

FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS

CONDITIONS OF SUB CONTRACT

FOR WORKS OF CIVIL

ENGINEERING CONSTRUCTION

Part I - General Conditions

Part II - Guidance for Preparation of
Conditions of Particular Application

With Forms of Offer and Agreement

(For use in conjunction with the Conditions of Contract for Works of Civil
Engineering Construction, Fourth Edition 1987 Reprinted 1992 with further
Amendments)

1ST Edition 1994

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FOREWORD

The terms of the Conditions of Subcontract for Works of Civil Engineering Construction have been prepared by the Fédération Internationale des Ingénieurs-Conseils (FIDIC) and are recommended for use in conjunction with the Conditions of Contract for Works of Civil Engineering Construction (Fourth Edition 1987, Reprinted 1992 with Further Amendments). The Conditions, subject to minor modifications, are equally suitable when the Subcontractor has been nominated by the Employer.

The version in English of the Conditions is considered by FIDIC as the official and authentic text for the purpose of translation.

In the preparation of the Conditions of Subcontract it was recognised that while there are numerous Clauses which will be generally applicable there are some Clauses which must necessarily vary to take account of the circumstances and locality of the Subcontract Works. The Clauses of general application have been grouped together in Part I of this document and are referred to as Part I - General Conditions. They have been printed in a form which will facilitate their inclusion as printed in the subcontract documents normally prepared.

The General Conditions are linked with the Conditions of Particular Application, referred to as Part II of the Subcontract, by the corresponding numbering of the Clauses, so that Parts I and II together comprise the Conditions of Subcontract governing the rights and obligations of the parties.

The Conditions of Particular Application must be specially drafted to suit each individual Subcontract. The guidance in Part II of this document is intended to aid in this task by giving options for various clauses where appropriate.

Use of clauses in Part II may be necessary or appropriate for one or more reasons, of which the following are examples:

(i) Where the wording in Part I specifically requires that further information is to be included in Part II and the Conditions of Subcontract would not be complete without that information, namely in Sub-Clauses 1.1 paragraphs (a)(i), (ii) and (iv), (b)(i) and (e)(ii), 2.3, 6.1, 15.1 and 15.2.

(ii) Where the wording in Part I indicates that supplementary information may be included in Part II, but the Conditions of Subcontract would still be complete without any such information, namely in Sub-Clauses 4.4, 5.2, 5.3, 6.2, 7.3, 12.1, 19.1, 19.2 and Clause 22.

(iii) Where the type, circumstances or locality of the Subcontract Works necessitate additional Clauses or Sub-Clauses (for example, when the Subcontractor has been nominated by the Employer).

(iv) Where the governing law or exceptional circumstances necessitate an alteration in Part I. Such alterations should be effected by stating in Part II that a particular Clause, or part of a Clause, in Part I is deleted and giving the substitute Clause, or part, as applicable.

In Part II, in the case of some Clauses, example wording is provided. In other cases, however, only guidance for drafting purposes is given. Before incorporating any example wording it must be checked to ensure that it is wholly suitable for the particular circumstances and, if not, it must be varied. Where example wording is varied and in all cases where additional material is included in Part II, care must be taken to ensure that no ambiguity is created with Part I or between the Clauses in Part II.

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The preparation was carried out under the general direction of the FIDIC Contracts Committee comprising K.B. (Tony) Norris, Consulting Engineer, UK; Michael Mortimer-Hawkins of SwedPower, Sweden; and John Bowcock of Sir Alexander Gibb & Partners Ltd. UK.

FIDIC wishes to record its appreciation of the time and effort devoted by all the above.

The ultimate decision on the form and content of the document rests with FIDIC.

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PART I – GENERAL CONDITIONS

Definitions and Interpretation

Definitions

- 1.1 In the Subcontract (as hereinafter defined) all words and expressions shall have the same meanings as are respectively assigned to them in the Main Contract (as hereinafter defined), except where the context otherwise requires and except that the following words and expressions shall have the meanings hereby assigned to them:
- (a) (i) "Employer" means the person named as such in Part II of the Conditions of Subcontract and the legal successors in title to, or assignees of, such person, as the Contractor shall notify the Subcontractor from time to time
 - (ii) "Contractor" means the person named as such in Part II of the Conditions of Subcontract and the legal successors in title to such person, but not (except with the consent of the Subcontractor) any assignee of such person.
 - (iii) "Subcontractor" means the person whose offer has been accepted by the Contractor and the legal successors in title to such person, but not (except with the consent of the Contractor) any assignee of such person.
 - (iv) "Engineer" means the person appointed by the Employer to act as Engineer for the purposes of the Main Contract and named as such in Part II of the Conditions of Subcontract.
 - (b) (i) "Main Contract" means the contract entered into between the Employer and the Contractor, particulars of which are given in Part II of the Conditions of Subcontract.
 - (ii) "Subcontract" means the Conditions of Subcontract (Parts I and II), the Subcontract Specification, the Subcontract Drawings, the Subcontract Bill of Quantities, the Subcontractor's Offer, the Contractor's Letter of Acceptance, the Subcontract Agreement (if completed) and such further documents as may be expressly incorporated in the Contractor's Letter of Acceptance or Subcontract Agreement (if completed).
 - (iii) "Subcontract Specification" means the specification of the Subcontract Works included in the Subcontract and any modification thereof or addition thereto made pursuant to Clause 9.
 - (iv) "Subcontract Drawings" means all drawings, calculations and technical information of a like nature under the Subcontract.
 - (v) "Subcontract Bill of Quantities" means the priced and completed bill of quantities forming part of the Subcontractor's Offer.
 - (vi) "Subcontractor's Offer" means the Subcontractor's priced offer to the Contractor for the execution and completion of the Subcontract Works and the remedying of any defects therein in accordance with the provisions of the Subcontract, as accepted by the Contractor's Letter of Acceptance.
 - (vii) "Contractor's Letter of Acceptance" means the formal acceptance by the Contractor of the Subcontractor's Offer.
 - (viii) "Subcontract Agreement" means the subcontract agreement (if any) referred to in Sub-Clause 3.3.
 - (ix) "Appendix to Subcontractor's Offer" means the appendix comprised in the form of Subcontractor's Offer annexed to the Conditions of Subcontract.
 - (x) "Conditions of Subcontract" means Parts I and II of the Fédération Internationale des Ingénieurs-Conseils' "Conditions of Subcontract for Works of Civil Engineering Construction (for use in conjunction with the Conditions of Contract for Works of Civil Engineering Construction, Fourth Edition 1987 Reprinted 1992 with further amendments)", 1994, as adapted by the Contractor and the Subcontractor and forming part of the Subcontract.



(xi) "Conditions of Main Contract" means Part I of the Fédération Internationale des Ingénieurs-Conseils' "Conditions of Contract for Works of Civil Engineering Construction, Fourth Edition 1987 Reprinted 1992 with further amendments", and Part II of such Conditions as adapted by the Employer and the Contractor, which form part of the Main Contract.

- (c) (i) "Subcontractor's Commencement Date" means the date upon which the Subcontractor receives the notice to commence issued by the Contractor pursuant to Sub-Clause 7.1.
- (ii) "Subcontractor's Time for Completion" means the time for completion of the Subcontract Works or any Section thereof as stated in the Appendix to Subcontractor's Offer (or as extended under Clause 7) calculated from the Subcontractor's Commencement Date.
- (d) "Subcontract Price" means the sum stated in the Contractor's Letter of Acceptance as payable to the Subcontractor for the execution and completion of the Subcontract Works and the remedying of any defects therein in accordance with the provisions of the Subcontract.
- (e) (i) "Main Works" means the Works as defined in the Main Contract.
- (ii) "Subcontract Works" means the works described in Part II of the Conditions of Subcontract.
- (iii) "Subcontractor's Equipment" means all appliances and things of whatsoever nature (other than Temporary Works) required for the execution and completion of the Subcontract Works and the remedying of any defects therein, but does not include Plant, materials or other things intended to form or forming part of the Subcontract Works.

Headings and Marginal Notes

- 1.2 The headings and marginal notes in the Conditions of Subcontract shall not be deemed part thereof or be taken into consideration in the interpretation or construction thereof or of the Subcontract.

Interpretation

- 1.3 Words importing persons or parties shall include firms and corporations and any organisation having legal capacity.

Singular and Plural

- 1.4 Words importing the singular only also include the plural and vice versa where the context requires.

Notices, Consents, Approvals, Certificates, Confirmations and Determinations

- 1.5 Wherever in the Subcontract provision is made for the giving or issue of any notice, consent, approval, certificate, confirmation or determination by any person, unless otherwise specified such notice, consent, approval, certificate, confirmation or determination shall be in writing and the words "notify", "certify", "confirm" or "determine" shall be construed accordingly. Any such notice, consent, approval, certificate, confirmation or determination shall not unreasonably be withheld or delayed.

