

\$1.00
Stamp to
be impressed
here

Articles of Agreement

made the day of 19

BETWEEN.....

of (or whose registered office is situate at)

(hereinafter called 'the Employer') of the one part and.....

of (or whose registered office is situate at)

(hereinafter called 'the Contractor') of the other part. WHEREAS the Employer is desirous

of*.....

(hereinafter called 'the Works') at.....

and has caused Drawings and a Specification marked "A"*** showing and describing the work to be done

to be prepared by or under the direction of.....

of.....

AND WHEREAS the said Drawings numbered to inclusive

(hereinafter referred to as 'the Contract Drawings') and the Specification (hereinafter referred to as

'the Specification') have been signed by or on behalf of the parties hereto AND WHEREAS the Contractor

has made an estimate of the sum which he will require for carrying out the said work;

* State nature of intended Works.

**It is important that the document be used as Specification should be marked "A"

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. For the consideration hereinafter mentioned the Contractor will upon and subject to the Conditions annexed hereto carry out and complete the Works shown upon the Contract Drawings and described by or referred to in the Specification and in the said Conditions.

2. The Employer will pay to the Contractor the sum of

(\$, hereinafter referred to as 'the Contract Sum') or such other sum as shall become payable hereunder at the times and in the manner specified in the said Conditions.

*3[A] The term 'the Architect' in the said Conditions shall mean

of

..... or, in the event of his death or ceasing to be the Architect for the purpose of this Contract, such other person as the Employer shall nominate for that purpose, not being a person to whom the Contractor shall object for reasons considered to be sufficient by an arbitrator appointed in accordance with clause 33 of the said Conditions. Provided always that no person subsequently appointed to be the Architect under this Contract shall be entitled to disregard or overrule any certificate or opinion or decision or approval or instruction given or expressed by the Architect for the time being.

*3[B] The term 'the Architect' in the said Conditions shall be deemed to have been deleted throughout and replaced with the term 'the Supervising Officer', which term shall mean

of

or, in the event of his death or ceasing to be the Supervising Officer for the purpose of this Contract, such other person as the Employer shall nominate for that purpose, not being a person to whom the Contractor shall object for reasons considered to be sufficient by an arbitrator appointed in accordance with clause 33 of the said Conditions. Provided always that no person subsequently appointed to be the Supervising Officer under this Contract shall be entitled to disregard or overrule any certificate or opinion or decision or approval or instruction given or expressed by the Supervising Officer for the time being.

**4[A] The term 'the Quantity Surveyor' in the said Conditions shall mean

..... of

..... or, in the event of his death or ceasing to be the Quantity Surveyor for the purpose of this Contract such other person as the Employer shall nominate for that purpose, not being a person to whom the Contractor shall object for reasons considered to be sufficient by an arbitrator appointed in accordance with clause 33 of the said Conditions.

**4[B] The functions ascribed by the said Conditions to the 'Quantity Surveyor' shall be exercised by

..... of

..... or, in the event of his death or ceasing to exercise the function of the Quantity Surveyor for the purpose of this Contract by such other person as the Employer shall nominate for that purpose, not being a person to whom the Contractor shall object for reasons considered to be sufficient by an arbitrator appointed in accordance with clause 33 of the said Conditions.

**Footnote.—Article 3 (A) is applicable where the person concerned is entitled to the use of the name 'Architect' under and in accordance with the Architects Ordinance (Chapter 232). Article 3 (B) is applicable in all other cases. Therefore complete whichever is appropriate and delete the alternative.*

***Footnote.—Article 4 [A] is to apply where a Quantity Surveyor is appointed, and Article 4 [B] is to apply where no Quantity Surveyor is appointed. Therefore complete whichever is appropriate and delete the alternative.*

*** As Witness** the hands of the said parties:

Signed by the said

.....
.....
.....

In the presence of

Name

Address

Description

Signed by the said

.....
.....
.....

In the presence of

Name

Address

Description

***Footnote.**—If the Contract is to be executed under seal, this Clause and the words following it must be altered accordingly

The Conditions hereinbefore referred to

Contractor's
Obligations.

1 (1) The Contractor shall upon and subject to these Conditions carry out and complete the Works shown upon the Contract Drawings and described by or referred to in the Specification and in the Articles of Agreement and these Conditions (which Drawings, Specification, Articles of Agreement and Conditions are hereinafter called 'the Contract Documents') in compliance therewith, using materials and workmanship of the quality and standards therein specified, provided that where and to the extent that approval of the quality of materials or of the standards of workmanship is a matter for the opinion of the Architect, such quality and standards shall be to the reasonable satisfaction of the Architect.

(2) If the Contractor shall find any discrepancy in or divergence between any two or more of the following documents, including a divergence between parts of any one of them or between documents of the same description, namely:

- (i) the Contract Drawings,
- (ii) the Specification,
- (iii) any instructions issued by the Architect under these Conditions (save insofar as any such instruction requires a variation in accordance with the provisions of clause 11 (1) of these Conditions), and
- (iv) any drawings or documents issued by the Architect under clause 3 (3), clause 3 (4) or clause 5 of these Conditions

he shall immediately give to the Architect a written notice specifying the discrepancy or divergence, and the Architect shall issue instructions in regard thereto.

Architect's
instructions.

2 (1) The Contractor shall (subject to sub-clauses (2) and (3) of this Condition) forthwith comply with all instructions issued to him by the Architect in regard to any matter in respect of which the Architect is expressly empowered by these Conditions to issue instructions. If within seven days after receipt of a written notice from the Architect requiring compliance with an instruction the Contractor does not comply therewith, then the Employer may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to such instruction and all costs incurred in connection with such employment shall be recoverable from the Contractor by the Employer as a debt or may be deducted by him from any monies due or to become due to the Contractor under this Contract.

(2) Upon receipt of what purports to be an instruction issued to him by the Architect the Contractor may request the Architect to specify in writing the provision of these Conditions which empowers the issue of the said instruction. The Architect shall forthwith comply with any such request, and if the Contractor shall thereafter comply with the said instruction (neither party before such compliance having given to the other a written request to concur in the appointment of an arbitrator under clause 57 of these Conditions in order that it may be decided whether the provision specified by the Architect empowers the issue of the said instruction), then the issue of the same shall be deemed for all the purposes of this contract to have been empowered by the provision of these Conditions specified by the Architect in answer to the Contractor's request.

(3) All instructions issued by the Architect shall be issued in writing. Any instruction issued orally shall be of no immediate effect, but shall be confirmed in writing by the Contractor to the Architect within seven days, and if not dissented from in writing by the Architect to the Contractor within seven days from receipt of the Contractor's confirmation shall take effect as from the expiration of the latter said seven days.

Provided always:

- (a) That if the Architect within seven days of giving such an oral instruction shall himself confirm the same in writing, then the Contractor shall not be obliged to confirm as aforesaid, and the said instruction shall take effect as from the date of the Architect's confirmation, and
- (b) That if neither the Contractor nor the Architect shall confirm such an oral instruction in the manner and at the time aforesaid but the Contractor shall nevertheless comply with the same, then the Architect may confirm the same in writing at any time prior to the issue of the Final Certificate, and the said instruction shall thereupon be deemed to have taken effect on the date on which it was issued.

3 (1) The Contract Drawings, the Specification and the Schedule of Rates hereinafter referred to shall remain in the custody of the Architect so as to be available at all reasonable times for the inspection of the Employer or of the Contractor.

Contract documents.

(2) (a) Immediately after the execution of this Contract the Architect without charge to the Contractor shall furnish him (unless he shall have been previously furnished) with—

(i) one copy certified on behalf of the Employer of the Articles of Agreement and of these Conditions,

(ii) two copies of the Contract Drawings, and

(iii) two copies of the Specification.

(b) Immediately after the execution of this Contract the Contractor without charge to the Employer shall furnish the Architect (unless he shall have been previously furnished) with a schedule of the rates upon which the Contractor's estimate was based. Such schedule is hereinafter referred to as 'the Schedule of Rates'.

(3) As and when from time to time may be necessary the Architect without charge to the Contractor shall furnish him with two copies of such drawings or details as are reasonably necessary either to explain and amplify the Contract Drawings or to enable the Contractor to carry out and complete the Works in accordance with these Conditions.

(4) The Contractor shall keep one copy of the Contract Drawings, one copy of the Specification, and one copy of the drawings and details referred to in sub-clause (3) of this Condition upon the Works so as to be available to the Architect or his representative at all reasonable times.

(5) Upon final payment under clause 30 (6) of these Conditions the Contractor shall if so requested by the Architect, forthwith return to the Architect all drawings, details, specifications, descriptive schedules and other documents of a like nature which bear his name.

(6) None of the documents hereinbefore mentioned (except the Schedule of Rates) and no bill of quantities or other statement as to quantities of work at any time supplied to the Contractor shall be used by him for any purpose other than this Contract and neither the Employer, the Architect nor the Quantity Surveyor shall divulge or use except for the purposes of this Contract any of the rates in the Schedule of Rates.

(7) Any certificate to be issued by the Architect under these Conditions shall be issued to the Contractor.

4 (1) (a) The Contractor shall comply with, and give all notices required by, any Act of Parliament, any instrument rule or order made under any Act of Parliament, or any regulation or byelaw of any local authority or of any statutory undertaker which has any jurisdiction with regard to the Works or with whose systems the same are or will be connected (all requirements to be so complied with being referred to in these Conditions as 'the statutory requirements').

Statutory obligations, notices, fees and charges.

(b) If the Contractor shall find any divergence between the statutory requirements and all or any of the documents referred to in clause 1 (2) of these Conditions or any variation instruction issued in accordance with clause 11 (1) of these Conditions, he shall immediately give to the Architect a written notice specifying the divergence.

(c) If the Contractor gives notice under paragraph (b) of this sub-clause or if the Architect shall otherwise discover or receive notice of a divergence between the statutory requirements and all or any of the documents referred to in clause 1 (2) of these Conditions or any variation instruction issued in accordance with clause 11 (1) of these Conditions, the Architect shall within 7 days of the discovery or receipt of a notice issue instructions in relation to the divergence. If and insofar as the instructions require the Works to be varied, they shall be deemed to be Architect's instructions issued in accordance with clause 11 (1) of these Conditions.

(d) (i) If in any emergency compliance with paragraph (a) of this sub-clause requires the Contractor to supply materials or execute work before receiving instructions under paragraph (c) of this sub-clause the Contractor shall supply such limited materials and execute such limited work as are reasonably necessary to secure immediate compliance with the statutory requirements.

(ii) The Contractor shall forthwith inform the Architect of the emergency and of the steps that he is taking under this paragraph of this Condition.

(iii) Work executed and materials supplied by the Contractor under sub-paragraph (i) of this paragraph shall be deemed to have been executed and supplied pursuant to an Architect's instruction in accordance with clause 11 (1) of these Conditions provided

that the emergency arose because of a divergence between the statutory requirements and all or any of the documents referred to in clause 1 (2) of these Conditions or any variation instruction issued in accordance with clause 11 (1) of these Conditions, and the Contractor has complied with sub-paragraph (ii).

(e) Provided that the Contractor complies with paragraph (b) of this sub-clause, the Contractor shall not be liable to the Employer under this Contract if the Works do not comply with the statutory requirements where and to the extent that such non-compliance of the Works results from the Contractor having carried out work in accordance with the documents referred to in clause 1 (2) of these Conditions or any variation instruction issued in accordance with clause 11 (1) of these Conditions.

