Parties with any agreement or estimates reached, with supporting details, within 28 days after its receiving the objection or the request, unless stipulated otherwise. Each of the Parties shall comply with the agreement or the estimates mentioned in the notice, unless (or until) they are revised, according to the provisions of Article 20: Claims, Disputes and Arbitration.

## Article Four: Contractor

### 4-1- General obligations of the contractor

The Contractor, to the extent stipulated in the Contract, shall design, execute and complete Works according to the Contract Provisions and as per the Engineer's instructions, and shall rectify any faults therein.

The Contractor shall provide the Machineries, Contractor's Documents specified in the Contract, all its executive staff members, executive requirements, consumer items and other things and services, whether of temporary or permanent type, that are required from him to perform the functions of design, completion of and rectify any fault in the Works. The origins of

all equipments, items and services included in Work or required therefor shall be from the eligible countries specified by the Employer.

The Contractor shall be responsible for the adequacy, stability and safety of all the site works and all methods of constructions. Except for what is stipulated in the Contractor, the Contractor: a- Is deemed responsible for all the Contractor's Documents and Temporary Works and the

design of any item of the Machineries or items as required so that this item shall be according to the Contract requirements.

b- Otherwise, the Contractor shall not be responsible for the design and specifications of the Permanent Works.

The Contractor shall, whenever required by the Engineer, shall submit to the Engineer the details of arrangements and methods of executing the Works as proposed by the Contractor for

the execution of Works. The Contractor may not make crucial change in such arrangements or methods without informing the Engineer about its actions in advance.

If the Contract stipulates that the Contractor shall be responsible for the design of party of the Permanent Work, then unless the Special Conditions stipulate otherwise:

a- The Contractor shall submit to the Engineer the Contract Documents for such part of Works according to the procedures stipulated in the Contract.

b- The Contractor's Documents shall be according to the Specifications and Drawings and shall be formulated in the communication language stipulated in 1-4 and shall include the additional information as required by the Engineer to be added to the Drawings for the purpose of coordination between the designs of each Party.

c- The Contractor shall be responsible for such part of Works, and such part shall, after execution thereof and completion of Works, shall realize the purpose to which it was established as required in the Contract.

d- The Contractor shall submit to the Engineer, before commencement of conducting the inspections on completion, the as-built drawings of the facility or such part thereof, even if this requires the maintenance and operation guide required in the Specifications, in details, in order that the Employer is enables to maintain, operate, disassemble, assemble, calibrate and repair the same. Such part of Work shall not be considered as completed for the purpose of taking over thereof as per 10-1 unless such documents and the operation manual are submitted to the Engineer.

### 4-2- Good Performance Guarantee

The Contractor shall, at its cost, take out a good performance guarantee through the satisfactory completion of Works, in the amount and currency specified in the Contract Information. If no amount is specified in the Contract Information, the provisions of this Clause shall not apply.

The Contractor shall submit the good performance guarantee to the Employer within 28 days as of the date of its receiving the letter of award and shall send copy thereof to the Engineer.

The guarantee shall be issued from a bank or financial institution accepted by the Employer, and shall be set up as per the form attached to the Special Conditions, or in any other form approved by the Employer.

The Contractor shall ensure that the good performance guarantee shall be valid until the Contractor executes, completes and rectifies any fault in the Works. If the guarantee conditions contains a date of expiry, and it is discovered that the Contractor shall not be authorized

to receive the Works' Final Taking Over Certificate 28 days before the good performance guarantee's expiry date, it shall extend the guarantee's validity until the Works are completed

and any faults therein are rectified.

The Employer shall not make any claim with respect to the **good** performance guarantee , except for the amounts due under the Contract.

The Employer shall indemnify and hold the Contractor harmless against all damages, losses and expenses (to include the litigation costs and expenses) that may arise from the Employer's claim with respect to the **good** performance guarantee , to the extent the Employer is considered not rightful in its claim.

The Employer shall return the performance to the Contractor within **28** days as of the date of its receiving the Work's Final Taking Over Certificate.

In addition to the conditions stated in this Clause, whenever the Engineer determines the need for increase or decrease of the Contract Price due to changes in prices or legislations or due to Change Orders of 25% to any amount in the Contract specified in certain currency, the Contractor shall, according to the Engineer's request, take prompt actions to increase or decrease the amount of **good** performance guarantee as appropriate in that currency at equal rates.

#### **4-3- the Contractor's Representative**

The Contractor shall appoint the Contractor's Representative, giving it the required powers to act on its behalf as required according to the Contract.

Unless the Contractor's Rep. is named in the Contract, the Contractor shall, before the commencement date, submit to the Engineer for approval the name and qualifications of the Person it nominates as its Rep. If it is not approved or if the approval is withheld later by the Engineer according to 6-9: Contractor's Reps., or if the Rep. fails to act as the Contractor's Rep., the Contractor shall in the same way provide the name and qualifications of another person to suit such appointment.

The Contractor may not cancel the employment of or replace its Rep. without prior consent from the Engineer thereon.

The Contractor's Rep. shall act for directing the execution of the Contractor's Work on full-time basis. If circumstances require such Rep. to be temporarily absent from site during the execution of Works, the Contractor shall name suitable alternative with the Engineer's prior consent; the Engineer shall be notified therewith.

The contractor's Rep. shall receive instructions on behalf of the Contractor, in pursuance of 3-3. The Contractor's Rep. may authorize some of its powers or functions to any eligible person and may cancel such authorization at any later time. However, such authorization or cancellation shall not be applicable unless agreed on by the Engineer, after receiving a prior notice signed by the Contractor's Rep. stating the name, qualifications, powers, tasks and authorities given to such nominated person or cancelled.

The Contractor's Rep. and all such persons shall be fluent in the language of communication stated in 1-4. Otherwise, the Contractor shall continuously provide expert translators within the business hours in the number specified by the Engineer.

#### **4-4- Subcontractors**

The Contractor may not assign whole the Works to subcontractors. However, it may assign part of the Works to them after obtaining written consent by the Engineer.

The Contractor shall be responsible for the acts and errors by any subcontractor, its agent or employees as if such acts or errors were made by the Contractor itself. Unless the Special Conditions stipulate otherwise:

- a- The Contractor is not required to obtain approval of the outsourcers of Goods, or related to any subcontract which subcontractor's name is mentioned in the Contract.
- b- The Contractor shall obtain the Engineer's prior approval of the other subcontractors.
- c- The Contractor shall send to the Engineer a prior notice at least 28 days before the date scheduled for the commencement of any subcontractor's work and for the actual commencement of such work onsite.
- d- Each subcontract agreement shall include stipulations authorizing the Employer to assign such Subcontract to it, as per 4-5, if applicable, or in the event of Contract termination by the Employer as per 15-2.

The Contractor shall bind its subcontractors with the same obligations binding it in 1-12 on the protection of confidentiality.

The foreign Contractor shall give fair opportunity to local Contractors to work in a capacity of Subcontractors in the execution of Works entrusted to it.

#### **4-5- Assignment of Subcontract**

In the event the Subcontractor's obligations continue beyond the expiry of the Maintenance Period, and the Engineer, prior to such date, requires the Contractor, to assign such Subcontract to the Employer, the Contractor shall comply with the same.

In which case, the Contractor shall not be responsible to the Employer for any Work performed by the Subcontractor when the assignment is in force, unless the letter of assignment stipulates otherwise.

#### **4-6- Cooperation**

The Contractor, as stipulated in the Contract, or in response to the Engineer's instructions, shall give enough facilities for the execution of any Works from:

- a- Employer's Personnel.
- b- Any other Subcontractors employed by the Employers.
- c- Those in service of any legally constituted public authorities.
- d- Those who are employed for the execution of Works on or in the vicinity of the site, other than the Works included in the Contract.

Such instructions are considered Changes to the extent the Contractor sustains delay of its Works and/or unexpected costs. Such services required by such employees or other contractors may include the use of the Contractor's equipments, Temporary Works and arrangement for Access to Site which are considered a Contractor's responsibility.

If the Employer is required under the Contract to give the possession of any foundations, facilities, Machineries or access right under the Contractor's Documents, the Contractor shall submit to the Engineer such documents at the time and according to the method specified in the Specifications.

#### **4-7- Fixing Dimensions**

The Contractor shall fix the original points, straightness and reference levels described in the Contract or supplied by the Engineer. Also, the Contractor shall be responsible for the correct fixation of all parts of Works, and shall rectify every error in the places, levels, measures or straightness of Works.

The Employer shall be responsible for any error in determining such reference points stipulated in the Contract or those supplied by the Contractor. However, the Contractor shall exert every effort in verifying their correctness before using thereof.

If the Contractor sustains delay in the execution and/or costs of Works due to the execution of Works depending on false information about the reference points, and a prudent Contractor could not reasonably discover such errors and avoid delay and/or increase the Cost incur thereon, then the Contractor shall give the Engineer a notice to estimate its entitlement in such respect, considering the provisions of 20-1 for the following:

- a- Any extension to the Period of Completion due to such delay, if such completion is or will be delayed, as per 8-4.
- b- Any cost with profit margin, to be added to the Contract Price.

When the Engineer receives such notice, it shall, in pursuance to 3-5, agree thereon or setup the necessary estimates of the following:

- 1) Whether, to any extent, it is not possible to reasonably discover the error.
- 2) The Stipulations of (a) and (b) above, but to this extent.

#### **4-8- Safety Measures**

The Contractor shall:

- a- Comply with all the safety instructions required.
- b- Consider the safety of all persons having right to be available onsite.
- c- Exert the reasonable efforts to keep the site and Works free of unnecessary obstructions, in view to avoid endangering such persons.
- d- Provide fences, lighting and guard and watching Works until completion and handing over according to the provisions of Article 10.
- e- Provide any Temporary Works (to include roads, walkways, guards and fences) that may be required, due to Work's execution, for the use by and protection of the public, staffs and those who use the land adjacent to site.

#### **4-9- Quality Assurance**

The Contractor shall establish quality assurance regulations to prove compliance with the Contract requirements, provided that such system shall be according to the Contract details. Also, the Engineer shall have the right to check any aspect of such regulations.

The details of all compliance procedures and documents shall be submitted to the Engineer, for information, before the commencement of any design and execution milestones. Upon issuance of any technical document to the Engineer, such document shall be endorsed to evidence the prior approval by the Contractor itself thereof.

Compliance with the quality regulations shall not relieve the Contractor from any of its duties, obligations or responsibilities stated in the Contract.

#### **4-10- Data of the Site**

The Employer shall, prior to the Primary Date, have provided the Contractor, for information, the information available to it on the subsurface and hydrological conditions of the Site, to include the environmental phenomena.

Also, it shall provide the Contractor with any information it obtains after the Primary Date. However, the Contractor shall be responsible for the construction of all such information.

Also, and to the practicable extent, taking into consideration the time and cost, the Contractor shall be considered as obtained the necessary information on the risks, emergencies and other conditions affecting its offer or the Works. To the same extent, the Contractor shall be considered as has inspected the site and vicinity and has access to all information previously mentioned, and that it has personally satisfied, prior to submitting its offer, with all the related matters, to include but not limited to:

- a- Site's shape and type, to include the status of subsurface strata.
- b- Hydrological and environmental status.
- c- Amount and type of Work and execution requirements for the Works execution, completion and rectification of any faults therein.
- d- State's law, procedures and doing business therein.
- e- Contractor's requirements related to access to site, accommodation, facilities, employees, power, transportation, water and other utilities.

#### **4-11- Adequacy of Contract Price Approved**

The Contractor shall have:

- a- Accurately and adequately satisfied with the Contract Price Approved.
- b- Set up its offer according to the information, construction, necessary data, inspection, tests and its satisfaction with all the matters referred to in 4-10.

Unless the Contract stipulates otherwise, the Contract Price Approved shall cover all the Contractor's obligations required in the Contract, to include the backup amounts – if any, and all things required for the execution, completion and of rectifying any faults in the Works.

#### **4-12- Unforeseen Material Conditions (Obstructions Beyond the Contractor's Control)**

"Material Conditions" under this Clause means the natural material conditions, artificial obstructions and other natural obstructions and pollutants that the Contractor may experience onsite upon Works execution, to include the subsurface and hydrological conditions, excluding the climatic conditions.

If the Contractor experiences adverse material conditions which it considers unforeseeable, then it shall notify the Engineer therewith within max. period of 28 days in reference to 20-1, provided that the notice shall include description thereof and state the causes leading them to be so considered, until the Engineer is able to inspect the same and verify the causes which the Contractor deems unforeseeable.

Also, the Contractor shall continue the execution of Works, taking the required precautions against such Material Conditions, and shall comply with any instructions issued by the Engineer in their respect; if any of such instructions constitute a Change (Change Order), the provisions of Article 13 shall apply in their respect.



If the Contractor experiences such unforeseeable material conditions, to the extent these may be so considered, sends a notice thereof to the Engineer and sustains delay in the Period of Completion and/or cost resulting therefrom, it shall be entitled to the same according to its notice, taking into account the provisions of Clause 20-1, for the following:

- a- Extension of the Period of Completion due to such delay, if Completion is or will be delayed, according to the provisions of 8-4.
- b- Any such cost to be added to the Contract Price.

The Engineer, once receives the aforementioned notice, shall inspect and/or investigate the material conditions, and then it shall, in pursuance to 3-5, agree thereon or set up estimates as follows:

- 1) Whether such Material Conditions are unforeseeable, and to what extent they can be so considered.
- 2) Estimate the two matters described in (a) and (b) above, according to such extent. However, the Engineer may, prior to agreement on financial indemnification mentioned in 2 above, investigate whether other Material Conditions in parts of similar Works, if any, are better than what is reasonably expected upon submitting the offer by the Contractor. If such favorable conditions are experienced, the Engineer may, by employing the method in 3-5, estimate or reach agreement or discounting the cost due to such favorable conditions, which can be considered deduction from the Contract Price and the payment certificates.

The Engineer shall consider any evidence submitted by the Contractor on such material conditions, as expected upon submitting its Bid. However, the Engineer is not bound to adopt any construction contained in such evidence.

#### **4-13- Right of passage and Facilities**

Unless the Contract stipulates otherwise, the Employer shall, without any cost to the Contractor, provide access road and site possession to include the private of temporary right of way, as are considered necessary for the Works. The Contractor shall, at its risk and cost, provide any additional facilities outside the site as required for Works execution.

#### **4-14- Avoid Interference**

The Contractor may not unnecessarily or unsuitably intervene with the following:

- a- Public convenience.
- b- Access to, use or occupy all roads and walkways, whether general or specific to the Employer's or others' property.

The contractor shall also indemnify and hold the Employer harmless from damages, losses or expenses (to include the litigation costs and expenses) for anything resulting from any unnecessary or unsuitable intervention or obstruction.

#### **4-15- Access Roads**

The Contractor is deemed as has investigated the availability and suitability of the Site's access roads on the Primary Date, and it has satisfied with their conditions. The Contractor shall spare no effort to avoid damages to and protect roads and bridges due to the Contractor's and employees' traffic, to include using suitable vehicles and roads.

Unless these Conditions stipulate otherwise:

- a- The Contractor shall, as between the Parties, be responsible for any maintenance required to the access roads due to its use thereof.
- b- The Contractor shall provide the necessary signs and regulatory instructions along such roads and shall obtain the required permits from the competent authorities on its use of the roads, signs and instructions.
- c- The Employer shall not be responsible for any demands that may arise from use or otherwise of any access road.
- d- The Employer does not guarantee the availability and suitability of access roads.
- e- The Contractor shall be charged with costs to incur from unavailability or unsuitability of such access roads for its use.

#### **4-16- Transportation of Execution Requirements**

Unless the Special Conditions stipulate otherwise:

- a- The Contractor shall notify the Engineer within max. period of 21 days after the arrival of any Machineries or essential item of other execution requirements to the Site.
- b- The Contractor shall be responsible for packaging, loading, transportation, taking over, unloading, storage and protection of all execution requirements and other matters necessary for Works.
- c- The Contractor shall indemnify and hold the Employer harmless from any damages, losses or expenses, to include the litigation costs and expenses that may arise from any damage to occur due to the transportation of execution requirements, and shall negotiate and pay the claims that may arise from transportation operations.

#### **4-17- Contractor's Equipments**

The Contractor shall be responsible for all its equipments. The Contractor's Equipments, after delivery at Site, shall be deemed as exclusively dedicated for Works execution. The Contractor may not take out of site any essential items of such equipments without the Engineer's consent. However, such consent shall not be required for the vehicles transporting the execution requirements or Contractor's employees.

#### **4-18- Environmental Protection**

The Contractor shall take all reasonable steps for the environmental protection, in or outside the Site, and shall limit the nuisance or damage to occur to persons or properties due to pollution, noise or otherwise resulting from the Contract execution.

The Contractor shall, also, verify that the emission rate and the amount of surface ejection and flow resulting from its activities are not more than the limits stated in the Specifications or the limits stipulated in the applicable law.

#### **4-19- Electricity, Water and Gas**

The Contractor is responsible for the provision of power, water and other utilities it may require, except for what is stipulated hereafter, for the purpose of execution of constructions, to the extent required in the Specifications for inspection purposes.

The Contractor has the right to use power, water, gas and other utilities available onsite for the purpose of Works execution, according to the details and the prices stated in the Specification, the Contractor shall, at its risk and cost, provide any tools required for such uses and for measurement of quantities consumed.

The quantities consumed and amounts (as per the prices) of such utilities shall be agreed on, or estimated in pursuance to 2-5 for calculating the Employer's claims, and 3-5 for making estimates. The Contractor shall pay such amounts to the Employer.

#### **4-20- Equipments and Items submitted by Employer**

The Employer shall allow the Contractor to use the Employer's Equipments, if any, for Works execution according to the details and arrangements and for the prices stated in the Specifications. Unless the Specifications stipulate otherwise:

- a- The Employer shall be responsible for its Equipments; otherwise,
- b- The Contractor is considered responsible for any item of the Contractor's Equipments while these are operated, driven, possessed or controlled by the Contractor's employees.

The quantities and use amounts, as per the fixed prices, for the Employer's Equipments in agreement or as estimated by the Engineer according to the provisions of 2-5 and 3-5. The Contractor shall pay such amounts to the Employer.

The Employer shall supply the Contract, for free, with items to be provided, if any, according to the details specified in the Employer's Requirements. The Employer shall, at its risk and costs, supply such items at the time and place specified in the Contract; the Contractor shall visually inspect the same and notify the Engineer promptly on any deficiency or shortage therein. Unless the Parties agree on otherwise, the Employer shall promptly rectify any deficiency, fault or shortage therein.

After such visual inspection, such free items shall become at the Contractor's custody and supervisions. However, the Contractor's obligation to inspect and protect the same shall not relieve the Employer from responsibility for any deficiency, shortage or fault in unless it can be

discovered by visual inspection.

#### **4-21- Work Progress Reports**

Unless the Special Conditions stipulate otherwise, the Contractor shall make submit to the Engineer the Work progress reports in 6 copies, provided that the first report shall cover the period through the end of the month following the commencement date; thereafter, the reports shall be issued monthly, within 7 days from the latest day of the relevant period.

Submission of reports shall continue until completion by the Contractor of all the outstanding Works and deficiencies until the date of execution specified in the Works Primary Taking Over Certificate.

Each report shall contain:

- a- Charts and details of Work progress to include each phase of design, if any, the Contractor's Documents, Purchase Orders, manufacture, delivery to Site, construction, installation and inspection, including all Work milestones undertaken by the Subcontractor nominated (as defined in Article 5: Subcontractors Nominated).
- b- Photos showing the status of manufacturing and Work progress onsite.
- c- With respect to the manufacture of essential items of Machineries: to be stated the names of manufacturers, places of manufacture, rate of progress and expected and actual completion dates of:
  - 1) commencement in the manufacture.
  - 2) the inspection operations by the Contractor.
  - 3) inspections.
  - 4) Shipping and arrival at site.
- d- Information of the Contractor's executive staff and constructional equipments as described in 6-10.
- e- Copies of the quality assurance documents, inspection results and item certificates.
- f- List of notices related to the Employer's requirements according to 2-5 and the Contractor's requirements according to 20-1.
- g- Statistics of public safety including the details related to any serious accidents and any activities connected to environmental and public relations aspects.
- h- Comparison between the actual progress and the planned progress of Works execution, stating the details of incidents and circumstances that may obstruct completion according to the Contract and stating the procedure being or to be taken to avoid delay.