Instructions in Writing

- 1.6 Instructions given by the Contractor shall be in writing, provided that if for any reason the Contractor considers it necessary to give any such instruction orally, the Subcontractor shall comply with such instruction. Confirmation in writing of such oral instruction given by the Contractor, whether before or after the carrying out of the instruction, shall be deemed to be an instruction within the meaning of this Sub-Clause. Provided further that if the Subcontractor, within 7 days, confirms in writing to the Contractor any oral instruction of the Contractor and such confirmation is not contradicted in writing within 7 days by the Contractor, it shall be deemed to be an instruction of the Contractor.

General Obligations

Subcontractor's General Responsibilities

- 2.1 The Subcontractor shall, with due care and diligence, design (to the extent provided for by the Subcontract), execute and complete the Subcontract Works and remedy any defects therein in accordance with the provisions of the

Subcontract. The Subcontractor shall provide all superintendence, labour, materials, Plant, Subcontractor's Equipment and all other things, whether of a temporary or permanent nature, required in and for such design, execution, completion and remedying of any defects, so far as the necessity for providing the same is specified in or is reasonably to be inferred from the Subcontract,



and except as otherwise agreed in accordance with Clause 5 and set out in Part II of the Conditions of Subcontract.

The Subcontractor shall give prompt notice to the Contractor of any error, omission, fault or other defect in the design of or specification for the Subcontract Works which he discovers when reviewing the Subcontract and/or the Main Contract or executing the Subcontract Works.

**Performance
Security**

- 2.2 If the Subcontract requires the Subcontractor to obtain security for his proper performance of the Subcontract, he shall obtain and provide to the Contractor such security in the sum stated in the Appendix to Subcontractor's Offer. Such security shall be in the form annexed to the Conditions of Subcontract or in such form as may be agreed between the Contractor and the Subcontractor. The institution providing such security shall be subject to the approval of the Contractor. The cost of complying with the requirements of this Clause shall be borne by the Subcontractor, unless the Subcontract otherwise provides.

The performance security shall be valid until the Subcontractor has executed and completed the Subcontract Works and remedied any defects therein in accordance with the Subcontract. No claim shall be made against such security after the issue of the Defects Liability Certificate in respect of the Main Works and such security shall be returned to the Subcontractor within 28 days of the issue of the said Defects Liability Certificate.

Prior to making a claim under the performance security the Contractor shall, in every case, notify the Subcontractor stating the nature of the default in respect of which the claim is to be made.

**Programme to be
Submitted by
Subcontractor**

- 2.3 The Subcontractor shall, within the time stated in Part II of the Conditions of Subcontract after the date of the Contractor's Letter of Acceptance, submit to the Contractor for his consent a programme, in such form and detail as the Contractor shall reasonably prescribe, for the execution of the Subcontract Works. The Subcontractor shall, whenever required by the Contractor, also provide in writing for his information a general description of the arrangements and methods which the Subcontractor proposes to adopt for the execution of the Subcontract Works.

If at any time it should appear to the Contractor that the actual progress of the Subcontract Works does not conform to the programme to which consent has been given, the Subcontractor shall produce, at the request of the Contractor, a revised programme showing the modifications to such programme necessary to ensure completion of the Subcontract Works within the Subcontractor's Time for Completion.

**Assignment of
Subcontract**

- 2.4 The Subcontractor shall not, without the prior consent of the Contractor (which consent, notwithstanding the provisions of Sub-Clause 1.5, shall be at the sole discretion of the Contractor), assign the Subcontract or any part thereof, or any benefit or interest therein or thereunder, otherwise than by:
- (a) a charge in favour of the Subcontractor's bankers of any monies due or to become due under the Subcontract, or
 - (b) assignment to the Subcontractor's insurers (in cases where the insurers have discharged the Subcontractor's loss or liability) of the Subcontractor's right to obtain relief against any other party liable.

**Sub-
subcontracting**

- 2.5 The Subcontractor shall not subcontract the whole of the Subcontract Works, nor shall he subcontract any part of the Subcontract Works without the prior consent of the Contractor. Any such consent shall not relieve the Subcontractor from any liability or obligation under the Subcontract and the Subcontractor shall be responsible for the acts, defaults and neglects of any of his subcontractors, including such subcontractor's agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Subcontractor, his agents, servants or workmen.

Provided that the Subcontractor shall not be required to obtain such consent for:

- (a) the provision of labour, or
- (b) the purchase of materials which are in accordance with the standards specified in the Subcontract and/or the Main Contract.



In the event of a subcontractor having undertaken towards the Subcontractor in respect of the work executed, or the goods, materials, Plant or services supplied by such subcontractor, any continuing obligation extending for a period exceeding that of the Defects Liability Period under the Main Contract in respect of the Main Works or of the Section or Sections or part or parts thereof in which the Subcontract Works are comprised, as the case may be, the Subcontractor shall at any time, after the expiration of such Period, assign to the Contractor, at the Contractor's request and cost, the benefit of such obligation for the unexpired duration thereof.

Subcontract Documents

- | | |
|--|--|
| Language/s | <p>3.1 Unless otherwise stated in Part II of the Conditions of Subcontract:</p> <p>(a) the language or languages in which the Subcontract documents shall be drawn up shall be the same as the language or languages in which the Main Contract documents have been drawn up, and</p> <p>(b) if the Subcontract documents are drawn up in more than one language, the Subcontract shall be construed and interpreted according to the Ruling Language of the Main Contract.</p> |
| Governing Law | <p>3.2 Unless otherwise stated in Part II of the Conditions of Subcontract, the law of the country or state which applies to the Main Contract and according to which the Main Contract is construed shall also apply to the Subcontract and be the law according to which the Subcontract shall be construed.</p> |
| Subcontract Agreement | <p>3.3 The Subcontractor shall, if called upon so to do, enter into and execute the Subcontract Agreement, to be prepared and completed at the cost of the Contractor, in the form annexed to the Conditions of Subcontract with such modification as may be necessary.</p> |
| Priority of Subcontract Documents | <p>3.4 The several documents forming the Subcontract, listed in the Contractor's Letter of Acceptance or the Subcontract Agreement (if any), are to be taken as mutually explanatory of one another. Unless otherwise provided in the Subcontract, the priority of the documents forming the Subcontract shall be as follows:</p> <ol style="list-style-type: none"> (1) The Subcontract Agreement (if any); (2) The Contractor's Letter of Acceptance; (3) The Subcontractor's Offer; (4) Part II of the Conditions of Subcontract; (5) Part I of the Conditions of Subcontract; and (6) Any other document forming part of the Subcontract. |
| Main Contract | |
| Subcontractor's, Knowledge of Main Contract | <p>4.1 The Subcontractor shall be deemed to have full knowledge of the provisions of the Main Contract (other than the details of the Contractor's prices there under as stated in the bills of quantities or schedules of rates and prices as the case may be). The Contractor shall make the Main Contract available for inspection to the Subcontractor and, if so requested by the Subcontractor, provide the Subcontractor with a true copy of the Main Contract (less such details), at the cost of the Subcontractor. The Contractor shall, in any event, provide the Subcontractor with a copy of the Appendix to Tender to the Main Contract together with Part II of the Conditions of Main Contract and details of any other contract conditions which apply to the Main Contract which differ from Part I of the Conditions of Main Contract.</p> |
| Subcontractor's Responsibilities in relation to Sub-contract work | <p>4.2 Save where the provisions of the Subcontract otherwise require, the Subcontractor shall so design (to the extent provided for by the Subcontract), execute and complete the Subcontract Works and remedy any defects therein that no act or omission of his in relation thereto shall constitute, cause or contribute to any breach by the Contractor of any of his obligations under the Main Contract. The Subcontractor shall, save as aforesaid, assume and perform hereunder all the obligations and liabilities of the Contractor under the Main Contract in relation to the Subcontract Works.</p> |



**No Privity of Contract
with Employer**

**Possible Effects of
Subcontractor's
Breaches of
Subcontract**

4.3 Nothing herein shall be construed as creating any privity of contract between the Subcontractor and the Employer.

4.4 If the Subcontractor commits any breaches of the Subcontract, he shall indemnify the Contractor against any damages for which the Contractor becomes liable under the Main Contract as a result of such breaches. In such event, the Contractor may, without prejudice to any other method of recovery, deduct such damages from monies otherwise becoming due to the Subcontractor

Temporary Work, Contractor's Equipment and/or Other Facilities (if Any)

**Subcontractor's
Use of Temporary
Works**

5.1 Unless otherwise stated in Part II of the Conditions of Subcontract, the Contractor shall not be required to provide or retain any Temporary Works for the Subcontractor. However, the Contractor shall permit the Subcontractor, in common with the Contractor and/or such other subcontractors as the Contractor may allow, for the purpose of executing and completing the Subcontract Works and remedying any defects therein, to use such Temporary Works as are from time to time provided by the Contractor in connection with the Main Works. No such permission shall impose any liability upon the Contractor in respect of the use of such Temporary Works by the Subcontractor, his agents, servants or workmen, nor relieve the Subcontractor of any statutory or other obligation to test or inspect the Temporary Works to be used by his agents, servants or workmen or to provide suitable Temporary Works for their use.