(2) The Contractor shall pay and indemnify the Employer against liability in respect of any fees or charges (including any rates or taxes) legally demandable under any Act of Parliament, any instrument, rule or order made under any Act of Parliament, or any regulation or byelaw of any local authority or of any statutory undertaker in respect of the Works. Provided that the amount of any such fees or charges (including any rates or taxes) shall be added to the Contract Sum unless they

(a) arise in respect of work executed or materials or goods supplied by a local authority or statutory undertaker for which a prime cost sum is included in the Specification or for which a prime cost sum has arisen as a result of Architect's instructions given under clause 11 (3) of these Conditions, or

(b) are priced or stated by way of a provisional sum in the Specification.

(3) None of the provisions of clause 27 (nominated sub-contractors) nor of clause 28 (nominated suppliers) of these Conditions shall apply where prime cost sums are included in the Specification or arise as a result of an instruction by the Architect in regard to the expenditure of provisional sums in respect of any fees or charges for work executed or materials or goods supplied by a local authority or statutory undertaker solely in pursuance of its statutory obligations. Such fees or charges shall be dealt with under the provisions of sub-clause (2) of this Condition and any amount properly paid by the Contractor to any local authority or statutory undertaker shall be added to the amount that would otherwise be stated as due in the next interim certificate.

Levels and setting out of the Works.

5 The Architect shall determine any levels which may be required for the execution of the Works, and shall furnish to the Contractor by way of accurately dimensioned drawings such information as shall enable the Contractor to set out the Works at ground level. Unless the Architect shall otherwise instruct, in which case the contract sum shall be adjusted accordingly, the Contractor shall be responsible for and shall entirely at his own cost amend any errors arising from his own inaccurate setting out.

Materials, goods and workmanship to conform to description, testing and inspection.

6 (1) All materials, goods and workmanship shall so far as procurable be of the respective kinds and standards described in the Specification.

(2) The Contractor shall upon the request of the Architect furnish him with vouchers to prove that the materials and goods comply with sub-clause (1) of this Condition.

(3) The Architect may issue instruction requiring the Contractor to open up for inspection any work covered up or to arrange for or carry out any test of any material or goods (whether or not already incorporated in the Works) or of any executed work, and the cost of such opening up or testing (together with the cost of making good in consequence thereof) shall be added to the Contract Sum unless provided for in the Specification or unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract.

(4) The Architect may issue instructions in regard to the removal from the site of any work, materials or goods which are not in accordance with this Contract.

(5) The Architect may (but not unreasonably or vexatiously) issue instructions requiring the dismissal from the Works of any person employed thereon.

Royalties and patent rights.

7 All royalties or other sums payable in respect of the supply and use in carrying out the Works as described by or referred to in the Specification of any patented articles, processes or inventions shall be deemed to have been included in the Contract Sum, and the Contractor shall indemnify the Employer from and against all claims, proceedings, damages, costs and expenses which may be brought or made against the Employer or to which he may be put by reason of the Contractor infringing or being held to have infringed any patent rights in relation to any such articles, processes and inventions. Provided that where in compliance with Architect's instructions the Contractor shall supply and use in carrying out the Works any patented articles, processes or inventions, the Contractor shall not be liable in respect of any infringement or alleged infringement of any patent rights in relation to any such articles, processes and

inventions and all royalties damages or other monies which the Contractor may be liable to pay to the persons entitled to such patent rights shall be added to the Contract Sum.

- 8 The Contractor shall constantly keep upon the Works a competent foreman-in-charge and any instructions given to him by the Architect shall be deemed to have been issued to the Contractor. Foreman-in-Charge.
- 9 The Architect and his representatives shall at all reasonable times have access to the Works and to the workshops or other places of the Contractor where work is being prepared for the Contract, and when work is to be so prepared in workshops or other places of a sub-contractor (whether or not a nominated sub-contractor as defined in clause 27 of these Conditions) the Contractor shall by a term in the sub-contract so far as possible secure a similar right of access to those workshops or places for the Architect and his representatives and shall do all things reasonably necessary to make such right effective. Access for Architect to the Works.
- 10 The Employer shall be entitled to appoint a clerk of works whose duty shall be to act solely as inspector on behalf of the Employer under the directions of the Architect, and the Contractor shall afford every reasonable facility for the performance of that duty. If any directions are given to the Contractor or to his foreman upon the Works by the clerk of works the same shall be of no effect unless given in regard to a matter in respect of which the Architect is expressly empowered by these Conditions to issue instructions and unless confirmed in writing by the Architect within two working days of their being given. If any such directions are so given and confirmed then as from the date of confirmation they shall be deemed to be Architect's instructions. Clerk of Works.
- 11 (1) The Architect may issue instructions requiring a variation and he may sanction in writing any variation made by the Contractor otherwise than pursuant to an instruction of the Architect. No variation required by the Architect or subsequently sanctioned by him shall vitiate this Contract. Variations, provisional and prime cost sums.
- (2) The term 'variation' as used in these Conditions means the alteration or modification of the design, quality or quantity of the Works as shown upon the Contract Drawings and described by or referred to in the Specification, and includes the addition, omission or substitution of any work, the alteration of the kind or standard of any of the materials or goods to be used in the Works, and the removal from the site of any work materials or goods executed or brought thereon by the Contractor for the purposes of the Works other than work materials or goods which are not in accordance with this Contract.
- (3) The Architect shall issue instructions in regard to the expenditure of prime cost* and provisional sums included in the Specification and of prime cost sums which arise as a result of instructions issued in regard to the expenditure of provisional sums.
- (4) All variations required by the Architect or subsequently sanctioned by him in writing and all work executed by the Contractor for which provisional sums are included in the Specification (other than work for which a tender made under clause 27 (g) of these Conditions has been accepted) shall be measured and valued by the Quantity Surveyor who shall give to the Contractor at opportunity of being present at the time of such measurement and of taking such notes and measurements as the Contractor may require. The valuation of variations and of work executed by the Contractor for which a provisional sum is included in the Specification (other than work for which a tender has been accepted as aforesaid) unless otherwise agreed shall be made in accordance with the following rules:—
- (a) The prices in the Schedule of Rates shall determine the valuation of work of similar character executed under similar conditions as work priced therein;
- (b) The said prices, where work is not of a similar character or executed under similar conditions as aforesaid, shall be the basis of prices for the same so far as may be reasonable, failing which a fair valuation thereof shall be made;
- (c) Where work cannot properly be measured and valued the Contractor shall unless otherwise agreed be allowed:
- (i) the prime cost of such work calculated in accordance with the 'Definition of Prime Cost of Daywork carried out under a Building Contract' issued by the Fiji Association of Architects and the Fiji Master Builders' Association and current at the date of tender as defined in clause 31D (6) (a) of these Conditions together with percentage

*Footnote.—The term 'prime cost' may be indicated by the abbreviation 'P.C.' in any document relating to this Contract (including the Specification), and wherever the abbreviation is used it shall be deemed to mean 'prime cost'.

additions to each section of the prime cost at the rates set out by the Contractor in the Schedule of Rates; or

- (ii) where the work is within the province of any specialist trade and the Fiji Association of Architects, or other appropriate professional body, and the appropriate body representing the employers in that trade have agreed and issued a definition of prime cost of daywork, the prime cost of such work calculated in accordance with that definition and current at the date of tender as defined in clause 31D (6) (a) of these Conditions together with percentage additions on the prime cost at the rates set out by the Contractor in the Schedule of rates.

Provided that in any case vouchers specifying the time daily spent upon the work (and if required by the Architect the workmen's names) and the materials employed shall be delivered for verification to the Architect or his authorised representative not later than the end of the week following that in which the work has been executed;

- (d) The rates contained in the Schedule of Rates shall determine the valuation of items omitted; provided that if omissions substantially vary the conditions under which any remaining items of work are carried out the prices for such remaining items shall be valued under rule (b) of this sub-clause.

(5) Effect shall be given to the measurement and valuation of variations under sub-clause (4) of this Condition in Interim Certificates and by adjustment of the Contract Sum; and effect shall be given to the measurement and valuation of work for which a provisional sum is included in the Specification under the said sub-clause in Interim Certificates and by adjustment of the Contract Sum in accordance with clause 30 (5) (c) of these Conditions.

(6) If upon the written application being made to him by the Contractor, the Architect is of the opinion that a variation or the execution by the Contractor of work for which a provisional sum is included in the Specification (other than work for which a tender made under clause 27 (g) of these Conditions has been accepted) has involved the Contractor in direct loss and/or expense for which he would not be reimbursed by payment in respect of a valuation made in accordance with the rules contained in sub-clause (4) of this Condition and if the said application is made within a reasonable time of the loss or expense having been incurred, then the Architect shall either himself ascertain or shall instruct the Quantity Surveyor to ascertain the amount of such loss or expense. Any amount from time to time so ascertained shall be added to the Contract Sum, and if an Interim Certificate is issued after the date of ascertainment any such amount shall be added to the amount which would otherwise be stated as due in such Certificate.

- 12 (1) The quality and quantity of the work included in the Contract Sum shall be deemed to be that which is shown upon the Contract Drawings or described in the Specification, but save as aforesaid nothing contained in the Contract Drawings or the Specification shall override, modify, or affect in any way whatsoever the application or interpretation of that which is contained in these Conditions.

(2) Any error in description or in quantity or in omission of items from the Contract Drawings and/or the Specification shall not vitiate this Contract but shall be corrected and deemed to be a variation required by the Architect.

(3) Any bills of quantities or other statements as to quantities of work which may at any time be supplied to the Contractor shall not form part of this Contract, and the rates contained in the Schedule of Rates shall apply notwithstanding any discrepancy between such rates and anything contained in any such bill or other statement.

- 13 The Contract Sum shall not be adjusted or altered in any way whatsoever otherwise than in accordance with the express provisions of these Conditions, and subject to clause 12 (2) of these Conditions any error whether of arithmetic or not in the computation of the Contract Sum shall be deemed to have been accepted by the parties hereto.

- 14 (1) Unfixed materials and goods delivered to, placed on or adjacent to the Works and intended therefor shall not be removed except for use upon the Works unless the Architect has consented in writing to such removal which consent shall not be unreasonably withheld. Where the value of any such materials or goods has in accordance with clause 30 (2) of these Conditions been included in any Interim Certificate under which the Contractor has received payment, such materials and goods shall become the property of the Employer, but subject to clause 20 [B] or clause 20 [C] of these Conditions (if applicable), the Contractor shall remain responsible for loss or damage to the same.

(2) Where the value of any materials or goods has in accordance with clause 30 (2A) of these

Conditions been included in any Interim Certificate under which the Contractor has received payment, such materials and goods shall become the property of the Employer, and thereafter the Contractor shall not, except for use upon the Works, remove or cause or permit the same to be moved or removed from the premises where they are, but the Contractor shall nevertheless be responsible for any loss thereof or damage thereto and for the cost of storage, handling and insurance of the same until such time as they are delivered to and placed on or adjacent to the Works whereupon the provisions of sub-clause (1) of this clause (except the words 'where the value' to the words 'the Employer but') shall apply thereto.

15 (1) When in the opinion of the Architect the Works are practically completed, he shall forthwith issue a certificate to that effect and Practical Completion of the Works shall be deemed for all the purposes of this Contract to have taken place on the day named in such certificate.

Practical completion and defects liability.