#### **4-22- Security in the Site**

Unless the Special Conditions stipulates otherwise:

- a- The Contractor shall be responsible for disallowing the unauthorized persons to enter site.
- b- The persons authorized to be onsite shall be only the Contractor's employees, the Employers personnel and any other persons whom the Employer or the Engineer notifies the Contractor as authorized by other Employer's Contractors onsite.

#### **4-23- Contractor Operations at the Site**

The Contractor shall confine its operations within site and any other areas that the Contractor may obtain and the Engineer may approve as additional Work areas. Also, it shall take all necessary precautions to maintain the Contractor's Equipments and employees within the Site's boundaries and such other areas, so that they are not removed from adjacent lands.

The Contractor, during Work execution, shall keep the Site free of all unnecessary obstructions and shall store or remove the surplus equipments in coordination with the Engineer; it shall clean the Site from all debris, wastes and Temporary Works that are no longer required.

The Contractor shall, upon issuance of the Works Primary Taking Over Certificate, clean all parts of the Site or the Works related to such taking over certificate, and shall remove the surplus equipments and items therein, as well as the wastes, debris and Temporary Works, so that such parts of Site or Works are kept clean and safe. However, the Contractor shall keep onsite through termination of the Maintenance Period its execution requirements until fulfillment

of its obligations under the Contract.

#### **4-24- Artifacts**

All fossils, coins, finds of value, artifacts, facilities or other remnants or items of geological or archeological value that are discovered onsite shall be placed at the Employers care and disposal. The Contractor shall take all reasonable precautionary measures to prevent its employees or any other persons from removal thereof or damaging any or such discoveries.

Also, the Contractor shall, upon discovery of such objects, notify the Engineer therewith promptly; the Engineer shall issue its instructions on the method of dealing with the same.

If the Contractor sustains delay in the period of execution and/or cost due to its compliance with such instructions, it shall give the Engineer another notice to estimate its dues, taking into account the provisions of 20-1 with respect to the following:

a- Extension of the Period of Completion due to such delay, if the completion is or will be delayed, as per 8-4.

b- Any cost as such, to be added to the Contract Price.

The Engineer shall, after receiving such other notice, act according to 3-5 to agree thereon or make estimates for such matters.

## **Article Five: Subcontractors Nominated**

### **5-1- Definitions of Subcontractor Nominated**

Shall be defined as Subcontractor Nominated in this Contract and Subcontractor:

- a- Who the Contract states as a Subcontractor Nominated.
- b- Who the Engineer, according to the provisions of Article 13: Changes and Amendments, issues instructions to the Contractor to engage as a Subcontractor, as per 5-2: Objection to Nomination.

### **5-2- Objection to Nomination**

Except for the Subcontractors nominated in the Contract, the Contractor is not obliged to engage any other subcontractor nominated upon whom he has reasonable objection, provided that it shall notify the Engineer with that, stating supporting details. The objection is reasonable is based on any of the following matters, unless the Employer also agrees to indemnify the Contractor for the consequences of such matter:

- a- There are reasons to realize that such Subcontractor has no adequate qualification, resources or financial capacity.
- b- The Subcontractor Nominated does not accept the Contractor's indemnification and security against any default in or misuse of requirements caused by it, agents, employees, ...
- c- The Subcontractor Nominated refuses to sign the Subcontract Agreement, to include setting up designs, if any.

The Subcontractor Nominated:

- 1- The Subcontractor Nominated shall be liable to the Contractor for all obligations and responsibilities that enables the Contractor to comply with its obligations and responsibilities under the Contract.
- 2- Shall indemnify the Contractor for all obligations and responsibilities that may arise from or are connected the Contract due to failure by the Subcontractor in performing such obligations or complying with such responsibilities.
- 3- The Nominate Subcontractor shall not be paid the dues mentioned in 3-5 unless the Contractor receives payments from the Employer for the Works executed as per the Subcontract Agreement.

### **5-3- Payments to Nominated Subcontractors**

The Contractor shall pay the Subcontractor Nominated all the amounts referred to in the approved bills of payments to the Subcontractor as after the Engineer's consent as entitlement to it as per the Subcontract Agreement such amounts plus any other expenses shall be part of the Contract Price, according to the provisions of 5-13.

### **5-4- Proof of Payment**

The Engineer may, before issuance of any certificate of payment containing an amount payable to a Subcontractor Nominated, require the Contractor to submit reasonable proof that all payments due to the Subcontractor Nominated in the previous payment certificates, minus the deduction applied for withholding or otherwise, are paid to is, unless the Contractor:

- a- Submits such reasonable proof to the Engineer, and b- Also,
  - (1) Convinces the Engineer, in written evidence, that the Contractor reasonably has the right to withhold or refuse payment of such amounts.
  - (2) Submits to the Engineer written proof that the Subcontractor Nominated is notified with the Contractor's right in its action.

Whereupon, the Employer may, based on a report set up by it solely, give instructions of payment to the Subcontractor Nominated part of or all such amounts that have been previously approved, after making the applied deduction, from the Subcontractor Nominated dues, and the Contractor fails to submit the proofs described in (a) and (b) above in their respect

The Contractor shall, in such case, return to the Employer such amounts disbursed directly by the Employer to the Subcontractor Nominated.

## **Article Six: Employees and Workers**

### **6-1- Appointing Employees and Workers**

Unless the Contract Documents stipulate otherwise, the Contractor shall make its arrangements to hire the necessary number, pay compensations, provide catering and transportation of employees and workers, domestic or otherwise, and provide accommodation therefor if applicable. The Contractor, to the possible and reasonable extent, shall hire experienced and qualified workers and employees from domestic sources within the country of Works.

### **6-2- Wage average and Labor Conditions**

The Contractor shall pay rates and observe labor conditions that are not below their level as applied by the trade and industry practitioners in the region where Works are executed. If such levels or conditions are not available, the Contractor shall pay the rates and observe the labor conditions that are not below the general level or rates or conditions applied domestically by Employers of trade or industry similar to that performed by the Contractor.

The Contractor shall inform its employees with their responsibility for the payment of income tax to incur thereon in the country of Works for their salaries, compensations and rewards plus any tax-related allowances according to the applicable law in the country of Works. The Contractor shall make such tax deductions from the income of its employees to incur according to such law.

### **6-3- Persons Employed by the Employer**

The Contractor shall not employ or solicit any services from any employees or workers who work for the Employer.

### **6-4- Labor Law**

The Contractor shall comply with all labor laws applicable to its employees, to include the laws on employment, health, public health, security, residence and immigration, and shall perform all their legal rights. Also, the Contractor shall require its employees to abide by the applicable law, to include work safety regulations.

### **6-5- Work Hours**

Works shall not be executed onsite on public holidays locally recognized or beyond ordinary business hours as specified in the Contract Information, unless:

- a- the Contract stipulates otherwise,
- b- they are approved by the Engineer, or
- c- continuing work is unavoidable, or was necessary to save lives or properties or protect Works' safety; in which case, the Engineer shall be notified promptly.

### **6-6- Facilities of the employees and workers**

Unless the specifications stipulated otherwise, the contractor shall provide and maintain the facilities and care supplies necessary for its employees, and shall provide to the Employer's employees the facilities stipulated in the Specifications.

The Contractor shall not allow any of its employees to take any of the facilities that constitute part of Permanent Work as a permanent or temporary place of residence.

## **6-7- Health and Safety**

The Contractor shall at all time take the necessary measures for the protection of his employees' health and safety, and shall, in cooperation with the local health authorities, the necessary medical staff, first-aid facilities, patient room and ambulance to be ready at all time onsite and in the accommodations of the Contractor's employees and Employer's personnel, and shall also provide the necessary arrangements for the public health requirements and prevent outbreak of epidemics.

The Contractor shall appoint a person to be responsible for safety and accident prevention onsite, so that such person has adequate qualification to be responsible for safety and accident prevention issues and shall have the authority to issue instructions and take precautionary measures to avert accidents. In this context, the Contractor shall provide the protection officer with all requirements to enable it exercise its powers and responsibilities.

The Contractor shall, also, send to the Engineer the details of any accident to occur once occurred and shall maintain registers and submit reports on health, public safety and damages that may occur to properties, as reasonably requested by the Engineer.

For the protection against AIDS, the Contractor shall conduct outreach programs on AIDS through providers of this service by taking the procedures to prevent communication and outbreak of this disease between its employees and to local citizens and ensure immediate diagnosis and helping diseased persons.

The Contractor shall, during the Contract, to include the faults rectification period:

- 1- Make, at least every two months, campaigns for collection of information, outreach and give advice to all staffs and workers of the Contractor, Subcontractors, consultants, truck drivers, Site suppliers and all people in the surrounding neighborhoods on the responsibility, risks, effects and practices to be avoided as much as much as the matter relates to preventing communicating the infection that cause diseases which results from sexual relations, particularly AIDS.
- 2- Provide the means that prevent infection communication during sexual activities by both sexes.
- 3- Conduct periodical survey and diagnosis and decide the treatment and referral to the domestic programs (local health centers) specializing in the treatment of sexual diseases and AIDS, unless agreed on otherwise, for all the Contractor's employees and worker onsite.

The contractor shall establish in its program for the execution of Works required, in pursuance to the provisions of 3-8, a viable program for its employees and workers onsite and their families that ensure no communication of infection and contracting sexual diseases and AIDS which shall include the protective measures, the costs required thereto according to this Clause and the specifications. The program shall also contain the details of its contents, the resources to be provided and employed for achieving the same and the contracting procedures for executing the same. Also, the Program shall be supported with cost estimate analysis, substantiated with supporting documents. The Contractor shall be paid for setting up and execution of such program no more than the amounts specified for this purpose.

## **6-8- Contractor's Control**

The Contractor shall provide all necessary staffs for planning, direction, arrangement, administration, inspection and testing of Works, throughout the period of Execution, and thereafter for any period required for the Contractor to fulfill its obligations.

Control shall be conducted by adequate number of eligible persons using the communication language, in pursuance to 1-4, and by the operations to be executed, to include the methods and techniques required and the risks might be sustained and methods of accident prevention, through the satisfactory and safe execution of Works.

### **6-9- Contractor's Employees**

Contractor's employees shall have the required competence, skill and experience according to specialty or profession and shall be approved by the Engineer. The Engineer may require the Contractor to remove or instruct to remove any person employed onsite of for the Works, to include the Contractor, if such person:

- a- persists in its conduct or is continuously careless, b- performs its duties inefficiently or negligently,
  - c- fails to apply any provisions of the Contract, or
  - d- persists in a conduct that threatens safety, health or environmental protection,
- then, in such case, the Contractor shall appoint or instruct to appoint a suitable alternative.

### **6-10- Workers' Records and Contractor's Equipments**

The Contractor shall provide the Engineer with detailed records stating the numbers of Contractor employees available onsite, categorized as per skill, and the numbers of its equipments, categorized as per type. Such records shall be submitted to the Engineer monthly, using the forms approved by the Engineer, until the Contractor completes any Work known to be outstanding on the Completion Date specified in the Works Primary Taking Over Certificate.

### **6-11- Undisciplined Behavior**

The Contractor shall, at all times, take all reasonable precautions to prevent occurrence of any riot or violation of law or disturbance to order by or between the Contractor's employees and shall keep Site and surroundings secure and protect persons there.

### **6-12- Foreign Workers**

The Contractor may bring in foreign labor from outside the Works country in the numbers required for the execution of Works and within the limits permitted by applicable laws.

The Contractor shall ensure admission of such labor according to lawful visas and work permits. The Employer may, at the Contractor's request, offer prompt assistance to the Contractor to obtain domestic, regional and governmental licenses to bring in foreign labor required for Work.

The Contractor shall assume the responsibility for repatriating its employees to the place wherefrom they were hired or to their previous place of residence. In the event of death of any of them or of their family members living therewith, the Contractor shall reciprocally assume the responsibility for securing the procedures required to return them to their country and have them buried there.

### **6-13- Necessary Food Supplying**

The Contractor shall set up the necessary arrangement to provide the adequate supplies of good food as stated in the Specifications in affordable prices to its employees related to the Contract execution.

### **6-14- Water Supplying**

The Contractor shall have inspected the conditions of the Site and the provision of water for drinking and for other uses by its Employees.

### **6-15- Protection from Harmful and Annoying Insects**

The Contractor shall, throughout the Term of Contract, take the required procedures for the protection of its employees available onsite from harmful and annoying insects in view to reduce their risks on the employees health. The Contractor shall comply with the application of instructions issued by the national health authorities and using insecticides for this purpose.

### **6-16- Alcohol and Drugs**

The Contractor shall not outsource, sell, barter or distribute any alcoholic beverages or drugs or permit outsourcing, selling, bartering or distributing any of them otherwise than what is applied by the law of Works country in this respect.



**6-17- Weapons and Ammunition**

The Contractor shall not give, barter or distribute any weapons or ammunitions of any type to any persons or permit any of its employees to the same.

**6-18- Celebrations and Religious Events**

The Contractor shall observe the events recognized by the Government, and public holidays and any other religious traditions.

**6-19- Funeral Ceremonies**

The Contractor is responsible for taking the necessary procedures required according to the domestic instructions and required for the funeral of any of its local employees dies during its work and according to the conditions applied domestically.

**6-20- Use of Force and Threat in Appoint Workers**

The Contractor shall not hire any worker using force or threat, of any type. Any type of work or performing a service which hiring is not voluntarily, such hiring shall be considered as made using force, threat and imposing penalties.

**6-21- Inadmissibility of Child Labor**

The Contractor shall not hire children in any work of business nature or that may expose it to or deprive it from education or that cause thereto health, physical, mental, behavioral, psychological or social-growth damage.

**6-22- Work Reports**

The Contractor shall maintain full accurate reports on the hiring procedures for its workers onsite. Such reports shall contain the name, age, sex, work hours and paid compensation for all its workers. Such reports shall be summarized monthly and shall be available for the Engineer's inspection within ordinary business hours. Such reports shall be submitted along with other details required to be submitted by the Contractor to the Engineer as per 6-10: Labor and Equipments Work Report.

## **Article Seven: Machineries, Materials and Workmanship**

### **7-1- Method of Implementation**

The Contractor shall manufacture the Machinery supplies and produce and fabricate items and all other execution works as follows:

- a- In the method specified in the Contract, if any.
- b- In a careful way suitable for the recognized rules of professional industry.
- c- Using facilities properly supplied and safe materials, unless the Contract stipulates otherwise.

### **7-2- Samples**

The Contractor shall submit to the Engineer the following samples of materials and their related information for its consent before using such materials in the Works:

- a- Standard manufacturers' samples of materials and the samples stipulated in the Contract, at the Contractor's cost.
- b- Any additional samples required by the Engineer as changes.

Provided that each sample shall be labeled to show its origin and the purpose of use thereof in the Works.

### **7-3- Inspection**

The Employer's personnel shall, at all reasonable times, have:

- a- Free access to all parts of the Site and to all places wherefrom the natural materials are obtained.
- b- Ability, throughout production, manufacture and construction, on or outside the site, to test, inspect and measure manufacturing materials and verify the progress in the manufacture of Machineries and the production and fabrication of materials.

The Contractor shall give the employer's personnel ample time to perform such activities, to include giving access, facilities, licenses, safety tools, knowing that conducting by the Contractor such activities shall not exempt it from any obligation or responsibility.

The Contractor shall, also, notify the Engineer when the Works are ready and before covering up or preparing the same for storage of transportation. The Engineer shall, thereafter, conduct inspection, test or measurement without delay, or shall inform the Contractor that there is no need for inspection thereof.

Failure by the Contractor to notify the Engineer, it shall, whenever so required by the Engineer, inspect the Works covered up, return the same to their previous situation and rectify faults therein. The Contractor shall be charged with the costs resulting therefrom.

### **7-4- Test**

The stipulations of this clause apply to all tests stipulated in the Contract, except for the tests conducted after completion, if any.

Unless the Contract stipulates otherwise, the Contractor shall provide all tools, assisting items, documents and other information, power, equipments, fuel, consumables, labor, materials, qualified and experienced personnel and other things required to effectively conduct the inspections stipulated. Also, it shall agree with the Engineer on the time and place of conducting inspection from any of the Machineries, items and other parts of Works.

The Engineer may, in pursuance to the provisions of Article 13, change the place or details of inspections stipulated or to instruct the Contractor to perform additional tests. If the results of such changed or additional tests show that the Machineries, Items or workmanship tested are not according to the Contract Requirements, then the Contractor shall be charged with the cost of execution of such changes regardless of the other provisions of the Contract.

The Engineer shall give the Contractor at least 24-hr notice informing it with its intent to attend tests. Failure by the Engineer or its Rep. to attend at the time and place agreed to, the Contractor may continue conducting tests, unless it receives written instructions of otherwise from the Engineer; such tests shall be considered as conducted in the presence of the Engineer.

If the Contractor sustains delay and/or cost due to its compliance with such instructions, or due to delay for which the Employer is considered liable, the Contractor shall give notice to the Engineer to estimate its entitlements in that respect, taking into account the provisions of 20-1 on:

- a- Extension of the Period of Completion due to such delay, if Completion is or will be delayed, as per the provisions of 8-4.
- b- Any such cost to be added to the Contract Price.

The Engineer shall, after receiving such notice, agree thereon according to the provisions of 3-5 or make estimates for such matters.

The Contractor shall give the Engineer, without delay, the certified test reports. If the Engineer finds the tests permitted, it shall approve the test certificate or issue a letter to the Contractor of that content. The Engineer shall, if did not attend the tests, accept as correct the results of readings.

#### **7-5- Refusal**

Failure by the Contractor to conduct any tests required according to the Contract, or if it finds due to any test, inspection or measurement that any of the Machineries, materials or workmanship is faulty or not in accordance with the Contract requirements, the Engineer may refuse such Machineries, materials or workmanship by a notice given to the Contractor, stating the reasons for refusal. The Contractor shall, thereafter, rectify the fault in the refused item until it becomes in accordance with the Contract requirements.

If the Engineer requests repeating the test of any of the Machineries, materials or workmanship, then the tests shall be repeated under the same conditions of circumstances. If, in consequence thereof, the Employer is found to have sustained additional cost due to refusal and repeating the test, the Contractor shall, as per 2-5, pay the Employer such additional cost.

#### **7-6- Repairing works**

Notwithstanding any previous test or issuance of any previous certificate, the Engineer enjoys the power of issuing instructions to the Contractor on the following:

- a- Removal and replacement of any Machineries or materials violating the Contract requirements.
- b- Removal and re-execution of any part of Works violating the Contract requirements.
- c- Execution of any work that is, in the opinion of the Engineer, urgently required for the safety of Works, due to occurrence of certain event, unexpected accident or otherwise.

The Contractor shall comply with the such instructions of the Engineer, and shall execute the same within reasonable time, which shall not exceed the specified period, if any, in the instruction, or it shall execute the same promptly if the matter relates to the execution of a work urgently as required in (c) above.

Failure by the Contractor to comply with the Engineer's instructions, the Employer shall be entitled to employ any other persons for the execution of such work and pay for the work. Except for and to the extent that the Contractor is entitled to a payment with respect to such work, the Contractor shall, in pursuance to 2-5, pay the Employer all costs to incur from such failure.

#### **7-7- Property of Machineries and Materials**

Unless the Contract stipulates otherwise, any item of the Machineries and materials, to the extent consistent with the State law, shall be Employer's property, free of any lien or encumbrance, as of the date closer to the following:

- a- When they are included or installed in the Works.
- b- When the contractor receives payment for the Machineries or materials in pursuance to 8-10: Payment for Machineries on Work Suspension.