**Subcontractor's Use
of Contractor's
Equipment and/or
Other Facilities (if Any)
in Common with Other
Subcontractors**

5.2 The Contractor shall provide at the Site the Contractor's Equipment and/or other facilities (if any) specified in Part II of the Conditions of Subcontract and shall permit the Subcontractor, in common with the Contractor and/or such other subcontractors as the Contractor may allow, to have the use thereof for the purposes of executing and completing the Subcontract Works but not of remedying any defects therein, upon such terms and conditions (if any) as are specified in Part II of the Conditions of Subcontract.

**Subcontractor's
Exclusive Use of
Contractor's
Equipment and/or
Other Facilities (if Any)**

5.3 The Contractor shall also provide for the exclusive use by the Subcontractor of the Contractor's Equipment and/or other facilities (if any) specified in Part II of the Conditions of Subcontract upon such terms and conditions (if any) as are specified therein.

**Indemnification for
Misuse of Temporary
Works, Contractor's
Equipment
and/or Other Facilities
(if Any)**

5.4 The Subcontractor shall indemnify the Contractor against any damages arising from the misuse by the Subcontractor, his agents, servants or workmen, of Temporary Works, Contractor's Equipment and/or other facilities provided for his use by the Contractor.

Site Working and Access

**Working Hours on
Site; Subcontractor's
Compliance with
Rules and
Regulations**

6.1 The Subcontractor shall observe the working hours of the Contractor as contained in Part II of the Conditions of Subcontract, unless otherwise agreed, and shall comply with all rules and regulations governing the execution of the work, the arrival at and the departure from the Site of materials and Subcontractor's Equipment and the storage of materials and Subcontractor's Equipment on the Site.

**Availability of Site
to Subcontractor
and Access to Site**

6.2 The Contractor shall, from time to time, make available to the Subcontractor so much of the Site and such access as may be required to enable the Subcontractor to proceed with the execution of the Subcontract Works with due dispatch in accordance with the Subcontract.

The Contractor shall not be bound to make available exclusively to the Subcontractor any part of the Site, unless otherwise stated in Part II of the Conditions of Subcontract.



**Subcontractor's
Obligation to
Permit Access to
Subcontract Works**

- 6.3 The Subcontractor shall permit the Contractor, the Engineer, and any person authorised by either of them, to have reasonable access, during working hours, to the Subcontract Works and to the places on the Site where any work or materials therefor are being executed, prepared or stored. The Subcontractor shall also permit or procure reasonable access for the Contractor, the Engineer, and any person authorised by either of them, to such places off the Site where work is being executed or prepared by or on behalf of the Subcontractor in connection with the Subcontract Works.

Commencement and Completion

**Commencement of
Subcontract Works;
Subcontractor's
Time for Completion**

- 7.1 The Subcontractor shall commence the Subcontract Works within 14 days, or such other period as may be agreed in writing, after the receipt by him of a notice to this effect from the Contractor, which notice shall be issued within the time stated in the Appendix to Subcontractor's Offer after the date of the Contractor's Letter of Acceptance.

Thereafter, the Subcontractor shall proceed with the Subcontract Works with due expedition and without delay, except such as may be expressly sanctioned or instructed by the Contractor. The Subcontract Works and, if applicable, any Section required to be completed within a particular time as stated in the Appendix to Subcontractor's Offer shall be completed within the time for completion stated in the Appendix to Subcontractor's Offer for the Subcontract Works or the Section (as the case may be), calculated from the Subcontractor's Commencement Date, or such extended time as may be allowed under Sub-Clause 7.2.

**Extension of
Subcontractor's
Time for
Completion**

- 7.2 If the Subcontractor shall be delayed in the execution of the Subcontract Works or, if applicable, any Section thereof:
- (a) by any circumstances in regard to which the Contractor is entitled to receive from the Engineer an extension of his time for completion of the Main Works under the Main Contract,
 - (b) by any instruction pursuant to Sub-Clause 8.2 to which paragraph (a) of this Sub-Clause does not apply, or
 - (c) by any breach of the Subcontract by the Contractor or for which the Contractor is responsible,

then in any such event the Subcontractor shall be entitled to such extension of the Subcontractor's Time for Completion of the Subcontract Works or such Section thereof as may in all the circumstances be fair and reasonable.

Provided that the Subcontractor shall not be entitled to such extension of time unless he has submitted to the Contractor notice of the circumstances which are delaying him within 14 days of such delay first occurring together with detailed particulars in justification of the extension of time claimed in order that the claim may be investigated at the time and, in any case to which paragraph (a) of this Sub-Clause applies, the extension shall not in any event exceed the extension of time to which the Contractor is entitled under the Main Contract.

Provided also that, where an event has a continuing effect such that it is not practicable for the Subcontractor to submit detailed particulars within the period of 14 days referred to in this Sub-Clause, he shall nevertheless be entitled to an extension of time provided that he has submitted to the Contractor interim particulars at intervals of not more than 14 days and final particulars within 14 days of the end of the effects resulting from the event.

**Contractor's
Obligation to Notify**

- 7.3 The Contractor shall promptly notify the Subcontractor of all extensions of time obtained under the provisions of the Main Contract which affect the Subcontract.



Instruction and Decisions

Instructions and Decisions under Main Contract

8.1 Subject to Clause 9, the Subcontractor shall in relation to the Subcontract Works comply with all instructions and decisions of the Engineer which are notified and confirmed to him as an instruction by the Contractor, irrespective of whether such instructions and decisions were validly given under the Main Contract. The Subcontractor shall have the like rights (if any) to payment from the Contractor in respect of such compliance as the Contractor has against the Employer under the Main Contract. Further, if any such instruction or decision notified and confirmed as aforesaid is invalidly or incorrectly given by the Engineer under the Main Contract, then the Subcontractor shall be entitled to recover such costs as may be reasonable (if any) from the Contractor of complying therewith to the extent that such costs were not caused or contributed to by any breach of the Subcontract by the Subcontractor.

Instructions under Subcontract

8.2 The Subcontractor shall take instructions only from the Contractor. The Contractor shall have the like authority in relation to the Subcontract Works to give instructions as the Engineer has in relation to the Main Works under the Main Contract. The Subcontractor shall have the like obligations to abide by and comply therewith and the like rights in relation thereto as the Contractor has under the Main Contract. The said authority of the Contractor shall be exercisable in any case irrespective of whether the Engineer has exercised like authority in relation thereto under the Main Contract.

Variations

Variations of Subcontract Work

9.1 The Subcontractor shall only make such variations of the Subcontract Works, whether by way of alteration, addition, or omission, as may be:

(a) instructed by the Engineer under the Main Contract and notified and confirmed as an instruction to the Subcontractor by the Contractor, or

(b) instructed by the Contractor.

Any instruction relating to the Subcontract Works which is given by the Engineer under the Main Contract and constitutes a variation thereunder shall be deemed to constitute a variation of the Subcontract Works, if notified and confirmed by the Contractor in accordance with paragraph (a) of this Sub-Clause.

Instructions for Variations

9.2 The Subcontractor shall not act upon an unconfirmed instruction for the variation of the Subcontract Works which is directly received by him from the Employer or the Engineer. If the Subcontractor shall receive any such direct instruction, he shall forthwith inform the Contractor thereof and shall supply the Contractor with a copy of such direct instruction, if given in writing. The Subcontractor shall only act upon such instruction as directed in writing by the Contractor, but the Contractor shall give his directions thereon promptly

Valuation of Variations

Manner of Valuation

10.1 All variations of the Subcontract Works shall be valued in the manner provided by this Clause and the value thereof shall be added to or deducted from the Subcontract Price, as appropriate.

Assessment of Value of Variations

10.2 The value of all variations shall be ascertained by reference to the rates and prices (if any) specified in the Subcontract for the like or analogous work, but if there are no such rates and prices, or if they are inappropriate or inapplicable, then such value shall be such as is fair and reasonable.

Valuation by Reference to Measurement under Main Contract

10.3 Where a variation of the Subcontract Works, which also constitutes a variation under the Main Contract, is measured by the Engineer thereunder, then provided that the rates and prices in the Subcontract permit such variation to be valued by reference to measurement the Contractor shall permit the Subcontractor to attend any measurement made on behalf of the Engineer. Such measurement made under the Main Contract shall also constitute the measurement of the variation for the purposes of the Subcontract and such variation shall be valued accordingly.



**Quantity Estimated
and Quantity
Executed**

10.4 The quantities set out in the Subcontract Bill of Quantities are the estimated quantities for the Subcontract Works, and they are not to be taken as the actual and correct quantities of the Subcontract Works to be executed by the Subcontractor in fulfillment of his obligations under the Subcontract.