(2) Any defects, shrinkages or other faults which shall appear within the Defects Liability Period stated in the appendix to these Conditions and which are due to materials or workmanship not in accordance with this Contract, shall be specified by the Architect in a Schedule of Defects which he shall deliver to the Contractor not later than 14 days after the expiration of the said Defects Liability Period, and within a reasonable time after receipt of such Schedule the defects, shrinkages and other faults therein specified shall be made good by the Contractor and (unless the Architect shall otherwise instruct, in which case the Contract Sum shall be adjusted accordingly) entirely at his own cost.

(3) Notwithstanding sub-clause (2) of this Condition the Architect may, whenever he considers it necessary so to do, issue instructions requiring any defect, shrinkage or other fault which shall appear within the Defects Liability Period named in the appendix to these Conditions and which is due to materials or workmanship not in accordance with this Contract to be made good, and the Contractor shall within a reasonable time after receipt of such instructions comply with the same and (unless the Architect shall otherwise instruct, in which case the Contract Sum shall be adjusted accordingly) entirely at his own cost. Provided that no such instructions shall be issued after delivery of a Schedule of Defects or after 14 days from the expiration of the said Defects Liability Period.

(4) When in the opinion of the Architect any defects, shrinkages or other faults which he may have required to be made good under sub-clauses (2) and (3) of this Condition shall have been made good he shall issue a certificate to that effect, and completion of making good defects shall be deemed for all the purposes of this Contract to have taken place on the day named in such certificate.

If at any time or times before Practical Completion of the Works the Employer with the consent of the Contractor shall take possession of any part or parts of the same (any such part being hereinafter in this clause referred to as 'the relevant part'), then notwithstanding anything expressed or implied elsewhere in this Contract:—

Partial possession by Employer.

(a) Within seven days from the date on which the Employer shall have taken possession of the relevant part the Architect shall issue a certificate stating his estimate of the approximate total value of the said part, and for all the purposes of this Condition (but for no other) the value so stated shall be deemed to be the total value of the said part.

(b) For the purposes of sub-paragraph (ii) of paragraph (f) of this Condition and of sub-clauses (2) and (3) of clause 15 of these Conditions, Practical Completion of the relevant part shall be deemed to have occurred and the Defects Liability Period in respect of the relevant part shall be deemed to have commenced on the date on which the Employer shall have taken possession thereof.

(c) When in the opinion of the Architect any defects, shrinkages or other faults in the relevant part which he may have required to be made good under sub-clause (2) or sub-clause (3) of clause 15 of these Conditions shall have been made good he shall issue a certificate to that effect.

(d) The Contractor shall reduce the value insured under clause 20 (A) of these Conditions (if applicable) by the full value of the relevant part, and the said relevant part shall as from the date on which the Employer shall have taken possession thereof be at the sole risk of the Employer as regards any of the contingencies referred to in the said clause.

(e) In lieu of any sum to be paid or allowed by the Contractor under clause 22 of these Conditions in respect of any period during which the Works may remain incomplete occurring after the date on which the Employer shall have taken possession of the relevant part there shall be paid or allowed such sum as bears the same ratio to the sum which would be paid or allowed apart from the provisions of this Condition as does the Contract Sum.

less the total value of the said relevant part to the Contract Sum.

(f) (i) Within fourteen days of the date on which the Employer shall have taken possession of the relevant part there shall be paid to the Contractor from the sums then retained under clause 30 (3) of these Conditions a percentage (which percentage shall be equal to half the Retention Percentage) of the total value (subject to paragraph (iii) of this sub-clause) of the relevant part.

(ii) On the expiration of the Defects Liability Period named in the Appendix to these Conditions in respect of the relevant part or on the issue of the Certificate of Completion of Making Good Defects in respect of the relevant part, whichever is the later, there shall be paid to the Contractor from the sums then retained under clause 30 (3) of these Conditions a percentage (which percentage shall be equal to half the Retention Percentage) of the total value (subject to paragraph (iii) of this sub-clause) of the relevant part.

(iii) Where the total value of the relevant part includes works in respect of which a final payment to a nominated sub-contractor has been made under the provisions of clause 27 (e) of these Conditions, the said total value for the purposes of paragraphs (i) and (ii) of this sub-clause shall be deemed to be reduced by the value of the said sub-contractor's work carried out in the relevant part.

17. (1) The Employer shall not without the written consent of the Contractor assign this Contract.

(2) The Contractor shall not without the written consent of the Employer assign this Contract, and shall not without the written consent of the Architect (which consent shall not be unreasonably withheld to the prejudice of the Contractor) sub-let any portion of the Works. Provided that it shall be a condition in any sub-letting which may occur that the employment of the sub-contractor under the sub-contract shall determine immediately upon the determination (for any reason) of the Contractor's employment under this Contract.

18. (1) The Contractor shall be liable for, and shall indemnify the Employer against, any liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury to or the death of any person whomsoever arising out of or in the course of or caused by the carrying out of the Works, unless due to any act or neglect of the Employer or of any person for whom the Employer is responsible.

(2) Except for such loss or damage as is at the risk of the Employer under clause 20 (B) or clause 20 (C) of these Conditions (if applicable) the Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any injury or damage whatsoever to any property real or personal in so far as such injury or damage arises out of or in the course of or by reason of the carrying out of the Works, and provided always that the same is due to any negligence omission or default of the Contractor, his servants or agents.

19. (1) (a) Without prejudice to his liability to indemnify, the Employer under clause 18 of these Conditions the Contractor shall maintain, and shall cause any sub-contractor to maintain such insurances as are necessary to cover the liability of the Contractor or, as the case may be, of such sub-contractor in respect of personal injury or death arising out of or in the course of or caused by the carrying out of the Works not due to any act or neglect of the Employer or of any person for whom the Employer is responsible and in respect of injury or damage to property, real or personal, arising out of or in the course of or by reason of the carrying out of the Works and caused by any negligence, omission or default of the Contractor, his servants or agents or, as the case may be, of such sub-contractor, his servants or agents. The insurance in respect of claims for personal injury to, or the death of, any person under a contract of service or apprenticeship with the Contractor or the sub-contractor as the case may be, and arising out of and in the course of such person's employment, shall comply with the Workmen's Compensation Ordinance (Chapter 77). For all other claims to which this sub-clause applies the insurance cover shall be the sum stated in the Appendix to these Conditions (or such greater sum as the Contractor may choose) for any one occurrence or series of occurrences arising out of one event.

(b) As and when he is reasonably required so to do by the Architect the Contractor shall produce and shall cause any sub-contractor to produce for inspection by the Employer documentary evidence that the insurances required by this sub-clause are properly maintained; but on any occasion the Employer may (but not unreasonably or vexatiously) require to have produced for his inspection the policies and receipts in question.

(c) Should the Contractor or any sub-contractor make default in insuring or in continuing or in causing to insure as provided in this sub-clause the Employer may himself insure against any risk with respect to which the default shall have occurred and may deduct a sum or sums

equivalent to the amount paid or payable in respect of premiums from any monies due or to become due to the Contractor.

(2) (a) The Contractor shall maintain in the joint names of the Employer and the Contractor insurances for such amounts of indemnity as may be specified by way of provisional sum items in the Specification in respect of any expense, liability, loss, claim, or proceedings which the Employer may incur or sustain by reason of damage to any property other than the Works caused by collapse, subsidence, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of or by reason of the carrying out of the Works excepting damage

(i) caused by the negligence, omission or default of the Contractor, his servants or agents or of any sub-contractor his servants or agent;

(ii) attributable to errors or omissions in the designing of the Works;

(iii) which can reasonably be foreseen to be inevitable having regard to the nature of the work to be executed or the manner of its execution;

(iv) which is at the risk of the Employer under clause 20 [B] or clause 20 [C] of these Conditions (if applicable);

(v) arising from a nuclear risk or war risk;

(b) Any such insurance as is referred to in the immediately preceding paragraph shall be placed with insurers to be approved by the Architect, and the Contractor shall deposit with him the policy or policies and the receipts in respect of premiums paid.

(c) Should the Contractor make default in insuring or in continuing to insure as provided in this sub-clause the Employer may himself insure against any risk with respect to which the default shall have occurred and the amounts paid or payable by the Employer in respect of premiums shall not be set against the relevant provisional sum in the settlement of accounts under clause 30 (5) (c) of these Conditions.

19A Notwithstanding the provisions of clauses 18 (2) or 19 of these Conditions, the Contractor shall not be liable either to indemnify the Employer or to insure against any damage, loss or injury caused to the Works, the site, or any property, by the effect of ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

Excepted Risks
— Nuclear perils
etc.

20 **[A]* (1) The Contractor shall in the joint names of the Employer and Contractor insure against loss and damage by ****fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion (excluding any loss or damage caused by ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds) for the full value thereof (plus the percentage (if any) named in the Appendix to these Conditions to cover professional fees) all work executed and all unfixated materials and goods, delivered to, placed on or adjacent to the Works and intended therefor but excluding temporary buildings, plant, tools and equipment owned or hired by the Contractor or any sub-contractor, and shall keep such work, materials and goods so insured until Practical Completion of the Works. Such insurance shall be with insurers approved by the Architect and the Contractor shall deposit with him the policy or policies and the receipts in respect of premiums paid and should the Contractor make default in insuring or continuing to insure as aforesaid the Employer may himself insure against any risk in respect of which the default shall have occurred and deduct a sum equivalent to the amount

Insurance of
the Works
against Fire, etc.

*Footnote.—*Clause 20 [A] is applicable to the erection of a new building if the Contractor is required to insure against loss or damage by fire, etc.; clause 20 [B] is applicable to the erection of a new building if the Employer is to bear the risk in respect of loss or damage by fire, etc.; and clause 20 [C] is applicable to alterations of or extensions to an existing building; therefore strike out clauses [B] and (C) or clauses (A) and [C] or clauses (A) and (B) as the case may require.*

**Footnote.—*In some cases it may not be possible for insurance to be taken out against certain of the risks mentioned in this clause; in others insurance may be required against risks not mentioned. This matter should be arranged between the parties at the tender stage and the clause amended accordingly.*

paid him in respect of premiums from any monies due or to become due to the Contractor.

Provided always that if the Contractor shall independently of his obligations under this Contract maintain a policy of insurance which covers *inter alia* the said work, materials and goods against the aforesaid contingencies to the full value thereof (plus the aforesaid percentage (if any)), then the maintenance by the Contractor of such policy shall, if the Employer's interest in that policy of insurance is endorsed thereon, be a discharge of the Contractor's obligation to insure in the joint names of the Employer and Contractor; if and so long as the Contractor is able to produce for inspection as and when he is reasonably required so to do by the Architect documentary evidence that the said policy is properly endorsed and maintained then the Contractor shall be discharged from his obligation to deposit a policy or policies and receipts with the Employer but on any occasion the Employer may (but not unreasonably or vexatiously) require to have produced for his inspection the policy and receipts in question.

(2) Upon acceptance of any claim under the insurances aforesaid the Contractor with due diligence shall restore work damaged, replace or repair any unfixed materials or goods which have been destroyed or injured; remove and dispose of any debris and proceed with the carrying out and completion of the Works. All monies received from such insurances (less only the aforesaid percentage, (if any)) shall be paid to the Contractor by instalments under certificates of the Architect issued at the period of Interim Certificates named in the Appendix to these Conditions. The Contractor shall not be entitled to any payment in respect of the restoration of work damaged, the replacement and repair of any unfixed materials or goods, and the removal and disposal of debris other than the monies received under the said insurances.

~~*[B] All work executed and all unfixed materials and goods, delivered to, placed on or adjacent to the Works and intended therefor (except temporary buildings, plant, tools and equipment owned or hired by the Contractor or any sub-contractor) shall be at the sole risk of the Employer as regards loss or damage by fire, lightning, explosion, storm, tempest, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion (excluding any loss or damage caused by ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds). The Employer shall maintain a proper policy of insurance** against that risk, and such policy and the receipt for the last premium paid for its renewal shall upon request be produced for inspection by the Contractor. If the Employer shall at any time fail upon request to produce any receipt showing such a policy as aforesaid to be effective then the Contractor may in the name and on behalf of the Employer insure all work executed and all unfixed materials and goods as aforesaid against loss or damage occasioned by the said contingencies and shall upon production of the receipt for any premium paid by him be entitled to have its amount added to the Contract Sum. If any loss or damage affecting the Works or any part thereof or any such unfixed materials or goods is occasioned by any one or more of the said contingencies then upon discovering the said loss or damage the Contractor shall forthwith give notice in writing both to the Architect and to the Employer of the extent, nature and location thereof and~~

~~(a) The occurrence of such loss or damage shall be disregarded in computing any amounts payable to the Contractor under or by virtue of this Contract.~~

~~(b) The Contractor with due diligence shall restore work damaged, replace or repair any unfixed materials or goods which have been destroyed or injured, remove and dispose of any debris and proceed with the carrying out and completion of the Works. The restoration of work damaged, the replacement and repair of unfixed materials and goods and the removal and disposal of debris shall be deemed to be a variation required by the Architect.~~

**Footnote.—Clause 20 [A] is applicable to the erection of a new building if the Contractor is required to insure against loss or damage by fire, etc.; clause 20 [B] is applicable to the erection of a new building if the Employer is to bear the risk in respect of loss or damage by fire, etc.; and clause 20 [C] is applicable to alterations of or extensions to an existing building; therefore strike out clauses [B] and (C) or clauses (A) and [C] or clauses (A) and (B) as the case may require.*

***Footnote.—In some cases it may not be possible for insurance to be taken out against certain of the risks mentioned in this clause; in others insurance may be required against risks not mentioned. This matter should be arranged between the parties at the tender stage and the clause amended accordingly.*

~~20~~ [C] The existing structures together with the contents thereof owned by him or for which he is responsible and the Works and all unfixed materials and goods, delivered to, placed on or adjacent to the Works and intended therefor (except temporary buildings, plant, tools and equipment owned or hired by the Contractor or any sub-contractor) shall be at the sole of the Employer as regards loss or damage by fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion (excluding any loss or damage caused by ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds) and the Employer shall maintain adequate insurance against those risks. ** If the Employer shall at any time fail upon request to produce any receipt showing such a policy as aforesaid to be effective, then the Contractor may in the name and on behalf of the Employer insure the existing structures together with the aforesaid contents, the Works and all unfixed materials and goods as aforesaid against loss or damage occasioned by the said contingencies, and for that purpose shall have such right of entry and inspection as may be required to make a survey and inventory of the existing structures and the aforesaid contents and shall upon production of the receipt for any premium paid by him be entitled to have its amount added to the Contract Sum. If any loss or damage affecting the Works or any part thereof or any such unfixed materials or goods is occasioned by any one or more of the said contingencies then, upon discovering the said loss or damage the Contractor shall forthwith give notice in writing both to the Architect and to the Employer of the extent, nature and location thereof and

(a) The occurrence of such loss or damage shall be disregarded in computing any amounts payable to the Contractor under or by virtue of this Contract.

(b) (i) If it is just and equitable so to do the employment of the Contractor under this Contract may within 28 days of the occurrence of such loss or damage be determined at the option of either party by notice by registered post or recorded delivery from either party to the other. Within 7 days of receiving such a notice (but not thereafter) either party may give to the other a written request to concur in the appointment of an arbitrator under clause 33 of these Conditions in order that it may be determined whether such determination will be just and equitable.

(ii) Upon the giving or receiving by the Employer of such a notice of determination or, where a reference to arbitration is made as aforesaid, upon the arbitrator upholding the notice of determination, the provisions of sub-clause (2) (except sub-paragraph (vii) of paragraph (b)) of clause 26 of these Conditions shall apply.

(c) If no notice of determination is served as aforesaid, or, where a reference to arbitration is made as aforesaid, if the arbitrator decides against the notice of determination, then

(i) the Contractor with due diligence shall reinstate or make good such loss or damage, and proceed with the carrying out and completion of the Works;

(ii) the Architect may issue instructions requiring the Contractor to remove and dispose of any debris; and

(iii) the reinstatement and making good of such loss or damage and (when required) the removal and disposal of debris shall be deemed to be a variation required by the Architect.

21 (1) On the Date for Possession stated in the Appendix to these Conditions possession of the site shall be given to the Contractor who shall thereupon begin the Works and regularly and diligently proceed with the same, and who shall complete the same on or before the Date for Completion stated in the said Appendix subject nevertheless to the provisions for extension of time contained in clause 23 of these Conditions.

Possession
completion and
postponement.

*Footnote.—Clause 20 [A] is applicable to the erection of a new building if the Contractor is required to insure against loss or damage by fire, etc.; clause 20 [B] is applicable to the erection of a new building if the Employer is to bear the risk in respect of loss or damage by fire, etc.; and clause 20 [C] is applicable to alterations of or extensions to an existing building; therefore strike out clauses [B] and (C) or clauses (A) and [C] or clauses (A) and (B) as the case may require.

**Footnote.—In some cases it may not be possible for insurance to be taken out against certain of the risks mentioned in this clause; in others insurance may be required against risks not mentioned. This matter should be arranged between the parties at the tender stage and the clause amended accordingly.

(2) The Architect may issue instructions in regard to the postponement of any work to be executed under the provisions of this Contract.

22 If the Contractor fails to complete the Works by the Date for Completion stated in the Appendix to these Conditions or within any extended time fixed under clause 23 of these Conditions and the Architect certifies in writing that in his opinion the same ought reasonably so to have been completed, then the Contractor shall pay or allow to the Employer a sum calculated at the rate stated in the said Appendix as Liquidated and Ascertained Damages for the period during which the Works shall so remain or have remained incomplete and the Employer may deduct such sum from any monies due or to become due to the Contractor under this Contract.

23 Upon it becoming reasonably apparent that the progress of the Works is delayed, the Contractor shall forthwith give written notice of the cause of the delay to the Architect, and if in the opinion of the Architect the completion of the Works is likely to be or has been delayed beyond the Date for Completion stated in the Appendix to these Conditions or beyond any extended time previously fixed under this clause,

- (a) by force majeure, or
- (b) by reason of any exceptionally inclement weather, or
- (c) by reason of loss or damage occasioned by any one or more of the contingencies referred to in clause 20 [A], [B] or [C] of these Conditions, or
- (d) by reason of civil commotion, local combination of workmen, strike or lockout affecting any of the trades employed upon the Works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Works, or
- (e) by reason of Architect's instructions issued under clauses 1 (2), 14 (1) or 21 (2) of these Conditions, or
- (f) by reason of the Contractor not having received in due time necessary instructions, drawings, details or levels from the Architect for which he specifically applied in writing on a date which having regard to the Date of Completion stated in the Appendix to these Conditions or to any extension of time then fixed under this clause was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or
- (g) by delay on the part of nominated sub-contractors or nominated suppliers which the Contractor has taken all practicable steps to avoid or reduce, or
- (h) by delay on the part of artists, tradesmen or others engaged by the Employer in executing work not forming part of this Contract, or
- (i) by reason of the opening up for inspection of any work covered up or of the testing of any of the work materials or goods in accordance with clause 6 (3) of these Conditions (including making good in consequences of such opening up or testing), unless the inspection or test showed that the work materials or goods were not in accordance with this Contract, or
- * (j) (i) by the Contractor's inability for reasons beyond his control and which he could not reasonably have foreseen at the date of this Contract to secure such labour as is essential to the proper carrying out of the Works, or
- (ii) by the Contractor's inability for reasons beyond his control and which he could not reasonably have foreseen at the date of this Contract to secure such goods and/or materials as are essential to the proper carrying out of the Works, or
- (k) by reason of compliance with the provisions of Clause 32 of these Conditions or with Architect's instructions issued thereunder, or
- (l) by a local authority or statutory undertaker in carrying out work in pursuance of its statutory obligations in relation to the Works, or in failing to carry out such work,

then the Architect shall so soon as he is able to estimate the length of the delay beyond the date or time aforesaid make in writing a fair and reasonable extension of time for completion of the Works. Provided always that the Contractor shall use constantly his best endeavours to prevent delay and shall do all that may reasonably be required to the satisfaction of the Architect to proceed with the Works.

*Footnote.—Strike out either or both of the sub-clauses (j) (i) or (j) (ii) if not to apply.

24 (1) If upon written application being made to him by the Contractor the Architect is of the opinion that the Contractor has been involved in direct loss and/or expense for which he would not be reimbursed by a payment made under any other provision in this Contract by reason of the regular progress of the Works or of any part thereof having been materially affected by:

Loss and expenses caused by disturbance of regular progress of the Works.

- (a) The Contractor not having received in due time necessary instructions, drawings, details or levels from the Architect for which he specifically applied in writing on a date which having regard to the Date for Completion stated in the Appendix to these Conditions or to any extension of time then fixed under clause 23 of these Conditions was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same; or
- (b) The opening up for inspection of any work covered up or the testing of any of the work materials or goods in accordance with clause 6 (3) of these Conditions (including making good in consequence of such opening up or testing), unless the inspection or test showed that the work, materials or goods were not in accordance with this Contract; or
- (c) Any discrepancy in or divergence between the Contract Drawings and/or the Specification; or
- (d) Delay on the part of artists, tradesmen or others engaged by the Employer in executing work not forming part of this Contract; or
- (e) Architect's instructions issued in regard to the postponement of any work to be executed under the provisions of this Contract;

and if the written application is made within a reasonable time of it becoming apparent that the progress of the Works or of any part thereof has been affected as aforesaid, then the Architect shall either himself ascertain or shall instruct the Quantity Surveyor to ascertain the amount of such loss and/or expense. Any amount from time to time so ascertained shall be added to the Contract Sum, and if an Interim Certificate is issued after the date of ascertainment any such amount shall be added to the amount which would otherwise be stated as due in such Certificate.

(2) The provisions of this Condition are without prejudice to any other rights and remedies which the Contractor may possess.

25 (1) Without prejudice to any other rights or remedies which the Employer may possess, if the Contractor shall make default in any one or more of the following respects, that is to say:—

Determination by Employer.

- (a) If he without reasonable cause wholly suspends the carrying out of the Works before completion thereof, or
- (b) If he fails to proceed regularly and diligently with the Works, or
- (c) If he refuses or persistently neglects to comply with a written notice from the Architect requiring him to remove defective work or improper materials or goods and by such refusal or neglect the Works are materially affected, or
- (d) If he fails to comply with the provisions of clause 17 of these Conditions,

then the Architect may give to him a notice by registered post or recorded delivery specifying the default, and if the Contractor either shall continue such default for fourteen days after receipt of such notice or shall at any time thereafter repeat such default (whether previously repeated or not), then the Employer may within ten days after such continuance or repetition by notice by registered post or recorded delivery forthwith determine the Employment of the Contractor under this Contract, provided that such notice shall be given unreasonably or vexatiously.