#### **7-8- Revenues of Ownership Right**

The Contractor shall, unless the Specifications stipulate otherwise, pay the Revenues of Ownership Right revenue, rental and other payments related to the following:

- a- Natural materials obtained from outside the Site.
- b- Removal of debris, excavation products and other surplus materials to outside the Site, whether they are natural or artificial, unless the Contract states allocation of places for discarding debris onsite.

## **Article Eight: Commencement, Completion Delay and Work Suspension**

### **8-1- Commencement of Work**

Unless the Contract Information stipulate otherwise, the Commencement Date is considered the date by which all the previous conditions referred to hereafter are met, the Engineer is notified with the agreement of the Parties and the Contractor is directly instructed to commence Works as follows:

- a- Signing the Contract Agreement by the Parties and approval thereof by the body authorizing the same in the Works country, when required.
- b- Supply the Contractor with the necessary evidence on the Employer's provision of financial arrangement for the Contract under 2-4: Employer's Financial Arrangement.
- c- The Contractor's receiving Site, the information on Site and the approvals mentioned in 1-13-a: Compliance with Law, as required for the commencement of Work, unless the Contract stipulates otherwise.
- d- The Contractor's receiving the advance payment as per 2-14: Advance Payment, after submission of the letter of guarantee on the Advance Payment.
- e- Failure by the Contractor to receive the Engineer's notice of commencement within 180 days of issuance of the letter of award, the Contractor may require the Contract be terminated in pursuance to the provisions of 2-16: Termination by the Contractor.

The Contractor shall commence the execution of Works as soon as practicable after the Commencement Date and shall thereafter continue the Works at reasonable expedition without any delay.

### **8-2- Period of Completion**

The Contractor shall complete all Works, or any part thereof (if any), within the Period of Completion specified for whole the Works, or the part thereof, as the case may be, which includes:

- a- Successful completion of On-Completion Tests.
- b- Completion of all Works specified in the Contract, as required for whole the Works or any part thereof, so that they are considered as complete for the purpose of receiving the same as per 10-1.

### **8-3- Work Methodology**

The Contractor shall submit to the Engineer a detailed timely schedule of Work within 28 days as of the date of its receiving the commencement notice as per 8-1. Also, it shall at any time provide amended schedule stating that the previous schedule is no longer keeping pace with the actual progress or with the Contractor's obligations, provided that the schedule involves:

- a- The order in which the Contractor intends to execute the Works, to include the expected time of each phase of design, if any, setting up the Contractor's documents, acquisition, manufacture of Machineries, delivery at Site, construction, installation and inspection.
- b- Description of Work milestones for each Subcontractor (Subcontractors Nominated as defined in Article 5).
- c- Description of the order and dates of inspections and tests specified in the Contract.
- d- Supporting Report considering:
  - 1- General Description of the methods to be adopted by the Contractor for each essential milestone of Execution.
  - 2- Description of the reasonable estimates by the Contractor to consider the Contractor's employees as categorized according to skill, and the record of Contractor's Equipment categorized according to type, that are required to be available onsite for each essential milestone of execution.

Unless the Engineer, within 21 days of its receiving the Schedule, makes suspension and inform the Contractor with the extent of noncompliant to the Contract Schedule, the Contractor shall then have the right to resume execution there under, observing its other obligations under the Contract. The Employer's personnel shall also be considered authorized to rely on such Schedule on planning their activities.

The Contractor shall give the Engineer a prompt notice on any possible events or future circumstances that may have adverse effect the Execution of Works, increase the Contract Price or delay execution. The Engineer may request the Contractor to set up its estimates for what such possible events or future circumstances may result in and/or submit its proposals according to the Provisions of 13-3 on the Changes.

If the Engineer, any time, notifies the Contractor that the Work Schedule is not longer consistent with the Contract, stating the extent of inconsistency, or it does not suit the actual progress for execution or the Contractor's planned intents, the Contractor shall submit to the Engineer an amended Schedule in pursuance to the provisions of this Clause.

#### **8-4- Extension of Period of Completion**

The Contractor, subject to 20-1, may obtain extension to the Period of Completion if there's actual or expected delay, and the extent of its effect on the Works handing over date for the purpose of applying 10-1, for any of the following reasons:

- a- Change, if there's agreement on amending the Period of Completion as per 13-3, or any other material change in a quantity of the Works items covered by the Contract.
- b- Any reason for delay justifying extension of the Period of Completion, as per any of these conditions.
- c- Exceptionally adverse climatic conditions.
- d- Unforeseeable deficiency in employees or execution requirements resulting from epidemic outbreak or changes to Governmental actions.
- e- Any delay or obstruction caused by actions of the Employer or its employees or any of the other Subcontractors working for it.

If the Contractor deems itself entitled to an extension to the Period of Completion, then it shall notify the Engineer therewith as per 20-1. When the Engineer estimates each extension as per 20-1, it shall reconsider the previous estimates and it may increase, but not decrease, the overall extension of Period of Completion.

#### **8-5 Delay Due to Authorities:**

The delay or hindrance shall be considered a cause of delay under item (8-4 -b), in the following cases:

- a) If the contractor responded seriously in following the procedures established by the competent authorities legally.
- b) These authorities have caused delay or hindered the contractor's work.
- c) That this delay or hindrance was not foreseeable

#### **8-6- Work Progress Percentage**

If, any time, it is found that:

- a- The actual progress is so slow that completion within the Period of Completion is impossible.
- b- The Work progress is or will be delayed beyond the time of current schedule mentioned in 8-3.

and that is not attributable to any of the reasons mentioned in 8-4, then the Engineer may issue its instructions to the Contractor in pursuance to 8-3 to set up an amended Work Schedule, supported with a report stating the amended methods which the Contractor intends to follow to expedite the rate of Work progress and complete the same within the Period of Completion.

Unless the Engineer issues instructions otherwise, the Contractor shall adopt the amended methods that may require increasing the working hours, setting up the Contractor's employees and/or the execution requirements, at the Contractor's risk and cost. While if such amended methods result in additional cost to the Employer, the Contractor shall, in pursuance to 2-5, pay the Employer such additional cost plus any indemnification for delay, if any, as per 7-8 hereafter.

The Employer shall pay for the additional cost to incur from revising the execution methods issued by the Engineer in view to increase the pace of Work and to decrease the delay resulting from the reasons stated in 4-8: Extension of Period of Completion, without causing any additional payment to incur to the Contractor.

### **8-7- Delay Penalties**

Failure by the Contractor in its obligation to complete the Works according to the provisions of 8-2, it shall pay to the Employer, in pursuance to the provisions of 2-5, the penalty of delay resulting from such failure, such penalty shall be in the amount stipulated in the Contract

Information, per every day to pass between the period specified for completion and the date specified in the Works Primary Taking Over Certificate. However, the total of penalties due under this Clause shall not exceed the max. limit of penalty of delay, if any, as stipulated in the Contract Information.

Such penalty of delay shall be the total amount payable by the Contractor for such failure, except for the case of Contractor Termination by the Employer as per 15-2 before Work Completion. Such penalty shall not relieve the Contractor from its obligation to complete the Works from any of its other duties, obligations or responsibilities stated in the Contract.

### **8-8- Work Suspension**

The Engineer shall, any time, issue its instructions to the Contractor for suspension of any part of or all the Works. The Contractor, during such suspension, shall keep, stock and protect the Works or the part thereof from any deterioration, loss or damage.

The Engineer may, also, state in its notice the reasons for suspension. If such suspension reason is a Contractor's risk, the provisions of 8-9, 8-10 and 8-11 hereafter shall not apply.

### **8-9- Work Suspension Penalties**

If the Contractor sustains delay in the Period of Completion and/or a cost due to its compliance with the Engineer's instructions on suspending the Work in pursuance to 8-8 and or resumption of the Work, the Contractor may give the Engineer a notice therewith, to estimate the Contractor's entitlements in pursuance to 20-1 with respect to:

a- Any extension to the Period of Completion due to such delay if the Completion is or will be delayed, as per Clause 8-4.

b- Payment of any cost to be added to the Contract Price.

After receiving the notice by the Engineer, it shall consider the same according to the provisions of 3-5 to be agreed to or set up its reports on such matters, knowing that the Contractor is not entitled to any extension of the Period of Completion or have refunded the cost it sustains due to its rectifying any fault in its designs, materials or workmanship, or for any default by it in keeping, stocking or protecting the Works in pursuance to 8-8.

### **8-10- Payment for Machineries and Materials upon Suspension of Work**

The Contractor is entitled to a payment of the Machineries and/or materials, as on the date of Suspension of Works, that are not yet outsourced to the Site, if:

a- The Work on Machineries or outsourcing Machineries and/or materials is suspended for more than 28 days.

b- The Contractor considers such Machineries and/or equipments have become property of the employer according to the instructions issued by the Engineer.

### **8-11- Prolonged Suspension**

If Suspension of Work as per 8-8 continues for more 84 days, then, unless the Special Conditions stipulate otherwise, the Contractor may require the Engineer to authorize it to resume Work. Failure by the Engineer to authorize the Contractor to resume Work within 28 days following the date of request, the Contractor may, after notifying the Engineer, deal with

such suspension as cancellation according to the provisions of Article 13 for such affected part of Work. If Suspension affects whole the Work, the Contractor may give a notice of Contract Termination by it in pursuance to 16-2.

### **8-12- Resuming the Work**

If instructions are issued or the Engineer permitted resumption of the Work, the Contractor and the Engineer shall jointly inspect the Works, Machineries and materials affected by Suspension. The Contractor shall rectify any deterioration, fault or loss that might have occurred thereto during the period of suspension after receiving the Engineer's instructions thereof as per Article 13: Changes and Amendments.

## **Article Nine: Tests upon Completion**

### **9-1- Contractor's Obligations**

The Contractor shall conduct the On-Completion Tests according to the provisions of this Article and 4-7, following evaluation of the documents required therefrom as per 4-1-d: Contractor's General Obligations.

The Contractor shall inform the Engineer, by at least 21-day notice before the date on which the Contractor is ready to conduct any of the On-Completion Tests. Unless agreed on otherwise, such tests shall be conducted within 14 days after such date, on the day or days specified by the Engineer.

When the results of On-Completion Tests are evaluated, the Engineer shall make enough grace to consider any use of the Works, with the Employer's knowledge, for the performance and other properties of the Works. When the Works, or any part thereof, are deemed to have passed the On-Completion Tests, the Contractor shall submit a certified report on the results of such tests to the Engineer.

### **9-2- Delayed Tests**

If the Employer delays the On-Completion Tests without reason, shall be applied the provisions of 7-4 and/or 10-3 on intervention in conducting tests.

If the On-Completion Tests are delayed by the Contractor without reason, the Engineer may give the Contractor a notice requiring it to arrange for conducting the tests within 21 days of the date of receiving the notice. The Contractor shall conduct the tests within such period on the day or days specified provided that the Engineer shall be notified therewith.

While failure by the Contractors to conduct the On-Completion Tests within 21 days, the Employer's personnel are entitled to conduct tests at the Contractor's risk and cost. Such tests shall be considered as been conducted in presence of the Contractor and the results thereof shall be accepted as correct.

### **9-3- Retest**

Failure of Works or any party thereof to pass the On-Completion Tests, the provisions of 5-7 shall be applied thereon; the Engineer or the Contractor may apply for repeating the test on failure in the result thereof for any part of relevant Works, provided that the tests shall be repeated under the same conditions and circumstances.

### **9-4- Failure to Pass Tests upon Completion**

Failure of the Works or any part thereof to pass the On-Completion Tests repeated as per 9-3, the Engineer shall be entitled to takes any of the following actions:

- a- To instruct repeating the On-Completion Tests again as per 9-3.
- b- If such failure may result in depriving the Employer substantially from making full use of the Works or any part thereof, then the Engineer may refuse the Works or the part thereof, as the case may be; in which case, the Employer may collect the same penalty stipulated in the provisions of 11-4-c.
- c- The Engineer to issue the Works Taking Over Certificate, if so required by the Employer.

In the event (c) above is applied, the Contractor shall continue to fulfill all its other obligations under the Contract; the Contract Price shall be reduced by an amount that is adequate to cover the deficit in the value realized to the Employer due to such failure. Unless such reduction related to such failure, or the method of calculation thereof, is specified in the Contract, the Employer may require reduction in one of the following ways:

- 1- To be agreed on by the Parties, as full indemnification for such failure, and the indemnification shall be paid prior to issuing the Works Primary Taking Over Certificate.
- 2- To be estimated and paid according to the provisions of 2-5 and 3-5.



## **Article Ten: Works Taking Over by Employer**

### **10-1- Works Taking Over and Works Parts**

Except for the text in 9-4 on the failure to pass the On-Completion Tests, the Employer shall take over the Works when:

- 1- The Works shall have been completed according to the Contract, to include the issues specified in 8-2 on the Period of Completion, except for what (a) below permits, and
- 2- The Works Primary Taking Over Certificate shall have been issued, or considered as issued, according to the provisions of this clause.

The Contactor may apply to the Engineer for issuance of the Works Primary Taking Over Certificate within period of not less than 14 days from the date on which the Works, in the Contractor's opinion, have been completed and are ready for handing over. If the Works are divided into parts, the Contractor may apply for handing over any part thereof in the same way. The Engineer shall, 28 days after the date of its receipt of the Contractor's application, perform the following:

- a- Issue the Works Primary Taking Over Certificate specifying the date on which the Works, or any part thereof, are considered as completed according to the Contract, except for any outstanding secondary works and faults that do not substantially affect taking over the Works, or the part thereof, for the purpose for which the are constructed, until and when such Works are completed and such faults are rectified, or
- b- Reject the application, stating the reasons and specifying the Work that the Contract shall complete until issuance the Works Primary Taking Over Certificate. The Contractor shall complete such Work before giving another notice to hand over the Works according to the provisions of this Clause.

Failure by the Engineer to issue the Works Primary Taking Over Certificate or refusal of the Contractors application within 28 days, and the Works or the part thereof, as the case may be, are substantially completed according to the Contract, then the Works Taking Over Certificate shall be considered as been actually issued on the last day of that period.

### **10-2- Taking Over of Parts of Works**

The Engineer may, at the Employer's sole discretion, issue the Primary Taking Over Certificate for any part of the permanent Works. The Employer may not use any part of the Works, other than the use as temporary action stipulated in the Contract or agreed on by the Parties, until the Engineer issues the Works Primary Taking Over Certificate for such part of the Works. While, if the Employer uses any part before issuance of the Primary Taking Over Certificate, then it:

- a- Shall consider such used part as been taken over as of the date of starting using it.
- b- The liability for care for such part of Works transfers to the Employer as of that date, and the Contractor's liability for the care thereof shall cease.
- c- The Engineer shall issue a Taking Over Certificate for that part, if so required by the Contractor.

Following issuance by the Engineer of the Works Primary Taking Over Certificate for part of the Works, the Contractor shall be given the nearest opportunity to complete the necessary steps to conduct the outstanding On-Completion Tests. The Contractor shall conduct such tests at nearest practicable opportunity, prior to expiry of the Maintenance Period for such part.

If the Contractor sustains cost due to the Employer's taking over and/or using part of the Works, unless the same is stipulated in the Contract or agreed on by the Contractor, the Contractor shall:

- 1- Give notice to the Engineer.
- 2- The Contractor's entitlements with respect to such cost shall be estimated taking into account the provisions of 20-1, plus any profit margin, to be added to the Contract Price.

The Engineer shall, after receiving such notice, in pursuance to 3-5, agree on or estimate such cost and profit.

If a certificate of taking over part of the Works is issued, the penalty of delay for the outstanding Works shall be reduced. Similarly, the penalty of delay for the outstanding part of Works, if any, when part thereof is taken over, shall also be reduced. The reduction in the penalty of delay shall be calculated proportional to the value of the part taken over to the total value of Works or the part thereof, as the case may be; the Engineer shall, in pursuance to the provisions of 3-5, agree thereon or to set up estimates related to such rates, knowing that the provisions of this Clause only apply to the daily amount of penalty of delay as per 7-8, and shall not affect the max. amount thereof.

### **10-3- Interfere in Conducting of the Test upon Completion**

Failure by the Contractor to conduct the On-Completion Tests for more than 14 days, for any reason, which the Employer is considered responsible for, such Works or the parts thereof, as the case may be, shall be considered a been received by the Employer on the date on which it was possible to complete the On-Completion Tests.

The Engineer shall issue the Taking Over Certificate for such Works accordingly. However, the Contractor shall conduct the On-Completion Tests at nearest practicable time before the expiry of the Maintenance Period. The Engineer shall send a notice within 14 days requiring the On-Completion Tests to be conducted as per the relevant conditions in the Contract.

If the Contractor sustains delay in the Period of Completion and/or cost due to such delay in conducting the On-Completion Tests, the Contractor may give the Engineer a notice to estimate its entitlements in their respect, taking into account the provisions of 20-1, on:

a- Any extension to the Period of Completion resulting from such delay, if Completion is or will be delayed, as per 8-4.

b- Any such cost with profit margin to be added to the contract Price.

The Engineer shall, after receiving the Contractor's notice, in pursuance to 3-5, agree thereon or set up estimates on such issues.

### **10-4- Surfaces required to be Returned to its Previous Position**

Unless the Works Primary Taking Over Certificate stipulate otherwise, the taking over certificate for any part of the Works shall not be considered confirmation on completion of any works on the land or surfaces to be restored.

## **Article Eleven: Responsibility for Defects**

### **11-1- Completion of the Remaining Works and Fixing the Defects**

So the Works document and the Contractor's documents, or any part thereof, to be in the Condition required by the Contract, except what results from ordinary use and expected consumption, upon expiry of the relevant Maintenance Period, or shortly thereafter, soon as practicable, the Contractor shall:

- a- Complete any outstanding Work as of the date stated in the Works Primary Taking Over Certificate, within reasonable period according to the Engineer's instructions.
- b- Execute all the works required for rectifying faults or damage according to the Employer's instructions, or its Rep., within or before expiry of the Maintenance Period, in such Works or the part thereof, as the case may be.

If a fault is discovered or damage occurred, the Employer, or its Rep., shall give the Contractor a notice thereof.

### **11-2- Defects Fixing Cost**

The Contractor shall be charged with the costs of all Works mentioned in 11-1-b at its own risk and cost, if and to the extent such Works are attributable to:

- a- Any design to which the Contractor is responsible.
- b- Any provision of Machineries, materials or workmanship in violation to the Contract Conditions.
- c- Any failure by the Contractor to comply with any other obligation.

While if such Work, and to the extent they, in whole or in part, are attributable to any other cause that is Not related to the Contractor, the Contractor shall promptly be informed therewith by the, of on behalf of the Employer; in which case, the provisions of 31-3 on Change procedures apply.

### **11-3- Extending Maintenance Period (During the period of Maintenance)**

The Employer is entitled to extension of the Maintenance Period of the Works or any part thereof, as per 2-5, for a period equals the Maintenance Period mentioned in the Contract, but not to exceed two years, if such Works or the part thereof, or any essential item of Machineries, as the case may be, after receipt thereof, cannot be used for their intended purpose due to a fault or damage therein.

If outsourcing Machineries and/or materials or installation thereof according to the provisions of Clause 8-8 or based on the Contractor's procedures according to the provisions of 16-1, the Contractor's obligations according to the provisions of this Article shall not apply to any fault or damage that may occur two years after the date on which the Maintenance Period for such Machineries and/or materials would terminate had such suspension not occurred.

### **11-4- Failure to Fix the Defects**

Failure by the Contractor to rectify and fault or damage within reasonable time, the Employer, or Rep., may give reasonable notice to the Contractor specifying another date to rectify such fault of damage before expiry thereof.

Failure by the Contractor to rectify such fault or damage on the date specified above, which result is that rectification shall be at the Contractor's account, according to 11-2, the Employer, at its discretion, shall take any of the following actions:

- a- Executes the Work by itself or through others, as reasonable and at the Contractor's account, with the Contractor not to assume any responsibility for such executed Work. In such case, the Contractor shall.

as per 2-5, pay the Employer its reasonable costs of rectifying such fault or damage.