No instruction shall be required for increase or decrease in the quantity of any work where such increase or decrease is not the result of an instruction given under Clause 9, but is the result of the quantities exceeding or being less than those stated in the Subcontract Bill of Quantities.

Daywork

10.5 Where the Subcontractor has been instructed by the Contractor to carry out work on a daywork basis the Subcontractor shall be paid for such work at the rates and prices specified in the daywork schedule included in the Subcontract.

Notices and Claims

Notices

11.1 Without prejudice to the generality of Clause 4, and unless otherwise stated in the Conditions of Subcontract, whenever the Contractor is required by the terms of the Main Contract to give any notice or other information to the Engineer or to the Employer, or to keep contemporary records, the Subcontractor shall in relation to the Subcontract Works give a similar notice or such other information in writing to the Contractor and keep contemporary records as will enable the Contractor to comply with such terms of the Main Contract. The Subcontractor shall do so in sufficient time to enable the Contractor to comply with such terms punctually.

Provided always that the Subcontractor shall be excused any non-compliance with this Sub-Clause for so long as he neither knew nor ought to have known of the Contractor's need of any such notice or information from him or such contemporary records.

Claims

11.2 Subject to the Subcontractor's complying with this Sub-Clause, the Contractor shall take all reasonable steps to secure from the Employer (including the Engineer) such contractual benefits (including additional payments, extensions of time, or both), if any, as may be claimable in accordance with the Main Contract on account of any adverse physical obstructions or physical conditions or any other circumstances that may be encountered during the execution of the Subcontract Works. The Subcontractor shall, in sufficient time, afford the Contractor all information and assistance that may be required to enable the Contractor to claim such contractual benefits. On receiving any such contractual benefits from the Employer, the Contractor shall pass on to the Subcontractor such proportion thereof as may in all the circumstances be fair and reasonable, it being understood that, in the case of any claim of the Contractor for an additional payment, the Contractor's receipt of payment therefor from the Employer shall be a condition precedent to the Contractor's liability to the Subcontractor in respect of such claim. The Contractor shall notify the Subcontractor regularly of his steps to secure such contractual benefits and of the Contractor's receipt thereof. Save as provided in this Sub-Clause, or in Sub-Clause 7.2, the Contractor shall have no liability to the Subcontractor in respect of any obstruction, condition or circumstance that may be encountered during the execution of the Subcontract Works. The Subcontractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Subcontract Price to cover the provision and doing by him of all things necessary for the performance of his obligations under the Subcontract. Provided always that nothing in this Clause shall prevent the Subcontractor from claiming against the Contractor for delays in the execution of the Subcontract Works, or other circumstances, caused by the act or default of the Contractor.

**Effects of Failure
to Give Notice**

11.3 If by reason of any failure by the Subcontractor to comply with the provisions of Sub-Clause 11.1 the Contractor is prevented from recovering any sum from the Employer under the Main Contract in respect of the Main Works, then, without prejudice to any other remedy of the Contractor for such failure, the Contractor may deduct such sum from monies otherwise due to the Subcontractor under the Subcontract.



Subcontractor's Equipment, Temporary Works and Materials

- Incorporation by Reference** 12.1 The provisions of Clause 54 of the Conditions of Main Contract in relation to Contractor's Equipment, Temporary Works or materials brought on to the Site by the Subcontractor are hereby incorporated by reference into the Subcontract.

Indemnities

- Subcontractor's Obligation to Indemnify** 13.1 The Subcontractor shall, except if and so far as the Subcontract provides otherwise, indemnify the Contractor against all losses and claims in respect of:

- (a) death of or injury to any person, or
- (b) loss or damage to any property (other than the Subcontract Works),

which may arise out of or in consequence of the execution and completion of the Subcontract Works and the remedying of any defects therein, and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, subject to what is provided in Sub-Clause 13.2.

- Contractor's Obligation to Indemnify** 13.2 The Contractor shall indemnify the Subcontractor against all claims, proceedings, damages, costs, charges and expenses in respect of the following matters to the like extent that the Contractor shall be indemnified by the Employer under the Main Contract, but no further:

- (a) the permanent use or occupation of land by the Subcontract Works, or any part thereof,
- (b) the right of the Employer and/or the Contractor to execute the Subcontract Works, or any part thereof, on, over, under, in or through any land,
- (c) damage to property which is the unavoidable result of the execution and completion of the Subcontract Works, or the remedying of any defects therein, in accordance with the Subcontract, and
- (d) death of or injury to persons or loss of or damage to property resulting from any act or neglect of the Employer, his agents, workmen or servants or other contractors, not being employed by the Contractor, or in respect of any claims, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto.

The Contractor shall indemnify the Subcontractor against all claims, proceedings, damages, costs, charges and expenses in respect of death of or injury to persons or loss of or damage to property resulting from any act or neglect of the Contractor, his agents, workmen or servants or other subcontractors, not being employed by the Subcontractor, or in respect of any claims, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto or, where the said death, injury, loss or damage was contributed to by the Subcontractor, his agents, workmen or servants, such part of the said death, injury, loss or damage as may be just and equitable having regard to the extent of the responsibility of the Contractor, his agents, workmen or servants or other subcontractors for the said death, injury, loss or damage.



Outstanding Work and Defects

- Subcontractor's Obligations before Taking-Over**
- 14.1 If the Subcontractor shall complete the Subcontract Works as required by Sub-Clause 2.1 before the issue of a Taking-Over Certificate in respect of the Main Works, or, where under the Main Contract a Taking-Over Certificate is issued in respect of a Section or part of the Main Works, before a Taking-Over Certificate is issued in respect of the Section or Sections or part or parts of the Main Works in which the Subcontract Works are comprised, the Subcontractor shall continue to maintain the Subcontract Works in the condition required by the Main Contract to the satisfaction of the Contractor. The Subcontractor shall remedy every defect therein from whatever cause arising until a Taking-Over Certificate is issued in respect of the Main Works or such Section or Sections or part or parts. Subject to Clause 15, the Subcontractor shall not be entitled to any additional payment for so doing unless such defect is caused by the act or default of the Employer, his agents, servants or workmen under the Main Contract or of the Contractor, his agents, servants or workmen under the Subcontract.
- Subcontractor's Obligations after Taking-Over**
- 14.2 After a Taking-Over Certificate is issued in respect of the Main Works or of the Section or Sections or part or parts thereof in which the Subcontract Works are comprised, as the case may be, the Subcontractor shall remedy such defects in the Subcontract Works as the Contractor is liable to remedy under the Main Contract for the like period and otherwise upon the like terms as the Contractor is liable to do under the Main Contract.
- Defect Caused by Contractor's Act or Default**
- 14.3 Provided always that if any defect remedied by the Subcontractor under Sub-Clause 14.1 or 14.2 is caused by the act or default of the Contractor, his agents, servants or workmen, then, notwithstanding that the Contractor may have no corresponding right under the Main Contract, the Subcontractor shall be entitled to be paid by the Contractor his costs of remedying such defect.

Insurances

- Subcontractor's Obligation to Insure**
- 15.1 The Subcontractor shall effect insurance against such risks as are specified in Part II of the Conditions of Subcontract and in such sums and for the benefit of such persons as are specified therein. Unless otherwise stated in Part II of the Conditions of Subcontract, the Subcontractor shall keep in force such insurance from the time that so much of the Site and such access is made available to him as may be required to enable him to commence and proceed with the execution of the Subcontract Works in accordance with the Subcontract until he has finally performed his obligations under the Subcontract.
- Provided that the Subcontractor shall insure against the liability in respect of any person employed by him on the Subcontract Works in such manner that the Employer and/or the Contractor is indemnified under the policy.
- Contractor's Obligation to Insure; Subcontract Works at Subcontractor's Risk**
- 15.2 The Contractor shall keep in force, until such time as a Taking-Over Certificate is issued in respect of the Main Works or the Main Works have ceased to be at his risk under the Main Contract, the policy of insurance specified in Part II of the Conditions of Subcontract.
- In the event of the Subcontract Works, Temporary Works, materials or other things belonging to the Subcontractor being destroyed or damaged during such period in such circumstances that a claim is established in respect thereof under the said policy, then the Subcontractor shall be paid the amount of such claim, or the amount of his loss, whichever is the less, and shall apply such sum in replacing or repairing that which was destroyed or damaged. Save as aforesaid the Subcontract Works shall be at the risk of the Subcontractor until a Taking-Over Certificate is issued in respect of the Main Works or, if a Taking-Over Certificate is issued in respect of a Section or Sections or part or parts of the Main Works, until a Taking-Over Certificate is issued in respect of the last of the Sections or parts of the Main Works in which the Subcontract Works are comprised. The Subcontractor shall make good all loss or damage occurring to the Subcontract Works prior thereto at his own expense. The Subcontractor shall also be liable for any loss or damage to the Subcontract Works occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations under Sub-Clause 14.2.