(2) In the event of the Contractor becoming bankrupt or making a composition or arrangement with his creditors or having a winding up order made or (except for purposes of reconstruction) a resolution for voluntary winding up passed or a provisional liquidator receiver or manager of his business or undertaking duly appointed, or possession taken, by or on behalf of the holders of any debentures secured by a floating charge, or any property comprised in or subject to the floating charge, the employment of the Contractor under this Contract shall be forthwith automatically determined but the said employment may be reinstated and continued if the Employer and the Contractor his trustee in bankruptcy liquidator provisional liquidator receiver or manager as the case may be shall so agree.

(3) In the event of the employment of the Contractor being determined as aforesaid and so long as it has been reinstated and continued, the following shall be the respective rights and duties of the Employer and Contractor:—

- (a) The Employer may employ and pay other persons to carry out and complete the Works and he or they may enter upon the Works and use all temporary buildings, plant, tools, equipment, goods and materials intended for, delivered to and placed on or adjacent to

the Works, and may purchase all materials and goods necessary for the carrying out and completion of the Works.

(b) The Contractor shall (except where the determination occurs by reason of the bankruptcy of the Contractor or of him having a winding up order made or (except for the purposes of reconstruction) a resolution for voluntary winding up passed), if so required by the Employer or Architect within fourteen days of the date of determination, assign to the Employer without payment the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Contract but on the terms that a supplier or sub-contractor shall be entitled to make any reasonable objection to any further assignment thereof by the Employer. In any case the Employer may pay any supplier or sub-contractor for any materials or goods delivered or works executed for the purposes of this Contract (whether before or after the date of determination) in so far as the price thereof has not already been paid by the Contractor. The Employer's rights under this paragraph are in addition to his rights to pay nominated sub-contractors as provided in clause 27 (c) of these Conditions and payments made under this paragraph may be deducted from any sum due or to become due to the Contractor.

(c) The Contractor shall as and when required in writing by the Architect so to do (but not before) remove from the Works any temporary buildings, plant, tools, equipment, goods and materials belonging to or hired by him. If within a reasonable time after any such requirement has been made the Contractor has not complied therewith then the Employer may (but without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor.

(d) The Contractor shall allow or pay to the Employer in the manner hereinafter appearing the amount of any direct loss and/or damage caused to the Employer by the determination. Until after completion of the Works under paragraph (a) of this sub-clause the Employer shall not be bound by any provision of this Contract to make any further payment to the Contractor, but upon such completion and the verification within a reasonable time of the accounts therefor the Architect shall certify the amount of expenses properly incurred by the Employer and the amount of any direct loss and/or damage caused to the Employer by the determination and, if such amounts when added to the monies paid to the Contractor before the date of determination exceed the total amount which would have been payable on due completion in accordance with this Contract, the difference shall be a debt payable to the Employer by the Contractor; and if the said amounts when added to the said monies be less than the said total amount, the difference shall be a debt payable by the Employer to the Contractor.

26 (1) Without prejudice to any other rights and remedies which the Contractor may possess, if

(a) The Employer does not pay to the Contractor the amount due on any certificate within 14 days from the presentation of that certificate and continues such default for seven days after receipt by registered post or recorded delivery of a notice from the Contractor stating that notice of determination under this Condition will be served if payment is not made within seven days from receipt thereof; or

(b) The Employer interferes with or obstructs the issue of any certificate due under this Contract; or

(c) The carrying out of the whole or substantially the whole of the uncompleted Works (other than the execution of work required under clause 15 of these Conditions) is suspended for a continuous period of the length named in the Appendix to these Conditions by reason of:

(i) by *force majeure*, or

(ii) loss or damage (unless caused by the negligence of the Contractor, his servants or agents or of any sub-contractor, his servants or agents) occasioned by any one or more of the contingencies referred to in clause 20(A) or clause 20(B) of these Conditions (if applicable), or

(iii) civil commotion, or

(iv) Architect's instructions issued under clauses 1 (2), 11 (1) or 21 (2) of these Conditions unless caused by reason of some negligence or default of the Contractor, or

(v) the Contractor not having received in due time necessary instructions, drawings, details or levels from the Architect for which he specifically applied in writing on a date which having regard to the Date of Completion stated in the appendix to these Conditions or to any extension of time then fixed under clause 23 of these Conditions

was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or

(vi) delay on the part of artists, tradesmen or other engaged by the Employer in executing work not forming part of this Contract, or

(vii) the opening up for inspection of any work covered up or of the testing of any of the work materials or goods in accordance with clause 6 (3) of these Conditions (including making good in consequence of such opening up or testing), unless the inspection or test showed that the work materials or goods were not in accordance with this Contract.

(d) The Employer becomes bankrupt or makes a composition or arrangement with his creditors or has a winding up order made or (except for the purposes of reconstruction) a resolution for voluntary winding up passed or a receiver or manager of his business or undertaking is duly appointed, or possession is taken by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the floating charge.

then the Contractor may thereupon by notice by registered post or recorded delivery to the Employer or Architect forthwith determine the employment of the Contractor under this Contract; provided that such notice shall not be given unreasonably or vexatiously.

(2) Upon such determination, then without prejudice to the accrued rights or remedies of either party or to any liability of the classes mentioned in clause 18 of these Conditions which may accrue either before the Contractor or any sub-contractors shall have removed his temporary buildings, plant, tools, equipment, goods or materials or by reason of his or their so removing the same, the respective rights and liabilities of the Contractor and the Employer shall be as follows, that is to say:—

(a) The Contractor shall with all reasonable dispatch and in such manner and with such precautions as will prevent injury, death or damage of the classes in respect of which before the date of determination he was liable to indemnify the Employer under clause 18 of these Conditions remove from the site all his temporary buildings, plant, tools equipment, goods and materials and shall give facilities for his sub-contractors to do the same, but subject always to the provisions of sub-paragraph (iv) of paragraph (b) of this sub-clause.

(b) After taking into account amounts previously paid under this Contract the Contractor shall be paid by the Employer:—

(i) The total value of work completed at the date of determination.

(ii) The total value of work begun and executed but not completed at the date of determination, the value being ascertained in accordance with clause 11 (4) of these Conditions as if such work were a variation required by the Architect.

(iii) Any sum ascertained in respect of direct loss and/or expense under clauses 11 (6), 24 and 32 (3) of these Conditions (whether ascertained before or after the date of determination).

(iv) The cost of materials or goods properly ordered for the Works for which the Contractor shall have paid or for which the Contractor is legally bound to pay, and on such payment by the Employer any materials or goods so paid for shall become the property of the Employer.

(v) The reasonable cost of removal under paragraph (a) of this sub-clause.

(vi) Any direct loss and/or damage caused to the Contractor by the determination.

Provided that in addition to all other remedies the Contractor upon such determination may take possession of and shall have a lien upon all unfixed goods and materials, which may have become the property of the Employer under clause 14 of these Conditions until payment of all monies due to the Contractor from the Employer.

27 The following provisions of this Condition shall apply where prime cost sums are included in the Specification or arise as a result of Architect's instructions given in regard to the expenditure of provisional sums in respect of persons to be nominated by the Architect to supply and fix materials or goods or to execute work.

Nominated
sub-contractors.

(a) Such sums shall be deemed to include 2½ per cent. cash discount and shall be expended in favour of such persons as the Architect shall instruct, and all specialists or others who are nominated by the Architect are hereby declared to be sub-contractors employed by the Contractor and are referred to in these Conditions as "nominated sub-contractors".

Provided that the Architect shall not nominate any person as a sub-contractor against whom the Contractor shall make reasonable objection, or (save where the Architect and Contractor shall otherwise agree) who will not enter into a sub-contract which provides (*inter alia*):—

- (i) That the nominated sub-contractor shall carry out and complete the sub-contract Works in every respect to the reasonable satisfaction of the Contractor and of the Architect, and in conformity with all the reasonable directions and requirements of the Contractor.
- (ii) That the nominated sub-contractor shall observe, perform and comply with all the provisions of this Contract on the part of the Contractor to be observed, performed and complied with (other than clause 20 [A] of these Conditions, if applicable) so far as they relate and apply to the sub-contract Works or to any portion of the same.
- (iii) That the nominated sub-contractor shall indemnify the Contractor against the same liabilities in respect of the sub-contract Works as those for which the Contractor is liable to indemnify the Employer under this Contract.
- (iv) That the nominated sub-contractor shall indemnify the Contractor against claims in respect of any negligence, omission or default of such sub-contractor, his servants or agents or any misuse by him or them of any scaffolding or other plant, and shall insure himself against any such claims and produce the policy or policies and receipts in respect of premiums paid as and when required by either the Architect or the Contractor.
- (v) That the sub-contract Works shall be completed within the period or (where they are to be completed in sections) periods therein specified, that the Contractor shall not without the written consent of the Architect grant any extension of time for the completion of the sub-contract Works or any section thereof, and that the Contractor shall inform the Architect of any representation made by the nominated sub-contractor as to the cause of any delay in the progress or completion of the sub-contract Works or of any section thereof.
- (vi) That if the nominated sub-contractor shall fail to complete the sub-contract Works or (where the sub-contract Works are to be completed in sections) any section thereof within the period therein specified or within any extended time granted by the Contractor with the written consent of the Architect, and the Architect certifies in writing to the Contractor that the same ought reasonably so to have been completed, the nominated sub-contractor shall pay or allow to the Contractor either a sum calculated at the rate therein agreed as liquidated and ascertained damages for the period during which the said Works or any section thereof, as the case may be, shall so remain or have remained incomplete or (where no such rate is therein agreed) a sum equivalent to any loss or damage suffered or incurred by the Contractor and caused by the failure of the nominated sub-contractor as aforesaid.
- (vii) That payment in respect of any work, materials or goods comprised in the sub-contract shall be made within 14 days after receipt by the Contractor of the Architect's certificate under clause 30 of these Conditions which states as due an amount calculated by including the total value of such work, materials or goods, and shall when due be subject to the retention by the Contractor of the sums mentioned in sub-paragraph (viii) of paragraph (a) of this Condition, and to a discount for cash of 2½ per cent. if made within the said period of 14 days.
- (viii) That the Contractor shall retain from the sum directed by the Architect as having been included in the calculation of the amount due in any certificate issued under clause 30 of these Conditions in respect of the total value of work, materials or goods executed or supplied by the nominated sub-contractor a percentage (which percentage shall be equal to the percentage currently being retained by the Employer under clause 30 of these Conditions) of such value; and that the Contractor's interest in any sums so retained (by whomsoever held) shall be fiduciary as trustee for the nominated sub-contractor (but without obligation to invest); and that the nominated sub-contractor's beneficial interest in such sums shall be subject only to the right of the Contractor to have recourse thereto from time to time for payment of any amount which he is entitled under the sub-contract to deduct from any sum due or to become due to the nominated sub-contractor; and that if and when such sums or any part thereof are released to the nominated sub-contractor they shall be paid in full less only a discount for cash of 2½ per cent. if paid within 14 days of the date fixed for their release in the sub-contract.

- (ix) That the Architect and his representatives shall have a right of access to the workshops and other places of the nominated sub-contractor as mentioned in clause 9 of these Conditions.
- (x) That the employment of the nominated sub-contractor under the sub-contract shall determine immediately upon the determination (for any reason) of the Contractor's employment under this Contract.
- (b) The Architect shall direct the Contractor as to the total value of the work, materials or goods executed or supplied by a nominated sub-contractor included in the calculation of the amount stated as due in any certificate issued under clause 30 of these Conditions and shall forthwith inform the nominated sub-contractor in writing of the amount of the said total value. The sum representing such total value shall be paid by the Contractor to the nominated sub-contractor within 14 days of receiving from the Architect the certificate less only (i) any retention money which the Contractor may be entitled to deduct under the terms of the sub-contract, (ii) any sum to which the Contractor may be entitled in respect of delay in the completion of the sub-contract Works or any section thereof, and (iii) a discount for cash of 2½ per cent.
- (c) Before issuing any certificate under clause 30 of these Conditions the Architect may request the Contractor to furnish to him reasonable proof that all amounts included in the calculation of the amount stated as due in previous certificates in respect of the total value of the work, materials or goods executed or supplied by any nominated sub-contractor have been duly discharged, and if the Contractor fails to comply with any such request the Architect shall issue a certificate to that effect and thereupon the Employer may himself pay such amounts to any nominated sub-contractor concerned and deduct the same from any sums due or to become due to the Contractor.
- (d) (i) The Contractor shall not grant to any nominated sub-contractor any extension of the period within which the sub-contract Works or (where the sub-contract Works are to be completed in sections) any section thereof is to be completed without the written consent of the Architect, provided always that the Contractor shall inform the Architect of any representations made by the nominated sub-contractor as to the cause of any delay in the progress of completion of the sub-contract Works or of any section thereof, and that the consent of the Architect shall not be unreasonably withheld.
- (ii) If any nominated sub-contractor fails to complete the sub-contract Works or (where the sub-contract Works are to be completed in sections) any section thereof within the period specified in the sub-contract or within any extended time granted by the Contractor with the written consent of the Architect, then if the same ought reasonably so to have been completed the Architect shall certify in writing accordingly; immediately upon issue the Architect shall send a duplicate of any such certificate to the nominated sub-contractor.
- (e) If the Architect desires to secure final payment to any nominated sub-contractor before final payment is due to the Contractor, and if such sub-contractor has satisfactorily indemnified the Contractor against any latent defects, then the Architect may in an Interim Certificate include an amount to cover the said final payment, and thereupon the Contractor shall pay to such nominated sub-contractor the amount so certified less only a discount for cash of 2½ per cent. Upon such final payment the Contractor shall, save for latent defects, be discharged from all liability for the work materials or goods executed or supplied by such sub-contractor under the sub-contract to which the payment relates.
- (f) Neither the existence nor the exercise of the foregoing powers nor anything else contained in these Conditions shall render the Employer in any way liable to any nominated sub-contractor.
- (g) (i) Where the Contractor in the ordinary course of his business directly carries out works for which prime cost sums are included in the Specification and where items of such works are set out in the Appendix to these Conditions and the Architect is prepared to receive tenders from the Contractor for such items, then the Contractor shall be permitted to tender for the same or any of them but without prejudice to the Employer's right to reject the lowest or any tender. If the Contractor's tender is accepted, he shall not sublet the work without the consent of the Architect.
- Provided that where a prime cost sum arises under Architect's instructions issued under clause 11 (3) of these Conditions it shall be deemed for the purposes of this paragraph to have been included in the Specification and the item of work to which

it relates shall likewise be deemed to have been set out in the Appendix to these Conditions.

- (ii) It shall be a condition of any tender accepted under this paragraph that clause 11 of these Conditions shall apply in respect of the items of work included in the tender as if for the reference therein to the Contract Drawings, the Specification and the Schedule of Rates there were references to the equivalent documents included in or referred to in the tender.

nominated
suppliers.

28 The following provisions of this Condition shall apply where prime cost sums are included in the Specification, or arise as a result of Architect's instructions given in regard to the expenditure of provisional sums, in respect of any materials or goods to be fixed by the Contractor.

(a) Such shall be deemed to include 5 per cent. cash discount and the term prime cost when included or arising as aforesaid, shall be understood to mean the net cost to be defrayed as a prime cost after deducting any trade or other discount (except the said discount of 5 per cent.), and shall include any tax or duty not otherwise recoverable under this contract by whomsoever payable which is payable under or by virtue of any Act of Parliament on the import, purchase, sale, appropriation, processing, alteration, adapting for sale, or use of the materials or goods to be supplied, and the cost of packing, carriage and delivery. Provided that, where in the opinion of the Architect the Contractor has incurred expense for special packing or special expense shall be allowed as part of the sums actually paid by the Contractor.

(b) Such sums shall be expended in favour of such persons as the Architect shall instruct, and all specialists, merchants, tradesmen or others who are nominated by the Architect to supply materials or goods are hereby declared to be suppliers to the Contractor and are referred to in these Conditions as 'nominated suppliers'. Provided that the Architect shall not (save where the Architect and Contractor shall otherwise agree) nominate as a supplier a person who will not enter into a contract of sale which provides (*inter alia*):—

(i) That the materials or goods to be supplied shall be to the reasonable satisfaction of the Architect.

(ii) That the nominated supplier shall make good by replacement or otherwise any defects in the materials or goods supplied which appear within such period as is therein mentioned and shall bear any expenses reasonably incurred by the Contractor as a direct consequence of such defects, provided that:—

(1) where the materials or goods have been used or fixed such defects are not such that examination by the Contractor ought to have revealed them before using or fixing;

(2) such defects are due solely to defective workmanship or materials in the goods supplied and shall not have been caused by improper storage by the Contractor or by misuse or by any act or neglect of either the Contractor the Architect or the Employer or by any person or persons for whom they may be responsible.

(iii) That delivery of the materials or goods supplied shall be commenced and completed at such times as the Contractor may reasonably direct.

(iv) That the nominated supplier shall allow the Contractor a discount for cash of 5 per cent. if the Contractor makes payment in full within 30 days of the end of the month during which delivery is made.

(v) That the nominated supplier shall not be obliged to make any delivery of materials or goods (except any which may have been paid for in full less only the discount for cash) after the determination (for any reason) of the Contractor's employment under this Contract.

(c) All payments by the Contractor for materials or goods supplied by a nominated supplier shall be in full and shall be paid within 30 days of the end of the month during which delivery is made less only a discount for cash of 5 per cent. if so paid.

(d) Where the said contract of sale between the Contractor and the nominated supplier in any way restricts, limits or excludes the liability of the nominated supplier to the Contractor in respect of materials or goods supplied or to be supplied, and the Architect has specifically approved in writing the said restrictions, limitations or exclusions, the liability of the Contractor to the Employer in respect of the said materials or goods shall be restricted, limited or excluded to the same extent. The Contractor shall not be obliged to enter into a contract with, nor expend prime cost sums in favour of, the nominated supplier until the Architect has specifically approved in writing the said restrictions, limitations or exclusions.

29 The Contractor shall permit the execution of work not forming part of this Contract by artists, tradesmen or others engaged by the Employer. Every such person shall for the purposes of

Artists and
tradesmen.

clause 18 of these Conditions be deemed to be a person for whom the Employer is responsible and not to be a sub-contractor.

30 (1) Interim valuations shall be made whenever the Architect considers them to be necessary for the purpose of ascertaining the amount to be stated as due in an Interim Certificate. The Architect shall from time to time as provided in this sub-clause issue Interim Certificates stating the amount due to the Contractor from the Employer, and the Contractor shall be entitled to payment therefor within 14 days from the presentation of that Certificate. Before the issue of the Certificate of Practical Completion, Interim Certificates shall be issued at the Period of Interim Certificates specified in the Appendix to these Conditions. After the issue of the Certificate of Practical Completion, Interim Certificates shall be issued as and when further amounts are due to the Contractor from the Employer provided always that the Architect shall not be required to issue an Interim Certificate within one calendar month of having issued a previous Interim Certificate.

Certificates
and payments.

(2) The amount stated as due in an Interim Certificate shall, subject to any agreement between the parties as to stage payments, be the total value of the work properly executed and of the materials and goods delivered to or adjacent to the Works for use thereon up to and including a date not more than seven days before the date of the said certificate less any amount which may be retained by the Employer (as provided in sub-clause (3) of this Condition) and less any instalments previously paid under this Condition. Provided that such certificate shall only include the value of the said materials and goods as and from such time as they are reasonably properly and not prematurely brought to or placed adjacent to the Works and then only if adequately protected against weather or other casualties.

(2A) The amount stated as due in an Interim Certificate may in the discretion of the Architect include the value of any materials or goods before delivery thereof to or adjacent to the Works provided that:—

- (a) Such materials or goods are intended for inclusion in the Works;
- (b) Nothing remains to be done to such materials or goods to complete the same up to the point of their incorporation in the Works;
- (c) Such materials or goods have been and are set apart at the premises where they have been manufactured or assembled or are stored, and have been clearly and visibly marked, individually or in sets, either by letters or figures or by reference to a pre-determined code, so as to identify:
 - (i) Where they are stored on premises of the Contractor, the Employer, and in any other case, the person to whose order they are held; and
 - (ii) Their destination as being the Works;
- (d) Where such materials or goods were ordered from a supplier by the Contractor or a sub-contractor, the contract for their supply is in writing and expressly provides that the property therein shall pass unconditionally to the Contractor or the sub-contractor (as the case may be) not later than the happening of the events set out in paragraphs (b) and (c) of this sub-clause;
- (e) Where such materials or goods were ordered from a supplier by the sub-contractor, the relevant sub-contract is in writing and expressly provides that on the property in such materials or goods passing to the sub-contractor the same shall immediately thereon pass to the Contractor;
- (f) Where such materials or goods were manufactured or assembled by a sub-contractor, the sub-contract is in writing and expressly provides that the property in such materials or goods shall pass unconditionally to the Contractor not later than the happening of the events set out in paragraphs (b) and (c) of this sub-clause;
- (g) The materials or goods are in accordance with this Contract;
- (h) The Contractor furnishes to the Architect reasonable proof that the property in such materials or goods is in him and that the appropriate conditions set out in paragraphs (a) to (g) of this sub-clause have been complied with;

The Contractor furnishes the Architect with reasonable proof that such materials or goods are insured against loss or damage for their full value under a policy of insurance protecting the interests of the Employer and the Contractor in respect of the contingencies referred to in clause 20 of these Conditions, during the period commencing with the transfer of property in such materials or goods to the Contractor until they are delivered to, or adjacent to, the Works.

(3) (a) In respect of any Interim Certificate issued before the issue of the Certificate of Practical Completion the Employer may, subject to paragraph (c) of this sub-clause, retain a per-

centage (in these Conditions called "the Retention Percentage") of the total value of the work, materials and goods referred to in sub-clauses (2) and (2A) of this Condition.* The Retention Percentage shall be 5 per cent, unless a lower rate shall be agreed between the parties and specified in the Appendix to these Conditions as the Retention Percentage.

- (b) If any Interim Certificate is issued after the issue of the Certificate of Practical Completion but before the issue of the Certificate for the residue of the amounts then so retained referred to in sub-clause (4) (c) of this Condition the Employer in respect of the said Interim Certificate may, subject to paragraph (c) of this sub-clause, retain a percentage (which percentage shall be equal to half the Retention Percentage) of the total value of the work, materials and goods referred to in sub-clauses (2) and (2A) of this Condition.
- (c) The amount which the Employer may retain by virtue of paragraphs (a) and/or (b) of this sub-clause shall be reduced by the amounts of any releases of retention made to the Contractor in pursuance of clause 16 (f) and/or clause 27 (e) of these Conditions.
- (4) The amounts retained by virtue of sub-clause (3) of this Condition shall be subject to the following rules:—
- (a) The Employer's interest in any amount so retained shall be fiduciary as trustee for the Contractor (but without obligation to invest) and the Contractor's beneficial interest therein shall be subject only to the right of the Employer to have recourse thereto from time to time for payment of any amount which he is entitled under the provisions of this Contract to deduct from any sum due or to become due to the Contractor.
- (b) On the issue of the Certificate of Practical Completion the Architect shall issue a certificate for one moiety of the total amounts then so retained and the Contractor shall, on presenting any such certificate to the Employer, be entitled to payment of the said moiety within 14 days from the presentation of that certificate.
- (c) On the expiration of the Defects Liability Period named in the Appendix to these Conditions, or on the issue of the Certificate of Completion of Making Good Defects, whichever is the later, the Architect shall issue a Certificate for the residue of the amounts then so retained and the Contractor shall, on presenting any such certificate to the Employer, be entitled to payment of the said residue within 14 days from the presentation of that certificate.
- (5) (a) The measurement and valuation of the Works shall be completed within the Period of Final Measurement and Valuation stated in the Appendix to these Conditions, and the Contractor shall be supplied with a copy of the priced Bills of Variation not later than the end of the said Period and before the issue of the Final Certificate under sub-clause (6) of this Condition.
- (b) Either before or within a reasonable time after Practical Completion of the Works the Contractor shall send to the Architect all documents necessary for the purposes of the computations required by these Conditions including all documents relating to the accounts of nominated sub-contractors and nominated suppliers.
- (c) In the settlement of accounts the amounts paid or payable under the appropriate contracts by the Contractor to nominated sub-contractors or nominated suppliers (including the discounts for cash mentioned in clauses 27 and 28 of these Conditions), the amounts paid or payable by virtue of clause 4 (2) of these Conditions in respect of fees or charges, the amounts paid or payable in respect of any insurances maintained in compliance with clause 19 (2) of these Conditions, the tender sum for such other sum as is appropriate in accordance with the terms of the tender) for any work for which a tender made under clause 27 (g) of these Conditions is accepted and the value of any work executed by the Contractor for which a provisional sum is included in the Specification shall be set against the relevant prime cost or provisional sum mentioned in the Specification or arising under Architect's instructions issued under clause 11 (3) of these Conditions as the case may be, and the balance, after allowing in all cases pro rata for the Contractor's profit at the rates shown in the Schedule of Rates, shall be added to or deducted from the Contract sum. Provided that no deduction shall be made in respect of any damages paid or allowed to the Contractor by any sub-contractor or supplier.
- (6) So soon as is practicable but before the expiration of 3 months from the end of the Defects Liability Period stated in the Appendix to these Conditions or from completion of making good defects under clause 15 of these Conditions or from receipt by the Architect of the documents referred to in paragraph (b) of sub-clause (5) of this Condition, whichever is the latest, the Architect shall issue the Final Certificate. The Final Certificate shall state:—

*Footnote.—Where the Employer at tender stage estimates the Contract Sum to be \$500,000 or over the Retention Percentage should not be more than three per cent.

(a) The sum of the amounts already paid to the Contractor under Interim Certificates and Certificates issued under sub-clauses (4) (b) and (4) (c) of this Condition, and

(b) The Contract Sum adjusted as necessary in accordance with the terms of these Conditions, and the difference (if any) between the two sums shall be expressed in the said certificate as a balance due to the Contractor from the Employer or to the Employer from the Contractor as the case may be. Subject to any deductions authorised by these Conditions, the said balance as from the fourteenth day after presentation of the Final Certificate by the Contractor to the Employer shall be a debt payable by the Employer to the Contractor or as the case may be as from the fourteenth day after issue of the Final Certificate shall be debt payable by the Contractor to the Employer.

(7) (a) Except as provided in paragraphs (b) and (c) of this sub-clause (and save in respect of fraud), the Final Certificate shall have effect in any proceedings arising out of or in connection with this Contract (whether by arbitration under clause 33 of these Conditions or otherwise) as

(i) conclusive evidence that where the quality of materials or the standards of workmanship are to be to the reasonable satisfaction of the Architect the same are to such satisfaction, and

(ii) conclusive evidence that any necessary effect has been given to all the terms of this Contract which require an adjustment to be made of the Contract Sum save where there has been any accidental inclusion or exclusion of any work, materials, goods or figure in any computation or any arithmetical error in any computation, in which event the Final Certificate shall have effect as conclusive evidence as to all other computations.

(b) If any arbitration or other proceedings have been commenced by either party before the Final Certificate has been issued the Final Certificate shall have effect as conclusive evidence as provided in paragraph (a) of this sub-clause after either

(i) such proceedings have been concluded, whereupon the Final Certificate shall be subject to the terms of any award or judgement in or settlement of such proceedings, or

(ii) a period of twelve months during which neither party has taken any further step in such proceedings, whereupon the Final Certificate shall be subject to any terms agreed in partial settlement,

whichever shall be the earlier.

(c) If any arbitration or other proceedings have been commenced by either party within 14 days after the Final Certificate has been issued, the Final Certificate shall have effect as conclusive evidence as provided in paragraph (a) of this sub-clause save only in respect of all matters to which these proceedings relate.

(8) Save as aforesaid no certificate of the Architect shall of itself be conclusive evidence that any works materials or goods to which it relates are in accordance with this Contract.

*31A The Contract Sum shall be deemed to have been calculated in the manner set out below and shall be subject to adjustment in the events specified hereunder:—

Fluctuations.

(a) (i) The prices (including the cost of workmen's compensation insurance and of third party insurance) contained in the Schedule of Rates are based upon the rates of wages and the other emoluments and expenses which will be payable by the Contractor to or in respect of workpeople engaged upon or in connection with the Works in accordance with the provisions of the Wages Regulation (Building and Civil and Electrical Engineering Trades) Order which will be applicable to the Works and which have been promulgated at the date of tender; or in the case of workpeople so engaged whose rates of wages and other emoluments and expenses order or by the terms of an agreement** between the Contractor and a registered

*Footnote.—See *footnote on Page 24

**Footnote.—The terms of any such agreement, or any subsequent alteration thereto, shall be those established by machinery of negotiation or arbitration to which the parties are an organisation of employers and a trade union representative respectively of substantial proportions of the employers and workers engaged in the trade or industry. If an organisation of employers is not itself a party to any such agreement, then its terms, or any subsequent alteration thereto, shall be those endorsed by such an organisation, or, in the absence of any such organisation, shall not be inconsistent with those observed by other employers whose general circumstances in the trade or industry in which the Contractor is engaged are similar.

and recognised trade union, in accordance with the provisions or terms of such other wages regulation order or agreement which will be applicable and which have been promulgated as aforesaid.

- (ii) If any of the said rates of wages or other emoluments and expenses are increased or decreased by reason of any alteration in the said provisions or terms promulgated after the date of tender, then the net amount of the increase or decrease in wages and other emoluments and expenses together with the net amount of any consequential increase or decrease in the cost of workmen's compensation insurance, of third party insurance and of any contribution, levy or tax payable by a person in his capacity as an employer, shall, as the case may be, be paid to or allowed by the Contractor.
- (b) (i) The prices contained in the Schedule of Rates are based upon the types and rates of contribution, levy and tax payable by a person in his capacity as an employer and which at the date of tender are payable by the Contractor. A type and a rate so payable are in the next sub-paragraph referred to as a 'tender type' and a 'tender rate'.
- (ii) If any of the tender rates other than a rate of levy payable by virtue of the Fiji National Training Act 1973, is increased or decreased, or if a tender ceases to be payable, or if a new type of contribution, levy or tax which is payable by a person in his capacity as an employer becomes payable after the date of tender, then in any such case the net amount of the difference between what the Contractor actually pays or will pay in respect of workpeople whilst they are engaged upon or in connection with the Works or because of his employment of such workpeople upon or in connection with the Works, and what he would have paid had the alteration, cessation or new type of contribution, levy or tax not become effective, shall, as the case may be, be paid to or allowed by the Contractor.
- (iii) The prices contained in the Schedule of Rates are based upon the types and rates of refund of contributions, levies and taxes payable by a person in his capacity as an employer and upon the types and rates of premium receivable by a person in his capacity as an employer being in each case types and rates which at the date of tender are receivable by the Contractor. Such a type and such a rate are in the next sub-paragraph referred to as a 'tender type' and a 'tender rate'.
- (iv) If any of the tender rates is increased or decreased or if a tender type ceases to be payable or if a new type of refund of any contribution levy or tax payable by a person in his capacity as an employer becomes receivable or if a new type of premium receivable by a person in his capacity as an employer becomes receivable after the date of tender, then in any such case the net amount of the difference between what the Contractor actually receives or will receive in respect of workpeople whilst they are engaged upon or in connection with the Works or because of his employment of such workpeople upon or in connection with the Works, and what he would have received had the alteration, cessation or new type of refund or premium not become effective, shall, as the case may be, be allowed by or paid to the Contractor.
- (v) The references in the two preceding sub-paragraphs to premiums shall be construed as meaning all payments howsoever they are described which are made under or by virtue of an Act of Parliament to a person in his capacity as an employer and which affect the cost to an employer of having persons in his employment.
- (vi) The references in sub-paragraphs (ii) to (iv) of this paragraph to contributions, levies and taxes shall be constructed as meaning all impositions payable by a person in his capacity as an employer howsoever they are described and whoever the recipient which are imposed under or by virtue of an Act of Parliament and which affect the cost to an employer of having persons in his employment.
- (c) (i) The prices contained in the Schedule of Rates are based upon the market prices of the materials and goods specified in the list attached thereto which were current at the date of tender. Such prices are hereinafter referred to as 'basic prices', and the prices stated by the Contractor on the said list shall be deemed to be the basic prices of the specified materials and goods.

**Footnote.—Parts A, C, D and E should be used where the parties have agreed to allow the labour and materials cost and tax fluctuations to which Part A refers. Otherwise Parts B, C, D and E should be used.*

- (ii) If after the date of tender the market price of any of the materials or goods specified as aforesaid increases or decreases, then the net amount of the difference between the basic price thereof and the market price payable by the Contractor and current when the materials or goods are bought shall, as the case may be, be paid to or allowed by the Contractor.
- (iii) The references in the two preceding sub-paragraphs to 'market prices' shall be construed as including any duty or tax by whomsoever payable which is payable under or by virtue of any Act of Parliament on the import, purchase, sale, appropriation, processing or use of the materials or goods specified as aforesaid.

*31B The Contract Sum shall be deemed to have been calculated in the manner set out below and shall be subject to adjustment in the events specified hereunder:—

- (a) (i) The prices contained in the Schedule of Rates are based upon the types and rates of contribution, levy and tax payable by a person in his capacity as an employer and which at the date of tender are payable by the Contractor. A type and a rate so payable are in the next sub-paragraph referred to as a 'tender type' and a 'tender rate'.
- (ii) If any of the tender rates under a rate of levy payable by virtue of the Fiji National Training Act 1973, is increased or decreased, or if a tender ceases to be payable or if a new type of contribution, levy or tax which is payable by a person in his capacity as an employer becomes payable after the date of tender, then in any such case the net amount of the difference between what the Contractor actually pays or will pay in respect of workpeople whilst they are engaged upon or in connection with the Works or because of his employment of such workpeople upon or in connection with the Works; and what he would have paid had the alteration, cessation or new type of contribution, levy or tax not become effective, shall, as the case may be, be paid to or allowed by the Contractor.
- (iii) The prices contained in the Schedule of Rates are based upon the types and rates of refund of contributions, levies and taxes payable by a person in his capacity as an employer and upon the types and rates of premium receivable by a person in his capacity as an employer being in each case types and rates which at the date of tender are receivable by the Contractor. Such a type and such a rate are in the next sub-paragraph referred to as a 'tender type' and a 'tender rate'.
- (iv) If any of the tender rates is increased or decreased or if a tender type ceases to be payable or if a new type of refund of any contribution levy or tax payable by a person in his capacity as an employer becomes receivable or if a new type of premium receivable by a person in his capacity as an employer becomes receivable after the date of tender, then in any such case the net amount of the difference between what the Contractor actually receives or will receive in respect of workpeople whilst they are engaged upon or in connection with the Works or because of his employment of such workpeople upon or in connection with the Works; and what he would have received had the alteration, cessation or new type of refund or premium not become effective, shall, as the case may be, be allowed by or paid to the Contractor.
- (v) The references in the two preceding sub-paragraphs to premiums shall be construed as meaning all payments howsoever they are described which are made under or by virtue of an Act of Parliament to a person in his capacity as an employer and which affect the cost to an employer of having persons in his employment.
- (vi) The references in sub-paragraphs (i) to (iv) of this paragraph to contributions, levies and taxes shall be construed as meaning all impositions payable by a person in his capacity as an employer howsoever they are described and whoever the recipient which are imposed under or by virtue of an Act of Parliament and which affect the cost to an employer of having persons in his employment.
- (b) (i) The prices contained in the Schedule of Rates are based upon the types and rates of duty if any and tax if any by whomsoever payable which at the date of tender are payable on the import, purchase, sale, appropriation, processing or use of the materials and goods specified in the list attached thereto under or by virtue of any Act of Parliament. A type and a rate so payable are in the next sub-paragraph referred to as a 'tender type' and a 'tender rate'.

*Footnote.—Parts A, C, D and E should be used where the parties have agreed to allow the labour and materials cost and tax fluctuations to which Part A refers. Otherwise Parts B, C, D and E should be used.

- (ii) If in relation to any materials or goods specified as aforesaid a tender rate is increased or decreased, or a tender type ceases to be payable or a new type of duty or tax becomes payable on the import, purchase, sale, appropriation, processing or use of those materials or goods, then in any such case the net amount of the difference between what the Contractor actually pays in respect of those materials or goods, and what he would have paid in respect of them had the alteration, cessation or imposition not occurred, shall, as the case may be, be paid to or allowed by the Contractor. In this sub-paragraph the expression 'a new type of duty or tax' includes an additional duty or tax and a duty or tax imposed in regard to specified materials or goods in respect of which no duty or tax whatever was previously payable.

31C (1) If the Contractor shall decide subject to clause 17 of these Conditions to sublet any portion of the Works he shall incorporate in the sub-contract provisions to the like effect as the provisions of clauses 31 A, 31 D and 31 E/clauses 31 B, 31 D and 31 E (as applicable) which are applicable for the purposes of this Contract.

(2) If the price payable under such a sub-contract as aforesaid is decreased below or increased above the price in such sub-contract by reason of the operation of the said incorporated provisions, then the net amount of such decrease or increase shall, as the case may be, be allowed by or paid to the Contractor under this Contract.

31D (1) The Contractor shall give a written notice to the Architect of the occurrence of any of the events referred to in such of the following provisions as are applicable for the purpose of this Contract:

- (a) Clause 31 A(a)(ii);
- (b) Clause 31 A(b)(ii);
- (c) Clause 31 A(b)(iv);
- (d) Clause 31 A(c)(ii);
- (e) Clause 31 B(a)(ii);
- (f) Clause 31 B(a)(iv);
- (g) Clause 31 B(b)(ii);
- (h) Clause 31 C(2).

(2) Any notice required to be given by the preceding sub-clause shall be given within a reasonable time after the occurrence of that to which the notice relates, and the giving of a written notice in that time shall be a condition precedent to any payment being made to the Contractor in respect of the event in question.

(3) The Quantity Surveyor and the Contractor may agree what shall be deemed for all the purposes of this Contract to be the net amount payable to or allowable by the Contractor in respect of the occurrence of any event such as is referred to in any of the provisions listed in sub-clause (1) of this Condition.

(4) Any amount which from time to time becomes payable to or allowable by the Contractor by virtue of clause 31 A or clause 31 B or clause 31 C of these Conditions shall, as the case may be, be added to or subtracted from:

(a) The Contract Sum; and

(b) Any amounts payable to the Contractor and which are calculated in accordance with either sub-paragraph (i) or sub-paragraph (ii) of paragraph (b) of sub-clause 26 of these Conditions; and

(c) The amount which would otherwise be stated as due in the next Interim Certificate.

Provided:

(i) No addition to or subtraction from the amount which would otherwise be stated as due in an Interim Certificate shall be made by virtue of this sub-clause unless on or before the date as at which the total value of work, materials and goods is ascertained for the purposes of that Certificate the Contractor shall have actually paid or received the sum which is payable by or to him in consequence of the event in respect of which the payment or allowance arises.

(ii) No addition to or subtraction from the Contract Sum made by virtue of this sub-clause shall alter in any way the amount of profit of the Contractor included in that Sum.

(5) Clause 31 A, clause 31 B and clause 31 C shall not apply in respect of:

(a) Work for which the contractor is allowed daywork rates under clause 11(4)(c) of these Conditions.

- (b) Work executed or materials or goods supplied by any nominated sub-contractor or nominated supplier (fluctuations in relation to nominated sub-contractors and nominated suppliers shall be dealt with under any provision in relation thereto which may be included in the appropriate sub-contract of sale), or
- (c) Work executed by the Contractor for which a tender made under Clause 27(g) of these Conditions has been accepted.

(6) In Clause 31 A and clause 31 B of these Conditions:

- (a) The expression 'the date of tender' means the date 10 days before the date fixed for the receipt of tenders by the Employer; and
- (b) The expressions 'materials' and 'goods' include timber used in formwork but do not include other consumable stores, plant and machinery.
- (c) The expression 'workpeople' means persons whose rates of wages and other emoluments and expenses are governed by the provisions of the Wages Regulation (Building and Civil and Electrical Engineering Trades) Order, or by the provisions of some other wages regulation order for trades associated with the building industry, or by the terms of an agreement between the Contractor and a registered and recognised trade union.

31E There shall be added to the amount paid to or allowed by the Contractor under:

- (a) Clause 31 A(a)(ii);
- (b) Clause 31 A(b)(ii);
- (c) Clause 31 A(b)(iv);
- (d) Clause 31 A(c)(iii);
- (e) Clause 31 B(a)(ii);
- (f) Clause 31 B(a)(iv);
- (g) Clause 31 B(b)(iii).

the percentage stated in the Appendix to these Conditions.

32 (1) All fossils, antiquities and other objects of interest or value which may be found on the site or in excavating the same during the Works shall become the property of the Employer, and upon discovery of such an object the Contractor shall forthwith:

Antiquities.

- (a) use his best endeavours not to disturb the object and shall cease work if and insofar as the continuance of work would endanger the object or prevent or impede its excavation or its removal;
- (b) take all steps which may be necessary to preserve the object in the exact position and condition in which it was found; and
- (c) inform the Architect or the Clerk of Works of the discovery and precise location of the object.

(2) The Architect shall issue instructions in regard to what is to be done concerning an object reported by the Contractor under the preceding sub-clause, and (without prejudice to the generality of this power) such instructions may require the Contractor to permit the examination, excavation or removal of the object by a third party. Any such third party shall for the purposes of clause 13 of these Conditions be deemed to be a person for whom the Employer is responsible and not to be a sub-contractor.

(3) If in the opinion of the Architect compliance with the provisions of sub-clause (1) of this Condition or with an instruction issued under sub-clause (2) of this Condition has involved the Contractor in direct loss and/or expense for which he would not be reimbursed by a payment made under any other provision in this Contract then the Architect shall either himself ascertain or shall instruct the Quantity Surveyor to ascertain the amount of such loss and/or expense. Any amount from time to time so ascertained shall be added to the Contract Sum, and if an Interim Certificate is issued after the date of ascertainment any such amount shall be added to the amount which would otherwise be stated as due in such a Certificate.

33 (1) Provided always that in case any dispute or difference shall arise between the Employer or the Architect on his behalf and the Contractor, either during the progress or after the completion or abandonment of the Works, as to the construction of this Contract or as to any matter or thing of whatsoever nature arising thereunder or in connection therewith (including any matter or thing left by this Contract to the discretion of the Architect or the withholding by the Architect of any certificate to which the Contractor may claim to be entitled or the measurement and valuation mentioned in clause 30(5)(a) of these Conditions or the rights and liabilities of the parties under clauses 25 or 26 of these Conditions), then such dispute or difference shall be and is hereby referred to the arbitration and final decision of a person to be agreed between

Arbitration.

the parties, or, failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an Arbitrator, a person to be appointed on the request of either party by the President or a Vice-President for the time being of the Fiji Association of Architects.

(2) Such reference, except on article 3 or article 4 of the Articles of Agreement, or on the questions whether or not the issue of an instruction is empowered by these Conditions, whether or not a certificate has been improperly withheld or is not in accordance with these Conditions, shall not be opened until after Practical Completion or alleged Practical Completion of the Works or termination or alleged termination of the Contractor's employment under this Contract, or abandonment of the Works, unless with the written consent of the Employer or the Architect on his behalf and the Contractor.

(3) Subject to the provisions of clauses 2 (2), 30 (7) and 31 D (3) of these Conditions, the Arbitrator shall, without prejudice to the generality of his powers, have power to direct such measurements and/or valuations as may in his opinion be desirable in order to determine the rights of the parties and to ascertain and award any sum which ought to have been the subject of or included in any certificate and to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.

(4) The award of such Arbitrator shall be final and binding on the parties.

(5) *Whatever the nationality, residence or domicile of the Employer, the Contractor, any sub-contractor or supplier or the Arbitrator, and wherever the Works, or any part thereof, are situated, the law of Fiji shall be the proper law of this Contract and in particular (but not so as Chapter 30) shall apply to any arbitration under this Contract wherever the same, or any part of it, shall be conducted.

**Footnote.—Where the parties do not wish the proper law of the contract to be the law of Fiji and/or do not wish the provisions of the Arbitration Ordinance (Chapter 30) to apply to any arbitration under the contract held under the procedural law of another country appropriate amendments to this sub-clause should be made.*

Appendix

	Clause
Defects Liability Period [if none other stated is 6 months from the day named in the Certificate of Practical Completion of the Works].	15, 16 and 30.....
Insurance cover for any one occurrence or series of occurrences arising out of one event.	19 (1) (a) \$.....
Percentage to cover Professional fees.	20 [A].....
Date for Possession.	21.....
Date for Completion.	21.....
Liquidated and Ascertained Damages	22 at the rate of \$ per.....
*Period of delay:	26.....
(ii) by reason of loss or damage caused by any one of the contingencies referred to in clause 20[A] or clause 20[B] (if applicable).
(ii) for any other reason.
Prime cost sums for which the Contractor desires to tender.	27 (g).....
Period of Interim Certificates [if none stated is one month].	30 (1).....
Retention Percentage (if less than five per cent.) * *	30 (3).....
Period of Final Measurement and Valuation [if none stated is 6 months from the day named in the Certificate of Practical Completion of the Works].	30 (5).....
Percentage addition.	31E.....

**Footnote.—It is suggested that the periods should be (i) three months and (ii) one month. It is essential that periods be inserted since otherwise no period of delay would be prescribed.*

***Footnote.—The Percentage will be five per cent unless a lower rate is specified here.*

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