- b- Require the Engineer to reach agreement or to determine its reasonable estimates to reduce the Contract Price in return thereof according to the provisions of 3-5.
- c- If the fault or the damage results in depriving the Employer substantially from making full use of the Works or any essential part thereof, it may terminate the Contract in whole, or terminate the same for such essential part thereof that cannot be used for the intended purpose. Without prejudice to any other rights to incur thereto under the Contract or for other reasons, the Employer is entitled to be refunded all the amounts paid to the Contractor for the Works of the for such part, as the case may be, plus the expenses of finance, and the expenses of disassembly, Site evacuation and returning the Machineries and materials to the Contractor.

### **11-5- Remove Defective Works**

If the fault or damage is not rectifiable immediately onsite, the Contractor may, after obtaining the Employer's consent, transport from site for repair any of the Machineries that are faulty or damaged. However, such consent may require entrusting the Contractor to increase the amount of performance guarantee by the same amount of replacement of such Machineries transported or to submit another suitable guarantee therefor.

### **11-6- Later Tests**

IF the works of correcting any fault or damage has effect on executing the Works, the Engineer may request repeating any of the tests described in the Contract, provided that such request shall be made within 28 days as of the date of completing the fault or damage rectification.

Such tests shall be conducted under the same condition pursuant to which previous tests were conducted. However, the cost of execution thereof are charged to the Party who is considered to be responsible for the fault or the damage, as specified under 11-2, with respect to the cost of repair works.

### **11-7- Site Access**

Unless the Works Final Taking Over Certificate is received, the Contractor shall have the access to the Work Site whenever this is reasonably required for the purpose of meeting its obligations according to the provisions hereof, unless this contradicts the Employer's reasonable security concerns.

### **11-8- Contractor's Duty to search for Reasons**

The Contractor shall, if so required by the Engineer, investigate the causes of any fault in the works, under supervision of the Engineer. Unless the fault rectification cost is at the Contractor according to the provisions of 11-2, the Engineer shall estimate the cost to incur for the cause investigation, with a profit margin, as per 3-5, either by agreement or by setting up the necessary estimation therefor, to be added to the Contract Price.

### **11-9- Final Acceptance Certificate of the Works**

The Contractor shall not be considered to have met its obligations until the Engineer has issued the Works Final Taking Over Certificate to the Contractor, stating the date on which the Contractor is considered as have met the obligations required therefrom in the Contract.

The Engineer shall issue the Works Final Taking Over Certificate within 28 days after expiry of the latest Maintenance Period or in the nearest opportunity after the Contractor has submitted all the Contractor's Documents and completed the Works and have them all tested, to include rectification of any fault therein. Also, a copy of such Works Final Taking Over Certificate shall be sent to the Employer.

The Works Final Taking Over Certificate shall solely considered as constituting acceptance of Works.

### **11-10- Unimplemented Obligations**

Following issuance of the Works Final Taking Over Certificate, each Party stays responsible for meeting any unmet obligation to that date. Accordingly, the Contract stays applicable between the Parties until the type and extent of unmet obligations are determined.

#### **11-11- Site Clearing**

The Contractor shall, upon receiving the Works Final Taking Over Certificate, remove from Site the remaining Contractor's documents, surplus materials, debris, wastes and temporary works.

If such equipments and execution requirements are not fully removed within 28 days as of the date on which the Contractor receives a copy of the Works Final Taking Over Certificate, the Employer shall sell or remove their remainder. The Employer shall be entitled to get refunded the costs incurred thereon for finalizing selling or removal and restoration of Site.

The Contractor shall pay any surplus balance from the sale. While if the amount collected is less than what is spent by the Employer, the Contractor shall pay the difference in amount to the Employer.

## **Article Twelve: Measurement of Works and Estimation of Value**

### **12-1- Measurement of Works**

Works are measured and estimated for the purpose of payment of value thereof according to the provisions of this Article.

The Contractor shall clarify in each request for milestone payment as per 3-14, upon application for the completion payment as per 14-10 or its application for the final payment as per 11-14 the quantities and any details related to their amounts due under the Contract.

When the Engineer requests measurement of any part of Works, it shall send a written notification to the Contractor's Rep., who shall:

- a- Respond promptly by either attending or sending another representative to assist the Engineer in performing the measurement.
- b- Give all details required by the Engineer.

Failure by the Contractor to attend or send a representative thereof, the measurement set up by the Engineer, or its representative, shall be considered as correct measurements of the Works.

Unless the Contract stipulates otherwise, when measurement of Permanent Works requires using the records, the Engineer shall prepare the same. The Contractor shall, upon such claim, bring the records to the inspection for agreement thereon with the Engineer, and signing thereon if agreed on. Failure to attend by the Contractor, the records shall be considered as accepted, correct and adopted.

If the Contractor inspects the records but does not approve thereof and/or sign thereon, it shall notify the Engineer therewith, stating the matters it deems incorrect in such records.

The Engineer, after receiving such notice, shall review the records and either amend the same or approve payment for the undisputed parts. Failure by the Contractor to send notice to the Engineer within 14 days after the date it is required to inspect the same, the measurement performed by the Engineer shall be considered final and adopted.

### **12-2- Method of Measurement**

Unless the Contract stipulates otherwise, and withstanding any local traditions, measurement shall be performed as follows:

- a- Engineering measurement shall be performed for the net actual quantities executed for each item of Permanent Works.
- b- Method of measurement shall be according to the bill of quantities or any other applicable tables.

### **12-3- Estimation of Value**

Unless the Contract stipulates otherwise, the Engineer shall, in pursuance to 3-5, agree on the Contract Price or estimated the same counting the value of each item of the Works, employing the measurement approved or estimated according to the provisions of 12-1 and 12-2 above. The unit price stated for the item shall be as that stated thereto in the Contract; if such item is no available, a unit price of similar item shall be adopted. Any item of the Works stated in the bill of quantities where there is no unit price or amount stated next to, its unit price or amount shall be considered as included in the prices and amounts of the other items in the bill of quantities and shall not be paid separately. Otherwise, a new suitable unit price for an item of the Works shall be stated in the following cases:

- a- If the quantity measured of such item is changed by 20% of the quantity stated in the bill of quantity or any other table, and the product of multiplying the change in quantity by the unit price stated in the contract for such item is more than 0.1% of the Accepted Contract Price, and the item is not marked as "fixed priced", or

- b- Change instruction issued on the Work according to the provisions of Article 13 and there's no unit price stated for such item in the Contract, and there's no stated unit price suitable thereto, because the type of Work therein is not similar to any item of the Contract, or the Work is not executed under circumstances similar to its.

The new unit price shall be derived from the prices of relevant Contract items, with reasonable amendments to cover the effect of cases (a) and (b) above, as applicable.

If there are no relevant items to derive the new unit price, it shall be derived through determining the reasonable cost for the execution of Work, plus a reasonable profit margin, taking into account any other related matters.

Until agreement on or estimation of the suitable unit price, the Engineer shall establish temporary unit price for the milestone payment purpose.

#### **12-4- Cancellations**

When cancellation of any Work constitutes part of or the whole Change, and its value is not agreed on, then:

- a- If the Contractor has sustained will sustain cost that should have presumably been covered by an amount that constitutes part of the Accepted Contract Price, if the Cancellation has occurred,
- b- Cancelling the Work shall result in or resulted in such amount to no longer constitute part of the Contract Price,
- c- Such cost cannot be considered as covered in estimating the value of any Work alternative thereto,

then in such case, the Contractor shall notify the Engineer therewith, giving the supporting information. The Engineer shall, as well, upon receiving such notice, in pursuance to the provisions of 3-5, reach agreement on or make the due estimation for such cost, to be added to the Contract Price, once such part of Works is commenced.

## **Article Thirteen: Changes and Amendments**

### **13-1- Authority to Make Change**

The Engineer may, any time before issuance of the Works Primary Taking Over Certificate and following to the Employer's approval, initiate any changes in the Works, whether by instructions it issues or by requiring the Contractor to submit a proposal for consideration.

The Contractor shall comply and perform with each Change (Change Order), unless the Contractor gives the Engineer a prompt notice, supported with the information substantiating its opinion, informing it that:

1- it is incapable of obtaining the execution requirements for performing the Changes works on time.

2- this Change substantially affect the Works progress or logical order.

Once the Engineer receives such notice, it shall cancel, confirm or amend its instructions.

Each Change (Change Order) may contain the following:

a- Changes in quantities of any item of the Works covered by the Contract. However, such Changes do not necessarily constitute a Change Order).

b- Changes in quality or other characteristics of any item of the Works.

c- Changes in levels, places and/or dimensions of any part of the Works.

d- Cancellation of any Work, unless it is to be executed by others.

e- Execution of any additional Work, provision of any Machineries, Goods or Services required to the Permanent Work, to include any On-Completion Tests related thereto, or making probes or other inspection or exploration operations.

f- Changes in the order or timing of Works execution.

The Contractor may not make any change and/or any amendment to the Permanent Works, unless and until the Engineer issues its instructions and approval on making the Change.

### **13-2- Engineering Evaluation**

The Contractor may, any time, submit to the Engineer a written proposal stating its opinion which, if adopted, will:

1- Expedite Work Completion.

2- Reduce the cost of Works (in favor of the Employer) with respect to the execution, maintenance or operation of the Works.

3- Improve the efficiency or value of executed Works in favor of the Employer.

4- In general, realize benefit to the Employer.

The proposal shall be set up at the Contractor's account, and shall meet the requirements of making the Changes specified in 13-3 hereafter.

If the Contractor's offer, as approved by the Engineer, contains amendment of any part of the Permanent Works, then, unless the Parties agree otherwise, the following shall be performed:

a- The Contractor shall set up the design of such part.

b- The provisions of 4-1-a, b, c, d on the Contractor's General Obligations shall apply thereon.

c- If such amendment results in the reduction of the Contract Price for such part, then Engineer shall, in pursuance to the provisions of 3-5, agree thereon or estimate the price to incur on the amendment of the design to be included in the Contract Price. Such price shall equal 50% of the difference between the following amounts:



- 1) Reduction realized in the Contract Price for such part, as a result of the amendment, except for the amendments due to changes to the legislations as per 13-7 and the amendments due to changes in costs as per 13-8.
- 2) Deficiency, if any on making amendment, in the material value of such amended parts in respect to the Employer, taking into consideration any deficiency in the quality, lifetime expected or operational capacity of facilities.

However, if it is found that the amount of (1) is less than that of (2), then no price shall be calculated.

### **13-3- Changing Procedures**

If the Engineer, at the Contractor's request, prior to issuing instructions on a Change, requested proposal from the Contractor, the Contractor shall respond to the request in writing as soon as practicable either by stating the reasons for noncompliance, if applicable, or by submitting the following:

- a- A description of the Works to be undertaken and the time schedule for the execution thereof.
- b- Contractor's proposal for any amendment to be introduced to the time schedule as per 3-8, and its effect on the Works Period of Completion.
- c- Contractor's proposal to count the Change.

The Engineer shall, as soon as practicable, after its receiving the Contractor's proposal, as per 13-2 or otherwise, reply to the Contractor either with approval or disapproval, or give its comments thereon, knowing that the Contractor shall not postpone the execution of any Work throughout the period of its waiting for reply.

Any instructions to execute a change, with any request for the requirements of recording the costs, shall be issued by the Engineer to the Contractor, and the Contractor shall inform it with receiving such instructions.

The price of each Change shall be estimated according to the provisions of Article 12, unless the Engineer issues its instructions or agrees otherwise in pursuance to the provisions of this Article.

### **13-4- Payment by Adopted Currencies**

If the Contract stipulates payment of the Contract Price in more than one currency, then, if agreed on any amendment to the Prices or agreement thereon, or estimation is made in such respect, as mentioned above, then the amount to be paid in each applicable currency shall be specified. Accordingly, the actual or expected percentages of currencies in which payment should be made with respect to the cost of Work changed and the percentages of various currencies specified for the payment of the Contract Amount.

### **13-5- Reserve Amounts**

Each backup amount allocated shall be used, in part or in whole, only according to the Engineer's instructions, the Contract Price shall be amended accordingly.

The total amount to be paid to the Contractor shall not include other than the amounts related to Work or execution requirements or services to which the backup amount is allocated, according to the Engineer's instructions. The Engineer may, to each backup amount, issue its instructions on the following:

- a- For the Work to be executed by the Contractor, to include the Machineries, Goods or Services to be provided, the value thereof shall be estimated as a Change as per 13-3, and /or
- b- Machineries, Goods or Services acquired by the Contractor from a Nominated Subcontractor according to Article 5 and the estimation of value thereof as follows, to be added to the Contract Price:
  - 1- Actual amounts paid or payable by the Contractor, and
  - 2- an amount against the administrative charges and profit, calculated as a percentage of such actual amounts by applying the relevant percentage, if any, as determined in any relevant tables. No such percentage in the table, then the percentage specified in the Contract information.

The Contractor shall, when so required by the Engineer, submit to it the priced offers, bills, documents, accounts and receipts.

### **13-6- Per-Diem Work**

For the small or urgent works, the Engineer shall issue its instruction for performing the Changed on Per-Diem Work basis. Thereupon, it shall be evaluated as per the Per-Diem Work schedule covered by the Contract, and by the procedures specified hereafter. While if the Contract does not contain Per-Diem Work schedule, the provisions of this Clause shall not apply.

The Contractor shall, prior to confirming the execution requirements purchase orders, submit the priced offers to the Engineer. Also, it shall, when submitting payment orders, submit bills, documents, accounts and receipts related to any of such execution requirements.

Except for any items not stated in the Per-Die Work schedule for payment, the Contractor shall submit correct daily statements (two copies) containing the following information of the resources used in the Work execution for the previous day:

- a- Names, occupations and working times of the Contractor's employees.
- b- Types and period of operation of the Contractor's equipments and use of Temporary Work.
- c- Quantities and types of Machineries and Goods used.

The Engineer shall sign a copy of each statement if found correct or approved, and return the same to the Contractor. Thereafter, the Contractor shall submit a priced statement of such resources to the Engineer before including the same in the next payment statement according to the provisions of 14-3.

### **13-7- Amendments Due to Changes in Legislations**

The Contract Price shall be amended to consider any increase or decrease in cost due to any change in the State's law, to include enacting new laws or cancellation or amendment of current laws, of in the official judicial or governmental constructions thereof, if such change occurs after the Primary Date and results in effect on the Contractor's performing its obligations under the Contract.

If the Contractor sustains, or will sustain, delay and/or additional cost due to such changes in laws or in such constructions, which occurs after the primary date, then the Contractor shall

give the Engineer a notice therewith to estimate its entitlements thereon, considering the provisions of 20-1 on:

- a- Extension of the Period of Completion due to the delay, if Completion is or will be delayed, as per 4-8.
- b- Any such cost to be added to the Contract Price.

After receiving such notice by the Engineer, it shall, in pursuance to the provisions of 3-5, reach agreement thereon or set up the necessary estimation on such matters.

In addition to the above, the Contractor is not entitled to any extensions to the Work time if such delay has been considered in the extension of the Contract Term, and the cost thereof shall not be paid unless it has been considered in the entries of the price revision table as per 13-8:

Amendments Due to Change in Cost.

### **13-8- Amendments Due to Change in Cost**

In applying the principle of price revision due to change in cost, this shall be done as stated in the price revision information table attached to the Contract Information, for both the local and the foreign currency stated in the bill of quantities.

"Amendment Information Table" mentioned in this Clause means the amendment information table filled out and attached to the tender's offer. No such table, the content of this Clause shall not apply. In the event of applying the provisions of this Clause, the amounts to be paid to the Contractor shall be amended to cover the effect of increase or decrease due to any increase or decrease to the compensation of hands or to the prices of execution requirements and other Works requirements, employing the formulas stated in this Clause. To the extent the overall compensation resulting from any increase

of decrease in the cost is uncovered by the provisions of this Clause or any other Article of the Contract, the Accepted Contract Price shall be considered as containing incidental amount for compensation for other cost fluctuations.

The amendment in the amounts payable to the Contractor shall be calculated, as their values estimates employing the relevant tables and through certifying the payment certificates, by applying the following formula. However, for the cases of payment in various currencies separately, knowing that such amendment shall not apply to any work estimated on the basis of cost and prices listed.

$$P_n = a + b(L_n/L_o) + c(E_n/E_o) + d(M_n/M_o) + \dots$$

Where:

P=Amendment factor by which the estimated value in the relevant currency in the Contract is multiplied within the time period (n) estimated in months, unless the annex to the tender's offer stipulates otherwise.

a=Constant means such part of the estimated value unaffected by the amendment, as specified in the relevant tables.

b, c, d=constants (relative weights) representing ratios of cost elements included in the execution of Works such as labor, equipments and materials.

$L_n$ ,  $E_n$ ,  $M_n$ =current factors (price index) for the cost elements on the forty ninth day prior to the estimation period with respect to the relevant payments.

$L_o$ ,  $E_o$ ,  $M_o$ =current factors (price index), basic or reference, for the cost elements on the Primary Date for each currency.

Provided that the factors (price index) or reference prices specified in the Amendment Information Table shall be employed. If there's a doubt about their source, these shall be estimated by the Engineer. For this purpose, the values of price indexes on certain dates shall be followed until the said source is clarified, even if such dates, as well as such values, may not suit the reference price indexes.

In cases where the index currency is not the currency specified in the table, the necessary conversion in currency rates shall be conducted depending on the sale price specified by the Central Bank on the date of price index applicability.

Until the current price index is specified, the Engineer shall establish a temporary index for the purpose of releasing milestone payment. When the price index becomes, the amendment value shall be recalculated accordingly.

Failure by the Contractor to execute the Works within the Period of Completion, the amendment to the payable amounts after the Period of Completion shall be calculated in one of the two following methods:

- 1- Each price index or price applicable on the forty ninth day prior to the expiry of the Work's Period of Completion.
- 2- Current price index of price, whichever is favored by the Employer.

For the factors (relative weights) (b, c, d) for the elements constituting the cost (L, E, M) as specified in the amendment table(s), these shall not be reconsidered unless they become reasonable or unbalanced or they are, due to changes, no longer applicable .

## Article Fourteen : Amount of Contract and Payments

### 14-1- Amount of the Contract

Unless the Special Conditions stipulate otherwise:

- a- Contract Price shall be agreed to or specified as per 12-3; the Price shall subject to any amendments under the Contract.
- b- The Contractor shall pay all taxes, fees and charges payable by it under the Contract. The Contract Price shall not be amended because any of such expenses, except for the stipulations of 13-7.
- c- The quantities written the bills of quantities or other bills are approximate and shall not be considered as the actual or correct quantities:
  - (1) of such Works to be executed by the Contractor.
  - (2) for the purpose of measurement and estimation of value, as per Article 12.
- d- The Contractor shall submit to the Engineer, within 28 days as of the date of commencement, its proposal concerning the price analysis for each item priced in the bills as a lump sum. The Engineer may take such analysis into account when setting up the payments, though it shall not be considered obliged to adopt the same.
- e- In addition to (b) above, the Contractor's equipments, to include the spare parts required for the maintenance thereof and outsourced by it for the purpose of Works execution, shall be exempted from costumes duties and taxes when outsourced.

### 14-2- Advance Payment

The Employer shall pay to the Contractor an advance payment as a loan without interest for the purpose of arrangement for Work and provision of liquid money when the Contractor submits the required guarantee according to the provisions of this Clause. The total advance payment, the method of payment of installments thereof, if any, and the currencies of payment shall be as specified in the Contract Information annex.

The provisions of this Clause shall not apply when the guarantee is received from the Employer or it the advance payment amount is not specified in the Contract Information.

The Engineer shall, after receiving the certificate of advance payment in pursuance to the provisions of 14-3, issue a milestone payment certificate of the payment offered or the first installment thereof and send it to the Employer and the Contractor, after the Employer have received:

- (1) The good performance guarantee as per 4-2.
- (2) The good performance guarantee which equals in amount and currency the advance payment amount; it shall be issued from a bank or financial institution approved by the Employer. Such guarantee shall be in the form attached to the Special Conditions of any other from approved by the Employer.