Evidence of Insurance; Remedy on Failure to Insure

15.3 Where by virtue of this Clause either party is required to effect and keep in force insurance, he shall if so required by the other party provide evidence of insurance and the receipt for the payment of the current premium.

If either the Contractor or the Subcontractor fails to effect and keep in force any of the insurances required under the Subcontract, or fails to provide evidence of insurance, when required, then and in any such case the other party may effect and keep in force any such insurances and pay any premium as may be necessary for that purpose and may from time to time deduct the amount so paid from any monies due or to become due to the party in default, or recover the same as a debt due from the party in default, as the case may be.

Payment

Subcontractor's Monthly Statements

16.1 The Subcontractor shall submit to the Contractor, 7 days after the end of each month (the "**Specified Day**"), 7 copies of a statement, in such form as the Contractor may from time to time prescribe (the "**Statement**"), showing the amounts to which the Subcontractor considers himself to be entitled up to the end of such month in respect of:

- (a) the value of the Subcontract Works executed;
- (b) any other items in the Subcontract Bill of Quantities including those for Subcontractor's Equipment, Temporary Works, dayworks and the like;
- (c) the percentage of the invoice value of listed materials, all as stated in the Appendix to Subcontractor's Offer, and Plant delivered by the Subcontractor on the Site for incorporation in the Subcontract Works but not incorporated in such Works;
- (d) adjustments under Clause 21; and
- (e) any other sums to which the Subcontractor may be entitled under the Subcontract or otherwise.

The value of work done shall be calculated in accordance with the rates and prices specified in the Subcontract, but if there are no such rates and prices, or if they are inappropriate or inapplicable, then such value shall be such as is fair and reasonable.

Contractor's Monthly Statements

16.2 Subject to the Subcontractor having submitted a Statement for any month to the Contractor, the Contractor shall include, unless inappropriate, the amounts set out therein in the Contractor's next statement for payment under the Main Contract.

In any proceedings, whether arbitral or other, instituted by the Contractor against the Employer to enforce payment of monies due under any certificate issued by the Engineer in accordance with the provisions of the Main Contract there shall be included all sums certified and unpaid in relation to the Subcontract Works, without prejudice to the Subcontractor's rights under Clause 19.

Payment Due ; Payment Withheld or Deferred ; Interest

16.3 Within 35 days of the Specified Day or otherwise as agreed but subject as hereinafter provided, the amounts included in a Statement shall be due and payable to the Subcontractor, subject to deduction of previous payments and of retention monies at the rate(s) specified in the Appendix to Subcontractor's Offer until such time as the limit of retention money (if any) therein specified has been reached.

The Contractor shall be entitled to withhold or defer payment of all or part of any sums otherwise due pursuant to the provisions hereof where:

- (a) the amounts included in any Statement together with any sums to which the Subcontractor might otherwise be entitled in the opinion of the Contractor, but after all retentions and deductions, are less in the aggregate than the minimum amount (if any) stated in the Appendix to Subcontractor's Offer,
- (b) the amounts included in any Statement together with any other sums which are the subject of an application by the Contractor under the Main Contract in accordance with Sub-Clause 16.2, but after all retentions and deductions, are insufficient in the aggregate to justify the issue of an Interim Payment Certificate by the Engineer under the Main Contract,
- (c) the amounts included in any Statement are not certified in full by the Engineer, providing such failure to certify is not due to the act or default of the Contractor,



(d) the Contractor has included the amounts set out in the Statement in his own statement in accordance with the Main Contract and the Engineer has certified but the Employer has failed to make payment in full to the Contractor, providing such failure is not due to the act or default of the Contractor, or

(e) a dispute arises or has arisen between the Subcontractor and the Contractor and/or the Contractor and the Employer involving any question of measurement or quantities or any matter included in any such Statement.

Any payment withheld under the provisions of paragraphs (c), (d) or (e) above shall be limited to the extent that the amounts in any Statement are not certified, not paid by the Employer or are the subject of a dispute, as the case may be.

In the event of the Contractor withholding or deferring any payment he shall notify the Subcontractor of his reasons therefor as soon as is reasonably practicable but not later than the date when such payment would otherwise have been payable.

The provisions of paragraphs (a) and (b) of this Sub-Clause with regard to the time for payment shall not apply to the amounts in any Statement by the Subcontractor which are included in the Contractor's Final Statement to the Engineer under the provisions of the Main Contract. In respect of any such amounts payment shall be due 14 days after receipt by the Contractor of any payment which includes a sum in respect of such amounts.

In the event of the Contractor failing to make payment of any sum properly due and payable to the Subcontractor or in the event of payment being withheld or deferred pursuant to paragraph (d) of this Sub-Clause, the Contractor shall, upon receiving a notice of claim for interest from the Subcontractor, which should be made within 7 days of the date when such sum became payable, pay to the Subcontractor interest on such overdue sum at the rate payable by the Employer to the Contractor under the provisions of the Main Contract. Provided always that, in the event of the Contractor not receiving a notice of a claim for interest within 7 days of the date when such sum became payable as aforesaid, interest shall be payable by the Contractor on such sum at such rate from the date of receipt of the said notice of claim.

Notwithstanding the immediately preceding paragraph the Subcontractor shall be paid any interest actually received by the Contractor from the Employer which is attributable to monies due to the Subcontractor.

Notwithstanding the terms of this Clause or any other Clause of the Subcontract no amount shall be due and payable to the Subcontractor until the performance security, if required under the Subcontract, has been provided by the Subcontractor and approved by the Contractor.

Payment of Retention Money

16.4 Within 35 days of the issue by the Engineer of the Taking-Over Certificate with respect to the whole of the Main Works or, where the Main Works are completed by Sections or parts, with respect to a Section or part of the Main Works in which the Subcontract Works are comprised, the Contractor shall pay to the Subcontractor one half, or such other proportion as the Contractor reasonably determines having regard to the relative value of such Section or part of the Subcontract Works, of the retention monies under the Subcontract.

Within 7 days of the Contractor's receipt of any payment under the Main Contract which is by way of release of the other half of the retention monies the Contractor shall pay the Subcontractor the other half, or the remaining proportion, of the retention monies under the Subcontract.

Payment of Sub-contract Price and Other Sums Due

16.5 Within 84 days after the Subcontractor has finally performed his obligations under Clause 14, or within 14 days after the Contractor has recovered full payment under the Main Contract in respect of the Subcontract Works, whichever is the sooner, and provided that 35 days have expired since the submission by the Subcontractor of his statement of final account to the Contractor, the Contractor shall pay to the Subcontractor the Subcontract Price and any additions to or deductions from such sum as are provided for in the Subcontract, or are otherwise payable in respect thereof, less such sums as have already been received by the Subcontractor on account.



Cessation of Contractor's Liability

- 16.6 The Contractor shall not be liable to the Subcontractor for any matter or thing arising out of or in connection with the Subcontract or execution of the Subcontract Works, unless the Subcontractor has given a notice of claim in respect thereof to the Contractor before the issue of the Defects Liability Certificate in respect of the Main Works.

Termination of Main Contract

Termination of Subcontractor's Employment

- 17.1 If the Contractor's employment under the Main Contract is terminated, or if the Main Contract is otherwise terminated, for any reason whatsoever before the Subcontractor has fully performed his obligations under the Subcontract, then the Contractor may at any time thereafter by notice to the Subcontractor forthwith terminate the Subcontractor's employment under the Subcontract and thereupon the Subcontractor shall, subject to Clause 12, with due expedition remove his staff and workmen and Subcontractor's Equipment from the Site.

Payment after Termination

- 17.2 If the Subcontractor's employment is terminated as aforesaid, and subject to Sub-Clause 17.3, the Subcontractor shall be paid by the Contractor, in so far as such amounts or items have not already been covered by payments on account made to the Subcontractor,
- (a) for all work executed prior to the date of termination at the rates and prices, if any, provided in the Subcontract, or if there are no such rates and prices, then such amount as may be fair and reasonable,
 - (b) for all materials properly brought and left on the Site by the Subcontractor, together with such proportion of the cost as may be reasonable, taking into account payments made or to be made for work executed, of removal of Subcontractor's Equipment from the Site and, if required by the Subcontractor, return thereof to the Subcontractor's main plant yard in his country of registration or to other destination, at no greater cost,
 - (c) for the reasonable cost of repatriation of all the Subcontractor's staff and workmen employed on or in connection with the Subcontract Works at the time of such termination, and
 - (d) for any goods properly prepared or fabricated off the Site for subsequent incorporation in the Subcontract Works, provided the Subcontractor delivers such goods to the Site or to such other place as the Contractor shall reasonably direct.
- Provided always that nothing herein shall affect the rights of either party in respect of any breach of the Subcontract committed by the other prior to such termination, nor any right which accrued to the Subcontractor prior to such termination to receive any payment which is not in respect or on account of the Subcontract Price.