Te Contractor shall ensure that the advance payment guarantee is valid until repayment of the advance payment amount to the Employer in full. However, the amount of such guarantee can be reduced proportionally to the amount repaid by the Contractor, as stated in the milestone payment certificate. If the guarantee stipulates its expiry after certain time, the Contractor, in such case, shall extend its validity until full payment of its amount, unless the Contract stipulates otherwise.

The amount of advance payment shall be recovered by deductions of percentages of the milestone payments approved by the Engineer according to the provisions of 14-6: Release of milestone payments, as shown hereafter:

- a- Deduction starts with the milestone payment certificate which approved value, other than the advance payment and other deduction and recovery of cash deductions, exceeds 30% of the approved Contract Price minus the backup amounts.

- b- Deductions shall be recovered by the redemption rate specified in the Contract Information from the value of each milestone payment, except for the amount of advance payment and deductions related to recovery thereof and recovered cash deductions, in the currencies and deduction rates from the advance payment, until the time when the advance payment is recovered. Provided that the recovery of advance payment in full before the time when the payable dues reach 90% from the Contract Price approved, minus the backup amounts.

If the advance payment is not recovered before issuance of the Works Primary Taking Over Certificate or before Contract termination as per the provisions of Article 15 or Contract termination as per the provisions of Article 16 or Contract termination as per the provisions of Article 19, as the case may be, the unpaid balance of advance payment shall become due and payable by the Contractor to the Employer promptly. Also, this is the case on Contract termination as per Article 15: Contract Termination by the Employer, and 19-6: Optional Contract Termination, Payments and Performance Responsibility Release.

### **14-3- Submit Interim Advances Requests**

The Contractor shall submit to the Engineer, after the end of each month, payment statement of the Works executed, in the required number of copies; where the statement shall be drafted according to the form approved by the Engineer, and stating the details of amounts which the Contractor deems payable thereto, accompanied with substantiating documents, to include the monthly Work progress report for that month, according to the provisions of 21-4.

The payment statement shall contain the following items, as applicable, which shall be expressed in the various currencies of payment of Contract Price, in the following order:

- a- The estimated contractual value of Works executed and the Contractor's Documents until the end of the month, to include the changes, except for (b) and (f) below.
- b- Any amounts to be added or deducted for the amendment of prices due to changes in legislations or changes in costs, in pursuance to 13-7 or 13-8.
- c- An amount to deducted as money deduction at the percentage specified in the Bid's annex from the total amounts dues as above, until such deductions withheld with the Employer reach the maximum limit of cash deductions, if any, as specified in the Contract.
- d- Any amounts to be added to the advance payment and, if there's more than one installment, deducted for the purpose of recovery thereof, according to the provisions of 14-2: Advance Payment.
- e- Any amounts to be added or deductions with respect to the Machineries and Goods according to the provisions of 14-5 on the arrangements.
- f- Any other amounts or deductions that might have incurred according to any provision in the Contract or otherwise, to include those resulting from the provisions of Article 20.
- g- Deduction of amounts paid in all previous certificates of payments.

#### **14-4- Payments Schedule**

If the Contract contains a payment schedule specifying the method of payment of Contract Price in installments, then, unless they said schedule stipulates otherwise:

- a- The installments specified in the payment schedule shall be estimated contractual values for the purpose of 14-3-1 above.
- b- 14-5 on the arrangements for Works shall not apply.
- c- If such installments are not defined in reference to the actual progress in performing the Works, and the actual progress of Works executed is found to be less or more than what is stated in the payment schedule, then the Engineer shall start applying the provisions of 3-5 to agree on or setting up corrected installments to consider the extent of delay of Work progress beyond that pursuant to which the installments were previously set.

If the Contract does not contain payment schedule, the Contractor shall give nonbinding estimates for the payments it deems payable to it by the end of each quarter, provided that the first estimate shall be made within 42 days as of the Date of Commencement, and giving the corrected estimates is to continue at the end of each quarter, until the Works Primary Taking Over Certificate is issued.

#### **14-5- Machineries and Goods to be Used in Works (Arrangements)**

If the conditions of the provisions of this Clause are met, the milestone payments shall include, in pursuance to 14-3-e, the following:

- 1- Amount for the arrangement of Machineries and Goods outsourced to Site to be used in the Permanent Works.
- 2- Reduction in the values of items when the contractual value of such Machineries and Goods is entered as part of the Permanent Works according to the Provisions of 14-3-a.

If the tables referred to in b-1 and c-1 below are not covered by the schedules, the provisions of this Clause shall not apply.

The Engineer shall estimate and approve each increase in the value of payment if the following conditions are met:

a- The Contractor shall have:

- (1) Maintained adequate records available for inspection (to include the purchase orders, receipts, costs and use of Machineries and Goods).
- (2) Submitted a statement of the cost of purchase and delivery of the Machineries and Goods to Site, supported with enough evidence, and that any of the following:

b- The Machineries and related Goods:

- (1) Are those stated in the schedules to be paid for on shipping.
- (2) Have been shipped to the country, i.e. the Site, in pursuance to the Contract Provisions.
- (3) Are described in a valid shipping document or any other shipping evidence, and is delivered to the Engineer with evidence on the payment of shipping and insurance fees, and other required evidence, and a bank guarantee issued from a financial institution in a form approved by the Employer in the amounts and currencies provided in this Clause. Such guarantee may be in a form similar to the advance payment form mentioned in 14-2, provided that it remains valid.

Until the Machineries and Goods are delivered, stored properly onsite and protected against loss, damage or deterioration, or

c- The Machineries or related Goods:

- (1) Are those stated in the schedules to be paid for on outsourcing to Site.
- (2) Have been delivered, stored properly onsite and protected against loss, damage or deterioration, and seem to meet the Contract requirements.
- (3) Whereupon, the additional amount to be approved shall equal the rate stipulated in the Bid's annex of the Engineer's estimates of the cost of Machineries and Goods, to include the cost of delivery to Site, taking into account the documents stated in this Clause and the contractual value of the Machineries and Goods.

Payment of such additional amount shall be in the same currencies of making due payment as per 14-3-a. Meanwhile, shall be considered that the payments shall cover reduction which is considered to be equal to what applies to this amount and the payment in the types and rates of currencies to be employed, for the Machineries and related Goods.

#### **14-6- Issuing Interim Advances**

No amount shall be confirmed or paid to the Contractor, unless the Employer receives and approves the performance guarantee . Thereafter, the Engineer shall, within 28 days as of the date of its receiving a statement of the Works executed and supporting documents, send to the Employer a milestone payments certificate stating the amount which the Engineer fairly estimates to be payable to the Contractor, accompanied with the supporting information of any deductions or amounts withheld by the Engineer on the payment statement, if any.

However, the Engineer shall not be considered bound, before issuance of the Works Primary Taking Over Certificate, to issue any milestone payment certificated, unless the value thereof, after making money deduction and other rebates, is below the minimum limit, if any, of the milestone payment referred to in the Contract Information. In this case, the Engineer shall inform the Contractor therewith.

The release of payments may not be withheld for any other reason, unless:

- a- Anything outsourced or any Work executed is nonconforming to the Contract, then the cost of repair or replacement may be withheld until execution of such repair or replacement, and/or
- b- The Contractor fails to perform and Work or obligation according to the Contract, and it is informed therewith by the Engineer, then the value of such Work of obligation can be withheld until the Work or obligation is performed.

The Engineer may, in any payment certificate, make correction or amendment that should have been made properly at the value of any previous payment certificate; also, payments cannot be considered as indication of the Engineer's satisfaction, approval or acceptance.

#### **14-7- Payment to the Contractor**

Unless the Special Conditions stipulate otherwise, the Employer shall pay to the Contractor:

- a- The first installment of the advance payment within 42 days as of issuance of the letter of award, or within 21 days as of the date of receiving the performance guarantee by the Employer, in pursuance to 4-2 and, for the advance payment guarantee in pursuance to 14-2, whichever comes later.
- b- The amount approved for each milestone payment, within 56 days as of the date of receiving the payment statement and supporting documents by the Engineer.
- c- The amount approved for the final payments, within 56 days as of the date of receiving such payment by the Employer.

Payment to the Contractor of every payable amount shall be in the specified currency. The amount shall be credited to the bank account named by the Contractor in the payment country, of such currency, as specified in the Contract.

#### **14-8- Cash Deductions**

If the Contractor doesn't receive any due payment as per 14-7, it may collect the finance charges for any amounts delayed by calculating a monthly combination for the delay. Such period shall be calculated as of the date of payment mentioned in 14-7, regardless of the date

of releasing the milestone payment, in case of 14-7-b.

Unless the special conditions stipulate otherwise, the finance charges shall be calculated on the basis of annual deduction rate as specified by the Central Bank of the country of payment currency, plus the annual percentage of 3%, and shall be paid in the specified currency.

The Contractor shall be entitled to collect such payment without any formal notice of confirmation and without prejudice to any other right or remedy, provided that the rate of finance charges shall not exceed the percentage according to the laws applicable in the country where Works are executed, unless the special conditions stipulated otherwise.

#### **14-9- Paying Withheld Amounts**

When the Works Primary Taking Over Certificate is issued, the Engineer approves the payment of half the cash deductions to the Contractor.

If the Primary Taking Over Certificate is issued to part of the Works, a certain ratio of cash deductions shall be recovered by calculating the relative amount of such part which shall be 50% of the ratio produced from dividing the estimated Contract Price for such part on the final Contract Price as estimated.

The Contractor is, on the expiry of the last Maintenance Period, entitled to recover the outstanding balance of cash deductions by a certificate confirmed by the Engineer. For the expiry of the last Maintenance Period for part of the Works, shall be recovered a ratio of cash deductions of 50% of the value calculated by dividing the estimated Contract Price for such part on the final Contract Price as estimated, promptly after expiry of the relevant Maintenance Period.

However, if there are outstanding Works related to rectifying faults in the Works according to the provisions of Article 11, the Engineer is entitled to withhold the estimated cost of such rectification from the value of cash deduction until they are executed.

In calculating such ratios, shall not be taken into account any amendments to price due to change in legislations in pursuance to 13-7 of due to change in cost in pursuance to 13-8.

Unless the Special Conditions stipulate otherwise, the Contractor may, after issuance of the Works Primary Taking Over Certificate and obtaining the Engineer's approval or releasing the first half of cash deductions, submit a bank letter of guarantee from a recognized bank, in the form referred to the Special Conditions' annex, against releasing of the Second Half of cash deductions. The letter of guarantee shall be in the same amounts and currencies of the second half of cash deductions and binding and valid until the Contractor executes the Works and rectify any faults similar to the performance letter of guarantee mentioned in 4-2. Once the Employer receives the letter of guarantee against releasing the cash deductions, the Engineer shall give instructions on payment and notice the Employer to release the cash deductions.

Such method to release the second half of cash deductions which differs from the stipulation of the second Paragraph of this Clause is an alternative proposal; the Employer shall release a letter of guarantee for releasing the second half of cash deductions within 21 days as of its receiving the Works Final Taking Over Certificate.

If the amount of performance letter of guarantee mentioned in 4-2 is more than a half of the cash deductions when the Primary Taking Over Certificate is issued, the second half of cash deductions shall be released without the need to a new letter of guarantee against their amount. While if the amount of the performance letter of guarantee is less than a half



of the cash deductions, then a half of the outstanding cash deductions shall be released against a letter of guarantee of the difference between the amount of performance letter of guarantee and the amount of the half of outstanding cash deductions.

**14-10- Final Advance (upon receiving the works)**

The Contractor shall, within max. period of 84 days as of the date of its receiving the Works Primary Taking Over Certificate, submit the final payment statement, 6 copies, with supporting documents, as per the requirements of 14-3, stating:

- a- The price of all Works executed under the Contract until the date specified in the Works Primary Taking Over Certificate,
- b- Any other amounts to which the Contractor deems itself entitled, and
- c- Any other estimated amounts to which the Contractor deems itself will be entitled under the Contract, provided that separate details shall be submitted to each of such amounts as estimated in the final payment statement.

Thereafter, the Engineer shall approve the payment due according to the provisions of 14-6. The final payment shall not be released unless the Contractor submits a confirmation on receiving by subcontractors and outsourcer their dues until the payment before the final.

**14-11- Request for Final Account Certificate (Final Abstract)**

The Contractor shall submit to the Engineer, within a period of 56 days as of the date of its receiving the Works Final Taking Over Certificate, a draft statement of the final account, 6 copies, with the supporting documents, in the form approved by the Engineer, stating the following details:

- a- Price of all Works executed under the Contract.
- b- Any other amounts to which the Contractor deems itself entitles under the Contract or otherwise.

If the Contractor does not approve the draft statement of final account, or could not verify the validity of a part thereof, the Contractor shall submit such additional information reasonably required by the Engineer, within 28 days as of the date of receiving the draft statement of final account; the Contractor shall amend the same in the form agreed to, noting that such statement in the form agreed to is called in these Conditions the "Final Account Statement".

However, if due to later discussions between the Engineer and the Contractor, and any amendments to the draft statement of final account to be agreed to, a dispute is found, the Engineer shall set up and submit to the Employer a milestone payment for such parts agreed to of the draft statement of final account, CC to the Contractor.

Thereafter, if the dispute is finally settled according to the provisions of 20-4 or settled according to the provisions of 20-5, the Contractor shall, then, set up and submit to the Employer the Final Account Statement, CC to the Engineer, supported with the documents listed hereafter, as stipulated in the Contract Special Conditions:

- 1- Clearance letter from the bodies relevant to labor outsourced for this Contract.
- 2- Clearance letter from relevant bodies evidencing its payment of all the dues of workers registered in the Contract.
- 3- Clearance letter from the General Commission for Customs and the General Commission for Taxes.
- 4- Confirmation on receiving by the subcontractors and suppliers of their dues.

#### **14-12- Final Measurement**

The Contractor shall, on submitting the Final Account Statement, submit to the Employer a written statement that the Final Account Statement represents the full and final settlement of all amounts due to the Contractor under the Contract or what relates thereto.

Such statement may stipulate that it shall not be in force until the performance guarantee is returned to the Contractor and the latter receives its outstanding balance of its dues; in which case, settlement of final account shall be considered in force as of such date.

#### **14-13- Issuance of Final Account Certificate**

The Engineer shall, within 28 days as of its receiving the Final Account Statement as per 14-11 and the Final Account Release Letter as per 14-12, send the Final Account Certificate to the Employer, CC to the Contractor, stating:

- a- The amount finally due to the Contractor, and
- b- The balance payable, if any, by the Employer to the Contractor or by the Contractor to the Employer, as the case may be, after calculating all the payments made by the Employer and the balance of deductions due to the Employer under the Contract.

Failure by the Contractor to submit the Final Account Certificate in pursuance to the provisions of 14-11 and the Final Account Release Letter in pursuance to the provisions of 14/2, the Engineer shall require the same therefrom. Failure by the Contractor to submit the Final Account Certificate within 28 days, the Engineer may issued the Final Account Certificate in the amount it fairly estimates as payable.

#### **14-14- Employer's Termination of Liability**

The Employer shall not be liable to the Contractor for any matter or thing resulting from or connected with this Contract or for the Works execution, unless the Contractor submits in that respect express claim of certain amount:

- a- Within the Final Account Statement, and
- b- Within the Final Payment Statement as described in 14-10, except for the matters or things developed after issuance of the Works Primary Taking Over Certificate.

However, the stipulations of this Clause shall not limit the Employer's liability under its indemnification obligations or the Employer's liability in any case of fraud or intentional default or careless conduct from its part.

#### **14-15- Payment Currencies**

The Contract Price shall be paid in the currency or currencies specified in the Payment Currencies Table. Unless the Special Conditions Stipulate otherwise, if payment is to be made in more than one currency, then payment shall be made as follows:

- a- If the Contract Price Approved is specified in the local currency only:
  - 1- The rates or amounts of the local currency and the foreign currencies and the fixed exchange prices to be employed in calculating the payments, as specified in the Bid's annex, unless the Parties agree on otherwise.
  - 2- Payment and deductions with respect to backup amounts shall be made, in pursuance to the provisions of Article 13/7, in the currencies and rates applicable.
  - 3- For the other payments and deductions mentioned in 14-3-a, b, c and d, these shall be paid in the currencies and rates specified in a-1 above.
- b- Payment of penalties specified in the Contract Information shall be made in the currencies and rates specified in the Payment Currencies Table.
- c- For the other payments made by the Contractor to the Employer, shall be made in the currency in which amounts are expended with the Employer's knowledge, or in any other currency to be agreed on by the Parties.

- d- If the amount payable by the Contractor to the Employer in a specified currency exceeds the amount payable by the Contractor to the Employer in such currency, the Employer may deduct the balance of such amount from the amounts payable to the Contractor in other currencies.
- e- If no currency exchange rates are specified in the Payment Currency Table, shall be adopted the currency exchange rates prevailing on the Primary Date as announced by the Central Bank of the execution country.

## Article Fifteen: work withdrawal by Employer

### 15-1 Notification of Correction:

If the contractor failed in performing any obligation under the contract, the employer, after giving written notice requesting to him to correct this failure and remedy it within a period of (15) days, has the right to withdraw the work and lay the hand on the site and works and the contractor shall out of them if his request of correction of this failure was not responded to.

### 15-2 Contract Termination by Employer

First: The employer is entitled to withdraw the work in the following cases without referring to the court:

- a) If the contractor failed in providing good performance guarantee under Paragraph (4-2) or to respond to notice of correction as mentioned in Paragraph (15- 1)
- b) If the (contractor) goes bankrupt or announce his Insolvency.
- c) If the contractor submits a request for bankruptcy or insolvency. If the contractor failed without a reasonable cause to continue the work in accordance with the provisions of "Article Eight";
- d) If a decision is issued by the competent court to place the (contractor's) funds under the control of bankruptcy trustee (sindiak).
- e) If the contractor makes a reconciliation that preserves him from bankruptcy or waives his rights to his creditors.
- f) If the contractor agrees to implement the contract under the supervision of the control board of his creditors
- g) If the contractor is a company that has announced liquidation, excluding the optional liquidation for the purpose of merger or reformation.
- h) if the contractor waives the contract.
- I) If the contractor awards parts of the works to subcontractor without obtaining the approval of the employer.
- J) If the funds of the contractor are seized by a court of competency and this seizure may lead the contractor unable to fulfill his obligations.
- K) If the contractor offered or presented to any person (directly or indirectly) a bribe, gift or bonus or commission or a financial donation as a induction or a reward for:
  - 1) Act or omission (performance or non-performance) of work related to the contract; and
  - 2) Show favoritism or lack thereof in favor of or against the interests of any person related to the contract, or if he promised any of contractor's personnel or his agents or sub-contractors or promised to give any bribe (directly or indirectly) to any person or bonus as described in Paragraph (f), but offer any legal incentives and rewards to contractor's personnel shall not require the termination of the contract.
- L) If the delay percentage of work progress, in any time during the period of works execution, is more than what is stipulated in the special conditions.
- M) If the engineer approved in writing to the employer that the following cases are realized:
  - That the contractor has waived the contract refrained from signing the contract text in spite of his commencement of work.
  - That the contractor has failed, without an acceptable excuse, to continue the works or the work progress is stopped for a period of (30) thirty days after receiving a written notice from the engineer that he must continue the works.
  - That the contractor fails in removing the materials from the site or works demolition or replacing them within thirty days after receiving a written notice from the engineer that it has been decided to refuse the mentioned materials and works according to the provisions of contract.
  - That the contractor has not implemented the works in accordance with the contract or has intentionally negligent and careless in fulfilling his obligations according to the contract.
  - That the contractor has contracted with a subcontractor concerning any part of the contract in form that harm the quality of work or violate the instructions of the engineer.

n) If it is clear to the employer that the contractor has practiced an administrative corruption, fraudulent, collusion, oppression or obstruction, etc. shown in the Para (15/6) below.

In any of these cases or circumstances, the employer may, after informing the Contractor in writing (warning him) for a period of 15 days, withdraw the work and keep the contractor out of the site.

The choice of the employer to withdraw the work should not affect any other rights of the employer realized to him under the contract, or otherwise.

The Contractor shall, in such a case, leave the site and delivers the engineer the required implementation supplies and all "contractor's documents" and any design documents prepared by the contractor or have been prepared in his favor.

However, the contractor shall do his utmost to implement immediately any reasonable instructions included in the notice which is sent by the employer, in relation to:

- A. Waiver any subcontracting
- B. Save the lives or properties or for works safety.

After work withdrawal, the employer is entitled to complete the works and / or use any other institutions to complete it. Then the employer and these institutions may use any of contractor's supplies, contractor's documents, and other designs documents prepared by the contractor, or those that have been prepared for his account.

Employer shall then, give notice to that contractor's equipment or temporary works will be released to the contractor at the site or adjacent to it, and the contractor shall immediately remove them on his responsibility and expense. only if it is found that the contractor has not to date paid any dues to the employer owed by him, the employer may sell the implementation supplies to collect his entitlements, and if a balance remained from the sale proceeds after the recovery of dues, then such balance shall be paid to the contractor.

Second: The employer, when the contractor violates the execution of contract works and the work reaches the final stages and the contracting party has the ability to execute the other works, then the contracting party has the right to form a speedup committee that undertakes the completion of works according to the conditions and procedures stated in the contracts guide in this regard.

### **15-3 Assessment on the Date Contract Termination:**

The engineer - and as soon as practicable - after the notice of termination of the contract has become effective under the provisions of Paragraph (15-2), shall agree pursuant to the provisions of Paragraph (3-5) on the value of the works and implementation requirements and contractor's documents and any other amounts accruing to the contractor in exchange for works performed under the contract, or make estimates about them.

### **15-4 Payment after Contract Termination:**

The employer may, after the notice of termination of the contract has become effective under Paragraph (15-2), carry out the following:

- a) Proceed with the procedures related to his claims according to the provisions of Paragraph (2-5).
- b) Stop the payment of any amounts to the contractor until the verification of the costs of works implementation, their completion and repair any defects therein, and determine the delay penalties accruing on the contractor (if any), and any other costs incurred by the employer.
- c) Deduct any losses and damages incurred by the employer and any additional costs paid up to the completion of the works of from Contractor's account, after calculating any amounts accruing to the contractor for termination of the contract under Paragraph (15-3), and after the recovery of such losses, damages, additional costs, the employer shall pay any remaining balance to the contractor.

### **15-5 Employer's Right to Contract Termination**

First: the employer has the right to terminate the contract in the following cases:

- i- The employer has the right to terminate the contract in any time for the public interest, whereby he issues a warning concerning that to the contractor, and the termination shall be considered valid after the pass of (28) days after the contractor receives the mentioned warning or from the date of returning the good performance guarantee to him by the employer, whichever is later to the public interest in accordance with the order of the provisional coalition authority (disbanded) No. 87 for the year 2004 or any law that replaces it.
- ii- If the contractor fails in completing a large part of the contract for a period more

than (90) ninety days for reasons beyond his will, in accordance with the conditions and procedures stated in the contracts guide in the regard.

- iii- If the execution of the contracting obligation becomes impossible and both parties agreed to termination.

Second: the employer has no right to terminate the contract in accordance with this Paragraph, in order to execute the works by himself or to arrange to be executed by another contractor, to avoid the termination of contract by the contractor in accordance with the Para (16/2) (Termination by Contractor)

Third: after this termination, the contractor has to stop the work and remove its equipment in accordance with provisions of Para (16/3) and then accounts will be settled by applying the provisions of Para (16/4) (Payment on Contract Termination).

## **15-6- Fraud and Corrupt Practices**

If the Employer finds the Contractor to be involved in any corrupt, fraudulent, collusive, coercive or obstructive practice during competition to win or execute the Contract, then the Employer may, within 14 days after notifying the contractor therewith, terminate the Contract and dismiss the Contractor from Site and apply the provisions of Article 15 as if the dismissal is made as per 15-2: Termination by the Employer.

If any of the Contractor's employees is found to be involved in and corrupt, fraudulent, collusive, coercive or obstructive practice during Works execution, such employee shall be dismissed from Site according to the provisions of 6-9: Contractor's Employees.

The Employer applies the following definitions for the purpose of these texts:

- (1) "Corrupt Practice" means offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence the actions of a public official throughout the contracting process or contract execution.
- (2) "Fraudulent Practice" means any misrepresentation or omission of any fact in view to influence the contracting process or contract execution.
- (3) "Collusive Practice" means any scheme or arrangement between two or more Bidders, with or without knowledge of the Employer, in view to establish artificial and noncompetitive prices.
- (4) "Coercive Practice" means harming or threatening to harm, directly or indirectly, the persons or their properties to influence their participation in the contracting processes or influence the contract execution.
- (5) "Obstructive Practice" means:

First: To destroy intentionally, falsify, distort documents and conceal investigation-required evidences or give false testimony to investigators to obstruct the Buyer's investigation procedures in the corrupt, fraudulent, collusive, coercive practices or threaten, provoke or obstruct any party and prevent it from giving any investigation-related information or prevent it from following up the investigation procedures.

Second: The practice that obstructs the Employer from following up the auditing and revision procedures, as per 3-1-d/Instructions to Bidders.

## **Article Sixteen : Work Suspension and Contract Termination by the Contractor**

### **16-1- Contractor Right of Work Suspension**

Failure by the Employer to provide the financial arrangements required for the Contract as per 2-4, failure by the Engineer to certify any milestone payment certificate as per the provisions of 14-6, or failure by the Employer to comply with the dates of payments due to the Contractor in pursuance to the provisions of 14-7, the Contractor may, after giving the Employer at least 21-day notice, suspend the Work, or slow execution, unless and until the Contractor receives the payments, or it is paid, as the case may be and as stated in the notice.

Such action by the Contractor shall affect neither its right to collect the finance expenses that may incur thereto according to the provisions of 14-8, nor its right to terminate the Contract in pursuance to the provisions of 16-2.

If the Contractor receives, after its notice, the payments or the payment due to it before its giving the termination notice, then it shall continue the ordinary work as soon as practicable.

If the Contractor sustains delay in the Period of completion and/or cost due to Work suspension, of slowing execution, according to the provisions of this Clause, it shall give the Engineer a notice of the matter, to estimate its dues in that respect, considering the provisions of 20-1. on:

- a- Extension of the Completion Period due to such delay, if such execution is or will be delayed, according to the provisions of 8-4.
- b- Any such cost with reasonable profit margin, to be added to the Contract Price.

After receiving by the Engineer such notice, it shall follow the procedures as per the provisions of 3-5 to agree thereon or make estimates on such matters.

### **16-2- Contract Termination by the Contractor**

The Contractor may terminate the Contract in the following cases:

- a- The Contractor does not receive reasonable evidence of providing by the Employer the financial arrangements required according to the Contract as per 4-2, after 42 days from its submitting a notice thereof to the Employer in pursuance to the provisions of 16-1: Contractor's Right of Work Suspension.
- b- If the Engineer does issue a milestone payment certificate within 56 days after the date of its receiving the statement of such payments with the supporting information.
- c- If the Contractor does not receive any amount due to it according to a milestone payment certificate within 42 days after the date by which the Employer shall make payment according to the provisions of 14-7, except for the deductions to incur with respect to the Employer's claims as per 2-5.
- d- If the Employer is in material breach of its obligations under the Contract so that there's adverse material effect on the business balance of the Contract and/or on the Contractor's ability to execute the Contract.
- e- If the Employer violates compliance with the provisions of 1-6 related to the Contract Agreement or 1-7 related to assignment.
- f- If there is prolonged suspension of Work to affect the execution of whole Works, as stipulated in 8-11.
- g- If it is found that the Employer has become insolvent or bankrupt, placed under liquidation, lost liquidity, a Court order is passed on transferring its assets to a receiver, makes financial settlement with its creditors, continues.

to do business under receiver, trustee or administrator to the benefit of its creditors or any occurrence or activity of the same effect of such actions or events occurs, according to the applicable law.

- h- In the event the Contractor does not receive the Engineer's notice by the Parties' agreement in the fulfillment of the conditions on commencement of Works as per 8-1: Commencement of Works.

In any of the following events and circumstances, the Contractor may, after giving the Employer a 14-day written notice, terminate the Contract. However, the Contractor may, by a notice, terminate the Contract promptly in any of (f) and (g) above.

Selecting by the Contractor to terminate the Contract shall not prejudice any other rights to realize thereto under the Contract or otherwise.

### **16-3- Stopping Work and Removing Contract Equipments**

After any notice related to Contract termination by the Employer in at its convenience according to the provisions of 15-5 or to Contract termination by the Contractor according to the provisions of 16-2 or to optional termination resulting from a force majeure according to the provisions of 19-6 enters into force, the Contractor shall promptly perform the following:

- a- Stop any Work, unless instructions are issued by the Engineer on executing such Work for the purpose of Saving lives or properties or Works safety.
- b- Deliver the Contractor's Documents, and the Contract-related documents, Machineries, Goods and other Works which considerations are paid thereto.
- c- Remove from site all other execution Requirements, except for what is required for safety issues, and leave site.

### **16-4- Payment upon Termination of Contract**

The Employer shall, after the notice of Contract termination issued as per 16-2 enters into force, do the following:

- a- Return the performance guarantee to the Contractor.
- b- Pay the Contractor's dues according to the provisions of 19-6.
- c- Pay the amounts resulting from any other damage or loss sustained by the Contractor due to such termination.



## **Article Seventeen: Risk and Responsibilities**

### **17-1- Penalty**

The Contractor shall indemnify and hold the Employer and its personnel and agent harmless against all claim, damage, encumbrance and expense (to include the attorney fees) with respect to the following:

- a- Body injuries, disease, illness or death to any person whoever if these result from, during or due to the Contractor's designs, if any, or due to Work execution, completion and rectifying any fault therein, unless these are attributed to negligence or intentional conduct or Contract revocation by the Employer or its personnel or any of their agents, and
- b- Damage or loss to occur to real or personal properties, other than the Works, to the extent such damage of loss:
  - 1- Results from, during or due to the Contractor's design, if any, or Work execution, completion or rectifying any fault therein.
  - 2- Unless and to the extent attributable to any negligence or intentional conduct or Contract revocation by the Employer or its personnel or any of their agents or any person directly or indirectly employed by them.

The Employer shall indemnify and protect the Contractor and its employees and their agents against any claim, damage, loss or expense (to include the attorney fees) with respect to:

- 1- Body injuries, disease, illness or death that is attributable to negligence or intentional conduct or Contract revocation by the Employer or its personnel or any of their agents.
- 2- Any other matters which liability therefore is exempted from insurance coverage, as mentioned in 18-3-d (1), (2), (3).

### **17-2- Contractor's Care for Works**

The Contractor assumes full responsibility for care for Works and execution requirements as of the Commencement Date until the Works Primary Taking Over Certificate is issued or deemed issued as per 10-1, where the responsibility transfers to the Employer. The same concept applies to any part of the Works to which the Primary Taking Over certificate is issued or deemed issued.

After the responsibility transfers to the Employer accordingly, the Contractor remains responsible for care for any outstanding Work on the date specified in the Works Primary Taking Over Certificate until such outstanding amounts are completed. If any damage or loss befalls the Works, execution requirements or Contractor's Documents during the period of Contractor's responsibility for the care thereof for any reason, except for the risks described in 17-3 hereafter, the Contractor shall rectify such loss or damage at its own expense and risk, until the Works, execution requirements and Contractor's Documents are compliant to the Contract.

The Contractor shall remain responsible for any damage or loss that may result from the Contractor's actions after issuance of the Works Primary Taking Over Certificate in such respect, and for any damage or loss that may occur after issuance of the Works Primary Taking Over Certificate but results from any previous incident to which the contractor was responsible.

### **17-3- Employer's Risks (Exempted Risks)**

The Risks referred to in 17-4 and mentioned hereafter are those that have direct effect on the Works execution:

- a- War or hostilities, whether declared war or not, invasion or acts of foreign enemy,

- b- Insurgence, terrorist act, sabotage by persons not employed by the Contractor, rebellion, usurped authority or civil war in the Country,
- c- Strike, riot or disorder movement in the Country by persons not employed by the Contractor,
- d- Ammunition, explosives, ionic radiation or nuclear radiation pollution in the country, except for what results from the use by the Contractor of such ammunition, explosives or radiation,
- e- Pressure waves resulting from aircrafts and air transportation means moving at sonic or supersonic velocity,
- f- Use or occupancy by the Employer of any permanent Works, except for what is stipulated in the Contract,
- g- Design any part of the Works that is set up by the Employer's employee or by other persons for whom the Employer is considered responsible, and
- h- Any natural catastrophe which is unforeseeable or it is not expectable by a prudent Contractor to take the proper precautionary measures against it.

#### **17-4- Employer's Risks Consequences**

If any of the risks mentions in 17-3 above results in any loss or damage to the Works, execution requirements or Contractor's Documents, the Contractor shall inform the Engineer therewith promptly and shall rectify the resultant damage or loss to the extent required by the Engineer.

If the Contractor sustains delay in execution and/or cost due to rectifying such damage or loss, it shall give the Engineer another notice to estimate its dues in their respect, taking into account the provisions of 20-1, on:

- a- Extension of the Completion Period if Completion is or will be delayed, according to the provisions of 8-4.
- b- Any such cost to be added to the Contract Price, computing a profit margin for the cases in 17-3-f and g above to be added to the cost.

The Engineer shall, after receiving the latter notice, act according to 3-5 by agreement thereon or makes estimations with respect to such matters.

#### **17-5- Intellectual and Industrial Property Rights**

"Violation" in this Clause means any violation, or alleged violation, of any rights such as patents or designs registered, copyrights, trade names, trade secrets or other intellectual or industrial property rights related to the Works. Also, "claim" means any claim or procedure of claim of alleged violation.

If neither Party gives the other a notice of any claim within 28 days as of the date of receiving a claim, the First Party, in this Clause, shall be considered as assigned its right of indemnity according to the provisions of this Clause.

The Employer shall indemnify and protect the Contractor from any alleged violation, if the allegation:

- a- Occurs as a result of the Contractor's compliance with the Contract provisions, which it could not avoid, or
- b- Results from the use by the Employer of any Works:
  - (1) For other than their intended person, or that can reasonably be concluded from the Contract, or

(2) In connection with anything not outsourced by the Contractor, unless such use comes to the Contractor's knowledge before the Primary Date or it is stipulated in the Contract.

The Contractor shall indemnify and protect the Employer against any other claims that may arise from or be connected to:

- a- Manufacture, use, sale or outsource any of the execution requirements.
- b- Any design to which the Contractor is considered responsible.

If any Party is entitled to indemnification according to the provisions of this Clause, the indemnifying Party shall, at its cost, enter into negotiation for the settlement of the claim of judicial or arbitral procedures that may result therefrom. The other Party shall give assistance in defending the claim based on the indemnifying Party request and account. The other Party and employees shall also refrain from giving any endorsement that may be prejudice to the right of the indemnifying Party, unless such indemnifying Party has failed to enter into negotiation or litigation or arbitration according to the other Party's request.

#### **17-6- Determine of Responsibility**

No Party is considered liable to the other Party for loss of use of any Works, loss of profit from any Contract, loss of opportunity to obtain other contracts, or for any indirect or consequential damage or loss that may befall the other Party as a result of the Contract, except for what is stipulated in the penalty of delay in 8-7, cost of fault rectification as per 11-2, payment after Contract termination as per 15-4, payment of termination as per 16-4, penalty as per 17-1, consequences of risks of Employer as per 17-4-b and the intellectual and industrial property right as per 17-5.

The overall liability assumed by the Contractor to the Employer under or in connection with the Contract shall not exceed the product of multiplying the factor of more or less than 1 by the Contract Price Approved as specified in the Contract Information or the Contract Price Approved in the event such factor is not mentioned in the Contract Information, except for the following:

- Water and power supply as per 4-19.
- Employers equipments and Goods provided free of charge, as per 4-20.
- Penalty as per 17-1.
- Intellectual and industrial property rights, as per 17-5.

The provisions of this Clause shall not limit the liability of the Party in violation in any case of fraudulence or intentional default or misconduct from its part.

#### **17-7- Use of the Employer's Offices and Accommodations**

The Contractor assumes full responsibility for care for the offices and accommodations of the Employer in the Sites, if any, as stated in the Specifications as of the date of handing over the Site to the Contractor until the date of evacuation due to Works evacuation, if evacuation is done on a later date to that specified in the Works Primary Taking Over Certificate.

If any loss or damage to occur to the quarters mentioned above during continuity of the Contractor's responsibility due to whatever reason, but not attributable to the Employer, The Contractor, at its own cost, rectify damages and compensate for the lost parts, as required by the Engineer.

## Article Eighteen: Insurance

### 18-1- General Requirements of Insurance

“Insuring Party” in this Clause means, for all types of insurance, the Party that it is responsible for taking out and maintenance of the insurance stipulated in any Clause of this Article. Wherever the Contractor is the Insuring Party, it shall procure insurance from insurance agencies with insurance endorsements accepted by the Employer, so that such endorsement are consistent with the Conditions agreed to by the Parties before the date of the Letter of Award; such conditions agreed to have priority over the provisions stipulated in this Article. Wherever the Employer is the Insuring Party, it shall procure insurance from insurance agencies with insurance endorsements accepted by the Contractor, so that such endorsement are consistent with the Conditions agreed to by the Parties before the date of the Letter of Award; such conditions agreed to have priority over the provisions stipulated in this Article.

If the Insurance Certificate provides giving indemnification of joint insurance, i.e. to both Parties jointly, then it shall be applied the insurance coverage of each insured Party separately as if it has been issued a separate certificate. While if the insurance certificate provides giving indemnification to additional subscribers, i.e. to persons other than the insured Parties according to the provisions of this Article, then:

- 1- The Contractor shall substitute such additional subscribers, except for the Employers personnel where the Employer shall substitute them.
- 2- Such additional subscribers are not considered as authorized to receive payments directly from the insurance agency or they have any direct dealing with such insurance agency.
- 3- The Insuring Party may request all such additional subscribers to comply with the conditions stated in the Insurance Certificate.

Also, each Insurance Certificate against loss or damage shall stipulate that the indemnification therein shall be paid in the currencies required for indemnification for loss or damage, and that such payments made by the insurance agencies shall be used for compensation for loss or damage.

The Insuring Party concerned shall submit to the other Party, within the times specified in the Contract Information, which is to be counted from the start thereof, the following:

- a- Proof that the insurance certificates required according to this Article are obtained.
- b- Copies of the insurance certificates related to insuring the Works and the Contractor's equipments as per 18-2 and insurance against body injury and damages to properties as per 18-3.

Also, the Insuring Party shall, upon repayment of each installment, submit copies of the payment receipts to the other Party. When the documents or payment receipts are submitted to the other Party, the Engineer shall be informed therewith.

Each Party shall comply with the conditions endorsed in any insurance certificate. Also, the Insuring Party shall inform the insurance agency with any changes in Works and shall verify continued validity of the Insurance Certificates according to the provisions of this Article.

No Party has the right to make any material change to the Insurance Certificates without obtaining the other Party's prior consent. If an insurance agency makes, or attempts making, any amendment to the insurance conditions, the Party notified by the insurance agency with the amendment order shall first inform the other Party promptly therewith. Failure by the Insuring Party to procure and maintain any type of insurance required therefrom according to the Contract Conditions, or its failure to submit a good proof and copies of the documents according to the requirements of this Clause, then the other Party may, at its discretion and without prejudice to any of its rights or actions, procure insurance certificates with the required coverage, and shall pay their premiums, and the insured Party shall pay the amounts of such premiums to the other Party; the Contract Price shall be corrected by the amounts paid.

Any provision of this Article shall not constitute limitation to any duties, obligations or responsibilities of the Contractor or the Employer according to any other provisions in the Contract or for other reasons. The Contractor and/or

the Employer shall be charged with any amounts uninsured or uncollected from the insurance agencies as required therefrom under such duties, obligations or responsibilities, except for the case where the Insuring Party fails to obtain and maintain obtainable insurance certificate, and required under the Contract Provision, and the other Party accept dropping thereof and fails to conclude securities to cover such default, then any amounts recoverable from the insurance for the issuance of such document, shall be charged to the Insuring Party.

The payments made by any Party in fulfillment to the other Party shall subject to the provisions of 2-5 on the Employer claims or 20-1 on the Contractor claims, as applicable.

The Contractor is entitled to procure insurance related to the Contractor to include but not limited to the insurance referred to in Article 18 with insurance agencies in any eligible country.

### **18-2- Insurance on Works and Contractor's Equipments**

The Insuring Party shall insure on the Works, Machineries, Goods and Contractor's Documents with an amount of not less than their replacement value plus and cost of demolition, removal of debris, trade fees and profit. Such insurance shall be valid as of the date on which it is required to submit proof as per 18-1-a until the date of issuance of the Works Primary Taking Over Certificate.

The Insuring Party shall, also, maintain the insurance coverage until the date of issuance of the Works Final Taking Over Certificate against any loss or damage for which the Contractor is responsible due to events occurred prior to issuance of the Works Primary Taking Over Certificate and against any loss or damage that might be caused by the Contractor during its performing the fault rectification process in pursuance to the provisions of Article 11.

The Insuring Party shall insure the Contractor's equipments with an amount not less than whole their replacement value to include the cost of delivery thereof at Site, taking into account that such insurance shall be valid for each piece of equipment during transportation thereof to the Site until they are no longer required as Contractor's equipments.

Unless the Special Conditions stipulate otherwise, insurance under this Clause shall consider that:

- a- The insurance is operative and maintained by the Contractor being the Insuring Party.
- b- The insurance shall be in the names of both Parties jointly, who shall have the right to jointly obtain the insurance amounts from the insurance agencies, and these shall be kept and allocated to the Party who is to be charged with the cost of rectifying the damage or loss.
- c- It shall cover every damage or loss resulting from any event not mentioned in the Employer's risks stated in 17-3.
- d- It shall cover every damage or loss that may occur to any part of the Works and is attributable to the use of occupancy by the Employer of another part of the Works, and every damage or loss connected with the risks listed in 17-3 c, g, h of the Employer's risks, except for the risks that cannot be insured by reasonable commercial conditions, with a discount amount per every accident with no more than the amount specified in the Bid's Information; if no amount is stated in the Contract Information, then this Clause (d) shall not apply.
- e- However, insurance against damage, loss or replacement can be exempted for the following:
  - (1) Any part of the Works that is defective due to any fault in the design, materials or manufacture; however, shall be maintained an insurance coverage for any other parts sustained damage as a direct result of such case but not due to reasons stated in 2 hereafter.
  - (2) Any part of the Works sustains damage or loss due reconstruction of other parts of the Works, if such other part is defective due to fault in design, materials or manufacture.
  - (3) Any part of the Works which have been delivered to the Employer, except for the extent to which the Contractor is responsible for coverage of the damage of loss.

(4) Execution requirements when they are not available in the country, taking into consideration the provisions of 14-5 with respect to the Machineries and the Goods to be used in the Works.

If it is found, a year after the Primary Date, that the insurance coverage described in (d) above is no longer available on commercial basis, the Contractor shall, as Insuring Party, give the Employer a notice thereof, accompanied with supporting details. The Employer shall then be:

- (1) Entitled, considering the provisions of 2-5, to receive from the Contractor an amount equals such reasonable commercial insurance coverage which the Contractor has expected to pay for such coverage.
- (2) Considered, unless it has obtained the insurance coverage on reasonable commercial basis, as has approved revocation thereof from the insurance as per the provisions of Clause 18-1.

### **18-3- Insurance Against Body Injury and Damages to Properties**

The Insuring Party shall insure against the responsibility of each Party due to any death or body injury or any loss or damage to occur to any real assets, except for the Works and the Contractor's equipments insured according to the provisions of 18-2, or any persons insured according to the provisions of 18-4, for the possible results of the execution process conducted by the Contractor before issuance of the Works Final Taking Over Certificate.

The amount of such insurance per occurrence shall not be less than the amount specified in the Contract Information, without a maximum limit of number of occurrences; if no such amount is stated in the Bid's annex, the provisions of this Clause shall not apply.

Unless the Special Conditions stipulate otherwise, the following shall be considered with respect to the types of insurance mentioned in this Clause:

- a- Shall be obtained and maintained by the Contractor as Insured Party.
- b- Insurance shall be in the name of both Parties jointly.
- c- The coverage shall be extended to include the liability for loss and damage to occur to the Employer's properties that may result from the execution by the Contractor of the Contract Works, except for the items insured as per 18-2, which result from the execution of Contract by the Contractor.
- d- However, liability may be disclaimed to the extent it may arise from:
  - 1- The Employer's right to execute the Permanent Works on, above, under or through any land, and to occupy such land for the Permanent Works purposes.
  - 2- Damage that is considered inevitable result of the Contractor's obligations of Works execution and rectifying any fault therein.
  - 3- Any case listed in the Employer's risks in 17-3, unless the insurance coverage thereof is available in commercially reasonable conditions.

### **18-4- Insurance on Contractor's Employees**

The Contractor shall procure and maintain the validity of insurance on liability against claims, damages, losses or expenses (to include the attorney fees) that may result from disease, illness or death to any person employed by the Contractor or any of its employees.

The insurance the Employer and the Engineer shall include any demands for the penalty, loss and damage and any amounts to incur from the injury, illness, disease or death to any of the Contractor's personnel, except that such insurance may not involve loss or penalty resulting from any act or omission be the Employer or representatives.

Such insurance shall be maintained effectively and continuously throughout the period through which such persons are engaged in Works execution, while for the employees of any Subcontractor, then the Subcontractor may have them insured while the Contractor remains under the obligations of this Article.

## **Article Nineteen : Force Majeure**

### **19-1- Definition of Force Majeure**

Force Majeure, as used in this Article, means any occurrence or exceptional circumstance which is:

- a- Beyond the Control of either Party.
- b- Could not reasonably be provided for by that Party before entering into the Contract.
- c- Could not be reasonably avoided or averted by that Party before its occurrence.
- d- Not substantially attributable to the other Party.

As long all the conditions in a, b, c and d above are met, Force majeure may include by not limited to any kind of the following occurrences or exceptional circumstances:

- (1) War or hostilities, whether declared war or not, invasion or acts of foreign enemy,
- (2) Insurgence, terrorist act, sabotage by persons not employed by the Contractor, rebellion, usurped authority or civil war,
- (3) Strike, riot or disorder movement, or strike or blockade by persons not employed by the Contractor,
- (4) Ammunition, explosives, ionic radiation or nuclear radiation pollution, except for what results from the use by the Contractor of such ammunition, explosives or radiation,
- (5) Natural catastrophe such as earthquake, hurricane, storm or volcanic activity.

### **19-2- Notification of Force Majeure**

Failure by either Party to perform any of its contractual obligations due to occurrence of Force Majeure, it shall give the other Party a notice of the occurrence or the circumstance constituting Force Majeure. Such notice shall state the obligations which are or will be impossible for it to perform. Such notice shall be issued within 14 days as of the date on which such Party knew, or should have known, about the occurrence or the circumstance constituting Force Majeure.

The Party giving the notice shall be excused from performing the obligations mentioned as long as the Force Majeure preventing it from performance thereof is still in effect.

Notwithstanding any other provision in this Article, the provision of Force Majeure shall not apply to the obligations of either Party of payment to the other Party its dues under the Contract.

### **19-3- Obligation to Reduce Delay**

Each Party shall, at all time, exert every reasonable effort to reduce delay in its delay in performing its obligations under the Contract as a result of Force Majeure.

Also, each Party shall inform the other Party upon cessation of Force Majeure.

### **19-4- Force Majeure Consequences**

If the Contractor is prevented b Force Majeure from performing any of its substantial obligations under the Contract, a notice therewith is sent in pursuance to the provisions of 19-2 and as a result it sustains delay of period of execution and/or cost, the Contractor shall, considering the provisions of 20-1, be entitled to claim the following:

- A. Extension of Period of Completion due to such delay, if Completion is or will be delayed, according to the provisions of 8-4, and

- B. Recovery of any such cost to include the cost of rectifying or repeating the execution of Works and/or replacement of Goods that are damaged or deteriorated due to Force Majeure to the extent these cannot be indemnified through the insurance certificate mentioned in 1-2, if any incident stipulated in 2, 3, 4 occurs in the Works country.

The Engineer shall, after receiving such notice, commence, as per 3-5, agreeing on or setting its estimates of the said costs.

#### **19-5- Force Majeure Affecting the Subcontractor**

If any Subcontractor is entitled under any Contract or Agreement on the Works any exemption due to Force Majeure according to additional conditions or conditions more extensive than those specified in this Article, such incidents and the additional or more extensive circumstances of the Force Majeure shall not relieve the Contractor in the event of nonperformance and shall not entitle it to any exemption under the provisions of this Article.

#### **19-6- Terminating the Contract Optionally, Payment and Release**

If the execution of all Works is substantially not possible to be performed for 84 days continuously due to Force Majeure to which a notice is given as per 19-2, or for intermittent periods of total 140 days, due to the same Force Majeure to which the notice is given, then either Party may give the other Party a notice of Contract termination.

In which case, Contract termination shall be valid 7 days after the date of giving the notice. The Contractor shall commence taking actions to stop Works and remove its equipments, in pursuance to the provisions of 16-3. On Contract so termination, the Engineer shall estimate the value of Works completed and issue a payment certificate that includes:

- a- Amounts payable for any Work executed that have fixed price in the Contract,
- b- Cost of Machineries and Goods which acquisition is proved and are received by the Contractor or it contracted on the supply and receipt thereof. In which case, such Machineries and Goods shall be property of or under custody of the Employer once it pays their value, the Contractor shall hand over and put the same at the Employer's disposal,
- c- Costs and other financial obligations sustained, reasonably and necessarily, by the Contractor in such circumstances due to its expectation of Works execution,
- d- Cost of removal of the Temporary Works and the Contractor's equipments from Site and returning the same its warehouses in its country, or to any other place provided that it shall not exceed the cost of returning it to its country, and
- e- Cost of deportation of the Contractor's employees and workers whom it had employed for the execution of Works on full-time basis, on termination of the Contract.

#### **19-7- Disclaimer of Liability for Performance Under the Law**

Notwithstanding any other provision in this Article, if any incident or circumstance beyond the control of the Parties, to include but not limited to Force Majeure, occurs and renders compliance by any of or both Parties with the contractual obligations impossible or violating to the law, or according to the law governing the Contract results in exempting the Parties from continuing Contract execution, then following notice by a Party to the other with that circumstance or incident:

1. The Parties shall be exempted from continuing performance, without prejudice to the rights of either on any previous default in the Contract.
2. The amount to be payable by the Employer shall be the same as that is payable according to the provisions of 19-6 above, as if the Contract is terminated according to the said Clause.



## Article Twenty: Claims, Disputes and Arbitration

### 20-1- Contractor's Claims

If the Contractor deems itself entitled to extension of the Period of Completion and/or any additional payment under any Article of these Conditions, or for other reasons related to the Contract, it shall give the Engineer a notice stating the incident or the circumstance that resulted in such claim. Such notice shall be given as soon as practicable, within max. period of

28 days as of the date on which the Contractor knew, or should have known, with such incident or circumstance.

Failure by the Contractor to give the notice within such 28-day period, the Period of Completion shall not be extended, and the Employer shall, thus, be deemed as disclaimed of responsibility with respect to such claim. Otherwise, the provisions of this Clause to come hereafter shall be applied.

The Contractor shall, also, give any notices required under the Contract and shall give details supporting the Claim, for everything related to the incident or the circumstance.

The Contractor shall maintain updated records as required to support the claim, either onsite or in any other place approved by the Engineer.

The Engineer may, without being obliged to claim responsibility of Employer thereon, after its receiving any notice under this Clause, observe record maintenance and/or instruct the Contractor to continue updating the records. The Contractor shall give the Engineer the opportunity to inspect the records and shall provide it with copies thereof, if so required.

The Contractor shall, also, give the Engineer, within 42 days as of the date of its knowledge of the incident or the circumstance that led to the claim, or from the date on which it should have known about, or through any other period proposed by the Contractor and approved by the Engineer, detailed claim that includes all information supporting the basis of claim, extension of period and/or additional payment claimed. If it is for the incident or circumstance that results in the claim to continue in effect, then:

1. The detailed claim submitted shall be considered a milestone claim.
2. The Contractor shall continue sending other milestone claims monthly, stating in each the period of delay accumulated and/or the amount claimed, in addition to other supporting details as reasonably required by the Engineer.
3. The Contractor shall send its final claim within 28 days as of the date of cessation of effects resulting from the incident or circumstance, or within any other period suggested by the Contractor and approved by the Engineer.

The Engineer shall, within 42 days as of the date of its receiving a claim, or any other details confirming a previous claim – or through any period suggested by the Engineer and approved by the Contractor – evaluate the claim and reply thereon either with approval or with disapproval, stating its comments thereon in details; also it may require any other necessary details. However, it shall be bound to submit its reply on the bases of claim within such aforementioned period.

The Engineer shall, within the aforementioned 42-day period, conduct estimations as per 5-3 to determine or estimate the following:

- 1- Any extension to the Period of Completion, whether before or after expiry thereof, in pursuance to the provisions of 8-4, and/or
- 2- The additional payment, if any, which the Contractor is entitled to according to the Contract provisions.

Each such payment certificate shall include the amounts of any additional payment that may prove to be reasonably due according to any relevant Contract provisions. Until adequate details proving correct assumption of the whole claim are submitted, the Contractor entitlement thereto shall be confined to such part of the claim that it could prove its correct assumption in its respect.

Failure by the Engineer to respond within the time ceiling specified in this Article, each Party may consider the claim as refused by the Engineer and each Party may refer the claim to the Dispute Settlement Committee to take the due decision in pursuance to the provisions of 20-2.

The requirements of this Clause are considered additional to those stated in any other Article that may apply to the claim. Failure by the Contractor to comply with the provisions of this Clause or any other Article with respect to any claim, shall be considered the extent, if any, of the effect of such failure on the proper investigation on the claim upon estimating any extension to the Period of Completion and/or any additional payment, if the claim is disregarded under this Clause.

## **20-2- Appointing Dispute Settlement Council (the Council)**

Disputes shall be referred to the dispute settlement committee to issue decisions thereon according to the provisions of 20-4. The Parties shall jointly nominate the members of the Committee within the date stated in the Contract Information.

The Committee consists, as specified in the Contract Information, from one person or three persons of adequate qualification (the Members). Each shall have the communication skills specified in the Contract and shall have experience in the methods of construction employed in the Works execution as well as experience in the construction of Contract Documents. If number of members is not agreed to by the Parties, the number shall be three.

The Parties shall appoint the Dispute Settlement Committee 21 days before the date specified in the Contract Information. If the Committee is to consist of three members, each Party shall nominate one member to be approved by the other Party; the two members appointed shall suggest the third member to be approved by the Parties as the Committee's head.

If there's a list of nominated arbitrator agreed to by the Parties, stated in the Contract, the members shall be selected from the names listed, except for any person who is incapable of or not interested in accepting the appointment as a member to the Committee.

The agreement between the Parties and the single Committee's member (the Arbitrator) or each of the three members shall be formulated so that it refers to the general conditions related to the Dispute Settlement Agreement, annexed to these General Conditions of the Contract, with any amendments they agree on to be introduced.

For the compensation of the single Committee's member or each of the three member or the compensation of any other expert consulted by the Committee, these shall be determined by the Parties on agreement on the Members appointment conditions; the Parties shall pay such compensations fifty-fifty.

The Parties may, jointly, if they agree any time, refer any matter to the Committee to give opinion

thereon. However, no Party is entitled to consult the Committee on any matter without the other Party's consent.

Reluctance by any Member of the Dispute Settlement Committee, or its inability, to perform its task due to disablement or death or due to resignation or termination of appointment, a substitute shall be appointed in the same manner pursuant to which the substituted member was appointed or agreed on as described in this Clause.

Any appointment of a Member may be terminated by joint agreement of the Parties, rather than by the Employer or the Contractor severally. Unless the Parties agree on otherwise, the term of the Committee, to include each Member therein, terminates when the Final Accounts Certificate, mentioned in 14-12/General Conditions enters into force.

## **20-3- Failure in Agreeing to Appoint the Council**

If any of the following cases specifically applies:

- A. Failure by the Parties to appoint the single Committee's Member on the date specified in the first Paragraph of 20-2: Appointment of Dispute Settlement Committee's Members.
- B. Failure by any Party to nominate a Member for approval by the other Party, or to approve the Member suggested by the other Party to the Dispute Settlement Committee of three Members on the abovementioned date.
- C. Failure by the parties to appoint the third member (committee Head) in the above mentioned date, or

D. Failure by the Parties to agree on the appointment of any substitute Member within 42 days after termination of the task of the Committees single Member, or one of the Committee's three Members, due to its refrain or due to death or disablement to perform the tasks due to resignation or appointment termination.

Thereupon, the appointing body or the nominated person in the Contract Information shall, at request of any of or both Parties and following conducting due consultation with both Parties, appoint such Committee's Member. Such appointment shall be conclusive and decisive. The Parties shall, also, pay the compensation of the body or the person who made the appointment fifty-fifty.

#### **20-4- Decision Taking by the Disputes settlement Council (The Council)**

If any dispute between the Parties of any type connected with or arises from the Contract or Works execution, to include any dispute on any certificate, estimates, instructions, opinion or value estimation by the Engineer, then any Party may refer the matter in writing to the Committee for consideration or taking decision thereon, CC to the other Party and the Engineer; provided that it should be mentioned that such referral of dispute is conducted according to the provisions of this Clause.

If the Committee consists of three Members, the Committee considers the notice of referral of dispute to it as received according the provisions of this Clause on the date on which the Committee's head received such notice.

The Parties shall promptly submit to the Committee all additional information and shall provide access to Site and the proper facilities that may be required by the Committee to enable the Committee take decision on such dispute; by implication the Committee is presumed to not act as arbitration panel.

The Committee shall, within max. period of 84 days as of the date of its receiving the notice of referral of dispute to it, or within any other period suggested by the Committee and approved by the Parties, take its decision in its respect. Such decision shall be reasoned and shall mention that it is issued according to the provisions of this Clause. Such decision shall be binding to the Parties who shall execute it, unless (or until) it is revised in amicable settlement or through arbitration as mentioned hereafter. Unless the Contract is assigned, cancelled or terminated, the Contractor shall, in such case, continue Works execution according to the contract Provisions.

If neither Party is satisfied with Committee's decision, it shall, within 28 days as of the date of its receiving the decision, give the other Party a notice of its dissatisfaction and its intent to resort to arbitration. Failure by the Committee to issue its decisions during the 84-day period, or as

agreed on otherwise, as of the date of its receiving the request of referral of dispute to it, then either Party may, within 28 days following the elapsed 84-day period, inform the other Party with its dissatisfaction and its intent to resort to arbitration.

In either case, the subject of dispute and reasons of dissatisfaction shall be stated in such dispute, in addition to mention that it is issued according to the provisions of this Clause. Except

for the stipulations of 20-7 and 20-8 hereafter, no Party may initiate arbitration procedures on the dispute unless the notice of dissatisfaction is issued as specified in this Clause.

If the Committee issues its decision on any matter disputed by the Parties without receiving a notice of dissatisfaction from either Party within 28 days as of the date of its receiving the decision, the Committee's decision shall become conclusive and binding to both Parties.

#### **20-5- Amicable Settlement**

If a notice of dissatisfaction is issued in pursuance to 20-4 above, the Parties shall attempt at settlement of the dispute amicably before initiating arbitration procedures. Unless the Parties agree on otherwise, the arbitration procedures may be initiated on or before the 56<sup>th</sup> day after the date of giving the notice of dissatisfaction and intent to resort to arbitration, even without attempt to settle the dispute between them amicably.

#### **20-6- Arbitration**

Unless stated otherwise in the Special Conditions and unless the dispute is settled amicably, any dispute on the Committee's decision, if any, on it, which has not become conclusive and binding, shall be settled by arbitration. Unless the Parties agree on otherwise:

- a- For contracts with foreign contracts, arbitration shall be conducted according to the procedures of international arbitration rules adopted by the International Arbitration Board as specified in the Contract Information, such as those passed by the International Chamber of Commerce, UNCITRAL or the Arab Arbitration Chamber for Contractors.
- b- Unless otherwise is stipulated, arbitration shall be conducted in Iraq.
- c- Arbitration awards are subject to the Iraqi arbitration laws.
- d- Shall be employed in the arbitration procedures adopted the communication language specified in 1-4: Law and Language.
- e- For contracts with domestic contractors, arbitration rules shall be adopted according to the Iraqi law.

The arbitration panel enjoys full capacity to inspect, review and revise any certificate, estimates, instructions, opinions or evaluation, or any decision issued by the Dispute Settlement Committee on the dispute.

Also, neither Party shall be restricted in the procedures before the arbitration panel with respect to the evidences and pretexts previously submitted to the Committee before taking its decision, or for the reasons mentioned in the notice of dissatisfaction. Also, any decision by the Committee shall be accepted as good evidence in the arbitration.

Arbitration procedures may be initiated before or after Works completion; obligations of either Party or the Committee shall not be affected if the procedures are initiated during Works execution.

#### **20-7- Noncompliance to the Decision of "The Council"**

Failure by either Party to comply with the conclusive and binding decision issued by the Dispute Settlement Committee, the other Party may, without prejudice to any of its other rights, refer such noncompliance to arbitration according to the provisions of 20/6; in which case the provisions of 20-4 on Committee's decision and 20-5 on amicable settlement shall not apply.

#### **20-8- Appointment Expiration of the (Council)**

If any dispute between the Parties arising from or connected with the Contract or Works execution, while there's no Dispute Settlement Committee due to termination of appointment thereof or otherwise, then:

- a- 20-4 on Committee's decision and 20-5 on amicable settlement shall not apply.
- b- Dispute may be directly referred to arbitration according to the provisions 20-6.

## **Section Eight: Special Conditions of the Contract for Works Execution Contracts**

The Special Conditions stated hereafter are supplementary to the General Conditions of the Contract; whenever there's a dispute, the provisions thereof shall prevail those stipulated in the General Conditions of the Contract.

## A. Contract Information

[Insert Project Name]	[Insert Bid's No.]	
Information	Article No. in the General Conditions of the Contract	Limitation
Employer: Address:	1-1-2-2 And 1-3	[Insert Employer's Name] [Insert address, Tel. No., email and fax]
Engineer: Address:	1-1-2-4 And 1-3	[Insert Engineer's Name] [Insert address, Tel. No., email and fax]
Period of Completion:	1-1-3-3	[        ] days. If Works are divided to several parts, a summary schedule for the period of completion of each part shall be referred
Period of Fault Rectification (Maintenance)	1-1-3-7	[        ] Calendar days
Parts of Works	1-1-5-6	If Works are divided to several parts, Works parts schedule shall be referred to
Electronic submission of Bids	1-3	Insert (applicable, not applicable)
Law governing the Contract	1-4	[Insert the law to which the Contract is subject]
Language employed in the Contract	1-4	[Insert language(s) employed]
Communication Language	1-4	[Insert language(s) employed]
Date Contract entered into	1-6	Insert date
Date of Site's handing over	2-1	The date of Site's taking over

		shall precede the Date of Commencement, except the parts described hereafter (except where applicable, with a detailed description: _____ days after the Date of Commencement.						
		<table border="1"> <tr> <td>[Insert Parts of Works]</td> <td>[Insert date of Site's taking over]</td> </tr> <tr> <td></td> <td></td> </tr> <tr> <td></td> <td></td> </tr> </table>	[Insert Parts of Works]	[Insert date of Site's taking over]				
[Insert Parts of Works]	[Insert date of Site's taking over]							
Engineer's duties and powers	3-1-b-(second)	Changes to result in increasing the Contract Price Approved by (--%) shall subject to the Employer's approval.						
Performance guarantee	4-2	Performance guarantee in the form of bank guarantee of [insert percentage of the Contract Price Approved in the same currency (currencies) for the Contract Price Approved						
Normal business hours	6-5	[Insert daily business hours]						
Work progress schedule	8-3	Failure by the Contractor to submit valid Work progress schedule, it shall subject to penalty of [insert suggested penalty]						
Damages for delay (penalty of delay)	8-7 and 14-5-b	[Insert amount of daily penalty of delay] if the Contract allows partial handing over the parts of Project, shall be noted the schedule at the end of the Information						

Max. limit of penalty of delay	8-7	--% of the Total Contract Price
Long Term Suspension	11/8	If the work suspension continued, in accordance with Para 8/8, for a period exceeding ( ) days the engineer is permitted to notify the contractor to resume the work
Reserve Amounts	13/5 (B, Second)	(in case there is an amount of the general reserve, insert its percentage of the contract amount)
Adjustments because of changes in legislations	13/7	If the work suspension continued, in accordance with Para 8/8, for a period exceeding ( ) days the engineer is permitted to notify the contractor to resume the work.
Adjustments because of changes in the Cost	13/8	The time period for the review prices (insert the proper time period to review the prices) (applicable – not applicable)
Late Advances	14/8	If the contractor received any advance payment due to him according to Para (14/7), he has the right to receive the financing expenses for any delayed amounts to be paid to him (insert applicable, not applicable)
Contract Value	14/1 (B)	Is the contract amount exempted from taxes and custom duties? (insert yes or no)
Maximum limit Advance Payment	14/2	-----% of the contract amount ( the contracting party has to consider the proportions specified in the instructions of implementing the prevailing investment budget and the procedures of the collecting these advances)
Advance Payment Refunding	14/2	(Insert the refunding date of the first installment) (Insert the refunding percentage for each installment ) (Insert the refunding date of the last installment) ( the contracting party has to consider the limits of these proportions according to the instructions of the investment budget prevailing at that time and the procedures of the collecting these advances)



		consider the limits of these proportions according to the instructions of the investment budget prevailing at that time and the procedures of the collecting these advances)
Percentage of cash deduction	14-3	--%
Limits of cash deduction	14-3	--% of the Contract Price Approved
Equipments and Goods included in Works	14-5-b-(1)`	In the event of adopting 14-5, insert list of Equipments and Goods to pay their amounts upon shipping (FOB) or the other methods adopted in commercial sales (to be determined clearly by the contracting party) in accordance Incoterm
	14-5-c-(1)	Insert list of equipments and Goods to pay their amounts upon arrival at Site (CIP)
Minimum limit of milestone payments	14-6	[Insert --% of the Contract Price Approved]
Name of body to issue the annual deduction rate for the purpose specifying the amount of finance expenses for delay in disbursement of milestone payments	14-8	[ if it is applicable or (insert the name of the financial organization), not applicable]
Final Advance (upon receiving the works	14/10	The contractor has to submit to the engineer within a period not exceeding ( ) days from the date he receives the preliminary acceptance certificate of the work, the statement of the final account
Payment after work withdrawal	15/4	(to consider the prevailing legislations in the payment of contractor's dues)

The right of the contractor in terminating the contract	16/2	Insert ( Applicable – not Applicable)
Maximum Responsibility borne by the contractor toward the employer	17/6	(Insert one of the two alternatives set forth later on) multiplied by (factor less or more than one) in the accepted value of the contract, or (insert a higher value for the commitment of the contractor)
Insurance Documents Submission	18/1	(Insert the period specified to submit the document
A- Insurance Confirmation B- Insurance Policies		of insurance and insurance policy. The period is between 14-28 days ----- day ----- day
Maximum insurance deductions amount of damages arising from the works of the employer to any part of the works	18/2 (D)	(insert the maximum amount of deductions)
Minimum Insurance amount for the risks of third party	18/3	(insert the insurance amount of the third party)
Term of Appointment of the Settlement of Disputes Board	20/2	If applicable insert ( ) day from the commencement date
Forming of Settlement of Disputes Board	20/2	( ) either (one member) ( ) or (three members)
Name List of adopted experts of Settlement of Disputes Board	20/2	(when the Settlement of Disputes Board consists of one member only, insert the list of adopted experts: and also if more than one member)
The party that appoints the members of Settlement of Disputes Board	20/3	(Insert the name of party resorted to nominate the experts for the Settlement of Disputes Board)

Procedural Rules for Arbitration	20/6 A	(insert the adopted rules for Arbitration)
Arbitration	20/6 B	(insert the place of Arbitration and governing law)

**Table: Summary of parts constituting the Works**

Name and description of part as per 1-1-5-6	Date of completion for the part as per 1-1-3-3	Penalty of delay as per 8-7

## **B. Special Conditions**

### **Article 14-1: Contract Price**

(Alternative text for Clause (e))

Additional to the provisions specified in b, the Contractor's Equipments and their essential spare parts outsourced specifically for the execution of the Project are subject to temporary exemption from tax and costumes clearance when entered for the first time, provided that the Contractor shall submit to the costumes bodies on ports and borders a bank guarantee of export which shall be valid until the date of Contract Completion plus six months with an amount that equals the entire amount of costumes duties and payable tax for such equipments and their related spare parts in the event the Contractor export the same to outside Iraq upon Contract Completion. The Contractor shall, also, submit a copy of such guarantee certified by the Costumes Commission on when any of the various execution equipments and their spare parts enter Iraq. The Contractor shall, also, on re-exporting any of such equipments and spare parts or upon Contract completion, submit a statement of the value of such equipments and spare parts, in their later condition, to the Costumes commission for clearance thereof, employing the depreciation and other standards employed by the Costumes commission for this purpose according to the applicable law.

Shall incur on the Contractor the tax and costumes duties payable for the execution equipments and spare parts as stated below:

- a- For the price difference between the equipments and spare parts in their condition when they first entered Iraq and their price when they are exported to outside Iraq.
- b- For the price of equipments and spare parts in their condition when they first entered Iraq, if they are going to be stayed in Iraq rather than exported after Contract completion.

In the event of payment by the Contractor of tax and costumes duties for any equipments and spare parts within 28 days after being so required by the Costumes commission, the amount of bank guarantee shall be reduced to ensure exporting at the rate of equipments and spare parts exported to outside Iraq; otherwise, the entire amount of guarantee shall be withheld by the Costumes commission.

### **Article 6-23: Work Regulations**

(Added clause to S6/General Conditions of the Contract)

The Contract shall comply with the provisions of the Law on Labor and Social Security as applicable in Iraq, to include the labor's right of association and election of union.

### **Article 6-24: Non-Discrimination and Equal Opportunity**

(Added Clause to S6)

The Contractor shall not issue hiring decisions relying on personal characteristics irrelevant of professional requirements. It shall adopt the principles of equal opportunity and fairness in hiring and nondiscrimination and favoring in business relations in every aspect connected to determining compensation, incentives, work conditions, training opportunity, contract termination, pensioning off or discipline. It shall act according to the national laws on labor in order to realize the requirements of this Clause. Any action taken by the Contractor to rectify any of the previous favoring practices shall not be deemed as case of discrimination.

**Section Nine: Annexes of the Special Conditions and Forms of the Contract for  
The Contracts of Executing the Works**

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**Notification of Award**  
(Letter of Acceptance)

[To be written on a paper with the letterhead of the employer]

[Insert the number] [Insert  
the date]

To: (name of employer (work owner and his address)  
Sub. / Award of Works [Insert the number and identification of the contract]

We would like to inform you that approval has been obtained for your bid dated [Insert date] to execute the works of [Insert contract name and number as specified in the contract data], with the accepted contract amount of [Insert the amount in figures and writing] [Insert currency] as corrected and adjusted according to the Instructions to Bidders, and it has been accepted.

for acknowledgement and provide us with the good performance guarantee within 28 days as from the above letter of acceptance, according to the form specified in Section Nine (Annex of the Special Conditions and Contract Forms in the Bid Documents), and attach herewith a copy of the Contract Agreement Form.

With appreciation,

Enclosures  
Contract Agreement Form

Authorized Person Signature: .....

Name and Capacity of Position: .....

Name of Employer: .....

## Contract Agreement

This agreement has been concluded on [Insert the day, month, and year], between the first party [Insert the Contracting Party and its address], (who is called hereinafter "The Employer"), and the second party [Insert the Contractor and its address], where the employer intends that the contractor executes the works specified in the contract [Insert the name and number of contract], and the employer has accepted the bid of the contractor to execute and complete these works and to handle any defect therein.

Both parties have agreed on the following:

1. The meanings of words and expressions stated in this agreement shall have the same meanings stated against them in the contract documents.
2. Each of the documents listed below shall be considered as it forms, or be read or interpreted as an integral part of this contract agreement, and the this contract agreement shall govern all the other documents of contract.
  - (1) – Contract Agreement
  - (2) - Special Conditions of the Contract
  - (3) - General Conditions of the Contract
  - (4) - Letter of Acceptance (Awarding)
  - (5) - Specifications
  - (6) - Plans
  - (7) - Complete Schedules
  - (8) - Adjustments of the Bid Letter under No. .... (if any)
  - (9) - Bid Letter
3. The contractor shall undertake to execute and complete works, and to handle any defect therein in all regards, according the requirements and conditions of contract against the amounts are to be to him by the employer, as set forth in the contract agreement.
4. The employer shall undertake to pay to the contractor, against his execution and completion of works and handling any defect therein, the contract value or any other due amount pursuant to the provisions of contract at the times and by methods prescribed in the contract.

The parties, who have concluded this agreement, witness to execute it according the **Iraqi Law and I Iraqi Legislation organizing the procedures of government contracts**

Signature: .....

[Insert the name, position and address of the employer's representative]

Signature: .....

[Insert the name, position and address of the contractor's representative]



## Good Performance Guarantee

### Bank Good Performance Guarantee (unconditional)

[The winner bank/bidder, which provides the guarantee, shall fill out this form of good performance guarantee according to the instructions mentioned between the brackets, in case the employer needed this kind of guarantee]

[Insert the name of bank and branch address or issuing office]

**Beneficiary:** [Insert the name and address of the employer]

Date: [Insert the date]

**Good Performance Guarantee No.:** [Insert the number]

We have been notified that [Insert the name of contractor] (called hereinafter as "the Contractor") has concluded the contract No. [Insert Bid No.] dated with you, to execute [Insert the name of contract and a brief description of the works required] (called hereinafter as "the Contract")

Accordingly, we understand, according to contract conditions, that the good performance guarantee is required.

At the request of the contractor, we, [Insert the name of bank], commit irrevocably to pay any amount(s) not exceeding in total the amount of [Insert the amount in figures] ([Insert the amount in writing]) Iraqi Dinars<sup>1</sup>, immediately after we have received from you the first written request accompanied by an affidavit stating that the bidder is in violation of his obligation(s) under the contract, without the need that you confirm or clarify the base of your request.

This guarantee shall expire after before (28) days from the issuance date of the acceptance certificate, specified in the copy of certificate to be submitted to us, or on [Insert the date in day, month and year]<sup>2</sup>, whichever is earlier; therefore, any payment order, under this guarantee, we shall receive it on that date or before.

This guarantee is subject to the **Iraqi Law upon taking the procedure against the contractor who has violated his obligations**

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[The signature(s) of the authorized representative(s) of the bank]

<sup>1</sup> The guarantor (bank) will enter an amount that represents a percentage of the contract value specified in this contract.

<sup>2</sup> Enter the date for the twenty eight days after the expected expiry date. The employer shall be aware that in case of extending the expiry date of contract, the employer will need to request an extension for this guarantee from the guarantor. The request shall be in writing and before the expiry date prescribed in the guarantee. upon the preParation of this guarantee, the employer may deem proper to add the following text to the form, at the end of the Paragraph before the last: " The guarantor accepts to extend this guarantee for one time and for a period not exceeding [six months] [one year], in response to the written request of the employer for such extension, provided that such request shall be submitted to the guarantor before the expiry of guarantee".

## Advance Payment Guarantee

[The **winner bank/bidder**, which provides the guarantee, shall fill out this form of bank guarantee according to the instructions mentioned between the brackets, in case the employer requested this kind of guarantee]

[Insert the name of bank and branch address or issuing office]

**Beneficiary:** [Insert the name and address of the employer]

**Date:** [Insert the date]

**Advance Payment Guarantee:** [Insert the number]

We have been notified that [Insert the name of contractor] (hereinafter called as "The Contractor") has entered into the bid contract No. [Insert Bid No.], dated with you, to execute [Insert the name of contract and a brief description of the works required] (hereinafter called as "The Contract")

We understand, according to contract conditions, that the advance payment shall be granted against the advance payment with the amount mentioned hereunder.

At the request of the contractor, we, [Insert the name of bank], commit irrevocably to pay any amount(s) not exceeding in total the amount of [Insert the amount in figures] ([Insert the amount in writing])<sup>3</sup>, immediately after we have received from you the first written request accompanied by an affidavit stating that the bidder is in violation of his obligation(s) under the contract, because the contractor has used the advance payment for purposes other than the costs of works preparation.

This guarantee stipulates, in order to pay up any claim or payment under this guarantee, that the contractor shall have received the aforementioned advance payment to his account [Insert the number] in [Insert the name and address of bank].

The maximum amount of the guarantee shall be continually reduced, by the amount recovered from the advance payment returned by the contractor, as the referred to by the copies of interim data or payment certificates submitted to us. The validity of the guarantee shall expire, as maximum, after we receive a copy of the interim payment certificate, which indicate that 80 percent of the contract value has been

This guarantee is subject to the **Iraqi Law upon taking the procedure against the contractor who has violated his obligations**

[The signature(s) of the authorized representative(s) of the bank]

<sup>3</sup> The guarantor (bank) will enter an amount that represents the advance payment amount.

<sup>4</sup> Enter the expected of expiry date end. The employer shall be aware that in case of extending the expiry date of contract, the employer will need to request an extension for this guarantee from the guarantor. The request shall be in writing and before the expiry date prescribed in the guarantee. upon the preParation of this guarantee, the employer may deem proper to add the following text to the form, at the end of the Paragraph before the last: " The guarantor accepts to extend this guarantee for one time and for a period not exceeding [six months] [one year], in response to the written request of the employer for such extension, provided that such request shall be submitted to the guarantor before the expiry of guarantee".

## **Guarantee of Second Half Release of the Cash Deductions**

[Insert the name of bank and branch address or issuing office]

Beneficiary: [Insert the name and address of the  
employer] Date: [Insert the date]

Bank Guarantee of Cash Deductions: [Insert the number]

We have been notified that [Insert the name of contractor] (hereinafter called as "The Contractor") has concluded the contract No. [Insert the symbolic number of contract] dated with you [Insert the date of Signing the Contract] to implement [Insert the name of contract and a brief description of the works] (hereinafter called as "The Contract")

We, according to contract conditions, understand that whenever the Provisional Acceptance Certificate is issued for the works and the approval granted to pay the first half of the cash deductions, and release of payment [Insert the second half of the cash deductions or the difference between of cash deductions and the amount of good performance guarantee, if the amount of good performance guarantee is less than the half of cash deductions on the date of the Provisional Acceptance Certificate], the it will be done against the Bank Guarantee of Cash Deductions.

At the request of the contractor, we, [Insert the name of bank], commit irrevocably to pay any amount(s) not exceeding in total the amount of [Insert the amount in figures] ([Insert the amount in writing]), immediately after we have received from you the first written request accompanied by an affidavit stating that the bidder is in violation of his obligation(s), under the contract, in handling and repairing the defects and flaws that appear during the maintenance period (Defect Liability Period).

It is also required for paying any compensation or payment, according to this guarantee, that the contractor shall have received the second half of the aforementioned deductions in his account No. \_\_\_\_\_ deposited in [Insert the name and address of bank] bank.

This guarantee is valid for (21) days from the date on which the employer had has received the Performance Certificate (Final Acceptance Certificate) issued by the engineer, also any claims to pay any due amounts, according to this guarantee, shall be sent to our bank not later than the expiry date of the aforementioned guarantee.

This guarantee is subject to **Iraqi Law upon taking the procedure against the contractor who has violated his obligations**

[The signature(s) of the authorized representative(s) of the bank]