Termination of Main Contract in Consequence of Breach of Subcontract

- 17.3 If the Contractor's employment under the Main Contract is terminated, or if the Main Contract is otherwise terminated, by the Employer in consequence of any breach of the Subcontract by the Subcontractor, then the provisions of the preceding Sub-Clause as to payment shall not apply, but the rights of the Contractor and the Subcontractor hereunder shall be the same as if the Subcontractor had by such breach repudiated the Subcontract and the Contractor had by his notice of termination under Sub-Clause 18.1 elected to accept such repudiation.

Default of Subcontractor

Termination of Subcontract

- 18.1 If:
- (a) the Subcontractor is deemed by law unable to pay his debts as they fall due, or enters into voluntary or involuntary bankruptcy, liquidation or dissolution (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or becomes insolvent, or makes an arrangement with, or assignment in favour of, his creditors, or agrees to carry out the Subcontract under a committee of inspection of his creditors, or if a receiver, administrator, trustee or liquidator is appointed over any substantial part of his assets, or if any act is done or event occurs with respect to the Subcontractor or his assets which, under any applicable law, has a substantially similar effect to any of the foregoing acts or events, or if the Subcontractor has contravened Sub-Clause 2.4, or has an execution levied on his goods,



- (b) the Subcontractor has repudiated the Subcontract,
- (c) the Subcontractor, without reasonable excuse, has failed to commence or proceed with the Subcontract Works in accordance with Sub-Clause 7.1,
- (d) the Subcontractor refuses or neglects to remove defective materials or remedy defective work after being instructed so to do by the Contractor under this Sub-Clause,
- (e) the Subcontractor, despite previous warning from the Contractor, in writing, is otherwise persistently or flagrantly neglecting to comply with any of his obligations under the Subcontract,
- (f) the Subcontractor has contravened Sub-Clause 2.5, or
- (g) the Contractor is required by the Engineer to remove the Subcontractor from the Main Works after due notice in writing from the Engineer to the Contractor in accordance with the Main Contract,

then in any such event, and without prejudice to any other rights or remedies, the Contractor may by a notice to the Subcontractor forthwith terminate the Subcontractor's employment under the Subcontract and thereupon the Contractor may take possession of all materials, Subcontractor's Equipment and other things whatsoever brought on to the Site by the Subcontractor and may by himself or any other contractor use them for the purpose of executing and completing the Subcontract Works and remedying any defects therein and may, if he thinks fit, sell all or any of them and apply the proceeds in or towards the satisfaction of monies otherwise due to him from the Subcontractor.

**Contractor's and
Subcontractor's
Rights and
Liabilities upon
Termination

Contractor's
Power**

- 18.2** Upon such a termination, the rights and liabilities of the Contractor and the Subcontractor shall, subject to the preceding Sub-Clause, be the same as if the Subcontractor had repudiated the Subcontract and the Contractor had by his notice of termination under the preceding Sub-Clause elected to accept such repudiation.
- 18.3** The Contractor may in lieu of giving a notice of termination under this Clause take part only of the Subcontract Works out of the hands of the Subcontractor and may by himself or any other contractor execute and complete such part of the Subcontract Works and remedy any defects therein and in such event the Contractor may recover his costs of so doing from the Subcontractor, or deduct such costs from monies otherwise becoming due to the Subcontractor.

Settlement of Dispute

**Amicable
Settlement and
Arbitration**

- 19.1** If a dispute of any kind whatsoever arises between the Contractor and the Subcontractor in connection with, or arising out of, the Subcontract or the execution of the Subcontract Works, whether during the execution of the Subcontract Works or after their completion and whether before or after repudiation or other termination of the Subcontract, then the Contractor or the Subcontractor may give a notice of such dispute to the other party, in which case the parties shall attempt for the next fifty-six days to settle such dispute amicably before the commencement of arbitration. Such notice shall state that it is made pursuant to this Clause. Any dispute which has not been amicably settled within fifty-six days after the day on which such notice is given shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed under such Rules. Arbitration may be commenced prior to or after completion of the Subcontract Works, provided that the obligations of the Contractor and the Subcontractor shall not be altered by reason of the arbitration being conducted during the progress of the Subcontract Works.



**Dispute in
Connection with or
Arising out of Main
Contract Touching
or Concerning
Sub-contract
Works**

- 19.2 If a dispute of any kind whatsoever arises between the Employer and the Contractor in connection with, or arising out of, the Main Contract or the execution of the Main Works, whether during the execution of the Main Works or after their completion and whether before or after repudiation or other termination of the Main Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation of the Engineer, and the Contractor is of the opinion that such dispute touches or concerns the Subcontract Works and arbitration of such dispute under the Main Contract commences, the Contractor may by notice require that the Subcontractor provide such information and attend such meetings in connection therewith as the Contractor may reasonably request.

Notices and Instructions

**Giving of Notices
and Instructions**

- 20.1 All notices to be given to either the Contractor or the Subcontractor and all instructions to be given to the Subcontractor under the terms of the Subcontract shall be sent by post, cable, telex or facsimile transmission to or left at the principal place of business of the Contractor or Subcontractor, as the case may be, or such other address as the Contractor or Subcontractor shall nominate for that purpose.

**Change of
Address**

- 20.2 Either party may change a nominated address to another address in the country where the Subcontract Works are being executed by prior notice to the other party.

Changes in Cost and Legislation

**Increase or
Decrease of Cost**

- 21.1 There shall be added to or deducted from the Subcontract Price such sums in respect of rise or fall in the cost of labour and/or materials or any other matters affecting the cost of the execution of the Subcontract Works, to the like extent that such sums shall be added to or deducted from the Contract Price under the Main Contract, but no further.

**Subsequent
Legislation**

- 21.2 If, on or after the date the Subcontract is executed, there occur in the country in which the Subcontract Works are being or are to be executed changes to any National or State Statute, Ordinance, Decree or other Law or any regulation or bye-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation or bye-law which causes additional or reduced cost to the Subcontractor, other than under Sub-Clause 21.1, in the execution of the Subcontract, such additional or reduced cost shall be agreed between the Contractor and the Subcontractor, and shall be added to or deducted from the Subcontract Price, to the like extent that such additional or reduced cost shall be added to or deducted from the Contract Price under the Main Contract, but no further.

Currency and Rates of Exchange

**Currency
Restrictions**

- 22.1 If, on or after the date the Subcontract is executed, the Government or authorised agency of the Government of the country in which the Subcontract Works are being or are to be executed imposes currency restrictions and/or transfer of currency restrictions in relation to the currency or currencies in which the Subcontract Price is to be paid, the Contractor shall reimburse any loss or damage to the Subcontractor arising there from to the like extent that such loss or damage shall be reimbursed to the Contractor under the Main Contract, but no further. Any other rights or remedies to which the Subcontractor is entitled in such event shall not be prejudiced.

**Rates of
Exchange**

- 22.2 Where the Subcontract provides for payment in whole or in part to be made to the Subcontractor in foreign currency or currencies, such payment shall not be subject to variations in the rate or rates of exchange between such specified foreign currency or currencies and the currency of the country in which the Subcontract Works are to be executed.



REFERENCE TO PART II

As stated in the Foreword at the beginning of this document, the FIDIC Conditions of Subcontract comprise both Part I and Part II. Certain Clauses, namely Sub-Clauses 1.1 paragraphs a(i), (ii) and (iv), (b)(i) and (e)(ii), 2.3, 6.1, 15.1 and 15.2, must include additional wording in Part II for the Conditions of Subcontract to be complete. Other Clauses may require additional wording to supplement Part I.



Errata

Following publication of the Conditions of Subcontract, 1st. Edition 1994, it was found that an error had occurred in Sub-Clause 16.3. The period of 35 days stated in the first line is insufficient to allow for subsequent stages of the procedure.

When the document is reprinted a correction will be made.

In the meantime, it is recommended that the following wording should be included in part II of all subcontracts:

Clause 16

Sub-Clause 16.3 – Payment Due; Payment withheld or Deferred; Interest

In the first line delete “35 days” and substitute “70 days”.

PART II

GUIDANCE FOR THE PREPARATION OF CONDITIONS OF PARTICULAR APPLICATION

CLAUSE 1

- Definitions**
- 1.1
- (a)(i) *The Employer is (insert name)*
 - (a)(ii) *The Contractor is (insert name)*
 - (a)(iv) *The Engineer is (insert name)*
 - (b)(i) *The Main Contract between the Employer and the Contractor is composed of the following contract documents (insert particulars of the Main Contract)*
 - (e)(ii) *The Subcontract Works are (insert description, including, if applicable, any matter of design or specification of any part of the Permanent Works or of any Plant (as defined in the Conditions of Main Contract) to be incorporated therein to be provided in connection with any Provisional Sum (as defined in the Conditions of Main Contract)*

If further definitions are essential, additions should be made to the list.

CLAUSE 2

- Performance Security**
- 2.2 Two example forms of performance security are given on pages 6, 7 and 8 of Part II of the Fédération Internationale des Ingénieurs-Conseils' "Conditions of Contract for Works of Civil Engineering Construction, Fourth Edition 1987 Reprinted 1992 with further amendments". The wording of the example forms must be adapted to the Subcontract and may have to be varied to comply with the law of the Subcontract which may require the forms to be executed under seal.
- Programme to be Submitted by Subcontractor**
- 2.3 *The time within which the programme shall be submitted by the Subcontractor shall be (insert number) days.*

CLAUSE 3

- Language/s**
- 3.1 If the language or languages in which the Subcontract documents shall be drawn up are not the same as the language or languages in which the Main Contract documents have been drawn up, this should be indicated here as follows:
- The language is (insert as applicable)*
- If necessary, this should be varied to read:
- The languages are (insert as applicable)*
- and there should be added:
- The Ruling Language is (insert as applicable)*
- Governing Law**
- 3.2 If the governing law of the Subcontract is not the same as the law of the country or state which applies to the Main Contract and according to which the Main Contract is construed, this should be indicated here as follows:
- The law is that in force in (insert name of country)*
- Priority of Subcontract Documents**
- 3.4 If no Subcontract Agreement is entered into, the Subcontract documents should be listed here. If it is decided to vary the order of precedence for the Subcontract documents from that provided for in Part I of these Conditions of Subcontract, such order should be set out here. If it is decided that no order of precedence for the Subcontract documents should be included, this Sub-Clause may be varied as follows:

EXAMPLE

The several documents forming the Subcontract are to be taken as mutually explanatory of one another, but in the case of ambiguities or discrepancies the priority shall be that accorded by law.



CLAUSE 4

Subcontractor's Responsibilities in Relation to Subcontract Works

- 4.2 If in connection with any Provisional Sum the Subcontractor is required to provide design or specification of any part of the Permanent Works or of any Plant to be incorporated therein, an additional paragraph may be necessary.

EXAMPLE

The Subcontractor shall indemnify the Contractor against any liability which the Contractor may incur as the result of the failure of the Subcontractor to provide, as agreed, design or specification of any part of the Permanent Works or of any Plant to be incorporated therein, and against all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection therewith.

Possible Effects of Subcontractor's Breaches of Subcontract

- 4.4 If the Subcontractor is delayed in the execution of the Subcontract Works by circumstances which do not entitle the Subcontractor to an extension of the Subcontractor's Time for Completion then this would ordinarily be a breach of the Subcontract. If as a result of such breach the Contractor became liable for liquidated damages under the Main Contract the Subcontractor would, under this Sub-Clause 4.4, be liable to indemnify the Contractor against the same.

The parties may wish to agree on a limit to the Subcontractor's liability under this Sub-Clause.

As an alternative to passing through liquidated damages under the Main Contract to the Subcontractor under the Subcontract, the parties may wish provide for the imposition of liquidated damages by a special Sub-Clause in the Subcontract. An example clause for this purpose is given under Sub-Clause 7.4 below. If such example is adopted, it is suggested that the first sentence of Sub-Clause 4.4 be revised by inserting, after the word "Subcontract," in the first line, the words "other than delays in the execution of the Subcontract Works or any Section thereof,".

CLAUSE 5

Subcontractor's Use of Contractor's Equipment and/or Other Facilities (if Any) in Common with Other Subcontractors

- 5.2 *The Contractor's Equipment and/or other facilities (if any) for Subcontractor's use in common with other subcontractors are (insert description and specify terms and conditions of use, if any)*

Subcontractor's Exclusive Use of Contractor's Equipment and/or Other Facilities (if Any)

- 5.3 *The Contractor's Equipment and/or other facilities for Subcontractor's exclusive use are (insert description and specify terms and conditions of use, if any)*

CLAUSE 6

Working Hours on Site; Subcontractor's Compliance with Rules and Regulations

- 6.1 *The working hours of the Contractor, to be observed by the Subcontractor, are (insert working hours)*

Availability of Site to Subcontractor and Access to Site

- 6.2 If the Contractor is bound to give the Subcontractor exclusive control of any part of the Site, this should be stated here.



Commencement of Subcontract Works; Subcontractor's Time for Completion

- 7.1 If there are different Subcontractor's Times for Completion for different Sections of the Subcontract Works, then these should be set out in the Appendix to Subcontractor's Offer.

If the parties wish to provide that the Subcontractor shall be Liable for liquidated damages under the Subcontract if he is delayed, an additional Sub-Clause should be added.

EXAMPLE SUB-CLAUSE

Liquidated Damages for Delay

- 7.4 *If the Subcontractor fails to comply with the Subcontractor's Time for Completion in accordance with Sub-Clause 7.1 or, if applicable, any Section within the relevant time prescribed by Sub-Clause 7.1, then the Subcontractor shall pay to the Contractor the relevant sum stated in the Appendix to Subcontractor's Offer as liquidated damages for such default and not as a penalty (which sum shall be the only monies due from the Subcontractor for such default) for every day or part of a day which shall elapse between the relevant Subcontractor's Time for Completion and the date the Subcontract Works or the relevant Section is complete as evidenced (where applicable) by a Taking Over Certificate, subject to the applicable limit on liquidated damages stated in the Appendix to Subcontractor's Offer. The Contractor may, without prejudice to any method of recovery, deduct such damages from monies otherwise becoming due to the Subcontractor. The payment or deduction of such damages shall not relieve the Subcontractor from his obligation to complete the Subcontract Works, or from any other of his obligations and liabilities under the Subcontract.*

If this Sub-Clause is used, it is suggested that, as mentioned under Sub-Clause 4.4 above, the first sentence of Sub-Clause 4.4 be revised by inserting, after the word "Subcontract," in the first line, the words "other than delays in the execution of the Subcontract Works or any Section thereof,".

Both the amount of liquidated damages per day for the Subcontract Works and/or, if applicable, any Section thereof, and a limit of liquidated damages should be set out in the Appendix to Subcontractor's Offer.

CLAUSE 12

Incorporation by Reference

- 12.1 The parties may wish to agree on whether, and the extent to which, the Contractor shall assist the Subcontractor in respect of customs clearance and re-export of Subcontractor's Equipment.

CLAUSE 14

Subcontractor's Obligations before Taking-Over

- 14.1 The parties may wish to agree that the Subcontractor's obligations to maintain the Subcontract Works and to remedy any defects therein shall cease as soon as the Subcontractor has completed the Subcontract Works and irrespective of when a Taking-Over Certificate is issued in regard of the Main Works or the Section or Sections or part or parts of the Main Works in which the Subcontract Works are comprised.

Subcontractor's Obligations after Taking-Over

- 14.2 The parties may wish to agree that the Subcontractor's obligations to remedy defects in the Subcontract Works shall end earlier than or be on different terms from what is applicable to the Contractor under the Main Contract.

CLAUSE 15

Subcontractor's Obligation to Insure

- 15.1 *The risks insured (or the insurances effected) by the Subcontractor are (insert description, including sums and names of beneficiaries)*

Contractor's Obligation to Insure; Subcontract Works at Subcontractor's Risk

The Contractor's policy of insurance is (insert description)



CLAUSE 16

If payments have to be made to a nominated Subcontractor, an additional Sub-Clause should be added.

EXAMPLE SUB-CLAUSE

Direct Payment to
Nominated
Subcontractor

- 16.7 *Subject to the terms of Sub-Clause 59.5 of the Conditions of Main Contract, the Subcontractor shall be entitled to be paid by the Employer direct, upon certificate of the Engineer, all payments, less retentions, provided for in the Subcontract, which the Contractor has failed to make to the Subcontractor.*

CLAUSE 19

Amicable
Settlement and
Arbitration

- 19.1 Sub-Clause 19.1 assumes that the Contractor and Subcontractor will be from different countries or will otherwise wish to provide for the international arbitration of their disputes. This will not necessarily be so. If it transpires that the successful offer is from a subcontractor from the same country as the Contractor, for example, they may prefer to have recourse to their own national courts of tribunals (even though the contractor may have agreed to the international arbitration of disputes under the Main Contract, as provided for by Clause 67 of the Red Book). In this case, the two parties would have to agree an appropriate modification to Part II

In certain circumstances, parties may wish to agree on a longer period than fifty-six days before either party may commence arbitration of a dispute under the Subcontract to allow time for the procedure for the settlement of disputes under Clause 67 of Part I of the Fédération Internationale des Ingénieurs-Conseils' "Conditions of Contract for Works of Civil Engineering Construction, Fourth Edition 1987 Reprinted 1992 with further amendments" (beginning with the reference of a dispute to the Engineer) to be completed before either party can bring arbitration under the Subcontract. For example, a period of 210 days from the date a party gives notice under Sub-Clause 19.1 is the sum of the various time periods in Sub-Clauses 67.1 and 67.2 (namely, 84 days for the Engineer's decision, plus 70 days for the notice of intention to commence arbitration, plus 56 days for attempting to reach an amicable settlement) which must elapse before arbitration may begin under Sub-Clause 67.3 of Part I of the aforesaid Conditions.

Where it is considered desirable to add to this Sub-Clause provisions with respect to the number of arbitrators, the place of arbitration and the language of the arbitration, or where this Sub-Clause should be varied because it is decided that a settlement of dispute procedure, other than that of the International Chamber of Commerce (ICC), should be used, the parties may refer to the example paragraph and sub-clause given under Clause 67 of Part II of the Fédération Internationale des Ingénieurs-Conseils' "Conditions of Contract for Works of Civil Engineering Construction, Fourth Edition 1987 Reprinted 1992 with further amendments".

Dispute in
Connection with or
Arising out of Main
Contract Touching
or Concerning
Subcontract
Works.

- 19.2 With respect to disputes in connection with or arising out of the Main Contract which touch or concern the Subcontract Works, the Contractor and the Subcontractor may wish to consider agreeing on a procedure for multi-party arbitration (that is, an arbitration to which the Employer, the Contractor and the Subcontractor would be parties). However, the current edition of the Fédération Internationale des Ingénieurs-Conseils' "Conditions of Contract for Works of Civil Engineering Construction, Fourth Edition 1987 Reprinted 1992 with further amendments", in conjunction with which these Conditions of Subcontract are meant to be used, does not provide for the necessary consent by the Employer to multi-party arbitration. Consequently, this would have to be obtained in a separate provision or document in conjunction with any agreement on multi-party arbitration between the Contractor and the Subcontractor.

The drafting of any clause or agreement providing for the arbitration of disputes among the Employer, the Contractor and the Subcontractor is a complex exercise. Thus, to draft a multi-party arbitration clause providing for the resolution of such disputes under the dispute resolution provisions of the Main Contract the following matters, among others, need to be considered:



- (1) The consent of the Employer, the Contractor and the Subcontractor to multi-party arbitration will be required (as mentioned above).
- (2) The multi-party arbitration procedure must tie in with the procedure under the Main Contract requiring a reference of a dispute to the Engineer under Clause 67 as a condition precedent to arbitration.
- (3) A test in the form of words must be developed for determining when a dispute under the Subcontract is to be deemed sufficiently similar to a dispute under the Main Contract to be referable to arbitration under the Main Contract, e.g. will it be sufficient to state that a dispute in connection with or arising out of the Main Contract "which touches or concerns the Subcontract Works", or presents "common issues of law and fact" with a dispute under the Subcontract, is referable to arbitration under the Main Contract?
- (4) As a practical matter, someone - perhaps the Contractor - will probably have to be given the power to decide when the test is satisfied, that is, when the disputes under the two contracts are to be deemed sufficiently similar to justify their being heard in one arbitration under the Main Contract. If someone is not given this power, the issue would normally fall to be decided by the competent courts, resulting often in much delay.
- (5) A determination will have to be made as to the action (e.g. a notice to the other parties) which must be taken to permit the hearing of the two disputes in a single arbitral proceeding.
- (6) A determination will have to be made as to when such action must be taken to permit the joint hearing of the two disputes. Before arbitrators are appointed in any Main Contract proceeding? Earlier than this?
- (7) A decision must be made as to the maximum number of parties that would be acceptable in any multi-party arbitration proceeding:
 - (a) Horizontally, all subcontractors of the Contractor in relation to the project; and
 - (b) Vertically, sub-subcontractors, sub-sub-subcontractors, and so on down the line?

To the extent any multi-party arbitration will include parties in addition to the Employer, the Contractor and the Subcontractor, those parties must also be consented to by all the parties involved in the proceeding.

- (8) As yet, no international arbitration rules (e.g. ICC or UNCITRAL) satisfactorily address multi-party arbitration problems.

The above does not address the possibility of disputes under the Main Contract being resolved in a multi-party arbitration under the dispute resolution provisions of the Subcontract. However, similar considerations to those described above would apply.

As an alternative to a multi-party arbitration, the parties may wish to provide for separate Main Contract and Subcontract arbitrations but arrange for some or all of the arbitrators to be common to both proceedings.

CLAUSE 22

If payments have to be made to a nominated Subcontractor, the Contractor and the Subcontractor should agree on the proportions or amounts to be paid in foreign currencies in respect of Provisional Sums.

If the Contractor has required the Subcontractor's Offer to be expressed in a single currency but with payment to be made in more than one currency, the Subcontractor should state the proportions or amounts of other currency or currencies in which he requires payment to be made, and the Contractor and the Subcontractor should agree on the rate or rates of exchange applicable for calculating the payment of such proportions or amounts.

Further additions or modifications may be necessary depending on the contents of Part II of the Conditions of Main Contract.



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SUBCONTRACTOR'S OFFER

NAME OF SUBCONTRACT:

TO:

Gentlemen,

1. Having examined the Conditions of Subcontract, the Subcontract Specification, the Subcontract Drawings, and the Subcontract Bill of Quantities and Addenda Nos _____ for the execution of the above-named Subcontract Works, we, the undersigned, offer to execute and complete such Works and remedy any defects therein in conformity with the Conditions of Subcontract, the Subcontract Specification, the Subcontract Drawings, the Subcontract Bill of Quantities and Addenda for the sum of

(_____)
or such other sum as may be ascertained in accordance with the said Conditions.

2. We acknowledge that the Appendix hereto forms part of our Offer.
3. We undertake, if our Offer is accepted, to commence the Subcontract Works within 14 days, or such other period as may be agreed in writing, after the receipt of your notice to commence, and to complete the whole of the Subcontract Works comprised in the Subcontract within the time stated in the Appendix hereto.
4. We agree to abide by this Offer for the period of * _____ days from the date fixed for receiving the same and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
5. Unless and until a formal Subcontract Agreement is prepared and executed this Offer, together with your written acceptance thereof, shall constitute a binding contract between us.
6. We understand that you are not bound to accept the lowest or any offer you may receive.

Dated this _____ day of _____ 20____

Signature _____ in the capacity of _____

duly authorised to sign offers for and on behalf of _____

(IN BLOCK CAPITALS)

Address _____

Witness _____

Address _____

Occupation _____

(Note: All details marked* shall be inserted before issue Offer document.)



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APPENDIX TO SUBCONTRACTOR'S OFFER

	Sub-Clause	
Amount of security (if any)	2.2	_____ per cent of the Subcontract Price
Time for issue of notice to commence	7.1	_____ days
Subcontractor's Time for Completion	7.1	_____ days
Percentage of invoice value of Listed materials and Plant	16.1 (c)	_____ per cent
Percentage of Retention	16.3	_____ per cent
Minimum amount of Statement	16.3 (a)	
Initials of Signatory of Offer		

(Notes: All details in the list above shall be inserted before issue of Offer documents. Where a number of days is to be inserted, it is desirable, for consistency with the Conditions of Subcontract that the number should be a multiple of seven.

[Additional entries are necessary where provision is included in the Subcontract for:

- (a) completion of Sections
- (b) liquidated damages
- (c) a bonus
- (d) an advance payment]



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SUBCONTRACT AGREEMENT

This Subcontract Agreement made the
day of _____ 20

Between
of

(hereinafter called the "Contractor") of the one part

and _____ of
(hereinafter called the "Subcontractor") of the other part

Whereas the Contractor is desirous that certain Subcontract Works should be executed by the Subcontractor, viz _____ and has accepted a Subcontractor's Offer for the execution and completion of such Subcontract Works and the remedying of any defects therein

Now this Subcontract Agreement witnesseth as follows:

1. In this Subcontract Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Subcontract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Subcontract Agreement, viz:
 - (a) The Contractor's Letter of Acceptance;
 - (b) The Subcontractor's Offer;
 - (c) The Conditions of Subcontract (Parts I and II);
 - (d) The Subcontract Specification;
 - (e) The Subcontract Drawings; and
 - (f) The Subcontract Bill of Quantities.
3. In consideration of the payments to be made by the Contractor to the Subcontractor as hereinafter mentioned the Subcontractor hereby covenants with the Contractor to execute and complete the Subcontract Works and remedy any defects therein in conformity in all respects with the provisions of the Subcontract.
4. The Contractor hereby covenants to pay the Subcontractor in consideration of the execution and completion of the Subcontract Works and the remedying of any defects therein the Subcontract Price or such other sum as may become payable under the provisions of the Subcontract at the times and in the manner prescribed by the Subcontract.

Seal if any **In Witness Whereof** the parties hereto have caused this Subcontract Agreement to be executed the day and year first before written in accordance with their respective laws

The Common Seal of

was hereunto affixed in the presence of:

or

Seal if any Signed Sealed and Delivered by the
said

in the presence of:

