



**RFX NO. 100000642**

**Tender for Kotulo Transformer Line  
Extension/Upgrade (Retendered).**

**All tenderers are advised to read carefully this tender document in its entirety before  
making any bid**

**June, 2021**

**REREC Standard Tender Document for Electromechanical Works**

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## INTRODUCTION

- 1.1 This standard tender document for procurement of works has been prepared for use by procuring entities in Kenya in the procurement of works (i.e. Electrical and Mechanical Works – Including Erection on Site).
- 1.2 The following guidelines should be observed when using the document:
- (a) Specific details should be furnished in the tender notice and in the special conditions of contract (where applicable). The tender document issued to tenderers should not have blank spaces or options.
  - (b) The instructions to tenderers and the General Conditions of Contract should remain unchanged. Any necessary amendments to these parts should be made through Appendix to instructions to tenderers and special conditions of contract respectively.
- 1.3
- (a) Information contained in the invitation to tender shall conform to the data and information in the tender documents to enable prospective tenderers to decide whether or not to participate in the tender and shall indicate any important tender requirements.
  - (b) The invitation to tender shall be as an advertisement in accordance with the regulations or a letter of invitation addressed to tenderers.
- 1.4 This document is based on PART 1 of the third Edition of the International Federation of Consulting Engineers (Federation Internationale des Ingenieurs Con Seils – FIDIC) Conditions of Contract for Electrical and Mechanical Works, 1987 (reprinted May 1988 with Editorial Amendments).
- 1.5 The cover of the tender document should be modified to include:
- i. Tender number.
  - ii. Tender name.
  - iii. Name of procuring entity.

## SECTION I: INVITATION FOR TENDERS

1. The Rural Electrification & Renewable Energy Corporation invites bids from Interested firms to tender for RFX No. **1000000642**; Tender for Kotulo Transformer Line Extension/Upgrade (Retendered).
2. Tender documents detailing the requirements may be viewed at REREC E-Procurement Web Portal and the website found on ([www.rerec.co.ke](http://www.rerec.co.ke)) beginning on **30<sup>th</sup> June, 2021**.
3. Bidders who are interested in this tender **MUST** ensure that they are registered in REREC SAP SRM system and have set up their page. Please ensure compliance to the following
  - a) Each company must have two user accounts; **Admin Account** and **Employee Account**. Ensure that the following roles are NOT ASSIGNED to the employee; Employee Administrator and Supplier Master Data manager
  - b) Ensure that the admin account and employee account does not share same email address
  - c) Ensure that the Employee user name is between 4 and 12 characters.
  - d) It is a Mandatory requirement that all Bid Documents/Responses shall be uploaded to the COLLABORATION ROOM in the link with “RFX Response Number: Company Name”. Bidders shall not attach their documents at any other Tab of the Portal. Attachments placed elsewhere in the portal shall be declared non-responsive and will not be evaluated.
  - e) Prices **MUST** be entered under item term of the RFX. The prices entered here shall be similar to the prices in the price/BoQ Schedule and shall form part of the evaluation criteria.
  - f) For the purpose of this tender bidding, the employee account shall be used to submit your RFX responses.
  - g) Interested bidders are advised to visit the Corporation’s website, homepage, Information Center, SAP SRM Document, SAP SRM Supplier User Guide for registration and creation of their portal and Supplier Bidding Quick Reference Guide for submitting their responses.
4. Prospective bidders requiring any clarification of the tender document may notify the Supply Chain Manager in writing via e-mail [procurement@rea.co.ke](mailto:procurement@rea.co.ke) at least 7 days before tender closing.
5. Completed Tenders are to be saved as PDF documents marked with RFX description to be submitted through the REREC E-Procurement Web Portal found on the REREC website ([www.rea.co.ke](http://www.rea.co.ke)) so as to be received on or before **30<sup>th</sup> July, 2021 at 10.00am**
6. Tenders will be opened electronically after closing in REREC Procurement Office at Kawi House and the results sent via mail to all bidders who will have submitted their responses.

## RURAL ELECTRIFICATION & RENEWABLE ENERGY CORPORATION

## SECTION II: INSTRUCTIONS TO TENDERERS

Note: The tenderer must comply with the following conditions and instructions and failure to do so is liable to result in rejection of the tender.

### GENERAL

- **Definitions**

- (a) “**Tenderer**” means any person or persons partnership firm or company submitting a sum or sums in the Bills of Quantities in accordance with the Instructions to Tenderers, Conditions of Contract Parts I and II, Specifications, Drawings and Bills of Quantities for the work contemplated, acting directly or through a legally appointed representative.
- (b) “**Approved tenderer**” means the tenderer who is approved by the Employer.
- (c) Any noun or adjective derived from the word “**tender**” shall be read and construed to mean the corresponding form of the noun or adjective “**bid**”. Any conjugation of the verb “tender” shall be read and construed to mean the corresponding form of the verb “bid.”
- (d) “**Employer**” means Rural Electrification and Renewable Energy Corporation

- **Eligibility and Qualification Requirements**

- 2.1 This invitation to tender is open to all tenderers who are eligible as stated in the appendix.
- 2.2 The procuring entity’s employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
- 2.3 To be qualified for award of Contract, the tenderer shall provide evidence satisfactory to the Employer of their eligibility under Sub clause 2.1 above and of their capability and adequacy of resources to effectively carry out the subject Contract. To this end, the tenderer shall be required to meet the following conditions:
  - (a) Details of experience and past performance of the tenderer on the works of a similar nature within the past two years and details of current work on hand and other contractual commitments.
  - (b) The qualifications and experience of key personnel proposed for administration and execution of the contract, both on and off site.
  - (c) Major items of construction plant and equipment proposed for use in carrying out the Contract. Only reliable plant in good working order and suitable for the work required of it shall be shown on this schedule. The tenderer will also indicate on this schedule when each item will be available on the Works. Included also should be a schedule of plant, equipment and material to be imported for the purpose of the Contract, giving details of make, type, origin.
  - (d) Details of subcontractors to whom it is proposed to sublet any portion of the Contract and for whom authority will be requested for such subletting in accordance with clause 4 of the Conditions of Contract.
  - (e) A draft Program of Works in the form of a bar chart and Schedule of Payment which shall form part of the Contract if the tender is accepted. Any change in the Program or Schedule shall be subjected to the approval of the Engineer.

- (f) Details of any current litigation or arbitration proceedings in which the Tenderer is involved as one of the parties.
- (g) Manufacturers Authorization. That, in the case of a Tenderer offering to supply goods under the contract which the Tenderer did not manufacture or otherwise produce, the Tenderer has been duly authorized by the goods' manufacturer or producer to supply the goods. The authorization shall strictly be in the form and content as prescribed in the Manufacturer's Authorization Form in the Tender Document.
- (h) Warranty. Where required in the Tender, all Tenderers must also provide a Warranty that warrants that the goods to be supplied under the contract are new, unused, of the most recent or current specification and incorporate all recent improvements in design and materials unless provided otherwise in the Tender. The Warranty shall also warrant that the goods in the Tenderer's bid have no defect arising from manufacture, materials or workmanship or from any act or omission of the Tenderer that may develop under normal use of the goods under the conditions obtaining in Kenya.
- (i) That the Tenderer has the technical capability necessary to perform the contract.
- (j) Legal capacity to enter into a contract for procurement
- (k) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- (l) Shall not be debarred from participating in public procurement.

## **2.4 Joint Ventures**

Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements:

- (a) The tender, and in case of a successful tender, the Form of Agreement, shall be signed so as to be legally binding on all partners.
- (b) One of the partners shall be nominated as being in charge; and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners.
- (c) The partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture and the entire execution of the Contract including payment shall be done exclusively with the partner in charge.
- (d) All partners of the joint venture shall be liable jointly and severally for the execution of the Contract in accordance with the Contract terms, and a relevant statement to this effect shall be included in the authorization mentioned under (b) above as well as in the Form of Tender and the Form of Agreement (in case of a successful tender).
- (e) A copy of the agreement entered into by the joint venture partners shall be submitted with the tender.

## **2.5 Goods Eligibility and Conformity to Tender Documents**

- 2.5.1 Tenderer shall furnish, as part of its tender, documents establishing the eligibility and conformity to the Tender Document of all goods that the Tenderer proposes to supply under the contract.

2.5.2 The documentary evidence of the eligibility of the goods shall consist of a statement in the Price Schedule of the country of origin of the goods and services offered which shall be confirmed by a certificate of origin issued at the time of shipment.

- **Cost of Tendering**

3.1 The tenderer shall bear all costs associated with the preparation and submission of his tender and the Employer will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

- **Site Visit**

4.1 The tenderer is advised to visit and examine the Site and its surroundings and obtain for himself on his own responsibility, all information that may be necessary for preparing the tender and entering into a contract. The costs of visiting the Site shall be the tenderer's own responsibility.

4.2 The Employer may organize a for site. A representative of the Employer will be available to meet the intending tenderers at the Site on the indicated date. The contractor representative attending the pre-tender site visit should have an introduction letter on the bidding company letter head and a national ID and should have a Technical background.

4.3 Tenderers must provide their own transport. The representative will not be available at any other time for site inspection visits.

4.4 The tenderer and any of his personnel or agents will be granted permission by the Employer to enter upon premises and lands for the purpose of such inspection, but only upon the express condition that the tenderer, his personnel or agents, will release and indemnify the Employer from and against all liability in respect of, and will be responsible for personal injury (whether fatal or otherwise), loss of or damage to property and any other loss, damage, costs and expenses however caused, which but for the exercise of such permission, would not have arisen.

4.5 Each tenderer shall complete the Certificate of Tenderer's Visit to the Site, only available during the site visit described in (b).

4.6 Site visit form shall be submitted together with the bid documents.

**This is not applicable for this tender, however a bidder may choose to visit the site on their own**

### **TENDER DOCUMENTS**

- **Tender Documents**

5.1 The Tender documents comprise the documents listed here below and should be read together with any Addenda issued in accordance with Clause 7 of these instructions to tenderers.

- a. Form of Invitation for Tenders
- b. Instructions to Tenderers
- c. Form of Tender
- d. Appendix to Form of Tender
- e. Form of Tender Surety
- f. Statement of Foreign Currency Requirements
- g. Form of Performance Security
- h. Form of Agreement
- i. Form of Advance payment Bank Guarantee
- j. Schedules of Supplementary Information

- k. General Conditions of Contract – Part I
- l. Conditions of Particular Application – Part II
- m. Specifications
- n. Bills of Quantities
- o. Drawings
- p. Declaration Form

5.2 The tenderer is expected to examine carefully all instructions, conditions, forms, terms, specifications and drawings in the tender documents. Failure to comply with the requirements for tender submission will be at the tenderer's own risk. Pursuant to clause 22 of Instructions to Tenderers, tenders which are not substantially responsive to the requirements of the tender documents will be rejected.

5.3 All recipients of the documents for the proposed Contract for the purpose of submitting a tender (whether they submit a tender or not) shall treat the details of the documents as "private and confidential".

- **Clarification of Tenders**

6.1 A tenderer making inquiries relating to the tender documents may notify the Employer in writing or by telex, cable or facsimile at the Employer's mailing address indicated in the Invitation to Tender. The Employer will respond in writing to any request for clarification, which he receives earlier than 7 days prior to the deadline for the submission of tenders. Written copies of the Employer's response (including the query but without identifying the source of the inquiry) will be sent to all prospective tenderers who have purchased the tender documents.

6.2 Clarification of tenders shall be requested by the tenderer to be received by the procuring entity not later than 7 days prior to the deadline for submission of tenders.

6.3 The procuring entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

- **Amendment of Tender Documents**

7.1 At any time prior to the deadline for submission of tenders the Employer may, for any reason, whether at his own initiative or in response to a clarification requested by a prospective tenderer, modify the tender documents by issuing Addenda.

7.2 Any Addendum will be notified in writing or by cable, telex or facsimile to all prospective tenderers who have purchased the tender documents and will be binding upon them.

7.3 In order to allow prospective tenderers reasonable time in which to take the Addendum into account in preparing their tenders, the Employer may, at his discretion, extend the deadline for the submission of tenders.

## **PREPARATION OF TENDERS**

- **Language of Tender**

8.1 The tender and all correspondence and documents relating to the tender exchanged between the tenderer and the Employer shall be written in the English language. Supporting documents and printed literature furnished by the tenderer with the tender may be in another language provided



they are accompanied by an appropriate translation of pertinent passages in the above stated language. For the purpose of interpretation of the tender, the English language shall prevail.

- **Documents Comprising the Tender**

- 9.1 The tender to be prepared by the tenderer shall comprise:
  - a) The form of tender and appendix thereto.
  - b) A tender security
  - c) The priced Bill of Quantity and Schedule for each of the Lots quoted for.
  - d) The information on eligibility and qualification.
  - e) Tenderers are encouraged to submit only one Volume of the Tender even if they quote for more than One Lot.
  - f) Any other materials required to be completed and submitted in accordance with the instructions to tenderers.
- 9.2 The Forms, Bills of Quantities and Schedules provided in the tender documents shall be used without exception (subject to extensions of the schedules in the same format and to the provisions of clause 13.2 regarding the alternative forms of Tender Surety).

- **Tender Prices**

- 10.1 All the insertions made by the tenderer shall be made in INK and the tenderer shall clearly form the figures. The relevant space in the Form of Tender and Bills of Quantities shall be completed accordingly without interlineations or erasures except those necessary to correct errors made by the tenderer in which case the erasures and interlineations shall be initialed by the person or persons signing the tender.
- 10.2 A price or rate shall be inserted by the tenderer for every item in the Bills of Quantities whether the quantities are stated or not items against which no rate or price is entered by the tenderer will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bills of Quantities.
- 10.3 The prices and unit rates in the Bills of Quantities are to be the full [all-inclusive] value of the work described under the items, including all costs and expenses which may be necessary and all general risks, liabilities and obligations set forth or implied in the documents on which the tender is based. All duties and taxes and other levies payable by the Contractor under the Contract or for any other cause prior to the deadline for the submission of tenders, shall be included in the rates and prices and the total tender prices submitted by the Tenderer.
- 10.4 Each price or unit rate inserted in the Bills of Quantities should be a realistic estimate for completing the activity or activities described under that particular item and the tenderer is advised against inserting a price or rate against any item contrary to this instruction.
- 10.5 Every rate entered in the Bills of Quantities, whether or not such rate be associated with a quantity, shall form part of the Contract. The Employer shall have the right to call for any item of work contained in the Bills of Quantities, and such items of work to be paid for at the rate entered by the tenderer and it is the intention of the Employer to take full advantage of unbalanced low rates.
- 10.6 Unless otherwise specified the tenderer must enter the amounts representing 10% of the sub-total of the summary of the Bills of Quantities for Contingencies and Variation of Prices [V.O.P.] payments in the summary sheet and add them to the sub-total to arrive at the tender amount.

10.7 The tenderer shall furnish with his tender written confirmation from his suppliers or manufacturers of unit rates for the supply of items listed in the Conditions of Contract clause 47 where appropriate.

- **Currencies of Tender and Payment**

11.1 Tenders shall be priced in Kenya Shillings or any other convertible currency.

11.2 Tenderers are required to indicate in the Statement of Foreign Currency Requirements, which forms part of the tender, the foreign currency required by them. Such currency should generally be the currency of the country of the tenderer's main office. However, if a substantial portion of the tenderer's expenditure under the Contract is expected to be in countries other than his country of origin, then he may state a corresponding portion of the contract price in the currency of those other countries. However, the foreign currency element is to be limited to two (2) different currencies and a maximum of 30% (thirty percent) of the Contract Price.

11.3 The rate or rates of exchange used for pricing the tender shall be selling rate or rates of the Central Bank of Kenya ruling on the date of closing of tenders.

11.4 Tenderers must enclose with their tenders, a brief justification of the foreign currency requirements stated in their tenders.

**Tender Validity**

12.1 The tender shall remain valid and open for acceptance for a period of one hundred and twenty (120) days from the specified date of tender opening or from the extended date of tender opening (in accordance with clause 7.3 here above) whichever is the later.

12.2 In exceptional circumstances prior to expiry of the original tender validity period, the Employer may request the tenderer for a specified extension of the period of validity. The request and the responses thereto shall be made in writing or by cable, telex or facsimile. A tenderer may refuse the request without forfeiting his Tender Surety. A tenderer agreeing to the request will not be required nor permitted to modify his tender, but will be required to extend the validity of his Tender Surety correspondingly.

- **Tender Security**

13.1 The tenderer shall furnish as part of his tender, a Tender Security in the amount and form stated in the Appendix to Instructions to Tenderers.

13.2 The tender security shall be 2 percent (2%) of the tender price.

13.3 The tender security shall be valid for at least one hundred and fifty (150) days after tender closing date.

13.4 The format of the Surety shall be in accordance with the sample form of Tender Surety included in these tender documents; other formats may be permitted subject to the prior approval of the Employer. The Tender Surety shall be valid for thirty (30) days beyond the tender validity period.

13.5 Any tender not accompanied by an acceptable Tender Surety will be rejected by the Employer as non-responsive.

13.6 The Tender Sureties of unsuccessful tenderers will be returned as promptly as possible, but not later than fourteen (14) days after concluding the Contract execution and after a Performance Security has been furnished by the successful tenderer. The Tender Surety of the successful

tenderer will be returned upon the tenderer executing the Contract and furnishing the required Performance Security.

13.7 The Tender Surety may be forfeited:

- (a) if a tenderer withdraws his tender during the period of tender validity: or
- (b) in the case of a successful tenderer, if he fails
  - (i) to sign the Agreement, or
  - (ii) to furnish the necessary Performance Security
- (c) If a tenderer does not accept the correction of his tender price pursuant to clause 23.

- **No Alternative Offers**

14.1 The tenderer shall submit an offer which complies fully with the requirements of the tender documents unless otherwise provided for in the appendix.

14.2 A tender/firm may submit a tender on its own or as a joint venture or both. Where a tender submits a tender by himself and at the same time partners with other tenderers as a Joint Venture Partner, he shall not be the Main Partner in the joint venture. No Tenderer shall participate or cause his documents to be used in more than one JV.

14.3 The tenderer shall not attach any conditions of his own to his tender. The tender price must be based on the tender documents. The tenderer is not required to present alternative construction options and he shall use without exception, the Bills of Quantities as provided, with the amendments as notified in tender notices, if any, for the calculation of his tender price.

14.4 Any tenderer who fails to comply with this clause will be disqualified.

- **Pre-Tender Meeting**

15.1 If a pre tender meeting is convened the tenderer's designated representative is invited to attend a pre-tender meeting, which if convened, will take place at the venue and time stated in the Invitation to Tender. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

15.2 The tenderer is requested as far as possible to submit any questions in writing or by cable, to reach the Employer not later than seven days before the meeting. It may not be practicable at the meeting to answer questions received late, but questions and responses will be transmitted in accordance with the following:

- (a) Minutes of the meeting, including the text of the questions raised and the responses given together with any responses prepared after the meeting will be transmitted without delay to all purchasers of the tender documents. Any modification of the tender documents listed in Clause 9 which may become necessary as a result of the pre-tender meeting shall be made by the Employer exclusively through the issue of a tender notice pursuant to Clause 7 and not through the minutes of the pre-tender meeting.
- (b) Non-attendance at the pre-tender meeting will not be cause for disqualification of a bidder.

**This is not applicable for this tender**

- **Format and Signing of Tenders**

15.1 The Bidder shall prepare one original of the documents comprising the Bid as described in ITT

- 15.2 Bidders shall mark as “CONFIDENTIAL” information in their Bids which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.
- 15.3 The bid documents shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation notarized by a Commissioner of Oath which shall be attached to the Bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Bid where entries or amendments have been made shall be signed or initialed by the person signing the Bid.
- 15.4. In case the Bidder is a JV, the Bid shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.
- 15.5. Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.
- 15.6. The signed bid documents shall be scanned and uploaded to the collaboration folder in the response on **Rural Electrification and Renewable Energy Corporation’s e-Procurement System**.
- 15.7. The Original bid security shall be submitted to the Authority on or before the date of tender opening specified in the ITT.

### **SUBMISSION OF TENDERS**

- **Creation and submission of bids**

17.1. The Bidder shall process and submit its Bid via the Corporation’s e-Procurement system as follows:

- (a) Login to REREC portal via url <https://suppliers.rea.co.ke:44300/irj/portal>  
**N/B:** It is assumed that you have already completed the registration process and that your registration has been approved by REREC and you have created an employee user account to transact with REREC via url  
[https://suppliers.rea.co.ke:44200/supportal\(bD11biZjPTUwMCZkPW1pbg==\)/bspwdapplication.do#VIEW\\_ANCHOR-ROS\\_TOP](https://suppliers.rea.co.ke:44200/supportal(bD11biZjPTUwMCZkPW1pbg==)/bspwdapplication.do#VIEW_ANCHOR-ROS_TOP)

**For the purpose of bidding, each firm must ensure the following**

- Each company must have two user accounts; **Admin Account and Employee Account**. Ensure that the following roles are NOT ASSIGNED to the employee; Employee Administrator and Supplier Master Data manager.
  - Ensure that the admin account and employee account does not share same email address
  - Ensure that the Employee user name is between 4 and 12 characters.
  - For the purpose of this tender bidding, **the employee account** shall be used to submit your RFX responses.
- (b) Choose RFX and Auction link in the navigation pane
  - (c) Click on the RFX number to open it

- (d) Click Register and then Click Participate
- (e) Click Create response; You will get a unique number for your response for the RFX
- (f) Navigate to the Notes and Attachments tab and click on Collaboration link at the bottom of the screen (the link will be in the format “**RFX Response No: Company Name**”. If under your notes and attachment no link is formed in the collaboration room, you are advised to delete the response and create a new one until the link is formed, in this link all the documents of the tender shall be uploaded.

***NB: All supplier bid documents/Responses shall be uploaded to the COLLABORATION ROOM in the link with “RFX Response Number: Company Name” .Bidders shall not attach their documents at any other Tab of the Portal. Attachments placed elsewhere in the portal shall be declared non-responsive and the attachments shall not be evaluated.***

You are to login to the collaboration link and upload all the required documents

- (g) Enter bid price in the item tab and fill in all required information for the response. This price shall be read out price during the opening.
- (h) **No value shall be entered under the RFX information “Target Value for RFX”**
- (i) Check for errors by clicking the Check button
- (j) Click on Save to review later or Submit to send the response to REREC

- 17.2 The tender shall be typed or written in indelible ink. They shall be signed by the Tenderer or a person or persons duly authorized to bind the Tenderer to the contract.
- 17.3 The authorization shall be indicated by a written Power of Attorney granted by the Tenderer to the authorized person before any of the following persons:-
- a) For local Tenderers, a Commissioner of Oaths or a Notary Public or a Magistrate of the Kenyan Judiciary.
  - b) For foreign Tenderers, a Notary Public in the country of the Tenderer.

In either case above, the Power of Attorney shall accompany the Tender.

- 17.4 All pages of the Tender, including un-amended printed literature, shall be initialed by the person or persons signing the Tender and serially numbered.
- 17.5 The Tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the Tenderer, in which case such corrections shall be initialed by the person or persons signing the Tender.
- 17.6 REREC will assume no responsibility whatsoever for the Tenderer’s failure to comply with or observe the entire contents of this paragraph 17.
- 17.7 Any Tender not prepared and signed in accordance with this paragraph may be rejected by REREC’s as non-responsive.

## **18. Modification, Withdrawal and deadline for submission of Tenders**

- 18.1 **Modification:** A bidder may before tender closing edit their RFX response by clicking edit and resubmitting after editing the response.

- 18.2 **Withdrawal:** A Bidder may withdraw a Bid after it has been submitted by clicking withdraw if they are no longer interested in participating in the tender. A withdrawn bid shall not be evaluated
- 18.3 **Deadline for Submission of Tenders:** Tenders must be submitted online on or before the time specified in the Invitation to Tender.  
REREC may, at its discretion, extend this deadline for submission of Tenders by amending the tender documents in accordance with paragraph 3.7, in which case all rights and obligations of REREC's and the Tenderer previously subject to the initial deadline, will therefore be subject to the deadline as extended.

## **TENDER OPENING AND EVALUATION**

### **• Tender Opening**

- 20.1 The Employer will open the tenders electronically in the presence of the tenderers' representatives who choose to attend at the time and location indicated in the Letter of Invitation to Tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.
- 20.2 Tenders for which an acceptable notice of withdrawal has been submitted, pursuant to clause 19, will not be opened. The Employer will examine the tenders to determine whether they are complete, whether the requisite Tender Sureties have been furnished, whether the documents have been properly signed and whether the tenders are generally in order.
- 20.3 At the tender opening, the Employer will announce the tenderer's names, total tender price, and tender withdrawals, if any, the presence of the requisite Tender Surety and such other details as the Employer, at his discretion, may consider appropriate. No tender shall be rejected at the tender opening.
- 20.4 The Employer shall prepare a tender opening register and minutes of the tender opening including the information disclosed to those present.
- 20.5 Tenders not opened and read out a tender opening shall not be considered further for evaluation, irrespective of the circumstances.

### **21. Process to be Confidential**

- 21.2 After the public opening of tenders, information relating to the examination, clarification, evaluation and comparisons of tenders and recommendations concerning the award of Contract shall not be disclosed to tenderers or other persons not officially concerned with such process until the award of Contract is announced.
- 21.3 Any effort by a tenderer to influence the Employer in the process of examination, evaluation and comparison of tenders and decisions concerning award of Contract may result in the rejection of the tenderer's tender.

### **22. Clarification Tenders**

- 22.1 To assist in the examination, evaluation and comparison of tenders, the Employer may ask tenderers individually for clarification of their tenders, including breakdown of unit prices. The request for clarification and the response shall be in writing or by cable, facsimile or telex, but no change in the price or substance of the tender shall be sought, offered or permitted except as

required to confirm the correction of arithmetical errors discovered by the employer during the evaluation of the tenders in accordance with clause 24.

22.2 No Tenderer shall contact the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. If the tenderer wishes to bring additional information to the notice of the Employer, he shall do so in writing.

### **23. Determination of Responsiveness**

23.1 Prior to the detailed evaluation of tenders, the Employer will determine whether each tender is substantially responsive to the requirements of the tender documents.

23.2 For the purpose of this clause, a substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tender documents without material deviation or reservation. A material deviation or reservation is one which affects in any substantial way the scope, quality, completion timing or administration of the Works to be undertaken by the tenderer under the Contract, or which limits in any substantial way, inconsistent with the tender documents, the Employer's rights or the tenderers obligations under the Contract and the rectification of which would affect unfairly the competitive position of other tenderers who have presented substantially responsive tenders.

23.3 Each price or unit rate inserted in the Bills of Quantities shall be a realistic estimate of the cost of completing the works described under the particular item including allowance for overheads, profits and the like. Should a tender be seriously unbalanced in relation to the Employer's estimate of the works to be performed under any item or groups of items, the tender shall be deemed not responsive.

23.4 A tender determined to be not substantially responsive will be rejected by the Employer and may not subsequently be made responsive by the tenderer by correction of the non-conforming deviation or reservation.

### **Correction of Errors**

24.1 There shall be no correction of prices. Bid prices shall be the ones read out during opening and unless specified in the ITT shall be assumed to include all requisite taxes and levies.

However

(a) Where there is a discrepancy between the amount in bill of quantities and the amount in item tab in SRM the amount in Item tab in SRM will govern.

24.2 The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.

### **25. Conversion to Single Currency**

25.1 For comparison of tenders, the tender price shall first be broken down into the respective amounts payable in various currencies by using the selling rate or rates of the Central Bank of Kenya ruling on the date on the date of tender closing.

25.2 The Employer will convert the amounts in various currencies in which the tender is payable (excluding provisional sums but including Dayworks where priced competitively) to Kenya Shillings at the selling rates stated in clause 25.1.

### **26. Evaluation and Comparison of Tenders**

- 26.1 The Employer will evaluate and compare only tenders determined to be substantially responsive to the requirements of the tender documents in accordance with clause 23.
- 26.2 Price adjustment provisions in the Conditions of Contract applied over the period of execution of the Contract shall not be taken into account in tender evaluation.
- 26.3 If the lowest evaluated tender is seriously unbalanced or front loaded in relation to the Employer's estimate of the items of work to be performed under the Contract, the Employer may require the tenderer to produce detailed price analyses for any or all items of the Bills of Quantities, to demonstrate the relationship between those prices, proposed construction methods and schedules.
- 26.4 Firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 15% preferential bias provided that they do not sub-contract work valued at more than 50% of the Contract Price excluding Provisional Sums to a non-indigenous sub-contractor.
- 26.5 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.
- 26.6 Persons not officially involved in the evaluation of tender shall not attempt in any way to influence the evaluation.

### **AWARD OF CONTRACT**

#### **27. Award criteria**

- 27.1 Subject to clause 27.2, the Employer will award the Contract to the tenderer whose tender is determined to be substantially responsive to the tender documents and who has offered the lowest evaluated tender price subject to possessing the capability and resources to effectively carry out the Contract Works.
- 27.2 The Employer reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders, at any time prior to award of Contract, without thereby incurring any liability to the affected tenderers or any obligation to inform the affected tenderers of the grounds for the Employer's action.
- 27.3 The Employer reserves the right at the time of contract award to increase or decrease the number of projects originally specified in the schedule of projects without any change in unit price or other terms and conditions.

#### **28. Notification of Award and signing of contract**

- 28.1 Prior to the expiration of the period of tender validity prescribed by the Employer, the Employer will notify the successful tenderer by cable, telefax or telex and confirmed in writing by registered letter that his tender has been accepted. This letter (hereinafter and in all Contract documents called "Letter of Acceptance") shall name the sum (hereinafter and in all Contract documents called "the Contract Price") which the Employer will pay to the Contractor in consideration of the execution and completion of the Works as prescribed by the Contract.
- 28.2 Upon the furnishing of a Performance Security by the successful tenderer, the unsuccessful tenderers will promptly be notified that their tenders have been unsuccessful.
- 28.3 At the same time the employer notifies the successful tenderer that his tender has been accepted, the employer shall notify the other tenderers that their tenders have been unsuccessful.



- 28.4 Within fourteen [14] days of receipt of the form of Contract Agreement from the Employer, the successful tenderer shall sign the form and return it to the Employer together with the required Performance Security.
- 28.5 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.
- 28.6 A tenderer who gives false information in the tender document about his qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

## **29. Performance Guarantee**

- 29.1 Within twenty eight [28] days of receipt of the notification of award from the Employer, the successful tenderer shall furnish the Employer with a Performance Security in an amount stated in the Appendix to Instructions to Tenderers.
- 29.2 The Performance Security to be provided by the successful tenderer shall be an unconditional Bank Guarantee issued at the tenderer's option by an established and a reputable Bank approved by the Employer and located in the Republic of Kenya and shall be divided into two elements namely, a performance security payable in foreign currencies (based upon the exchange rates determined in accordance with clause 35.4 of the Conditions of Contract) and a performance security payable in Kenya Shillings. The value of the two securities shall be in the same proportions of foreign and local currencies as requested in the form of foreign currency requirements.
- 29.3 Failure of the successful tenderer to lodge the required Performance Security shall constitute a breach of Contract and sufficient grounds for the annulment of the award and forfeiture of the Tender Security and any other remedy under the Contract the Employer may award the Contract to the next ranked tenderer.

## **30. Advance Payment**

- 30.1 There shall be no advance payment for this tender.

## **31. Corrupt and fraudulent practices**

- 31.1 The procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contract. A tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

### SECTION III: APPENDIX TO INSTRUCTIONS TO TENDERERS

The following appendix to instructions to tenders shall complement or amend the provisions of the instructions to tenderers (Section II). Wherever there is a conflict between the provisions of the instructions to tenderers and the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers:

ITT Reference Clause	Particulars of Appendix
<b>2.1. Eligibility</b>	This invitation to tender is open to all eligible tenderers as specified in the advertisement, Any bidder with outstanding contracts will be treated as unresponsive
<b>2.3(a) Qualifications of the Company.</b>	<p>The tenderer shall provide the following</p> <ul style="list-style-type: none"> <li>• Details of experience and past performance of the tenderer on the works of a similar nature within the past five years and details of current work on hand and other contractual commitments.</li> <li>• The tenderer to attach at least 3 completion certificates from the owners of the works undertaken. The Applicants should have at least 2 years past experience in relevant works.</li> </ul>
<b>2.3(a) Qualifications of the Staff.</b>	<p>The tenderer to attach C.V.s and academic certificates to support the CVs of the following personnel:</p> <ul style="list-style-type: none"> <li>• Project Supervisor, the Project Supervisor shall have at least a degree in Electrical or Mechanical Engineering or Renewable Energy and Registered as a professional engineer and with at least five (5) years of experience.</li> <li>• The technicians shall have at least a Diploma in Engineering with a minimum of two (2) years of experience. Signed CV's by the technicians and the owner/director and Certified copies of Certificates MUST be submitted.</li> <li>• At least one staff member with Valid EPRA electrical worker license, Class B.</li> <li>• No Technician shall appear in more than one(1) bid. The bidder shall attach a signed letter of commitment from the technicians indicating that there is no association with any other bidder. Bidders with the same technicians will be disqualified.</li> </ul>
<b>2.3(c) Equipment and Office</b>	Confirmation of business Premise, workshops and service center with relevant tools and equipment whether owned or leased with evidence of valid lease agreements and OSHA registration of workplace certificate.

ITT Reference Clause	Particulars of Appendix
<p><b>2.3(g) Manufacturers Authorization and Capacity of the Manufacturer.</b></p>	<p>The following manufacturers documents are mandatory and must be provided together with the bid:</p> <ul style="list-style-type: none"> <li>a) In the case of a Tenderer offering to supply goods under the contract which the Tenderer did not manufacture or otherwise produce, the Tenderer has been duly authorized by the goods' manufacturer or producer to supply the goods. The authorization shall strictly be in the form and content as prescribed in the Manufacturer's Authorization Form in the Tender Document. The Procuring Entity may confirm with the various manufacturers the authenticity of the Authorizations submitted.</li> <li>b) The following shall be submitted as well: relevant Drawings and Technical Data of system configuration generators, transformer, switchgear, battery charger, outdoor equipment and all other accessories. The Drawings should be legible and the dimensions should be clearly marked.</li> <li>c) Manufacturer's ISO9001:2015 certification or KEBS certification for local manufacturers for quality management for the key equipment i.e, - generators, transformer, switchgear, battery charger, outdoor equipment and all other accessories should be valid.</li> <li>d) Manufacturers ISO14001:2015 or NEMA / energy policy certification on Environmental Management Policy for key equipment - generators, transformer, switchgear, battery charger, outdoor equipment and all other accessories should be valid</li> </ul>
<p><b>2.3(j) Legal Capacity to enter into Contract.</b></p>	<p>Besides any other documents as requested in this bidding document to demonstrate legal capacity, the following documents are mandatory and must be submitted.</p> <ul style="list-style-type: none"> <li>a) E-PIN Certificate with both Vat &amp; Income Tax obligations</li> <li>b) Valid Tax Compliance Certificate</li> <li>c) Certified CR12 form from Registrar of Companies</li> </ul>
<p><b>2.3(i). Technical Capacity of the Company</b></p>	<ul style="list-style-type: none"> <li>1) The tenderer SHALL attach a copy of the Submission of valid EPRA electrical - Company's Valid EPRA electrical license C1</li> <li>2) Submission of valid NCA 4 and above – electrical or Mechanical services registration.</li> </ul>
<p><b><u>2.4(b) . Joint Venture Partners</u></b></p>	<p>One of the partners shall be nominated as being in charge; and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners. The nominated lead/in charge partner shall comply with EPRA licensing requirements both for the firm and key personnel. Local companies can joint venture with foreign companies to enhance their qualifications and vice versa.</p>
<p><b><u>13. Tender Security</u></b></p>	<p>Amount of Tender Security is two (2) percent of the Total Price inclusive of VAT.</p>

ITT Reference Clause	Particulars of Appendix
<b><u>14.2. Offers by One Tenderer</u></b>	A tenderer may submit a bid either on his own or as a joint venture. A tenderer shall not be a member of more than one Joint Venture. Where a Tenderer submits in more than one JV, all the bids shall be rejected.
<b><u>16.1. Set of Documents</u></b>	A set of documents means both Technical and Financial Proposal. This should be submitted in one Volume.
<b><u>17. Sealing and Marking of Documents.</u></b>	<p>For Purposes of addressing the Tender documents, the following information shall apply;  The name and address of the Employer for the purposes of bid bond submission of tenders is  <b><u>Rural Electrification and Renewable Energy Corporation,</u></b>  <b><u>Kawi House – South C,</u></b>  <b><u>P.O. Box 34585, 00100 Nairobi</u></b></p> <p>The name of the proposed Works and where available the Contract Number is; Tender for Kotulo Transformer Line Extension/Upgrade (Retendered) <b>RFx No. 1000000642</b></p>
<b><u>26. Evaluation of Tenders.</u></b>	All tenders must comply to all the conditions stated in the Appendix, In the Technical Requirements and to the Provisions of Section V of the Tender Documents. All this will form the Evaluation Criteria for the Tender.
<b><u>27. Award Criteria</u></b>	The award shall be made to the lowest technically responsive bidder.
<b>29. Performance Guarantee</b>	The amount of Performance Security is 10% of the contract price.

## SECTION IV : CONDITIONS OF CONTRACT (Including erection on site)

### ANNEX I

#### GENERAL CONDITIONS OF CONTRACT

#### PREAMBLE TO GENERAL CONDITIONS

The General Conditions of Contract (GCC) shall be modified and supplemented by the Special Conditions of the Contract (SCC), Annex II herein. Where there is conflict between the GCC and SCC, the Provisions of the SCC shall prevail over these in the GCC.

		<b>Definitions and interpretations</b>
<b>Definitions</b>	<b>1.1</b>	In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them:
	<b>1.1.1</b>	<b>“Commencement Date”</b> means whichever is the latest of: i) The date specified in the SCC as the date for commencement of the Works or the date when the Contractor receives: ii) Such payment in advance of the commencement of the Works as may be specified in the terms of payment, or iii) Notice of the issue of any import license necessary for commencing performance of the Contract, or iv) Notice that any legal requirements necessary for the Contract to enter into force have been fulfilled, or v) Notice that any necessary financial or administrative requirements specified in SCC as conditions precedent to commencement have been fulfilled.
	<b>1.1.2</b>	<b>“Conditions”</b> means the SCC to and these Conditions of Contract, Parts I and II.
	<b>1.1.3</b>	<b>“Contract”</b> means the agreement between the Employer and the Contractor for the execution of the Works incorporating the Conditions, Specification, Employer’s Drawings and Contractor’s Drawings, priced and completed Schedules, Tender, Letter of Acceptance and such further documents as may be expressly incorporated by the Letter of Acceptance.
	<b>1.1.4</b>	<b>“Contract Agreement”</b> means the document recording the terms of the Contract between the Employer and the Contractor.
	<b>1.1.5</b>	<b>“Contract Price”</b> means the sum stated in the Letter of Acceptance as payable to the Contractor for the execution of the Works.
	<b>1.1.6</b>	<b>“Contractor”</b> means the person whose tender has been accepted Employer and the legal successors in title to the Contractor but not (except with the consent of the Employer) any assignee of the Contractor.
	<b>1.1.7</b>	<b>“Contractor’s Drawing”</b> means all drawings, samples, patterns, model and operation and maintenance manuals to be submitted by the Contractor in accordance with Clause 6.
	<b>1.1.8</b>	<b>“Contractor’s Equipment”</b> means all appliances or things of whatsoever nature required for the purposes of the Works but does not include Plant.
	<b>1.1.9</b>	<b>“Contractor’s Risks”</b> means the risks defined in Sub-Clause 37.3
	<b>1.1.10</b>	<b>“Defect Liability Certificate”</b> means the certificate to be issued by the Engineer to the Contractor in accordance with Sub-Clause 30.11
	<b>1.1.11</b>	<b>“Defects Liability Period”</b> means one year or the period stated in

- SCC following taking over, during which the Contractor is responsible for making good defects and damage in accordance with Clause 30.
- 1.1.12** “**Employer**” means the person named as such in the SCC and the legal successors in title to the Employer but not (except with the consent of the Contractor) any assignee of the Employer.
- 1.1.13** “**Employer’s Drawings**” means all the drawings and information provided by the Employer or the Engineer to the Contractor under the Contract.
- 1.1.14** “**Employer’s Risks**” means those risks defined in Sub-Clause 37.2
- 1.1.15** “**Engineer**” means the person appointed by the Employer to act as Engineer for the purposes of the Contract and designated as such in the SCC.
- 1.1.16** “**Engineer’s Representative**” means any representative of the Engineer appointed from time to time by the Engineer under Sub-Clause 2.2
- 1.1.17** “**Final Certificate of Payment**” means the certificate to be issued by the Engineer to the Employer in accordance with Sub-Clause 33.10.
- 1.1.18** “**Force Majeure**” has the meaning assigned to it under Sub-Clause 44.1.
- 1.1.19** “**Foreign Currency**” means a currency other than that in which Plant is to be installed.
- 1.1.20** “**Gross Misconduct**” means any act or omission of the Contractor in violation of the most elementary rules of diligence, which a conscientious contractor in the same position and under the same circumstances would have followed.
- 1.1.21** “**Letter of Acceptance**” means the formal acceptance by the Employer of the Tender incorporating and adjustments or variations to the Tender agreed between the Employer and the Contractor.
- 1.1.22** “**Performance Security**” means the security to be provided by the Contractor in accordance with Sub-Clause 10.1. for the due performance of the Contract..
- 1.1.23** “**Plant**” means machinery, apparatus, materials and all things to be provided under the Contract for incorporation in the Works.
- 1.1.24** “**Programme**” means the Programme to be submitted by the Contractor in accordance with Sub-Clause 12.1 and any approved revisions thereto.
- 1.1.25** “**Provisional Sum**” means a sum, described as such for the execution of work or for the supply of goods or services, to be used in accordance with Sub-Clause 36.1
- 1.1.26** “**Risk Transfer Date**” means the date when the risk of loss of or damage to the Works passes from the Contractor to the Employer in accordance with Sub-Clause 39.1
- 1.1.27** “**Schedules of Prices**” means the completed and priced Schedule of Prices, or any part or individual schedule thereof, submitted by the Contractor with his Tender and forming a part of the Contract documents.
- 1.1.28** “**Section**” means a part of the Works specifically identified as such in the Contract.
- 1.1.29** “**Site**” means the place or places, provided or made available by the Employer where work is to be done by the Contractor or to which Plant is to be delivered, together with so much of the area surrounding the same as the Contractor shall with the consent of the Employer use in connection with the Works otherwise than merely for the purpose of access.
- 1.1.30** “**Specification**” means the specification of the Works included in the Contract and any modification thereof made under Clause 31.

	1.1.31	“ <b>Subcontractor</b> ” means any person (other than the Contractor) named in the Contract for any part of the Works, or any person to whom any part of the Contract has been subcontracted with the consent of the Engineer, and the Subcontractor’s legal successors in title but not any assignee of the Subcontractor.
	1.1.32	“ <b>Taking-Over Certificate</b> ” means the certificate to be given by the Engineer to the Contractor in accordance with Clause 29.
	1.1.33	“ <b>Tender</b> ” means the Contractor’s priced offer to the Employer for the execution of the Works.
	1.1.34	“ <b>Tests on Completion</b> ” means the tests specified in the Contract or otherwise agreed by the Engineer and the Contractor to be performed before the Works are taken over by the Employer.
	1.1.35	“ <b>Time for Completion</b> ” means the time stated in the SCC for completing the Works or any Section thereof and passing the Test on Completion calculated from the Commencement Date unless extended in accordance with Clause 26.
	1.1.36	“ <b>Variation Order</b> ” means any written order, identified as such, issued to the Contractor by the Engineer under Sub-Clause 31.1
	1.1.37	“ <b>Works</b> ” means all Plant to be provided and work to be done by the Contractor under the Contract.
<b>Headings and Titles</b>	1.2	The headings and titles in these Conditions shall not be deemed part thereof or be taken into consideration in the interpretation or construction of the Contract.
<b>Interpretation</b>	1.3	Words importing persons or parties shall include firms and corporations and any organization having legal capacity. Words importing the singular only also include the plural and vice versa where the context requires.
<b>Written Communications</b>	1.4	Wherever in the Contract provision is made for a communication to be “written” or “in writing” this means any hand-written, typewritten or printed communication, including telex, cable and facsimile transmission.
<b>Notices, Consents and Approvals</b>	1.5	Wherever in the Contract provision is made for the giving of notice, consent or approval by any person, such consent or approval shall not be unreasonably withheld. Unless otherwise specified, such notice, consent or approval shall be in writing and the word “notify” shall be constructed accordingly.
<b>Costs, Overhead Charges and Profit</b>	1.6	Whenever by these Conditions the Contractor is entitled to be paid cost, such cost shall be properly incurred and shall include any overhead charges properly allocable thereto but not profit unless so stated. Any profit entitlement shall be added to cost at the percentage stated in the SCC.
<b>Periods</b>	1.7	In these Conditions “day” means calendar day and “year” means 365 days.
<b>Engineer’s Duties</b>	2.1	<b><u>Engineer</u></b> The Engineer shall carry out the duties specified in the Contract. If the Engineer is required, under the terms of his appointment by the Employer, to obtain the specific approval of the Employer before carrying out any of these duties, full particulars of such requirements shall be set out in SCC. Except as expressly stated in the Contract the

Engineer shall have no authority to relieve the Contractor of any of his obligations under the Contract.

<b>Engineer's Representative</b>	<b>2.2</b>	The Engineer's Representative shall be appointed by and be responsible to the Engineer and shall only carry out such duties and exercise such authority as may be delegated to him by the Engineer under Sub-Clause 2.3
<b>Engineer's Power to Delegate</b>	<b>2.3</b>	<p>The Engineer may from time to time delegate to the Engineer's Representative any of the duties vested in the Engineer and may at any time revoke such delegation. Any such delegation or revocation shall be in writing and shall not take effect until a copy thereof has been delivered to the Contractor and the Employer. Any decision, instruction or approval given by the Engineer's Representative to the Contractor in accordance with such delegation shall have the same effect as though it had been given by the Engineer. However:</p> <p>(a) Any failure of the Engineer's Representative to disapprove any Plant or workmanship shall not prejudice the right of the Engineer to disapprove such Plant or workmanship and to give instructions for the rectification thereof;</p> <p>(b) If the Contractor questions any decision or instruction of the Engineer's Representative he may refer the matter to the Engineer who shall confirm, reverse or vary such decision or instruction.</p>
<b>Engineer to Act Impartially</b>	<b>2.4</b>	<p>Wherever under the Contract the Engineer is required to exercise his discretion by:</p> <p>(a) Giving his decision, opinion or consent, or</p> <p>(b) Expressing his satisfaction or approval, or</p> <p>(c) Determining value, or</p> <p>(d) Otherwise taking action which may affect the rights and obligations of the Employer or the Contractor,</p> <p>He shall exercise such discretion impartially within the terms of the Contract and having regard to all the circumstances.</p>
<b>Engineer's Decisions and Instructions</b>	<b>2.5</b>	The Contractor shall proceed with the decisions and instructions given by the Engineer in accordance with these Conditions.
<b>Confirmation in Writing</b>	<b>2.6</b>	The Contractor may require the Engineer to confirm in writing any decision or instruction of the Engineer, which is not in writing. The Contractor shall notify the Engineer of such requirement without undue delay. Such a decision or instruction shall not be effective until written confirmation thereof has been received by the Contractor.
<b>Disputing Engineer's Decisions and Instructions</b>	<b>2.7</b>	<p>If the Contractor disputes or questions any decision or instruction under Clause 2.5 or a written confirmation under Clause 2.6, he shall give notice to the Engineer within 28 days after receipt thereof, giving his reasons.</p> <p>The Engineer shall within a further period of 28 days by notice to the Contractor and the Employer with reasons, confirm, reverse or vary such decision or instruction.</p> <p>If either party disagree with the action taken by the Engineer, or if the Engineer fails to reply to the Contractor's notice within the stipulated 28 days, and the matter cannot be settled amicably that party shall be at liberty, subject to Sub-Clause 50.1, to refer the matter to arbitration</p>



in accordance with the Contract.

<b>Replacement of Engineer</b>	<b>2.8</b>	The Employer shall not appoint any person to act in replacement of the Engineer without the consent of the Contractor.
<b>Assignment</b>	<b>3.1</b>	<p><b><u>Assignment and Subcontracting</u></b></p> <p>The Contractor shall not assign the Contract or any part of his obligations under the Contract. A charge in favor of the Contractor's bankers of any monies due under the Contract shall not be considered an assignment.</p>
<b>Subcontracting</b>	<b>4.1</b>	<p>The Contractor shall not subcontract the whole of the Works. Except where otherwise provided by the Contract the Contractor shall not subcontract any part of the Works without the prior consent of the Engineer.</p> <p>The Contractor shall however, not require such consent for purchases of materials or to place contracts for minor details or for any part of the Works of which the manufacturer or supplier is named in the Contract.</p> <p>The Contractor shall be responsible for the acts, defaults and neglects of any Subcontractor, his agents or employees as fully as if they were the acts, default or neglects of the Contractor, his agents or employees.</p>
<b>Ruling Language</b>	<b>5.1</b>	<p><b><u>Contract Documents</u></b></p> <p>Where versions of the Contract are prepared in different languages, the version, which is to prevail, shall be specified in the SCC. The language of such version is referred to as the ruling language.</p>
<b>Day to Day Communications</b>	<b>5.2</b>	<p>Where versions of the Contract are prepared in different languages, the version, which is to prevail, shall be specified in the SCC. The language of such version is referred to as the ruling language.</p>
<b>Priority of Contract Documents</b>	<b>5.3</b>	<p>Unless otherwise provided in the Contract the priority of the Contract documents shall be as follows:</p> <ol style="list-style-type: none"><li>1. The Letter of Acceptance</li><li>2. The SCC</li><li>3. The Conditions of Contract, SCC</li><li>4. The Conditions of Contract, Part I</li><li>5. Any other documents forming part of this Contract.</li></ol>
<b>Documents Mutually Explanatory</b>	<b>5.4</b>	<p>Subject to Sub-Clause 5.3. The Contract documents shall be taken as mutually explanatory. Any ambiguities or discrepancies shall be resolved by the Engineer, who shall then instruct the Contractor or thereon.</p> <p>If the Contractor considers that compliance with such instructions will result in any cost, which the Contractor could not reasonably have anticipated, he shall forthwith inform the Engineer with full supporting details. The Engineer shall then, if he approves, certify such costs as may be reasonable, together with profit where appropriate, which shall be added to the Contract Price.</p> <p>If on the other hand compliance with such instructions results in lower costs for the Contractor than he had reason to anticipate, the Engineer</p>

shall certify a deduction from the Contract Price allowing for profit where appropriate.

**Contractor's  
Drawing**

- 6.1** The Contractor shall submit to the Engineer for approval:
- (a) Within the time given in the Contract or in the Programme such drawings, samples, models or information as may be called for therein, and in the numbers therein required, and
  - (b) During the progress of the Works, such drawings of the general arrangement and details of the Works as specified in the Contract or as the Engineer may require.

The Engineer shall signify his approval or disapproval thereof. If he fails to do so within the time given in the Contract or the Programme or if no time limit is specified, within 28 days of receipt, they shall be deemed to be approved.

Approved drawings, samples and models shall be signed or otherwise identified by the Engineer.

The Contractor shall supply additional copies of approved drawings in the form and numbers stated in the Contract.

**Consequences of  
Disapproval of  
Contractor's  
Drawings**

- 6.2** Any Contractor's Drawings, which the Engineer disapproves, shall be forthwith modified to meet the requirements of the Engineer and shall be re-submitted.

**Approved  
Contractor's  
Drawings**

- 6.3** Approved Contractor's Drawings shall not be departed from except as provided in Clause 31.

**Inspection of  
Contractor's  
Drawings**

- 6.4** The Engineer shall have the right at all reasonable times to inspect, at the Contractor's premises, all Contractors' Drawings of any part of the Works.

**Erection  
Information**

- 6.5** The Contractor shall provide, within the times stated in the Contractor or in the Programme, drawings showing how the Plant is to be affixed and any other information required for:
- (a) Preparing suitable foundations or other means of support, and
  - (b) Providing suitable access on the Site for the Plant and any necessary equipment to the place where the Plant is to be erected, and
  - (c) Making necessary connections to the Plant.

**Operation and  
Maintenance  
Manuals**

- 6.6** Before the Works are taken over in accordance with Clause 29 the Contractor shall supply operation and maintenance manuals together with drawings of the Works as built. These shall be in such detail as will enable the Employer to operate, maintain, adjust and repair all parts of the Works.

Unless otherwise stated in SCC the manuals and drawings shall be in the ruling language, and in such form and numbers as stated in the Contract.

Unless otherwise agreed, the Works shall not be considered to be completed for the purposes of taking over until such manuals and drawings have been supplied to the Employer.

<b>Employer's Use of Contractor's Drawings</b>	<b>6.7</b>	Contractor's Drawings may be used by the Employer for no other purpose than completing, operating, maintaining, adjusting and repairing the Works.
<b>Contractor's Use Of Employer's Drawings</b>	<b>6.8</b>	The Employer's Drawings, Specification and other information submitted by the Employer or the Engineer to the Contractor shall remain the property of the Employer. They shall not, without the consent of the Employer, be used, copied or communicated to a third party by the Contractor unless necessary for the purpose of the Contract.
<b>Manufacturing Drawings</b>	<b>6.9</b>	Unless otherwise specified in SCC the Contractor shall not be required to disclose to the Employer or the Engineer the Contractor's confidential manufacturing drawings, designs, know-how or manufacturing practices, processes or operations.
<b>Errors in Contractor's Drawings</b>	<b>7.1</b>	<p>The Contractor shall be responsible for any errors or omissions in the Contractor's Drawings unless they are due to incorrect Employer's Drawings or other written information supplied by the Employer or the Engineer. Approval by the Engineer of the Contractor's Drawings shall not relieve the Contractor from any responsibility under this Sub-Clause.</p> <p>The Contractor shall bear any costs he may incur as a result of delay in providing Contractor's Drawings and other information or as a result of errors or omissions therein, for which the Contractor is responsible. The Contractor shall at his own cost carry out any alternations or remedial work necessitated by such errors or omissions for which he is responsible and modifies the Contractor's Drawings and such other information accordingly.</p> <p>The performance of his obligations under this Clause shall be in full satisfaction of the Contractor's liability under this Clause but shall not relieve him of his liability under Sub-Clause 27.1</p>
<b>Errors by Employer or Engineer</b>	<b>7.2</b>	The Employer shall be responsible for the Employer's Drawings and for other written information supplied by the Employer or the Engineer and for the details of special work specified by either of them. If such Employer's Drawings, information or details are incorrect and necessitate alternations of the work, the Employer shall pay the Contractor the cost of the alternations together with profit as certified by the Engineer.
<b>General Obligations</b>	<b>8.1</b>	<p><b><u>Obligation of the Contractor</u></b></p> <p>The Contractor shall, in accordance with the Contract, with due care and diligence, design, manufacture, deliver to Site, erect, test and commission the Plant and carry out the Works within the Time for Completion. The Contractor shall also provide all necessary Contractor's Equipment, superintendence, labour and, except as stated in SCC, all necessary facilities therefore.</p>
<b>Setting Out</b>	<b>8.2</b>	<p>The Contractor shall set out the Works in relation to original points, lines and levels of reference given by the Engineer in writing and provide all necessary instruments, appliances and labor for such purposes.</p> <p>If, at any time during the execution of the Works, any error appears in</p>

the positions, levels, dimensions or alignment of the Works, the Contractor shall rectify the error.

The Contractor shall bear the cost of rectifying the error, unless the error results from incorrect information supplied in writing by the Employer, the Engineer or from default by another contractor, in which case the cost together with profit shall be borne by the Employer.

The checking of any setting-out by the Engineer shall not relieve the Contractor of his responsibility for the accuracy thereof.

<b>Contract Agreement</b>	<b>9.1</b>	The Contractor shall, if called upon so to do, execute a Contract Agreement recording all the terms of the Contract, to be prepared by and completed at the cost of the Employer in the form annexed hereto.
<b>Performance Security</b>	<b>10.1</b>	If SCC requires the Contractor to obtain a Performance Security, he shall obtain the same in the sum required, within 28 days after the receipt of the Letter of Acceptance. The Performance Security shall be provided by a person and in a form approved by the Employer. The cost of complying with requirements of this Clause shall be borne by the Contractor.
<b>Period of Validity</b>	<b>10.2</b>	The performance Security shall be valid until the Contractor has executed, completed and remedied defects in the Works in accordance with the Contract. No claim shall be made against the Performance Security after issue of the Defects Liability Certificate and the Performance Security shall be returned to the Contractor within 14 days of the issue of the Defects Liability Certificate.
<b>Claim under Performance Security</b>	<b>10.3</b>	<p>Whether or not the Performance Security is stated by its terms to be payable on the demand of the Employer the Employer shall not make a claim under the Performance Security unless one of the following conditions is satisfied:</p> <ul style="list-style-type: none"><li>(a) The Contractor is in breach of the Contract and fails to remedy the breach within 42 days after receiving written notice from the Employer requiring him so to do. The notice shall state the intention to claim under the Performance Security, the amount claimed and the breach relied upon, or</li><li>(b) The Employer and the Contractor have agreed in writing that the amount demanded is payable to the Employer, and the amount has not been paid within 42 days thereafter, or</li><li>(c) The Employer has obtained an award in arbitration under Clause 50 and the amount awarded has not been paid within 42 days after the award, or</li><li>(d) The Contractor has gone into liquidation or his bankrupt.</li></ul> <p>In every case the Employer shall, when making the claim, send a copy to the Contractor.</p>
<b>Site Data</b>	<b>11.1</b>	The Tender shall be deemed to have been based on such data on climatic, hydrological and general conditions on the Site and for the operation of the Works as the Employer or the Engineer has made available to the Contractor for the purposes of the Tender. The Contractor shall be responsible for his own interpretation of such data.

<b>Sufficiency of Contract Price</b>	<b>11.2</b>	<p>The Contractor shall be deemed to have satisfied himself on and taken account of in his Tender:</p> <ul style="list-style-type: none"> <li>(a) All the conditions and circumstances affecting the Contract Price.</li> <li>(b) The possibility of carrying out the Works as described in the Contract,</li> <li>(c) The general circumstances at the Site (if access has been made available to him) and</li> <li>(d) The general labor position at the Site.</li> </ul> <p>The Contractor shall not be responsible for the accuracy of information given in writing by the Employer or the Engineer but shall be responsible for his interpretation of information received from whatever source.</p>
<b>Physical Obstruction and Conditions</b>	<b>11.3</b>	<p>If during the execution of the Works on Site the Contractor encounters physical obstructions or conditions of the kind stipulated in Sub-Clause 26.1.c) the Contractor shall be entitled to recover the additional cost incurred in consequence.</p> <p>The Engineer shall certify and there shall be added to the Contract Price the additional cost of:</p> <ul style="list-style-type: none"> <li>(a) Complying with any instruction which the Engineer, after due consultation with the Employer and the Contractor, issues to the Contractor in connection therewith, and</li> <li>(b) Any necessary measures which the Contractor may take in the absence of specific instructions from the Engineer.</li> </ul>
<b>Programme to be Furnished</b>	<b>12.1</b>	<p>The Contractor shall submit to the Engineer for his approval the Programme which shall contain the following:</p> <ul style="list-style-type: none"> <li>(a) The order in which the Contractor proposes to carry out the Works (including design, manufacture, delivery to Site, erection, testing and commissioning),</li> <li>(b) The times when submission and approval of the Contractor's Drawings are required,</li> <li>(c) The times by which the Contractor requires the Employer:</li> <li>(d) To furnish any Employer's Drawings,</li> <li>(e) To provide access to the Site</li> <li>(f) To have completed the necessary civil engineering work (including foundations for the Plant) and</li> <li>(g) To have obtained any import licenses, consents, way leaves and approvals necessary for the purpose of the Works.</li> </ul> <p>The Contractor shall submit the Programme in the form stated in the SCC within 28 days after the Commencement Date.</p> <p>The approval by the Engineer of the Programme shall not relieve the Contractor or the Employer from any obligation under the Contract.</p>
<b>Alteration to Programme</b>	<b>12.2</b>	<p>No material alteration to the Programme shall be made without the approval of the Engineer.</p>

<b>Revision of Programme</b>	<b>12.3</b>	<p>If the progress of the Works does not conform to the Programme, the Engineer may instruct the Contractor to revise the Programme.</p> <p>If such modifications are required for reasons for which the Contractor is not responsible, the cost of preparing the revised Programme shall be certified by the Engineer and added to the Contract Price.</p>
<b>Contractor's Representative</b>	<b>13.1</b>	<p>The Contractor shall employ one or more competent representatives to superintend the carrying out of the Works on Site. They shall be fluent in the language for day-to-day communications. Their names shall be communicated in writing to the Engineer before work on Site begins. Any instruction or notice, which the Engineer gives to the Contractor's representatives, shall be deemed to have been given to the Contractor.</p>
<b>Objection to Contractor's Employee</b>	<b>13.2</b>	<p>The Contractor shall, upon the Engineer's written instruction, remove from the Works any person employed by him in the execution of the Works, who misconducts himself or is incompetent or negligent.</p>
<b>Contractor's Equipment</b>	<b>14.1</b>	<p>Except to the extent specified in SCC, the Contractor shall provide all Contractor's Equipment necessary to complete the Works. All Contractor's Equipment shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the Works. The Contractor shall not remove from the Site any such equipment, except:</p> <ul style="list-style-type: none"> <li>(a) When it is no longer required for the completion of the Works, or</li> <li>(b) When the Engineer has given his consent.</li> </ul>
<b>Safety Precautions</b>	<b>14.2</b>	<p>The Contractor shall observe all applicable regulations regarding safety on the Site.</p> <p>Unless otherwise agreed, the Contractor shall, from the commencement of work on Site until taking over provide:</p> <ul style="list-style-type: none"> <li>(a) Fencing, lighting, guarding and watching of the Works, and</li> <li>(b) Temporary roadways, footways, guards and fences which may be necessary for the accommodation and protection of owners and occupiers of adjacent property, the public and others</li> </ul>
<b>Electricity, Water And Gas</b>	<b>14.3</b>	<p>The Contractor shall be entitled to use for the purposes of the Works such supplies of electricity, water, gas and other services as may be available on the Site and of which details are given in the SCC. The Contractor shall at his own cost provide any apparatus necessary for such use.</p>
<b>Employer's Equipment</b>	<b>14.4</b>	<p>The Employer shall, if the Contractor so requests for the execution of the Works, operate any available equipment of which details are given in the SCC. The Contractor shall pay the Employer a fair price for such use.</p> <p>The Employer shall during such operation retain control of and be responsible for the safe working of the equipment.</p>
<b>Clearance of Site</b>	<b>14.5</b>	<p>The Contractor shall from time to time during the progress of the Works clear away and remove all surplus materials and rubbish. On completion of the Works the Contractor shall remove all Contractor's Equipment and leave the whole of the Site and the Works clean and in</p>

a workmanlike condition, to the satisfaction of the Engineer.

<b>Opportunities for Other Contractors</b>	<b>14.6</b>	<p>The Contractor shall, in accordance with the Engineer's instruction, afford to other contractors engaged by the Employer to work on the Site and persons lawfully upon the Site all reasonable opportunities for carrying out their work provided that the same shall not obstruct or disturb the progress of the Works. The Contractor shall also afford such opportunities to the employees of the Employer.</p> <p>If the Contractor, on the written request of the Engineer, makes available any Contractor's Equipment or provides any other service, the Employer shall pay the Contractor accordingly. The amount to be paid shall be certified by the Engineer and added to the Contract Price.</p>
<b>Authority for Access</b>	<b>14.7</b>	<p>No persons other than the employees of the Contractor and his Subcontractors shall be allowed on the Site except with the consent of the Engineer.</p> <p>Facilities to inspect the Works shall at all times be afforded by the Contractor to the Engineer and his representative, the Employer's representatives, authorities and officials.</p>
<b>Information for Import Permits And Licenses</b>	<b>14.8</b>	<p>The Contractor shall submit to the Employer in good time such details of all Plant and Contractor's Equipment as will enable the Employer to obtain all necessary import permits or licenses.</p>
<b>Compliance with Statutes, Regulations</b>	<b>15.1</b>	<p>The Contractor shall, in all matters arising in the performance of the Contract, comply in all respects with, give all notices and pay all fees required by the provisions of any national or state statute, ordinance or other law or any regulation or bye-law of any duly constituted authority.</p>
<b>Compliance with Laws</b>	<b>15.2</b>	<p>The Contractor shall comply with the laws of the country of manufacture concerning the manufacture of the Plant, and the laws of the country where the Plant is to be erected so far as such laws concern the manufacture, erection and operation of the Works.</p>
<b>Patent Rights</b>	<b>16.1</b>	<p>The Contractor shall indemnify the Employer against all claims of infringement of any patent, registered design, copyright, trade mark or trade name or other intellectual property right provided that all of following conditions are satisfied:</p> <ul style="list-style-type: none"><li>(a) The claim or proceedings arise out of the design, construction, manufacture or use of the Works or any Plant supplied by the Contractor.</li><li>(b) The right was protected at the date of the Contract in the Contractor's country or the country in which the Plant is to be manufactured or erected.</li><li>(c) The infringement or allegation of infringement was not caused by any use of the Works otherwise than for the purpose indicated by or reasonably to be inferred from the Specification.</li><li>(d) The infringement or allegation of infringement was not caused by the use of any Plant in association or combination with any plant not supplied by the Contractor, unless such association or combination was disclosed to the Contractor prior to the date of the Tender.</li></ul>

- (e) The infringement or allegation of infringement was not caused by the Contractor following the design or instructions of the Employer or the Engineer.

<b>Claim in respect of Patent Rights</b>	<b>16.2</b>	<p>The Contractor shall be promptly notified of any claim under this Clause made against the Employer. The Contractor may at his own cost conduct negotiations for the settlement of such claim, and any litigation that may arise therefrom.</p> <p>The Employer shall not make any admission, which might be prejudicial to the Contractor unless the Contractor has failed to take over the conduct of the negotiations or litigation within a reasonable time after having been so requested.</p> <p>The Contractor may not, however, conduct such negotiations or litigation before he has given the Employer such reasonable security as the Employer may require. The security shall be for an amount which is an assessment of the compensation, damages, expenses and costs for which the Employer may become liable and which are the subject of the indemnity under Sub-Clause 16.1.</p> <p>The Employer shall, at the request of the Contractor, provide all available assistance for the purpose of contesting any such claim or action, and shall be repaid all reasonable costs incurred in so doing.</p>
<b>Employer's Warranty for Patent Rights</b>	<b>16.3</b>	<p>If any matter for which the Contractor is not liable to indemnify the Employer under Sub-Clause 16.1 causes the infringement or allegation of infringement by the Contractor of any patent, registered design, trade mark, copyright or other intellectual property right, the Employer shall indemnify the Contractor against all claims, damages, expenses and costs which the Contractor may incur in relation thereto. The provisions of Sub-Clause 16.2 shall apply mutatis mutandis.</p>
<b>Access to and Possession Of the Site</b>	<b>17.1</b>	<p><b>Obligations of the Employer</b></p> <p>The Employer shall in reasonable time grant the Contractor access to and possession of the Site, which may, however, not be exclusive to the Contractor.</p> <p>The Employer shall to the extent stated in the Specification provide means of access for the delivery of all Plant and Contractor's Equipment to the Site.</p>
<b>Assistance with Local Regulations</b>	<b>17.2</b>	<p>The Employer shall assist the Contractor in ascertaining the nature and extent of any laws, regulations, orders or bye-laws, and customs in the country where the Plant is to be erected, which may affect the Contractor in the performance of his obligations under the Contract. The Employer shall if so requested procure for the Contractor copies thereof and information relating thereto at the Contractor's cost.</p>
<b>Civil Works on Site</b>	<b>17.3</b>	<p>Any building, structure, foundation or means of access on the Site to be provided by the Employer shall be in a condition suitable for the reception, movement, installation and maintenance of the Works within the time or times indicated in the Programme.</p>
<b>Consents and Wayleaves</b>	<b>17.4</b>	<p>The Employer shall in due time obtain or grant all consents including permits-to-work, Wayleaves and approvals required for the Works.</p>



<b>Import Permits And Licenses</b>	<b>17.5</b>	The Employer shall obtain all import permits or licences required for any part of the Plant or Works in reasonable time having regard to the time for delivery of the Plant and completion of the Works.
<b>Engagement of Labour</b>	<b>18.1</b>	<p><b><u>Labour</u></b> The Contractor shall, unless otherwise provided in the Contract, make his own arrangements for the engagement of all labour and for their payment, housing, feeding and transport.</p>
<b>Returns of Labour</b>	<b>18.2</b>	The Contractor shall submit detailed returns showing the supervisory staff and the numbers of the several classes of labour from time to time employed by the Contractor and Subcontractors on the Site. The returns shall be submitted in such form and at such intervals as the Engineer may prescribe.
<b>Working Hours</b>	<b>18.3</b>	<p>On the Site the Contractor shall observe the normal working hours stated in the SCC. The Employer shall allow the Contractor to carry out work on the Site continuously during such working hours.</p> <p>The Engineer may after consulting the Employer and the Contractor, direct that work shall be done at other times. The extra cost, together with profit, shall be added to the Contract Price unless it has become necessary for the completion of the Works within the Time for Completion, and this is due to default of the Contractor.</p>
<b>Restriction on Working Hours</b>	<b>18.4</b>	<p>No work shall be carried out on the Site outside normal working hours or on the locally recognized days of rest, unless:</p> <ul style="list-style-type: none"> <li>(a) The Contract so provides, or</li> <li>(b) The work is unavoidable or necessary for the saving of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer, or</li> <li>(c) The Engineer gives his consent.</li> </ul>
<b>Manner of Execution</b>	<b>19.1</b>	<p><b><u>Workmanship and Materials</u></b> All Plant to be supplied shall be manufactured and all work to be done shall be executed in the manner set out in the Contract.</p> <p>Where the manner of manufacture and execution is not set out in the Contract, the work shall be executed in a proper and workmanlike manner in accordance with recognized good practice.</p>
<b>Covering up Work</b>	<b>19.2</b>	<p>The Contractor shall give the Engineer full opportunity to examine, measure and test any work on Site, which is about to be covered up or put out of view.</p> <p>The Contractor shall give due notice to the Engineer whenever such work is ready for examination, measurement or testing.</p> <p>The Engineer shall then, unless he notifies the Contractor that he considers it unnecessary, without unreasonable delay carry out the examination, measurement or testing.</p>
<b>Uncovering Work</b>	<b>19.3</b>	<p>If so instructed by the Engineer, the Contractor shall expose any parts of the Works. The Contractor shall reinstate and make good such parts to the Engineer's satisfaction.</p> <p>If any parts of the Works have been covered up or put out of view by the Contractor after complying with Sub-Clause 19.2 and are found to be in accordance with the Contract the cost incurred by the Contractor</p>

in complying with the Engineer's instructions including profit shall be certified by the Engineer and added to the Contract Price.

<b>Independent Inspection</b>	<b>20.1</b>	The Employer may delegate inspection and testing of Plant to an independent inspector. Any such delegation shall be effected in the manner required by Sub-Clause 2.3, and for this purpose such independent inspector shall be considered as an Engineer's Representative. Notice of such appointment (being not less than 14 days) shall be given by the Engineer to the Contractor.
<b>Inspection and Testing During Manufacture</b>	<b>20.2</b>	<p>The Employer shall be entitled during manufacture to inspect, examine and test the materials and workmanship and check the progress of manufacture of all Plant to be supplied under the Contract. This shall take place on the Contractor's premises during working hours. If Plant is being manufactured on other premises, the Contractor shall obtain permission for the Engineer to carry out such inspection, examination and testing on those premises.</p> <p>No such inspection, examination or testing shall release the Contractor from any obligation under the Contract.</p>
<b>Dates for Inspection and Testing</b>	<b>20.3</b>	<p>The Contractor shall agree with the Engineer the time and place for the testing of any Plant as provided in the Contract. The Engineer shall give the Contractor 24 hours notice of his intention to attend the tests.</p> <p>If the Engineer does not attend on the date agreed, the Contractor may, unless the Engineer instructs the Contractor not to do so, proceed with the tests, which shall be deemed to have been made in the Engineer's presence.</p> <p>The Contractor shall forthwith forward to the Engineer duly certified copies of the test results. If the Engineer has not attended the test, he shall accept the validity of the test readings.</p>
<b>Facilities for Testing</b>	<b>20.4</b>	Where the Contract provides for tests on the premises of the Contractor or of any Sub-Contractor, the Contractor shall provide such assistance, labour, materials, electricity, fuel, stores, apparatus and instruments as may be necessary to carry out the tests efficiently.
<b>Certificate of Testing</b>	<b>20.5</b>	When Plant has passed the tests referred to in this Clause, the Engineer shall furnish to the Contractor a certificate or endorse the Contractor's test certificate to that effect.
<b>Rejection</b>	<b>21.1</b>	<p>If, as a result of the inspection, examination or testing referred to in Clause 20, the Engineer decides that any Plant is defective or otherwise not in accordance with the Contract, he may reject such Plant and shall notify the Contractor thereof immediately. The notice shall state the Engineer's objections with reasons. The Engineer shall not reject any Plant for minor defects, which do not affect the commercial operation of such Plant.</p> <p>The Contractor shall then with all speed make good the defect or ensure that any rejected Plant complies with the Contract.</p> <p>If the Engineer requires such Plant to be retested, the tests shall be repeated under the same terms and conditions. All costs incurred by the Employer by the repetition of the tests shall be deducted from the Contract Price.</p>

<b>Permission to Deliver</b>	<b>22.1</b>	<p>The Contractor shall apply in writing to the Engineer for permission to deliver any Plant or Contractor's Equipment to the Site. No Plant or Contractor's Equipment may be delivered to the Site without the Engineer's written permission.</p> <p>The Contractor shall be responsible for the reception on Site of the Plant and Contractor's Equipment.</p>
<b>Order to Suspend</b>	<b>23.1</b>	<p><b><u>Suspension of Works, Delivery or Erection</u></b></p> <p>The Engineer may at any time instruct the Contractor to:</p> <ul style="list-style-type: none"> <li>(a) Suspend progress of the Works. Or</li> <li>(b) Suspend delivery of Plant or Contractor's Equipment which is ready for delivery to the Site at the time for delivery specified in the Programme, or if no time is specified, at the time appropriate for it to be delivered, or</li> <li>(c) Suspend the erection of Plant which has been delivered to the Site.</li> </ul> <p>When the Contractor is prevented from delivering or erecting Plant in accordance with the Programme the Engineer shall be deemed to have instructed a suspension except when such prevention is caused by the Contractor's default.</p> <p>The Contractor shall during suspension protect and secure the Works or Plant affected at the Contractor's works or elsewhere or at the Site, as the case may be, against any deterioration, loss or damage.</p>
<b>Cost of Suspension</b>	<b>24.1</b>	<p>The additional cost incurred by the Contractor in protecting, securing and insuring the Works or Plant and in following the Engineer's instructions under Sub-Clause 23.1 and in resumption of the work, shall be added to the Contract Price.</p> <p>The Contractor shall not be entitled to be paid any additional costs if such suspension is necessary by reason of a default on the part of the Contractor.</p> <p>The Contractor shall not be entitled to additional costs unless he notifies the Engineer of his intention to make such claim within 28 days after receipt of the order to suspend progress or delivery or of the date of deemed suspension under Sub-Clause 23.1.</p>
<b>Payment in Event Of Suspension</b>	<b>24.2</b>	<p>The Contractor shall be entitled to payment for Plant, which has not been delivered to Site if the work on Plant or delivery of Plant has been suspended for to payment of the value of such Plant as at the date of suspension.</p> <p>A certificate of payment shall be issued on condition that:</p> <ul style="list-style-type: none"> <li>(a) The Contractor has marked the Plant as the Employer's property in accordance with the Engineer's instructions, and</li> <li>(b) The suspension is not due to the Contractor's default.</li> </ul>
<b>Prolonged Suspension</b>	<b>24.3</b>	<p>If suspension under Clause 23.1 has continued for more than 84 days, and the suspension is not due to the Contractor's default, the Contractor may by notice to the Engineer require permission to proceed within 28 days.</p> <p>If permission is not granted within that time, the Contractor may treat the suspension as an omission under Clause 31 of the Section it affects, or if the suspension affects the whole of the Works, terminate the Contract and the provisions of Clause 46 shall apply.</p>

**Resumption of Work**

**24.4**

If the Contractor chooses not to treat prolonged suspension as an omission or termination under Sub-Clause 24.3, the Employer shall upon the request of the Contractor, take over the responsibility for protection, storage, security and insurance of the suspended Works and the risk of loss or damage thereto shall thereupon pass to the Employer.

After receipt of permission or an order to proceed, the Contractor shall, after due notice to the Engineer, examine the Works and the Plant affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant that may have occurred during the suspension. Cost properly incurred by the Contractor, which would not have been incurred but for the suspension shall be added to the Contract Price together with profit.

The Contractor shall not be entitled to payment for costs incurred in making good any deterioration, defect or loss caused by faulty workmanship or materials or by the Contractor's failure to take the measures specified in Sub-Clause 23.1.

If the Employer has taken over risk and responsibility for the suspended Works under this Sub-Clause, risk and responsibility shall revert to the Contractor 14 days after receipt of the permission or order to proceed.

**Time for Completion**

**25.1**

**Completion**

The Works shall be completed and shall have passed the Tests on Completion within the Time for Completion.

**Extension of Time For Completion**

**26.1**

The Contractor may claim an extension of the Time for Completion if he is or will be delayed in completing the Works by any of the following causes:

- (a) Extra or additional work ordered in writing under Clause 31,
- (b) Exceptional adverse weather conditions,
- (c) Physical obstructions or conditions which could not reasonably have been foreseen by the Contractor,
- (d) Employer's or Engineer's instructions, otherwise than by reason of the Contractor's default,
- (e) The failure of the Employer to fulfill any of his obligations under the Contract,
- (f) Delay by any other contractor engaged by the Employer,
- (g) Any suspension of the Works under Clause 23, except when due to the Contractor's default,
- (h) Any industrial dispute.
- (i) The Employer's Risk,
- (j) Force Majeure.

The Contractor shall give to the Engineer notice of his intention to make a claim for an extension of time within 14 days of the circumstances for such a claim becoming known to the Contractor. The notice shall be followed as soon as possible by the claim with full supporting details.

The Engineer shall, after due consultation with the Employer and the Contractor, grant the Contractor from time to time, either prospectively or retrospectively, such extension of Time for

Completion as may be justified. The Engineer shall notify the Employer and the Contractor accordingly.

The Contractor shall be entitled to such extension whether the delay occurs before or after the Time for Completion.

**Delays by Subcontractors**

**26.2** The Contractor shall be entitled to claim an extension of time if delay on the part of a Subcontractor is due to a cause mentioned in Clause 26.1, and such delay prevents the Contractor from meeting the Time for Completion.

**Earlier Completion**

**26.3** The Employer may require completion of the Works or part thereof earlier than the Time for Completion, on the following conditions:

- (a) The Employer and the Contractor shall first agree the extra sum to be paid for each day by which the Contractor completes the Works or part thereof earlier than the Time for Completion.
- (b) The Contractor shall not become liable under Sub-Clause 27.1 for any failure to complete the Works or the part thereof by the earlier time.

**Delay in Completion**

**27.1**

- (a) If the Contractor fails to complete the Works within the Time for Completion, the Employer shall be entitled to a reduction in the Contract Price unless it can be reasonably concluded from the circumstances that the Employer will suffer no loss.
- (b) The Employer shall within a reasonable time give the Contractor notice of his intention to claim a reduction.
- (c) The reduction shall be the percentage per day stated in the SCC of that part of the Contract Price, which is attributable to such part of the Works as cannot in consequence of the failure be put to the intended use. The reduction shall be computed for each day between the Time for Completion and the actual date of completion.
- (d) The reduction shall in no case exceed the maximum percentage of the Contract Price of such part stated in the SCC.
- (e) Except as provided in Sub-Clause 27.2, such reduction shall be to the exclusion of any other remedy of the Employer in respect of the Contractor's failure to complete within the Time for Completion.

**Prolonged Delay**

**27.2** If the Employer has become entitled to the maximum reduction under Clause 27.1 for any part of the Works, he may by notice require the Contractor to complete. Such notice shall fix a final time for completion, which shall be reasonable. If the Contractor fails to complete within such time, and this is not due to a cause for which the Employer or some other contractor employed by him is responsible, the Employer may by further notice to the Contractor either:

- (a) Require the Contractor to complete, or
- (b) May himself complete at the Contractor's cost provided that he does so in a reasonable manner, or
- (c) Terminate the Contract.

If the Employer terminates the Contract, he shall be entitled to recover from the Contractor any loss he has suffered up to the maximum amount stated in the SCC. If no maximum amount is stated, the Employer shall not be entitled to recover more than that part of the Contract Price, which is attributable to that part of the Works, which cannot by reason of the Contractor's failure be put to the intended use. The Employer shall give credit for the value of any part of the Works, which he retains.

**Tests on Completion**

<b>Notice of Tests</b>	<b>28.1</b>	The Contractor shall give to the Engineer 21 day's notice of the date after which he will be ready to make the Tests on Completion (the Tests). Unless otherwise agreed, the Tests shall take place within 14 days after the said date on such day or days as the Engineer shall notify the Contractor.
<b>Time for Tests</b>	<b>28.2</b>	If the Contractor fails to make the Tests within 21 days the Engineer may himself proceed with the Tests. All Tests so made by the Engineer shall be at the risk and cost of the Contractor and the cost thereof shall be deducted from the Contract Price. The tests shall then be deemed to have been made in the presence of the Contractor and the results of the Tests shall be accepted as accurate.
<b>Delayed Tests</b>	<b>28.3</b>	If the Tests are being unduly delayed by the Contractor the Engineer may by notice require the Contractor to make the Tests within 21 days after the receipt of such notice. The Contractor shall make the Tests on such days within that period as the Contractor may fix and of which he shall give notice to the Engineer. If the Contractor fails to make the Tests within 21 days the Engineer may himself proceed with the Tests. All Tests so made by the Engineer shall be at the risk and cost of the Contractor and the cost thereof shall be deducted from the Contract Price. The tests shall then be deemed to have been made in the presence of the Contractor and the results of the Tests shall be accepted as accurate
<b>Facilities for Tests On Completion</b>	<b>28.4</b>	Except where otherwise specified, the Employer shall provide free of charge such labour, materials, electricity, fuel, water, stores, apparatus and feedstock as may be reasonably required by the Contractor to carry out the Tests.
<b>Retesting</b>	<b>28.5</b>	If the Works or any Section fails to pass the Tests, the Engineer or the Contractor may require such Tests to be repeated on the same terms and conditions. All costs to which the Employer may be put by the repetition of the Tests under this Sub-Clause or under Sub-Clause 30.7 shall be deducted from the Contract Price.
<b>Disagreement as to Result of Tests</b>	<b>28.6</b>	If the Engineer and the Contractor disagree on the interpretation of the Test result, each shall give a statement of his views to the other within 14 days after such disagreement arises. The statement shall be accompanied by all relevant evidence.
<b>Consequences of Failure to Pass Tests on Completion</b>	<b>28.7</b>	If the Works or any Section fails to pass the Tests on the repetition thereof under Sub-Clause 28.5, the Engineer, after due consultation with the Employer and the Contractor, shall be entitled to:

- (a) Order one further repetition of the Tests under the conditions of Sub-Clause 28.5, or
- (b) Reject the Works or Section in which event the Employer shall have the same remedies against the Contractor as are provided under Sub-Clause 30.5(c), or
- (c) Issue a Taking-Over Certificate, if the Employer so wishes, notwithstanding that the Works are not complete. The Contract Price shall then be reduced by such amount as may be agreed by the Employer and the Contractor or, failing agreement, as may be determined by arbitration.

<b>Use by the Employer</b>	<b>28.8</b>	In considering the results of Tests carried out under Sub-Clause 29.3, 29.4 and 30.7 the Engineer shall make allowances for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works.
<b>Test Certificate</b>	<b>28.9</b>	As soon as the Works or any Section thereof has passed the Tests, the Engineer shall issue a Certificate to the Contractor and the Employer to that effect.
<b>Taking Over</b>	<b>29.1</b>	<p><b><u>Taking Over</u></b></p> <p>The Works shall be taken by the Employer when they have been completed in accordance with the Contract, except in minor respects that do not affect the use of the Works for their intended purpose, have passed the Tests on Completion and a Taking-Over Certificate has been issued or deemed to have been issued in accordance with Sub-Clause 29.2.</p>
<b>Taking-Over Certificate</b>	<b>29.2</b>	<p>The Contractor may apply by notice to the Engineer for a Taking-Over Certificate not earlier than 14 days before the Works will in the Contractor's opinion be completed and ready for taking over under Sub-Clause 29.1.</p> <p>The Engineer shall within 28 days after the receipt of the Contractor's application either:</p> <ul style="list-style-type: none"> <li>(a) Issue the Taking-Over Certificate to the Contractor with a copy to the Employer stating the date on which the Works were complete and ready for taking over, or</li> <li>(b) Reject the application giving his reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued.</li> </ul> <p>If the Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days he shall be deemed to have issued the Taking-Over Certificate on the last day of that period.</p> <p>If the Works are divided by the Contract into Sections the Contractor shall be entitled to apply for separate Taking-Over Certificates for each such Section.</p>
<b>Use before Taking Over</b>	<b>29.3</b>	<p>The Employer shall not use any part of the Works unless a Taking-Over Certificate has been issued in respect thereof.</p> <p>If nevertheless the Employer uses any part of the Works, that part which is used shall be deemed to have been taken over at the date of such use. The Engineer shall on request of the Contractor issue a Taking-Over Certificate accordingly. If the Employer uses any part of</p>

the Works before taking over the Contractor shall be given the earliest opportunity of taking such steps as may be necessary to carry out the Tests on Completion.

The provisions of Sub-Clause 27.1 shall not apply to any part of the Works while being so used by the Employer. Clause 30 shall apply as if the part had been taken over on the date it was taken into use.

**Interference with Tests on Completion**

**29.4**

If the Contractor is prevented from carrying out the Tests on Completion by a cause for which the Employer or the Engineer or other contractors employed by the Employer are responsible, the Employer shall be deemed to have taken over the Works on the date when the Tests on Completion would have been completed but for such prevention. The Engineer shall issue a Taking-Over Certificate accordingly.

The Works shall not be deemed to have been taken over if they are not substantially in accordance with the Contract.

If the Works are taken over under this Clause the Contractor shall nevertheless carry out the Tests on Completion during the Defects Liability Period. The Engineer shall require the Tests on Completion to be carried out by 14 days notice and in accordance with the relevant provisions of Clause 28.

Any additional costs, to which the Contractor may be put in making the Tests on Completion during the Defects Liability Period, shall be added to the Contract Price.

**Defects Liability Period**

**30.1**

**Defects after Taking Over**

Where any part of the Works is taken over separately from the Works the Defects Liability Period for that part shall commence on the date it was taken over.

**Making Good Defects**

**30.2**

The Contractor shall, subject to Sub-Clause 30.9, be responsible for making good any defect in or damage to any part of the Works which may appear or occur during the Defects Liability Period and which arise from, either:

- (a) Any defective materials, workmanship or design, or
- (b) Any act or omission of the Contractor during the Defects Liability Period.

The Contractor shall make good the defect or damage as soon as practicable and at his own cost.

**Notice of Defects**

**30.3**

If any such defect appears or damage occurs, the Employer or the Engineer shall forthwith notify the Contractor thereof in writing.

**Extension of Defects Liability Period**

**30.4**

The provisions of this Clause shall apply to all replacements or renewals carried out by the Contractor as if the replacements and renewals had been taken over on the date they were completed.

The Defects Liability Period for the Works shall be extended by a period equal to the period during which the Works cannot be used by reason of a defect or damage. If only part of the Works is affected the Defects Liability Period shall be extended only for that part.

In neither case shall the Defects Liability Period be extended by more



than one year.

When erection or delivery of Plant has been suspended under Sub-Clause 23.1, the Contractor's obligations under this Clause shall not apply to any defects occurring more than three years after it would have been delivered but for the suspension or such period as may be stated in SCC.

**Failure to  
Remedy Defects**

**30.5**

If the Contractor fails to remedy a defect or damage within a reasonable time, the Employer may fix a final time for remedying the defect or damage.

If the Contractor fails to do so, the Employer may:

- (a) Carry out the work himself or by others at the Contractor's risk and cost, provided that he does so in a reasonable manner. The costs properly incurred by the Employer in remedying the defect or damage shall be deducted from the Contract Price, but the Contractor shall have no responsibility for such work, or
- (b) Require the Contractor to grant the Employer a reasonable reduction in the Contractor Price to be agreed or fixed by arbitration under Clause 50, or
- (c) If the defect or damage is such that the Employer has been deprived of substantially the whole of the Works or a part thereof, he may terminate the Contract in respect of such parts of the Works as cannot be put to the intended use. The Employer shall to the exclusion of any remedy under Clause 45 be entitled to recover all sums paid in respect of such parts of the Works together with the cost of dismantling the same, clearing the Site and returning Plant to the Contractor or otherwise disposing of it in accordance with the Contractor's instruction.

**Removal of  
Defective Work**

**30.6**

If the defect or damages is such that repairs cannot be expeditiously carried out on the Site, the Contractor may with the consent of the Engineer or the Employer remove from the Site for the purposes of repair any part of the Works which is defective or damaged.

**Further Tests  
On Completion**

**30.7**

If the replacements or renewals are such that they may affect the performance of the Works, the Employer may request that Tests on Completion be repeated to the extent necessary. The request shall be made by notice within 28 days after the replacement or renewals. The Test shall be carried out in accordance with Clause 28.

**Right of Access**

**30.8**

Until the Final Certificate of Payment has been issued, the Contractor shall have the right of access to all parts of the Works and to records of the working and performance of the Works.

Such right of access shall be during the Employer's normal working hours at the Contractor's risk and cost. Access shall also be granted to any duly authorized representative of the Contractor whose name has been communicated in writing to the Engineer.

Subject to the Engineer's approval, the Contractor may also at his own risk and cost make any tests, which he considers desirable.

<b>Defects in Employer's and Engineer's Designs</b>	<b>30.9</b>	The Contractor shall not be liable for any defects resulting from designs furnished or specified by the Employer or the Engineer.
<b>Contractor to Search</b>	<b>30.10</b>	The Contractor shall, if required by the Engineer in writing, search for the cause of any defect, under the direction of the Engineer. Unless the defect is one for which the Contract is liable under this Clause, the cost of the work carried out by the Contractor in searching for the cause of the defect shall be added to the Contract Price.
<b>Defects Liability Certificate</b>	<b>30.11</b>	When the Defects Liability Period for the Works or any part thereof has expired and the Contractor has fulfilled all his obligations under the Contract for defects in the Works or that part, the Engineer shall issue within 28 days to the Employer and the Contractor a Defects Liability Certificate to that effect.
<b>Exclusive Remedies</b>	<b>30.12</b>	Except in the case of Gross Misconduct, the Employer's remedies under this Clause shall be in place of and to the exclusion of any other remedy in relation to defects whatsoever.

### Variations

<b>Engineer's Right to Vary</b>	<b>31.1</b>	The Engineer may by Variation Order to the Contractor at any time before the Works are taken over, instruct the Contractor to alter, amend, omit, add to or otherwise vary part of the Works. The Contractor shall not vary or alter any of the Works, except in accordance with a Variation Order from the Engineer. The Contractor may, however, at any time purpose variations of the Works to the Engineer.
<b>Variation Order Procedure</b>	<b>31.2</b>	Prior to any Variation Order under Sub-Clause 31.1 the Engineer shall notify the Contractor of the nature and form of such variation. As soon as possible after having received such notice, the Contractor shall submit to the Engineer:

- (a) A description of work, if any, to be performed and a programme for its execution, and
- (b) The Contractor's proposals for any necessary modifications to the Programme according to Sub-Clause 26.1 or to any of the Contractor's obligations under the Contract, and
- (c) The Contractor's proposals for adjustment to the Contract Price.

Following the receipt of the Contractor's submission the Engineer shall, after due consultation with the Employer and the Contractor, decide as soon as possible whether or not the variation shall be carried out. If the Engineer decides that the variation shall be carried out, he shall issue a Variation Order clearly identified as such in accordance with the Contractor's submission or as modified by agreement. If the Engineer and the Contractor are unable to agree the adjustment of the Contract Price, the provisions of Sub-Clause 31.3 shall apply.

<b>Disagreement on Adjustment of the</b>	<b>31.3</b>	If the Contractor and the Engineer are unable to agree on the adjustment of the Contract Price, the adjustment shall be determined in
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## Contract Price

accordance with the rates specified in the Schedule of Prices. If the rates contained in the Schedule of Prices are not directly applicable to the specific work in question, suitable rates shall be established by the Engineer reflecting the level of pricing in the Schedule of Prices.

Where rates are not contained in the said Schedule, the amount shall be such as is in all the circumstances reasonable. Due account shall be taken of any over-or-under-recovery of overheads by the Contractor in consequence of the variation.

The Contractor shall also be entitled to be paid:

- (a) The cost of any partial execution of the Works rendered useless by any such variation, and
- (b) The cost of making necessary alterations to Plant already manufactured or in the course of manufacture or of any work done that has to be altered in consequence of such a variation, and
- (c) Any additional costs incurred by the Contractor by the disruption of the progress of the Works as detailed in the Programme, and
- (d) The net effect of the Contractor's finance costs, including interest, caused by the variation.

The Engineer shall on this basis determine the rates or prices to enable on-account payment to be included in certificates of payment.

## Contractor to Proceed

31.4

On receipt of a Variation Order, the Contractor shall forthwith proceed to carry out the variation and be bound to these Conditions in so doing as if such variation was stated in the Contract.

The work shall not be delayed pending the granting of an extension of the Time for Completion or an adjustment to the Contract Price under Sub-Clause 31.3.

## Records of Costs

31.5

In any case where the Contractor is instructed to proceed with a variation prior to the determination of the adjustment to the Contract Price in respect thereof the Contractor shall keep records of the cost of undertaking the variation and of time expended thereon. Such records shall be open to inspection by the Engineer at all reasonable times.

## Ownership of Plant

32.1

### Ownership of Plant

Plant to be supplied pursuant to the Contract shall become the property of the Employer at whichever is the earlier of the following times:

- (a) When Plant is delivered to Site, or
- (b) When by virtue of Sub-Clause 24.2 the Contractor becomes entitled to payment of the value of the Plant.

### Certificates and Payment

## Terms of Payment

33.1

The terms of payment shall be as stated in the SCC.

## Method of Application

33.2

Unless otherwise specified in SCC applications by the Contractor for payment shall be made to the Engineer as follows:

- (a) In respect of the progress of the Works accompanied by

such evidence of the values of the work done as the Engineer may require, and

- (b) In respect of Plant shipped and en route to the Site identifying the Plant concerned and accompanied by such evidence of shipment and of payment of freight and insurance and by such other documents as the Engineer may require, and

- (c) For additional payment in accordance with Clause 34.

Any other application for payment shall state the amounts claimed and the detailed particulars in respect of which the application is made.

**Issue of Certificate  
Of Payment**

**33.3**

Within 14 days after receiving an application for payment which the Contractor was entitled to make the Engineer shall issue a Certificate of Payment to the Employer showing the amount due, with a copy to the Contractor.

A certificate of payment, other than the Final Certificate of Payment, shall not be withheld on account of:

- (a) Defects of a minor character which are not such as to affect the use of the Works, or
- (b) Any part of the payment applied for being disputed. In such case a certificate of payment for the undisputed amount shall be issued.

**Corrections to  
Certificates of  
Payment**

**33.4**

The Engineer may in any certificate of payment make any correction or modification that should properly be made in respect of any previous certificate.

**Payment**

**33.5**

Unless otherwise specified in SCC, the Employer shall pay the amount certified within 28 days from the date of issue of each certificate of payment to the Contract at his principal place of business.

**Delayed Payment**

**33.6**

If payment of any sum payable under Sub-Clause 33.5 is delayed, the Contractor shall be entitled to receive interest on the amount unpaid during the period of delay. Unless otherwise stated in SCC the interest shall be at the annual rate three percentage points above the discount rate of the central bank in the Contractor's country. The Contractor shall be entitled to such payment without formal notice and without prejudice to any other right or remedy.

**Remedies on  
Failure to Certify  
Or Make Payment**

**33.7**

The Contractor shall be entitled to stop the Works by giving 14 days notice to the Engineer and the Employer, if either:

- (a) The Engineer fails to issue a certificate of payment upon proper application by the Contractor, or
- (b) The Employer fails to make any payment as provided in this Clause.

The cost to the Contractor together with profit occasioned by the stoppage and the subsequent resumption of work shall be added to the Contract Price. The Contractor shall also be entitled to terminate the Contract by giving 28 days notice to the Engineer and the Employer in any case where the Engineer has failed to issue a certificate of

payment upon proper application by the Contractor.

**Payment by  
Measurement**

**33.8**

For any part of the Works which is to be paid according to quantity supplied or work done, the provisions for measurement shall be stated in SCC.

**Application for  
Final Certificate  
Of Payment**

**33.9**

The Contractor shall make application to the Engineer for the Final Certificate of Payment within 28 days after the issue of the Defects Liability Certificate, or if more than one, the last Defects Liability Certificate.

The application for the Final Certificate of Payment shall be accompanied by a final account prepared by the Contractor. The final account shall give full details of the value of all Plant supplied and work done under the Contract together with:

- (a) Such conditions to or deductions from the Contract Price as have been agreed, and
- (b) All claims for additional payment to which the Contractor may consider himself entitled.

**Issue of Final  
Certificate of  
Payment**

**33.10**

The Engineer shall issue to the Employer with a copy to the Contractor, the Final Certificate of Payment within 28 days after receiving an application in accordance with Sub-Clause 33.9.

If the Contractor has not applied for a Final Certificate of Payment within the time specified in Sub-Clause 33.9 the Engineer shall request the Contractor to do so within a further period of 28 days. If the Contractor fails to make such an application, the Engineer shall issue the Final Certificate of Payment for such amount as he deems correct.

**Final Certificate of  
Payment  
Conclusive**

**33.11**

A Final Certificate of Payment shall be conclusive evidence of the value of the Works, that the Works are in accordance with the Contract and that the Contractor has performed all his obligations under the Contract.

Payment of the amount certified in the Final Certificate of Payment shall be conclusive evidence that the Employer has performed all his obligations under the Contract.

A Final Certificate of Payment or payment shall not be conclusive:

- (a) To the extent that fraud or dishonesty relates to or affects any matter dealt with in the certificate, or
- (b) If any arbitration or court proceedings under the Contract have been commenced by either party before the expiry of 84 days after the issue of the Final Certificate of Payment.

**Claims**

**Procedure**

**34.1**

In any case where under these Conditions there are circumstances which the Contractor considers entitled him to claim additional payment, the Contractor shall:

- (a) If he intends to make any claim for additional payment give to the Engineer notice of his intention to make such claim within 28 days after the said circumstances became known to the Contractor

stating the reasons for his claim, and

- (b) As soon as reasonably practical after the date of such notice submit to the Engineer full and detailed particulars of his claim but not later than 182 days after such notice unless otherwise agreed by the Engineer. In any event such particulars shall be submitted no later than the application for the Final Certificate of Payment. The Contractor shall thereafter promptly submit such further particulars as the Engineer may reasonably require to assess the validity of the claim.

**Assessment**            **34.2**            When the Engineer has received full and detailed particulars of the Contractor's claim in accordance with Sub-Clause 34.1 and such further particulars as he may reasonably have required he shall after due consultation with the Employer and the Contractor determine whether the Contractor is entitled to additional payment and notify the parties accordingly.  
The Engineer may reject any claim for additional payment, which does not comply with the requirements of Sub-Clause 34.1.

**Foreign Currency and Rates of Exchange**

**Payment in Foreign Currencies**            **35.1**            Arrangements for payment in foreign currencies shall be as stated in the SCC.

**Currency Restrictions**            **35.2**            The Employer shall reimburse the Contractor for any loss arising from:  
(a) Currency restrictions, and  
(b) Restrictions on the transfer of currency in which the Contractor is to be paid which are imposed by the government or authorized agency of the government of the country from which any payments under the Contract are to be made.

This Sub-Clause only applies to restrictions imposed after the date 28 days prior to the latest date for submission of tenders for the Works.

**Rates of Exchange**            **35.3**            Where the Contract provides for payment in Foreign Currency the rates of exchange between the currencies shall be fixed for the purposes of the Contract and shall be as stated in the SCC.  
If such rates of exchange are not stated in the SCC the rates to be use shall be those quoted by the central bank of the country whose currency is to be sold 28 days or the nearest day thereto prior to the latest date for submission of tenders for the Works

**Provisional Sums**

**Use of Provisional Sums**            **36.1**            A Provisional Sum shall only be used, in whole or in part in accordance with the Engineer's instructions.  
The total sum paid to the Contractor shall include only such amounts in respect of work, supplies or services to which such Provisional Sums relate as the Engineer shall have instructed.

**Ordering Work Against Provisional Sums**            **36.2**            In respect of every Provisional Sum the Engineer may after due consultation with the Employer an the Contractor order:

- (a) Work to be executed, including goods, materials or services to be supplied by the Contractor. The value of such work executed, determined in accordance with Clause 31 shall be paid to the Contractor in accordance with Clause 33, and
- (b) goods and materials to be purchased by the Contractor, for which payment will be made in accordance with Sub-Clause 36.4

**Invoices and Receipts**

**36.3**

The Contractor shall, when required by the Engineer, produce quotations, invoices, vouchers and accounts or receipts in connection with expenditure in respect of Provisional Sums.

**Payment against Provisional Sums**

**36.4**

For all work executed or goods, materials or services supplied or purchased by the Contractor under Sub-Clause 36.2(b), there shall be included in the sums paid to the Contractor:

- (a) The actual price paid or due to be paid by the Contractor, and
- (b) In respect of all other charges and profit, a percentage of the actual price paid or due to be paid. Such percentage shall be as stated in the SCC.

**Risk and Responsibility**

**Allocation of Risk And Responsibility**

**37.1**

The Risks of loss of or damage to physical property and of death and personal injury which arise in consequence of the performance of the Contract shall be allocated between the Employer and the Contractor as follows:

- (a) The Employer: the Employer's Risks as specified in Sub-Clause 37.2.
- (b) The Contractor: the Contractor's Risks as specified in Sub-Clause 37.3.

**Employer's Risks**

**37.2**

The Employer's Risks are:

- (a) War and hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (b) rebellion, revolution, insurrection, military or usurped power or civil war insofar as it relates to the country in which the Works are located or countries through which plant must be transported;
- (c) Ionizing radiation or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosives or other hazardous properties of any explosive nuclear assembly or nuclear components thereof;
- (d) Pressure waves caused by aircraft traveling at sonic or supersonic speed;
- (e) Riot, commotion or disorder, unless solely restricted to the employees of the Contractor or of his Subcontractors;
- (f) Use or occupation of the Works or any part thereof by the Employer;
- (g) Fault, error, defect or omission in the design of any part of the Works by the Engineer, Employer or those for whom

- the Employer is responsible;
- (h) The use or occupation of the Site by the Works or any part thereof, or for the purposes of the Contract; or interference, whether temporary or permanent with any right of way, light, air or water or with any easement, wayleaves or right of a similar nature which is the inevitable result of the construction of the Works in accordance with the Contract;
  - (i) The right of the Employer to construct the Works or any part thereof on, over, under, in or through any land;
  - (j) Damage (other than that resulting from the Contractor's method of construction) which is the inevitable result of the construction of the Works in accordance with the Contract;
  - (k) The act, neglect or omission or breach of contract or of statutory duty of the Engineer, the Employer or other contractors engaged by the Employer or of their respective employees or agents;
  - (l) and all risks which an experienced contractor could not have foreseen or, if foreseeable, against which measures to prevent loss, damage or injury from occurring could not reasonably have been taken by such contractor.

**Contractor's Risks**                      **37.3**                      The Contractor's Risks are all risks other than those identified as the Employer's Risks.

**Contractor's  
Responsibility  
For the Care of  
The Works**

**38.1**                      **Care of the Works and Passing of Risk**  
The Contractor shall be responsible for the care of the Works or any Section thereof from the Commencement Date until the Risk Transfer Date applicable thereto under Sub-Clause 38.2.

The Contractor shall also be responsible for the care of any part of the Works upon which any outstanding work is being performed by the Contractor during the Defects Liability Period until completion of such outstanding work.

**Risk Transfer  
Date**                      **38.2**                      The Risk Transfer Date in relation to the Works or a Section thereof is the earliest of either:

- (a) The date of issue of the Taking-Over Certificate, or
- (b) The date when the Engineer is deemed to have issued the Taking-Over Certificate or the Works are deemed to have been taken over in accordance with Clause 29, or
- (c) The date of expiry of the notice of termination when the Contract is terminated by the Employer or the Contractor in accordance with these Conditions.

**Passing of Risk  
Of Loss of or  
Damage to the  
Works**                      **39.1**                      The risk of loss of or damage to the Works or any Section thereof shall pass from the Contractor to the Employer on the Risk Transfer Date applicable thereto.

**Loss or Damage  
Before Risk  
Transfer Date**                      **39.2**                      Loss of or damage to the Works or any Section thereof occurring before the Risk Transfer Date shall:



		<ul style="list-style-type: none"> <li>(a) To the extent caused by any of the Contractor’s Risks, be made good forthwith by the Contractor at his own cost, and</li> <li>(b) To the extent caused by any of the Employer’s Risks, be made good by the Contractor at the Employer’s expense if so required by the Engineer within 28 days after the occurrence of the loss or damage. The price for making good such loss and damage shall be in all circumstances reasonable and shall be agreed by the Employer and the Contractor, or in the absence of agreement, shall be fixed by arbitration under Clause 50.</li> </ul>
<b>Loss or Damage After Risk Transfer Date</b>	<b>39.3</b>	<p>After the Risk Transfer Date, the Contractor’s liability in respect of loss of or damage to any part of the Works shall, except in the case of Gross Misconduct, be limited:</p> <ul style="list-style-type: none"> <li>(a) To the fulfillment of the Contractor’s obligations under Clause 30 in respect of defects therein, and</li> <li>(b) To making good forthwith loss or damage caused by the Contractor during the Defects Liability Period.</li> </ul>
<b>Contractor’s Liability</b>	<b>40.1</b>	<ul style="list-style-type: none"> <li>a) <b>Damage to Property and Injury to Persons</b></li> <li>b) Except as provided under Sub-Clause 41.1, the Contractor shall be liable for and shall indemnify the Employer against all losses, expenses and claims in respect of any loss of or damage to physical property (other than the Works), death or personal injury occurring before the issued of the last Defects Liability Certificate to the extent caused by: <ul style="list-style-type: none"> <li>(a) Defective design, material or workmanship of the Contractor, or</li> <li>(b) Negligence or breach of statutory duty of the Contractor, his Subcontractors or their respective employees and agents.</li> </ul> </li> </ul>
<b>Employer’s Liability</b>	<b>40.2</b>	<p>The Employer shall be liable for and shall indemnify the Contractor against all losses, expenses or claims in respect of loss of or damage to any physical property or of death or personal injury whenever occurring, to the extent caused by any of the Employer’s Risks.</p>
<b>Accidents</b>	<b>41.1</b>	<p>The Contractor shall be liable for and shall indemnify the Employer against all losses, expenses or claims arising in connection with the death of or injury to any person employed by the Contractor or his Subcontractors for the purposes of the Works, unless caused by any acts or defaults of the Engineer, the Employer or other contractors engaged by the Employer or by their respective employees or agents. In the latter cases the Employer shall be liable for and shall indemnify the Contractor against all losses, expenses and claims arising in connection therewith.</p>
<b>Liability for Indirect or Consequential Damage</b>	<b>42.1</b>	<ul style="list-style-type: none"> <li>c) <b>Limitations of Liability</b></li> <li>d) Neither party shall be liable to the other for any loss or profit, loss of use, loss of production, loss of contracts or for any other indirect or consequential damage that may be suffered by the other, except:</li> </ul>

- (a) As expressly provided in Clause 27, and
- (b) Those provisions of these Conditions whereby the Contractor is expressly entitled to receive profit.

<b>Maximum Liability</b>	<b>42.2</b>	The liability of the Contractor to the Employer under these Conditions shall in no case exceed the sum stated in the SCC or, if no such sum is stated, the Contractor Price.
<b>Liability after Expiration of Defects Liability Period</b>	<b>42.3</b>	The Contractor shall have no liability to the Employer for any loss of or damage to the Employer’s physical property, which occurs after the expiration of the Defects Liability Period unless caused by Gross Misconduct of the Contractor.
<b>Exclusive Remedies</b>	<b>42.4</b>	<p>The Employer and the Contractor intend that their respective rights, obligations and liabilities as provided for in these Conditions shall alone govern their rights under the Contract and in relation to the Works.</p> <p>Accordingly, the remedies provided under the contract in respect of or in consequence of:</p> <ul style="list-style-type: none"> <li>(a) Any breach of contract, or</li> <li>(b) Any negligent act or omission, or</li> <li>(c) Death or personal injury, or</li> <li>(d) Loss or damage to any property are, save in the case of Gross Misconduct, to be to the exclusion of any other remedy that either may have against the other under the law governing the Contract or otherwise.</li> </ul>
<b>Mitigation of Loss Or Damage</b>	<b>42.5</b>	In all cases the party claiming a breach of Contract or a right to be indemnified in accordance with the Contract shall be obliged to take all reasonable measures to mitigate the loss or damage which has occurred or may occur.
<b>Foreseen Damage</b>	<b>42.6</b>	Where either the Employer or the Contractor is liable in damages to the other these shall not exceed the damage, which the party in default could reasonably have foreseen at the date of the Contract.
<b>The Works</b>	<b>43.1</b>	<p>e) <b>Insurance</b></p> <p>The Contractor shall insure the Works in the joint names of the Contractor and the Employer to their full replacement value with deductible limits not exceeding those stated in the SCC.</p> <p>From the Commencement Date until the Risk Transfer Date against any loss or damage caused by any of the Contractor’s Risks and any other risks specified in the SCC, and during the Defects Liability Period against any loss or damage which is caused either:</p> <ul style="list-style-type: none"> <li>(a) By the Contractor in completing any outstanding work or complying with his obligations under Clause 30, or</li> <li>(b) By any of the Contractor’s Risks which occurred prior to the Risk Transfer Date.</li> </ul>
<b>Contractor’s Equipment</b>	<b>43.2</b>	The Contractor shall insure Contractor’s Equipment for its full replacement value whilst in transit to the Site, from commencement of

loading until completion of unloading at the Site and while on the Site against all loss or damage caused by any of the Contractor's Risks.

<b>Third Party Liability</b>	<b>43.3</b>	<p>The Contractor shall insure against liability to third parties for any death or personal injury and loss of or damage to any physical property arising out of the performance of the Contract and occurring before the issue of the last Defects Liability Certificate.</p> <p>Such insurance shall be effected before the Contractor begins any work on the Site. The insurance shall be for not less than the amount specified in the SCC.</p>
<b>Employees</b>	<b>43.4</b>	<p>The Contractor shall insure and maintain insurance against his liability under Sub-Clause 41.1.</p>
<b>General Requirements of Insurance Policies</b>	<b>43.5</b>	<p>The Contractor shall:</p> <ul style="list-style-type: none"><li>(a) Whenever required by the Employer produce the policies or certificates of any insurance which he is required to effect under the Contract together with receipts for the premiums,</li><li>(b) Effect all insurances for which he is responsible with an insurer and in terms of approved by the Employer, and</li><li>(c) Make no material alterations to the terms of any insurance without the Employer's approval. If an insure makes any material alteration to the terms the Contract shall forthwith notify the Employer, and</li><li>(d) In all respects comply with any conditions stipulated in the insurance policies which he is required to place under the Contract.</li></ul>
<b>Permitted Exclusions from Insurance Policies</b>	<b>43.6</b>	<p>The insurance cover effected by the Contractor may exclude any of the following:</p> <ul style="list-style-type: none"><li>(a) The cost of making good any part of the Works which is defective or otherwise does not comply with the Contract provided that it does no exclude the cost of making good any loss or damage to any other part of the Works attributable to such defect or non-compliance,</li><li>(b) Indirect or consequential loss or damage including any reductions in the Contract Price for delay,</li><li>(c) Wear and tear, shortages and theft,</li><li>(d) Risks relating to vehicles for which third party or other insurance is required by law.</li></ul>
<b>Remedies on the Contractor's Failure to Insure</b>	<b>43.7</b>	<p>If the Contractor fails to produce evidence of insurance cover as stated in Sub-Clause 43.5.(a) then the Employer may effect and keep in force such insurance. Premiums paid by the Employer for this purpose shall be deducted from the Contract Price.</p>
<b>Amounts not Recovered</b>	<b>43.8</b>	<p>Any amounts not recovered from the insurers shall be borne by the Employer or Contractor in accordance with their responsibilities under Clause 37.</p>
<b>Definition of</b>	<b>44.1</b>	<p><b><u>Force Majeure</u></b> Force Majeure means any circumstances beyond the control of the</p>

**Force  
Majeure**

parties, including but not limited to:

- (a) War and other hostilities, (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition or embargo;
- (b) Ionizing radiation or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosives, or other hazardous properties of any explosive nuclear assembly or nuclear components thereof;
- (c) Rebellion, revolution, insurrection, military or usurped power and civil war;
- (d) Not, commotion or disorder, except where solely restricted to employees of the Contractor.

**Effect of Force Majeure**            **44.2**            Neither party shall be considered to be in default or in breach of his obligations under the Contract to the extent that performance of such obligations is prevented by any circumstances of Force Majeure which arise after the date of the Letter of Acceptance or the date when the Contract becomes effective, whichever is the earlier.

**Notice of Force Majeure**            **44.3**            If either party considers that any circumstances of Force Majeure have occurred which may affect performance of his obligations he shall promptly notify the other party and the Engineer thereof.

**Performance of Continue**            **44.4**            Upon the occurrence of any circumstances of Force Majeure the Contractor shall endeavour to continue to perform his obligations under the Contract so far as reasonably practicable. The Contractor shall notify the Engineer of the steps he proposes to take including any reasonable alternative means for performance, which is not prevented by Force Majeure. The Contractor shall not take any such steps unless directed so to do by the Engineer.

**Additional Costs Caused by Force Majeure**            **44.5**            If the Contractor incurs additional costs in complying with the Engineer's directions under Sub-Clause 44.4, the amount thereof shall be certified by the Engineer and added to the Contract Price.

**Damage Caused By Force Majeure**            **44.6**            If in consequence of Force Majeure the Works shall suffer loss or damage the Contractor shall be entitled to have the value of the work done, without regard to the loss or damage that has occurred, included in a Certificate of Payment.

**Termination in Consequence of Force Majeure**            **44.7**            If circumstances of Force Majeure have occurred and shall continue for a period of 182 days then, notwithstanding that the Contractor may by reason thereof have been granted an extension of Time for Completion of the Works, either party shall be entitled to serve upon the other 28 days' notice to terminate the Contract. If at the expiry of the period of 28 days Force Majeure shall still continue the Contract shall terminate.

**Payment on Termination for Force Majeure**            **44.8**            If the Contract is terminated under Sub-Clause 44.7 the Contractor shall be paid the value of the work done.  
The Contractor shall also be entitled to receive:

- a. The amounts payable in respect of any preliminary items so far as the work or service comprised therein has been carried

- out and a proper proportion of any such item in which the work or service comprised has only been partially carried out,
- b. The cost of materials or goods ordered for the Works or for use in connection with the Works which have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery. Such materials or goods shall become the property of and be at the risk of the Employer when paid for by the Employer and the Contractor shall place the same at the Employer's disposal,
- c. the amount of any other expenditure which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the whole of the Works,
- d. the reasonable cost of removal of Contractor's Equipment from the Site and the return thereof to the Contractor's works in his country or to any other destination at no greater cost, and
- e. the reasonable cost of repatriation of the Contractor's staff and workmen employed wholly in connection with the Works at the date of such termination.

**Release from Performance**      **44.9**      If circumstances of Force Majeure occur and in consequence thereof under the law governing the Contract the parties are released from further performance of the Contract, the sum payable by the Employer to the Contractor shall be the same as that which would have been payable under Sub-Clause 44.8 if the Contract had been terminated under Sub-Clause 44.7.

**Force Majeure Affecting Engineer's Duties**      **44.10**      The provisions of Clause 44 shall also apply in circumstances where the Engineer is prevented from performing any of his duties under the Contract by reason of Force Majeure.

**Notice of Default**      **45.1**      f)      **Default**  
 If the Contractor is not executing the Works in accordance with the Contract or is neglecting to perform his obligations thereunder so as seriously to affect the carrying out of the Works, the Engineer may give notice to the Contractor requiring him to make good such failure or neglect.

**Contractor's Default**      **45.2**      If the Contractor:

- (a) Has failed to comply within a reasonable time with a notice under Sub-Clause 45.1, or
- (b) Assigns the Contract or subcontracts the whole of the Works without the Employer's written consent, or
- (c) Become bankrupt or insolvent, has a receiving order made against him or compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors or goes into liquidation.

The Employer may, after having given 7 days notice to the Contractor, terminate the Contract and expel the Contractor from the Site.

Any such expulsion and termination shall be without prejudice to any other rights or powers of the Employer, the Engineer or the Contractor under the Contract.

The Employer may upon such termination complete the Works himself

or by any other Contractor.

<b>Valuation at Date Of Termination</b>	<b>45.3</b>	The Engineer shall, as soon as possible after such termination, certify the value of the Works and all sums then due to the Contractor as at the date of termination in accordance with Clause 33.
<b>Payment after Termination</b>	<b>45.4</b>	The Employer shall not be liable to make any further payments to the Contractor until the Works have been completed. When the Works are so complete, the Employer shall be entitled to recover from the Contractor the extra costs, if any, of completing the Works after allowing for any sum due to the Contractor under Sub-Clause 45.3. If there is no such extra cost the Employer shall pay any balance due to the Contractor.
<b>Effect on Liability For Delay</b>	<b>45.5</b>	The Contractor's liability under Clause 27 shall immediately cease when the Employer expels him from the Site without prejudice to any liability thereunder that may have already occurred.
<b>Employer's Default</b>	<b>46.1</b>	<p>The Contractor may, by giving 14 days' notice to the Employer and the Engineer, terminate the Contract if the Employer:</p> <ul style="list-style-type: none"><li>(a) Fails to pay the Contractor the amount due under any certificate of the Engineer within 28 days after the amount became payable, or</li><li>(b) Interferes with or obstructs the issue of any certificate of the Engineer, or</li><li>(c) Becomes bankrupt or insolvent, has a receiving order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors or goes into liquidation, or</li><li>(d) Consistently fails to meet his contractual obligations, or</li><li>(e) Appoints a person to act with or in replacement of the Engineer without the Contractor's consent.</li></ul> <p>Any such termination shall be without prejudice to any other rights of the Contractor under the Contract.</p>
<b>Removal of Contractor's Equipment</b>	<b>46.2</b>	On such termination, the Contractor shall be entitled to remove immediately all Contractors' Equipment, which is on the Site.
<b>Payment on Termination for Employer's Default</b>	<b>46.3</b>	<p>In the event of such termination the Employer shall pay the Contractor an amount calculated in accordance with Sub-Clause 44.8.</p> <p>The Employer shall pay in addition the amount of any loss or damage, including loss of profit, which the Contractor may have suffered in consequence of termination. The additional amount shall, however, not exceed the limit specified in the SCC.</p>
<b>Labour, Materials And Transport</b>	<b>47.1</b>	<p>g) h) <b>Changes in Cost and Legislation</b></p> <p>Where the Contract Price is to be adjusted for changes in the cost of labour, materials, transport or other costs of execution of the Works, the method for calculating such adjustment shall be specified in the SCC.</p> <p>When calculating the adjustment no account shall be taken of any increased cost, which results from the Contractor's default or</p>

negligence.

<b>Statutory and Other Regulations</b>	<b>47.2</b>	<p>The Contract Price shall be adjusted to take account of any increase or decrease in cost resulting from changes in legislation of the country where the Site is located or in its generally accepted interpretation. Legislation means any law, order, regulation or bye-law having the force of law, which affects the Contractor in the performance of his obligations under the Contract, made after the date 28 days prior to the latest date for submission of tenders for the Works.</p> <p>The Employer shall certify the amount of the resulting increase or decrease in cost, which shall be added to or deducted from the Contract Price.</p>
<b>Customs and Import Duties</b>	<b>48.1</b>	<p>i) <b>Customs</b></p> <p>Unless otherwise stated in SCC the Employer shall pay all customs, import duties and taxes in consequence of the importation of Plant. If the Contractor is required to pay such customs, import duties and taxes, the Employer shall reimburse the amount thereof.</p>
<b>Clearance through Customs</b>	<b>48.2</b>	<p>The Employer shall assist the Contractor in obtaining clearance through the customs of all Plant and Contractor's Equipment and in procuring any necessary government consent to the re-export of Contractor's Equipment when it is removed from the Site.</p>
<b>Notices to Contractor</b>	<b>49.1</b>	<p>j) <b>Notices</b></p> <p>All certificates, notices or written orders to be given to the Contractor by the Employer or the Engineer under these Conditions shall be sent by airmail post, cable, telex or facsimile transmission to or left at the Contractor's principal place of business or such other address as the Contractor shall nominate for that purpose, or may be handed over to the Contractor's representative.</p>
<b>Notices to Employer and Engineer</b>	<b>49.2</b>	<p>Any notice to be given to the Employer or to the Engineer under these Conditions shall be sent by airmail post, cable, telex or facsimile transmission to or left at the respective addresses nominated for that purpose in the SCC, or handed over to the Engineer's or the Employer's representative authorized to receive it.</p>
<b>Minutes of Meetings</b>	<b>49.3</b>	<p>Instructions or notices to the Contractor and notices from the Contractor to the Engineer or the Employer recorded in a minute or protocol signed by the authorized representatives of the giver and recipient of such notice or instruction shall be valid notice or instruction for the purposes of the Contract.</p>
<b>Dispute concerning Engineer's Decisions</b>	<b>50.1</b>	<p>k) <b>Disputes and Arbitration</b></p> <p>If either party is dissatisfied with a decision or instruction of the Engineer as confirmed, reversed or varied in accordance with Clause 2 he may refer the matter to arbitration pursuant to Sub-Clause 50.2. Unless the dissatisfaction party has notified the other party and the Engineer within 56 days of such decision or instruction of his intention to refer the matter to arbitration, he shall be deemed to have accepted the decision as final.</p> <p>Reference to arbitration shall not relieve the Contractor of his</p>

obligation to proceed with the Works in accordance with the Engineer's decision or instruction, nor relieve the Employer of any of his obligations under the Contract.

The Contractor shall in any such arbitration be at liberty to rely on reasons additional to the reasons stated in the notice given under Sub-Clause 2.7.

<b>Arbitration</b>	<b>50.2</b>	<p>If at any time any question, dispute or difference shall arise between the Employer and the Contractor in connection with or arising out of the Contract or the carrying out of the Works either party shall be entitled to refer the matter to be finally settled by arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with those Rules, or by arbitration in accordance with such other rules as are specified in SCC.</p> <p>The Arbitrator(s) shall have full power to open up, review and revise:</p> <ul style="list-style-type: none"><li>(a) Any decision or instruction of the Engineer referred to arbitration pursuant to Sub-Clause 50.1, and</li><li>(b) Any certificate of the Engineer related to the dispute.</li></ul>
<b>Works to Continue</b>	<b>50.3</b>	<p>Performance of the Contract shall continue during arbitration proceedings unless the Employer shall order suspension. If any such suspension is ordered the reasonable costs incurred by the Contractor and occasioned thereby shall be added to the Contract Price.</p> <p>No payments due or payable by the Employer shall be withheld on account of pending reference to arbitration.</p>
<b>Time Limit for Arbitration</b>	<b>50.4</b>	<p>Formal notice of arbitration must be given to the other party, and where required to the appropriate arbitration body, no later than 84 days after the issue of the Final Certificate of Payment.</p>
<b>Applicable Law</b>	<b>51.1</b>	<p>1) <b>Law and Procedure</b></p> <p>The law, which is to apply to the Contract and under which the Contract is to be constructed, is stated in the SCC.</p>
<b>Procedure Law</b>	<b>51.2</b>	<p>The law governing the procedure and administration of any arbitration instituted pursuant to Clause 50 is stated in the SCC.</p>
<b>Language</b>	<b>51.3</b>	<p>The language and place of the arbitration are stated in the SCC.</p>



## ANNEX II

### SPECIAL CONDITIONS OF CONTRACT

The General Conditions of Contract in Part I shall be modified by the Special Conditions set out below:-

CLAUSE IN GCC	DESCRIPTION	AMENDMENTS OF AND SUPPLEMENTS TO CLAUSES IN THE GCC
Sub-Clause 1.1.1	<b>Commencement Date</b>	The date for commencement of the Works is Seven (7) days from the date of the signing of the contract. Sub-sub- clauses ii), iii),iv) and v) of Part I- General Conditions are deleted.
Sub-Clause 1.1.11	<b>Defects Liability Period</b>	The Defects liability period is twelve calendar months.
Sub-Clause 1.1.12	<b>The Employer</b>	The Employer is Rural Electrification Authority, The Kawi House – South C, Bellevue (Popo Rd) P. O. Box 34585-00100, Nairobi, Kenya.
Sub-Clause 1.1.15	<b>The Engineer</b>	The Engineer shall be a duly authorized registered engineer within the Alternative Energy Dept. of Rural Electrification and Renewable Energy Corporation. The Employer may change the Engineer and any such change shall be communicated to the Contractor within reasonable time.
Sub-Clause 1.1.35	<b>Time for Completion</b>	The Time for Completion for the whole works shall be Nine (9) Months from the date of signing the Contract and as stipulated in the Delivery Timelines attached.
Sub-Clause 2.8	<b>Replacement of Engineer</b>	Sub-clause 2.8 is deleted.
Sub-Clause 4.1	<b>Subcontracting</b>	The last sentence in Sub-clause 4.1 para. 1 is amended by replacing “Engineer” with “employer.” The remainder of the sub-clause is deleted.
Sub-Clause 5.1	<b>Ruling Language</b>	Sub-clause 5.1 is deleted and replaced with: “The Ruling Language for this Contract is English and the English language version shall prevail over any other language.”
Sub-Clause 5.2	<b>Day to Day Communications</b>	Sub-clause 5.2 is deleted and replaced with: “The Ruling Language for this Contract is English and the English language version shall prevail over any other language.”
Clause 5.3	<b>Priority of Contract Documents</b>	Delete Clause 5.3 and substitute with: “The documents forming the Contract shall have equal prominence.”
Clause 6.6	<b>Operation and Maintenance Manuals</b>	In the first line substitute “built” with “installed”  The Sub-Clause is amended and the following sentence added after the last sentence: “Operations and Maintenance Manuals shall be in the English Language.”
Sub-Clause 6.7	<b>Employer’s Use of Contractor’s Drawings</b>	Delete Clause 6.7 and substitute with: “The Contractor’s Drawings and Manuals may be used by Employer for the purpose of completing, operating, maintaining, adjusting and repairing the Works, for interconnecting the Works with other plant and for training of personnel.”
Sub-Clause 8.1	<b>General Obligations</b>	Clause 8.1 is amended to include: “No facilities will be provided by Employer.”

<b>CLAUSE IN GCC</b>	<b>DESCRIPTION</b>	<b>AMENDMENTS OF AND SUPPLEMENTS TO CLAUSES IN THE GCC</b>
<b>Sub-Clause 10.1</b>	<b>Performance Security</b>	Clause 10.1 is amended to include: “Within Thirty (30) days of issue of the Letter of Acceptance the Contractor shall at his own expense obtain a Performance Security in the Form of Performance Bond given in the Tender documents from a reputable Bank approved by Employer to be bound with the Contractor to Employer for a sum equivalent to ten per cent (10%) of the Contract Price for the due Performance of the Contract. The Security shall be payable in the currency of the Contract. Employer may require an additional security if the value of the Contract is increased appreciably. The Contractor shall ensure that the Performance Security Bond is kept valid up to the date of issue of the last Defect Liability Certificate.”
<b>Sub-Clause 11.3</b>	<b>Physical Obstruction</b>	There SHALL be no variation of contract. In event of additional works arising for any reason thereof, the Contractor shall notify the Employer in writing beforehand who shall give written approval of such works including costs. The costs of the additional works will be borne by the employer and is subject to negotiations as per the rate in the schedule of prices.
<b>Sub-Clause 12.1</b>	<b>Programme to be Furnished</b>	Sub-clause 12.2 is deleted and substituted with: “The Programme shall be as set out in the Delivery Timelines/Work plan Annexed to the Contract. In the event that any milestone as mentioned in the work plan is not achieved within the timelines specified thereon, the employer shall be at liberty to revoke the performance bond and terminate the contract and claim for liquidated damages”
<b>Sub-Clause 12.2</b>	<b>Alteration of Programme</b>	Sub-clause 12.2 is amended by replacing “Engineer” with “employer.”
<b>Sub-Clause 14.3</b>	<b>Electricity, Water, Gas and Other Services</b>	The Sub-Clause is amended and the following sentence added after the last sentence: “The Contractor shall make his own arrangement to supply water and electricity other services required at his own expense.”
<b>Sub-Clause 14.4</b>	<b>Employer’s Equipment</b>	The Sub-Clause is amended and the following sentence is inserted after the last sentence: “None of the Employer’s equipment is available for use by the Contractor.”
<b>Clause 15.2</b>	<b>Compliance with Statutes, Regulations</b>	The Sub-Clause is amended and the following sentence is inserted after the last sentence: “Without limiting the generality of the foregoing the Contractor shall strictly abide by the Kenyan regulations concerning safety on the site of the Works”.
<b>Clause 17.4</b>	<b>Consents and wayleaves</b>	The Clause is amended by adding the following after the last sentence: “The Contractor shall exercise due care to avoid damage to property and environment and where such damage occurs, the Employer shall be entitled to compensation from the Contractor.”
<b>Clause 18.1</b>	<b>Engagement of Labour</b>	The Clause is amended by adding the following after the last sentence: <ul style="list-style-type: none"> <li>(a) The Contractor shall, to the extent practicable and reasonable, to employ staff and labour with the required qualifications and experience from sources within Kenya</li> <li>(b) The Contractor shall take all due care to comply with the Kenyan labour laws on engagement of labour and</li> </ul>

CLAUSE IN GCC	DESCRIPTION	AMENDMENTS OF AND SUPPLEMENTS TO CLAUSES IN THE GCC
		safety of working conditions. The employer shall not be responsible for any contravention of labour laws and/or accidents and loss occurring due to negligence of the contractor.”
<b>Sub-Clause 18.3</b>	<b>Working Hours</b>	The normal working hours at the site are between 7:45 a.m. and 5:00 p.m. on weekdays. The Contractor may arrange to work any other periods he wishes between 7:00 a.m. and 7:00 p.m. to meet the contract programme. Work outside this period and weekend or public holiday working shall only be carried out where specifically approved by the Engineer. Where the Contractor chooses to work in excess of eight hours a day or to work at weekends there shall be no additional cost added to the contract price.
<b>Sub-Clause 20.1</b>	<b>Independent Inspection</b>	The Clause is amended by adding the following after the final sentence: (a) In event of Independent Inspection, the contractor shall be given sufficient notice of the intention of the Employer to use independent inspector. Such Independent inspectors shall be considered for all material purposes employer’s representatives. (b) The Employer shall bear the cost of international travel, accommodation and cost of domestic travel in the country of inspection.
<b>Sub-Clause 25.1</b>	<b>Time for Completion</b>	Time for Completion means the time for completing of the Works or any section or portion thereof as tendered by the Contractor in the Schedule of Deliveries and included in the Letter of Award. This period shall include up to the end of all Tests on Completion but it may exclude any subsequent period required for minor finishing works, demobilization of the Contractor”’ site establishment.
<b>Sub-Clause 26.1</b>	<b>Extension of Time for Completion</b>	The Sub-Clause is deleted and replaced with: “The Contractor shall not be entitled to extension of time of completion except upon approval by the Employer of request for extension by the Contractor furnishing reasons thereof for the requested extension reasonable and acceptable to the Employer.”
<b>Sub-Clause 26.2</b>	<b>Delays by Sub-contractors</b>	Delete the Clause and substitute with: “The Contract does not allow sub-contracting expect in instances stipulated in the contract.”
<b>Sub-Clause 27.1</b>	<b>Liquidated Damages</b>	Sub-clause 27.1(d) the percentages for liquidated damages shall be: The Employer shall be entitled to a reduction in the Contract Price of 0.5% of the Contract Price per week of delay up to a maximum of 10% upon which the employer shall consider terminating the contract in accordance with sub-clause 27.2.
<b>Sub-Clause 27.2</b>	<b>Prolonged Delay</b>	If there is a Prolonged Delay in Completion and the Employer has become entitled to the maximum reduction in Contract price under Sub-Clause 27.1 and Employer terminates the Contract under Sub-Clause 27.2, then the additional amount recoverable from the Contractor by Employer shall be that part of the Contract Price which is attributable to that part of the works which cannot by reason o f the Contractor’s failure to put to the intended use.

<b>CLAUSE IN GCC</b>	<b>DESCRIPTION</b>	<b>AMENDMENTS OF AND SUPPLEMENTS TO CLAUSES IN THE GCC</b>
<b>Sub-Clause 28.1</b>	<b>Tests on Completion</b>	The tests on Completion shall include putting the system on load to satisfaction of engineer or his representative.
<b>Sub-Clause 29.2</b>	<b>Taking Over Certificate</b>	On satisfactory completion of the Tests on Completion, Employer shall issue a Taking Over Certificate. This shall show the effective date of Taking Over which shall be the date of commencement of the Defects Liability Period.
<b>Sub-Clause 29.3</b>	<b>Use Before Taking Over</b>	The Employer shall not use any part of the Works prior to the Completion of the Tests on Completion without the permission of the Tenderer. The Employer may use any part of the Works during its Tests to suit the Tests. Such use shall not imply Taking Over unless the Tests on that part of the Works are successful.
<b>Sub-clause 31.1</b>	<b>Variation Order</b>	Variation under this clause shall be deemed to be additional works as stipulated in Clause 11.3 herein.
<b>Clause 31.2</b>	<b>Variation Order Procedure</b>	The Clause is amended by adding the following after the final sentence: “Where the Contract provides for the payment of the contract Price in more than one currency, and varied work is valued at, or on the basis of, the rates and prices set out in the contract, payment for such varied work shall be made in the currency specified in the Contract for payment of the Contract Price.
<b>Clause 32.1</b>	<b>Ownership of Plant</b>	The Clause is amended by adding the following after the final sentence: “Provided the ownership of the plant envisaged under this clause is only for purposes of taking over the project to complete as envisaged under the contract if need arises and does not in any way delegate the responsibility of the Contractor to guarantee the quality of the Plant and/or to insure the Plant from any loss or damage occurring before Risk Transfer Date.”
<b>Sub-Clause 33.1</b>	<b>Terms of Payment</b>	In addition to the provisions under Clause 33.1; i.) The Terms of Payment shall be made as follows: <ul style="list-style-type: none"> <li>(a) The Procuring entity shall pay to the Supplier forty percent (40%) of the total Contract Price within forty five days(45) on delivery and inspection of ALL equipment to site.</li> <li>(b) The Procuring entity shall pay to the Supplier fifty percent (50%) of the total Contract Price on Successful Installation, Testing, Commissioning, Training, submission of user manual and Handover.</li> <li>(c) 10% of the total Contract Price after the defect liability period.</li> </ul> ii.) Method of Payment The Employer shall make payments to the contractor through the following methods: <ul style="list-style-type: none"> <li>i. Payment shall primarily be through REREC’s cheque or Real Time Gross Settlement (RTGS) or telegraphic transfer. Where applicable, a copy of a valid Performance Security, stamped, certified as authentic by REREC, shall form part of the documents to be presented to REREC before any payment is made. The terms shall be strictly on Delivered and Duty Paid (DDP) basis.</li> </ul>
<b>Sub-Clause 33.2</b>	<b>Method of</b>	The Contractor may make applications for Payment to

<b>CLAUSE IN GCC</b>	<b>DESCRIPTION</b>	<b>AMENDMENTS OF AND SUPPLEMENTS TO CLAUSES IN THE GCC</b>
	<b>Application for Payment</b>	Employer as set out in Sub-Clause 33.1.
<b>Sub-Clause 33.5</b>	<b>Payment</b>	Second line, delete “28 days” and substitute “60 days”.
<b>Sub-Clause 33.6</b>	<b>Delayed Payment</b>	There shall be no interest payable on delayed payments.
<b>Sub-Clause 35.1</b>	<b>Payment in Foreign Currency</b>	Payment for all Works will be made in the amounts and currency specified in the Contract.
<b>Sub-Clause 37.2</b>	<b>Employer’s Risks</b>	<p>The following amendments are to be made to Sub-Clause 37.2.</p> <p>After “Employer’s Risks are: “insert a new sub heading as follows:-</p> <p>“(1) Insofar as they relate to Kenya:”</p> <p>In (b), delete all words after “Civil War”</p> <p>After item (e) and before item (f) insert another new sub heading as follows:-</p> <p>“(2) Under all circumstances”</p> <p>At the end of item (g) delete the semi colon and add:-</p> <p>“Provided that the Contractor has disclaimed responsibility in writing within a reasonable time after receipt of such design.”</p> <p>Delete the last paragraph and substitute the following:</p> <p>“(3) (1) all risks (insofar as they occur on Site) which an experienced Contractor:</p> <ul style="list-style-type: none"> <li>(a) Could not have foreseen, or</li> <li>(b) Could reasonably have foreseen, but</li> <li>(c) Against which he could either not reasonably take measures to prevent loss or damage to physical property or death or personnel injury occurring, or</li> <li>(d) Which he could not reasonably insure against”</li> </ul>
<b>Sub-Clause 40.1</b>	<b>Contractor’s Liability</b>	In the first paragraph of Sub-Clause 40.1 delete the following words:- “occurring before the issue of the last Defects Liability Certificate”
<b>Sub-clause 40.2</b>	<b>Employer’s Liability</b>	In any case, the employer shall not in any way be liable for loss of or damage to any physical property or of death or personal injury and the Contractor shall indemnify him for costs incurred with respect to claims arising under this contract.
<b>Sub-Clause 42.2</b>	<b>Maximum Liability</b>	The maximum liability of the Contractor to the Employer shall be the Contract Price. In any case, where the Employer has incurred any extra cost arising out of any breach of contract, the Contractor shall indemnify the cost and/or the loss thereof until the Employer is restored to his original position.

CLAUSE IN GCC	DESCRIPTION	AMENDMENTS OF AND SUPPLEMENTS TO CLAUSES IN THE GCC
Sub-Clause 43.1	The Works	<p>Delete the first paragraph and substitute:  “The Contractor shall, prior to commencement of the Works, insure the Works in the joint names of the Contractor and Employer to their full replacement value thereof plus 10% thereon to allow for any additional costs and professional fees resulting from loss or damage.”  Add the following Sub-Clause:  “(c) It shall be the responsibility of the Contractor to notify the insurer of any change in the nature and extent of the works and to ensure the adequacy of the insurance cover at all times in accordance with the provisions of this Clause.”  Add the following Sub-Clause:  “(e) The Contractor shall obtain all the insurances required under this contract from a reputable insurance company agreeable to the Employer.”  Add the following Sub-Clause:  “(f) The insurance covers shall be obtained upon signing of the contract but not later than the date of commencement of works under the Contract herein.”  “(g) The Contractor shall obtain insurance of its employees in accordance with the Kenyan law and the employer shall not be responsible for any loss whatsoever arising from execution of the contract by the contractor.”</p>
Sub-Clause 43.3	Third Party Liability	<p>In the second line after “personal injury” add the words “to any person including any employee of the Employer.”  Add the following paragraph:  “The third party liability insurance should be in the joint names of the Employer and the Contractor with an extension of a cross liability cover so that the insurance shall apply to the Contractor and to the Employer as separate insured. The cover shall include the property of the Employer other than the Works.”  The amount of Insurance against third party liability taken out by the contractor shall not be less than the value of the contract and shall be obtained from a reputable and accepted Insurance company.</p>
Sub-Clause 48.1	Customs and Import Duties	This clause is deleted.
Sub-Clause 49.2	Notices to Employer	<p>The address of the Employer for notices is:-  <b>The Chief Executive Officer,  Rural Electrification and Renewable Energy Corporation  Kawi House – South C, Bellevue (Popo Rd)  P. O. Box 34585-00100,  Nairobi, Kenya.</b></p>
Sub-Clause 50.2	Arbitration	<p>The Clause is deleted and replaced with:  Any dispute difference or question which may arise at any time between the Parties upon the construction of this Agreement or on the rights and liabilities of the Parties with respect thereto, shall be referred to the decision of a single</p>

<b>CLAUSE IN GCC</b>	<b>DESCRIPTION</b>	<b>AMENDMENTS OF AND SUPPLEMENTS TO CLAUSES IN THE GCC</b>
		<p>arbitrator to be agreed upon between the Parties or in default of agreement within fourteen (14) days to be appointed at the request of any of them by the Chairperson for the time being of the Chartered Institute of Arbitrators (Kenya Branch) in accordance with and subject to the provisions of the Arbitration Act or any statutory modification or re-enactment thereof for the time being in force.</p> <p>The address of the Employer and Contractor for notices is as stated in the preamble of the agreement.</p>
<b>Sub-Clause 51.1</b>	<b>Applicable Law</b>	The applicable law for this Contract shall be the law of the Republic of Kenya.
<b>Sub-Clause 51.2</b>	<b>Procedural Law for Arbitration</b>	The procedural rules for arbitration for this Contract shall be the law of the Republic of Kenya.
<b>Sub-Clause 51.3</b>	<b>Language and Place of Arbitration</b>	The language of arbitration is the English language. The place of arbitration shall be Nairobi, Kenya.
	<b>Additional Clauses to General Conditions</b>	The following clauses are added to the General Conditions of Contract, namely, Clause 52.1: Initial Maintenance; Clause 52:2: Training; Clause 53.1: Pre-Shipment Inspection; Clause 54.1: Bribery and Corruption; Clause 55.1: Advertizing; Clause 56.1: Individuals Not Personally Liable; Clause 57.1: Progress Reports and Meetings; and Clause 58.1: Details to be Confidential.
<b>Clause 52.1</b>	<b>Initial Maintenance</b>	<p>The Contractor shall make routine maintenance once a month during the liability for the Defects Period and shall carry out all necessary adjustments and repairs, cleaning and oiling of moving parts. A monthly report of the inspection and any works done upon the installation shall be supplied to the Engineer.</p> <p>The Contractor shall also provide a 24 -hour break-down service to attend to faults on or malfunctioning of the installation between the routine visits of inspection.</p> <p>The Contractor shall allow in the Contract Sum of the initial maintenance, inspection and break-down service and shall provide for all tools, instruments, plant and scaffolding and the transportation thereof, as required for the correct and full execution of these obligations and the provision, use or installation of all materials as oils, greases, sandpaper, etc., or parts which are periodically renewed such as brake linings etc., or parts which are faulty for any reason whatsoever excepting always Acts of God such as storm, tempest, flood, earthquake and civil revolt, acts of war and vandalism.</p>
<b>Clause 52:2</b>	<b>Training</b>	<p>A person shall be identified from the school, who shall regulate the system usage and carry out routine maintenance of the systems. The contractor shall provide this person with user training covering the following:</p> <ul style="list-style-type: none"> <li>• System performance expectations and limitations</li> <li>• Purpose of each component of the system</li> </ul>

CLAUSE IN GCC	DESCRIPTION	AMENDMENTS OF AND SUPPLEMENTS TO CLAUSES IN THE GCC
		<ul style="list-style-type: none"> <li>• How to operate and use the systems including safety</li> <li>• Indicator Lights and their purpose</li> <li>• How to deal with breakdowns</li> <li>• Performance monitoring and data recording</li> <li>• User manuals shall be availed at every institution</li> </ul>
<b>Clause 53.1</b>	<b>Pre-Shipment Inspection</b>	<p>The Contractor should establish contact and liaise with the Inspection Agencies, unpacking, handling etc. shall be paid for by the Contractor. The Contractor shall give at least 21 days notice before shipment to the Inspection Agency indicating the place where the goods may be inspected and the expected time of shipment. When requesting pre-shipment inspection the Contractor shall provide the Inspection Agency with a copy of the pro-forma invoice, Contract and any other document relevant to the execution of the inspection. On Completion of inspection the Inspecting Agency will issue a report of finding which will be either. i) A Clean Report of Findings if the inspection yields a satisfactory result, or ii) A Non –negotiable Report of Findings if the inspection reveals deficiencies. In the case of a Clean Report the Contractor shall provide the Inspection Agency immediately after shipment with a non-negotiable copy of the Bill of Lading or Air Waybill and a copy of the final invoice covering the Goods. When these documents have been received the Clean Report of findings will be issued. The Contractor is warned against the shipment of Goods, which have not been inspected, or goods for which a Non-negotiable Report of Findings has been issued by the Inspection Agency.</p> <p>The Inspection of goods does not relieve the Contractor of its contractual obligations to the Employer, and items may be rejected by the Engineer if they fail to meet the requirements of the Contract even though they have been cleared by the Inspection Agency for shipment.</p>
<b>Clause 54.1</b>	<b>Bribery and Corruption</b>	<p>If the Contractor or any of its sub-contractors, agents or and servants shall offer or give or agree to person any bribe, gift, gratuity or commission as an inducement or regard for doing or forbearing to do any action in relation to the Contract or any other Contract with the Employer or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the employer then the Employer may enter upon the Site and expel the contractor therefrom and the provisions of Clause 45 shall apply as if such entry and expulsion had been made pursuant to that Clause.</p>
<b>Clause 55.1</b>	<b>Advertising</b>	<p>Any advertising mentioning the subject of this Contract must be approved by the Employer prior to publication which approval will not be unreasonably withheld.</p>
<b>Clause 56.1</b>	<b>Individuals not Personally Liable</b>	<p>No member or officer of the Employer nor any one of the respective staffs or the employees of the Employer shall be in any way personally liable for the acts or obligations of the Employer under the Contract or answerable for any default of omission of the Employer in the observance or performance of any of the acts, matters or things which are herein contained.</p>



CLAUSE IN GCC	DESCRIPTION	AMENDMENTS OF AND SUPPLEMENTS TO CLAUSES IN THE GCC
<b>Clause 57.1</b>	<b>Progress Reports and Meetings</b>	The Contractor will submit to the <b>Engineer</b> written detailed progress reports on monthly basis, indicating, the stage reached in the delivery and site works. The Contractor will be required to attend monthly progress meeting at Employer's site office.
<b>Clause 58.1</b>	<b>Details to be Confidential</b>	The Contractor shall treat the details of the Contract as confidential, save insofar as may be necessary for the purposes thereof, and shall not publish or disclose the same or any particulars thereof, and shall not publish or disclose the same or any particulars thereof in any trade or technical paper or elsewhere without the previous consent in writing of the employer or the Engineer. If any dispute arises as to the necessity of any publication or disclosure for the purpose of the contract the same shall be referred to the decision of the Employer whose award shall be final.

## SECTION V: SUMMARY OF EVALUATION PROCESS

### PRELIMINARY EVALUATION

The following are the **MANDATORY Requirements** that **SHALL** constitute the evaluation criteria at the Preliminary Evaluation Stage:

- 1) Confirmation that bidder documents/Attachments have been submitted in the Collaboration folder of the SAP SRM System.
- 2) Confirmation that the bidder's prices appear during tender opening. The entered prices in the Items Tab of the SRM Portal must be same as the prices in the Tender form/price schedules and the same prices are read out during opening. (award shall be based on the read out prices)
- 3) Confirmation of submission of Tender Security from a local Bank inform of either; inform of Bank guarantee or Bankers' cheque or Insurance Guarantee (Insurance issuing the guarantee must be part of the Public Procurement Regulatory Authority (PPRA) approved list, which validity shall be at least 150 days from the date of tender opening. Tender security value. Tender security value SHALL be at least 2% (percent) of the tender price.
- 4) The tenderer SHALL attach copies of: Certificate of Incorporation of Business, Copy of E-PIN Certificate with both VAT and Income Tax Obligations.
- 5) Valid Tax Compliance Certificate at the time of tender submission, CR 12 Certificate issued not more than 3 months from the date of Tender closing
- 6) Copy of Business Permit in the County of Operation
- 7) Power of Attorney Notarized by a Magistrate or Commissioner of Oath Indicating the Authorized signatory for the documents of the bidder.
- 8) The tenderer SHALL dully fill the Standard Forms (Letter of Application, Form of Tender, Tender Questionnaire, Declaration Form and Confidential Business Questionnaire) in the format provided. Confirmation of tender validity period. Tenders SHALL be valid for at least 120 days from the date of tender opening.
- 9) The tenderers SHALL submit drawings and specifications of system configuration, generators, transformer, switchgear, battery charger, outdoor equipment and all other accessories.
- 10) The tenderer SHALL submit catalogues and brochures in manufacturer's letterhead containing technical data as provided in the technical specifications - generators, transformer, switchgear, battery charger, outdoor equipment and all other accessories. Only one catalogue/brochure to be submitted per equipment.
- 11) Submission of Detailed Mobilization Plan & Detailed Construction Schedule. This should be clear and demonstrate/indicate for each activity for a period not exceeding 30 weeks.
- 12) Verification of submission of Professional Qualification and experience for key staff, which key staff shall be the Project Supervisor and two (2) Technicians. At least one staff member a registered professional Engineer with EPRA registered as electrical worker license class B.
- 13) The tenderer SHALL provide latest Audited financial reports for the last 15 months.
- 14) The tenderer SHALL submit Manufacturers Authorizations & Warranty form on manufacturer's letterhead signed and stamped for main equipment –
  - a) 500KVA, 0.415/11KV Step up Transformer
  - b) Switchgear (11KV Circuit Breaker),
  - c) Battery charger,
  - d) Outdoor equipment (NCT, CT, VTs, LA, DS, DSE and all other accessories).
  - e) 11KV Outdoor Circuit breaker (remote) operating panel

- 15) Submission of manufacturers contact details including a valid official email address and secure website for international companies
- 16) The tenderer SHALL provide details of experience and past performance on works of a similar nature within the past five years and details of current work on hand and other contractual commitments. The tenderer to attach at least 3 completion certificates from the owner of the works undertaken. The Applicants should have at least 2 years past experience in relevant works.
- 17) Confirmation of business Premise, workshops and or service center with relevant tools and equipment whether owned or leased with evidence of valid lease agreements.
- 18) Submission of valid EPRA electrical - Company's Valid EPRA electrical license Class C2
- 19) Submission of valid NCA 7 and above – electrical or Mechanical services registration.
- 20) Manufacture’s ISO9001:2015 certification for quality management OR KEBS certification for the key equipment i.e, - generators, transformer, switchgear, battery charger, outdoor equipment should be valid.
- 21) Manufacturers ISO14001 certification OR NEMA license for key equipment - generators, transformer, switchgear, battery charger, outdoor equipment should be valid
- 22) Submission of evidence of an established up to date safety program, policies and work practices. Bidder to provide a written occupational health and safety policy.
- 23) Confirmation that the bidder has no outstanding REREC contracts (Services and Works) that is un-serviced at tender closing. Any bidder with outstanding contracts will be treated as unresponsive.

**NB: Tenders which do not satisfy any of the requirements set out above shall be rejected as per public procurement and disposal Act, 2015 and will not proceed to technical evaluation stage.**

## **TECHNICAL EVALUATION**

The following SHALL constitute the evaluation criteria at the Technical Evaluation stage:

1. Full compliance to Technical specifications for key equipment. This is a mandatory fulfillment and a bidder who fails on any of the critical parameters shall be deemed non responsive. Only one brochure / technical specification per equipment should be offered, bids with more than one brochure / technical specifications per equipment will be considered non-responsive. Duly completed Schedule of Guaranteed Technical Particulars (GTP) as per Tender Specifications demonstrating substantial responsiveness of the equipment to those specifications and, if any, a statement of deviations and exceptions to the provisions of the Technical Specifications provided. The Corporation may at its own discretion verify manufacturer’s authorizations and warranty.
2. Verification of Professional Qualification and experience for key staff, which key staff shall be the Project Supervisor, two (2) Technicians. The Project Supervisor shall have at least a degree in Electrical or Mechanical Engineering or Renewable Energy and Registered with EBK as a Graduate engineer and above. He/She shall have at least five (5) years of experience. The technicians shall have at least a Diploma in Engineering with a minimum of two (2) years of experience. Signed CV’s by the technicians and the owner/director and

Certified copies of Certificates MUST be submitted. At least two staff member with Valid EPRA electrical worker license, Class B.

3. Verification of relevant Drawings and Technical Data of system configuration of;
  - a) 500KVA, 0.415/11KV Step up Transformer
  - b) Switchgear (11KV Circuit Breaker),
  - c) Battery charger,
  - d) Outdoor equipment (NCT, CT, VTs, LA, DS, DSE and all other accessories).
  - e) 11KV Outdoor Circuit breaker (remote) operating panel

The Drawings should be legible and the dimensions should be clearly marked.

4. Verification of detailed Mobilization Plan & Detailed Construction Schedule. This should be clear and demonstrate/indicate for each activity for period not exceeding 14 weeks.
5. Verification of previous works undertaken. The tenderer to attach at least 3 completion certificates from the owner of the works undertaken

**NB: Tenders which do not satisfy any of the requirements set out above shall be rejected as per public procurement and disposal Act, 2015 and SHALL not proceed to financial evaluation stage.**

### **FINANCIAL EVALUATION**

The following constituted the evaluation criteria at the Financial Evaluation stage:-

- i. The Procuring Entity SHALL apply the prevailing mean exchange rate at the time of tender opening for purposes of conversion of tender currencies into one common currency for comparison of unit prices. The source of the prevailing exchange rate shall be the Central Bank of Kenya
- ii. Confirmation that the bidder has quoted his prices Delivered Duty Paid, vat inclusive to site outlined in the Schedule of Requirements.
- iii. Confirmation of and considering BOQ/Price Schedule duly completed and signed.
- iv. Confirmation of tenderer's conformance with REREC delivery schedule in the tender document.
- v. Compliance with the stated REREC terms of payments

**NB: Tenders which do not satisfy any of the requirements set out above shall be rejected as per Public Procurement and Assets Disposal Act 2015.**

**SECTION VI:SPECIFICATIONS**

**Specifications are attached separately**

## SECTION VII: BILLS OF QUANTITIES

A: Notes for preparing Bills of Quantities

### 1.0 Preamble to Bill of Quantities

The Bill of Quantities shall form part of the Contract Documents and is to be read in conjunction with the Instructions to Tenderers, Conditions of Contract Parts I and II, Specifications and Drawings.

The brief description of the items in the Bill of Quantities is purely for the purpose of identification, and in no way modifies or supersedes the detailed descriptions given in the conditions of Contract and Specifications for the full direction and description of work and materials.

The Quantities set forth in the Bill of Quantities are estimated and provisional, representing substantially the work to be carried out, and are given to provide a common basis for tendering and comparing of Tenders. There is no guarantee to the Contractor that he will be required to carry out all the quantities of work indicated under any one particular item or group of items in the Bill of Quantities. The basis of payment shall be the Contractor's rates and the quantities of work actually done in fulfillment of his obligation under the Contract.

The prices and rates inserted in the Bills of Quantities will be used for valuing work executed, and the Engineer will measure the whole of the works executed in accordance with this Contract.

A price or rate shall be entered in ink against every item in the Bill of Quantities with the exception of items, which already have provisional sums, affixed thereto. The Tenderers are reminded that no "nil" or "included" rates or "lump-sum" discounts will be accepted. The rates for various items should include discounts if any. Tenderers who fail to comply will be disqualified.

Provisional sums (including Dayworks) in the Bill of Quantities shall be expended in whole or in part at the discretion of the Engineer in accordance with Sub-clause 52.4 and Clause 58 of part of the Conditions of Contract.

The price and rates entered in the Bill of Quantities shall, except insofar as it is otherwise provided under the Contract, include all Constructional plant to be used, labour, insurance, supervision, compliance, testing, materials, erection, maintenance or works, overheads and profits, taxes and duties together with all general risks, liabilities and obligations set out or implied in the Contract, transport, electricity and telephones, water, use and replenishment of all consumables, including those required under the Contract by the Engineer and his staff.

Errors will be corrected by the Employer for any arithmetic errors in computation or summation as follows:

Where there is a discrepancy between amount in words and figures, the amount in words will govern; and

Where there is a discrepancy between the unit rate and the total amount derived from the multiplication of the unit price and the quantity, the unit rate as quoted will govern, unless in the

opinion of the Employer, there is an obviously gross misplacement of the decimal point in the unit price, in which event the total amount as quoted will govern and the unit rate will be corrected. If a Tenderer does not accept the correction of errors as outlined above, his Tender will be rejected. The Bills of Quantities, unless otherwise expressly stated therein, shall be deemed to have been prepared in accordance with the principles of the latest edition of the Civil Engineering Standard Method of Measurement (CESMM).

“Authorized” “Directed” or “Approved” shall mean the authority, direction or approval of the Engineer.

Unless otherwise stated, all measurements shall be net taken on the finished work carried out in accordance with the details shown on the drawings or instructed, with no allowance for extra cuts or fills, waste or additional thickness necessary to obtain the minimum finished thickness or dimensions required in this Contract. Any work performed in excess of the requirements of the plans and specifications will not be paid for, unless ordered in writing by the Engineer.

Hard material, in this Contract, shall be defined as the material which, in the opinion of the Engineer, require blasting, or the use of metal wedges and sledgehammers, or the use of compressed air drilling for their removal, and which cannot be extracted by ripping with a dozer tractor of at least 150 brake horse power (112 kilowatt) with a single, rear-mounted, hydraulic ripper. Boulders of more than 0.2m<sup>3</sup> occurring in soft material shall be classified as hard material. Soft material shall be all material other than hard material.

2.0 The objectives of the Bills of Quantities are:

- (a) To provide sufficient information on the quantities of Works to be performed to enable tenders to be prepared efficiently and accurately; and
- (b) When a Contract has been entered into, to provide a priced Bills of Quantities for use in the periodic valuation of Works executed.

In order to attain these objectives, Works should be itemized in the Bills of Quantities in sufficient detail to distinguish between the different classes of Works, or between Works of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost. Consistent with these requirements, the layout and content of the Bills of Quantities should be as simple and brief as possible.

3.0 **The Bills of Quantities should be divided generally into the following sections:  
Preliminaries.**

The preliminaries should indicate the inclusiveness of the unit prices, and should state the methods of measurement which have been adopted in the preparation of the Bills of Quantities and which are to be used for the measurement of any part of the Works.

The number of preliminary items to be priced by the tenderer should be limited to tangible items such as site office and other temporary works, otherwise items such as security for the Works which are primarily part of the Contractor’s obligations should be included in the Contractor’s rates.

### **Work Items**

The items in the Bills of Quantities should be grouped into sections to distinguish between those parts of the Works which by nature, location, access, timing or any other special characteristics

may give rise to different methods of construction or phasing of the Works or considerations of cost. General items common to all parts of the Works may be grouped as a separate section in the Bills of Quantities.

The brief description of the items in the Bill of Quantities should in no way modify or supersede the detailed descriptions given in the Contract drawings, Conditions of Contract and Specifications.

Quantities should be computed net from the Drawings, unless directed otherwise in the Contract, and no allowance should be made for bulking, shrinkage or waste. Quantities should be rounded up or down where appropriate.

The following units of measurement and abbreviations are recommended for use.

<i>Unit</i>	<i>Abbreviation</i>	<i>Unit</i>	<i>Abbreviation</i>
cubic meter	M <sup>3</sup> or cu m	millimeter	mm
hectare	ha	month	mon
hour	h	number	nr
kilogram	kg	square meter	m <sup>2</sup> or sq m
lump sum	sum	square millimeter	mm <sup>2</sup> or sq mm
meter	m	week	wk
metric ton (1,000kg)	t		

The commencing surface should be identified in the description of each item for Work involving excavation, boring or drilling, for which the commencing surface is not also the original surface. The excavated surface should be identified in the description of each item for Work involving excavation for which the excavated surface is not also the final surface. The depths of Work should be measured from the commencing surface to the excavated surface, as defined.

### **Daywork Schedule**

A Daywork Schedule should be included if the probability of unforeseen work, outside the items included in the Bills of Quantities is relatively high. To facilitate checking by the Employer of the realism of rates quoted by the tenderers, the Daywork Schedule should normally comprise:

- a) a list of the various classes of labour, and materials for which basic Daywork rates or prices are to be inserted by the tenderer, together with a statement of the conditions under which the Contractor will be paid for Work executed on a Daywork basis; and
- b) a percentage to be entered by the tenderer against each basic Daywork Subtotal amount for labour, materials and plant representing the Contractor's profit, overheads, supervision and other charges.

### **Provisional Quantities and Provisional Sums**

Provision for quantity contingencies in any particular item or class of Work with a high expectation of quantity overrun should be made by entering specific "Provisional Quantities" or "Provisional Items" in the Bills of Quantities, and *not* by increasing the quantities for that item or



class of Work beyond those of the Work normally expected to be required. To the extent not covered above, a general provision for physical contingencies (quantity overruns) should be made by including a “Provisional Sum” in the Summary of the Bills of Quantities. Similarly, a contingency allowance for possible price increases should be provided as a “Provisional Sum” in the Summary of the Bills of Quantities. The inclusion of such provisional sums often facilitates budgetary approval by avoiding the need to request periodic supplementary approvals as the future need arises.

Provisional Sums to cover specialized works normally carried out by Nominated Sub Contractors should be avoided and instead Bills of Quantities of the specialized Works should be included as a section of the main Bill of Quantities to be priced by the Main Contractor. The Main Contractor should be required to indicate the name (s) of the specialized firms he proposes to engage to carry out the specialized Works as his approved domestic sub-contractors. Only Provisional Sums to cover specialized Works by statutory authorities should be included in the Bills of Quantities.

Unless otherwise provided in the Contract, the Provisional Sums included in the Bills of Quantities should always be expended in whole or in part at the discretion of the Engineer after full consultation with the Employer.

### **Summary**

The Summary should contain a tabulation of the separate parts of the Bills of Quantities carried forward, with Provisional Sums for Dayworks, physical (quantity) contingencies, and price contingencies (upward price adjustment) where applicable.

### **B: Price Schedule - New Diesel Engine Generator Set Option**

The quantities listed hereunder are deemed to be correct but the Contractor is requested to make his own assessment from the documentation supplied and site visits for the purposes of quantifying of materials and pricing. Any price omitted from the items listed shall be deemed to have been included in another.

The prices shall include all obligations under the Contract agreement, including, but not limited to supply of materials, equipment apparatus, fittings, spares, tools, insurance, storage as may be necessary, lifting facilities, installation, and commissioning among others.

The rates shall also be inclusive of Value Added Tax (VAT), duties, shipping freight, insurance and handling charges, transport, clearing and forwarding, IDF of handling and inspection fees etc. and no allowance of the same shall be made thereafter or any other charges e.g. late payment to port whatsoever.

The prices entered in this schedule include for the supply and set to work of a new Diesel Engine Generator set complete with its auxiliary equipment fully connected to the 33 KV REA electric network, whether it be fully described or not. They shall include the cost of labour, supervision and all other overheads. 12 months from the takeover date shall be the applicable warranty period.

The Tenderer shall indicate the currency of the prices.

2. TABLE 1 – PRICE SCHEDULE

Item	Description	Unit	Qty	Unit Price	Total Price
1	Energy Meter (Tariff type, 415V three phase meter) For Feeders	No.	1		
2	Provision of 1NO. Magnetic pickup and 2NO. oil pressure sensor for 150KVA cummins generator	Set	1		
3	Provision of 1NO. Micom P127 Overcurrent relay	No.	1		
4	Cabling and Earthing for the step-up transformer and the outdoor equipment. The Transformer will be approximately 20 metres from the control room.	No.	1		
5	Laptop computer for software	Lot	1		
6	Supply, installation and commissioning 500KVA, 415/11KV step up transformer	No.	1		
7	11KV circuit breaker and accessories including gas filling Kits	No.	1		
8	Indoor control unit for the 11KV outdoor circuit breaker. The control pane shall be complete with Overcurrent and Earth fault relays combined, annunciation (4 window) and measuring and indication equipment both analogue and numeric	Set	1		
9	11Kv Outdoor Current Transformers (CT)	No.	3		
10	11Kv Outdoor Voltage Transformers (VT)	No.	3		
11	11kv Lighting Arrester (LA)/ Surge Diverters	No.	4		
12	11Kv Isolator without Earth Switch (DS)	Set	1		
13	11Kv Isolator with Earth Switch (DSE)	Set	1		
14	Neutral Current Transformer (NCT)	No.	1		
15	11KV solid Link Isolator for isolating the NCT	No.	1		
16	Construction of steel work bench fitted with clamp at the station workshop	Set	1		
17	Mounting Structures for CT, VT, LA, CB, NCT, DS and DSE	Set	1		

18	110VDC battery Bank supply	Set	1		
19	110VDC, 50A Battery Charger	Set	1		
20	Housing for 110VDC battery Bank and the external Battery Charger	Set	1		
21	Transport all to the station, installation and commissioning of all equipment under supervision of REA/KPLC.	Lot	1		
22	Operation for 1 month inclusive of 1 month operator training.	Lot	1		
23	12 Months maintenance	No.	1		
24	Factory acceptance test for the outdoor Switchgear for 2 REREC and KPLC engineers.	Lot	1		
	<b>SUB-TOTAL</b>				
	<b>ADD VAT 16%</b>				
	<b>TOTAL COST</b>				

I certify that the above information is correct.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

**TABLE 2 – PERFORMANCE GUARANTEES**

The performance guarantees and ratings shall be based on the site conditions below:-

Inlet air temperature: 35<sup>0</sup> C average maximum

Mean humidity: 34% to 60%

Height above sea level: 5.0 Metres

	Percentage of Maximum Continuous Rating (MCR)			
	100	85	50	25
<b>ISO RATING- BRAKE TEST</b> Power output at brake coupling KW (b) Specific fuel consumption kg/kwh kj/kwh				
<b>SITE RATING</b> Power output at a.c. generator terminals at 0.85 power factor KW (e) Power output at unity power factor KW (e) Specific fuel consumption kg/kwh Kj/kwh Lubricating oil consumption l/h  <b>A.C GENERATOR EFFICIENCY AT SITE</b> 1. At unit power factor % 2. At 0.85 power factor %				

## SECTION VIII : STANDARD FORMS

### STANDARD FORMS

1. Form of Invitation for Tenders
2. Form of Tender
3. Appendix to Form of Tender
4. Letter of Acceptance
5. Form of Agreement
6. Form of Tender Security
7. Performance Bank Guarantee (unconditional)
8. Bank Guarantee for Advance Payment
9. Tender Questionnaire
10. Declaration Form
11. Confidential Business Questionnaire
12. Statement of Foreign Currency Requirement
13. Letter of Notification of Award

**NOTE:**

- 1.0** Tenderers must duly fill these Standard Forms as a mandatory requirement.
- 2.0** Any tender returned with **Unfilled Standard Forms** shall be considered **Non-Responsive and shall automatically be Disqualified.**

**FORM OF TENDER**

TO: \_\_\_\_\_ [Name of Employer) \_\_\_\_\_ [Date]  
\_\_\_\_\_ [Name of Tender]

Dear Sir,

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities for the execution of the above named Works, we, the undersigned offer to construct, install and complete such Works and remedy any defects therein for the Total Price Indicated as follows:.....amount in words.....
2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Project Manager’s notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Conditions of Contract.
3. We agree to abide by this tender until **150 days from tender closing date** and it shall remain binding upon us and may be accepted at any time before that date.
4. Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us.
5. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Signature \_\_\_\_\_ in the capacity of \_\_\_\_\_

Duly authorized to sign tenders for and on behalf of \_\_\_\_\_

Witness; Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

## APPENDIX TO FORM OF TENDER

**(This appendix forms part of the tender)**

CONDITIONS OF CONTRACT	CLAUSE	AMOUNT
Tender Security		2% of bid price
Amount of Performance Security (Unconditional Bank Guarantee)	10.1	Ten percent of Tender Sum in the form of Unconditional Bank Guarantee
Program to be submitted	14.1	Not later than 28 days after issuance of Order to Commence
Cash flow estimate to be submitted	14.3	Not later than 28 days after issuance of Order to Commence
Minimum amount of Third Party Insurance	23.2	Kshs. 5,000,000.00
Time for completion	43.1	Tenderer to indicate
Amount of liquidated damages	47.1	0.05% of the Contract Price per day
Limit of liquidated damages	47.1	10% of Contract Value
Defect Liability period	49.1	Twelve Months
Percentage of Retention	60.5	10% of Interim Payment Certificate
Limit of Retention Money	60.5	10 % of Contract Price
Minimum amount of interim certificates	60.2	Contract value/Time for completion in months
Time within which payment to be made after Interim Payment Certificate signed by Engineer	60.8	60 days
Time within which payment to be made after Final Payment Certificate signed by Engineer	60.8	60 days
Appointer of Arbitrator	67(3)	Chief Justice of The Republic of Kenya
Notice to Employer and Engineer	68.2	<p>The Employers address is:</p> <p><b>Chief Executive Officer, Rural Electrification and Renewable Energy Corporation P. O. Box 34585-00100 Nairobi, Kenya.</b></p> <p>The Engineer's address is: Rural Electrification and Renewable Energy Corporation, <b>P. O. Box 34585-00100 Nairobi</b></p>

Signature of Tender.....

Date.....

**LETTER OF ACCEPTANCE**

\_\_\_\_\_ [date]

To: \_\_\_\_\_  
[name of the Contractor]

\_\_\_\_\_  
[address of the Contractor]

Dear Sir,

This is to notify you that your Tender dated \_\_\_\_\_  
for the execution of \_\_\_\_\_  
[name of the Contract and identification number, as given in the Tender documents] for the  
Contract Price of Kshs. \_\_\_\_\_ [amount in figures] [Kenya  
Shillings \_\_\_\_\_ (amount in words) ] in accordance with the  
Instructions to Tenderers is hereby accepted.

You are hereby instructed to proceed with the execution of the said Works in accordance with the  
Contract documents.

Authorized Signature .....

Name and Title of Signatory .....

Attachment : Agreement



## **FORM OF AGREEMENT**

THIS AGREEMENT, made the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ between \_\_\_\_\_ of [or whose registered office is situated at] \_\_\_\_\_ (hereinafter called “the Employer”) of the one part AND \_\_\_\_\_ of [or whose registered office is situated at] \_\_\_\_\_ (hereinafter called “the Contractor”) of the other part.

WHEREAS THE Employer is desirous that the Contractor executes

\_\_\_\_\_ (*name and identification number of Contract* ) (hereinafter called “the Works”) located at \_\_\_\_\_ [*Place/location of the Works*] and the Employer has accepted the tender submitted by the Contractor for the execution and completion of such Works and the remedying of any defects therein for the Contract Price of Kshs \_\_\_\_\_ [*Amount in figures*], Kenya Shillings \_\_\_\_\_ [*Amount in words*].

NOW THIS AGREEMENT WITNESSETH as follows:

In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.

The following documents shall be deemed to form and shall be read and construed as part of this Agreement i.e.

Letter of Acceptance

Form of Tender

Conditions of Contract Part I

Conditions of Contract Part II and Appendix to Conditions of Contract

Specifications

Drawings

Priced Bills of Quantities

3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties thereto have caused this Agreement to be executed the day and year first before written.

The common Seal of \_\_\_\_\_

Was hereunto affixed in the presence of \_\_\_\_\_

Signed Sealed, and Delivered by the said \_\_\_\_\_

Binding Signature of Employer \_\_\_\_\_

Binding Signature of Contractor \_\_\_\_\_

In the presence of (i) Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

[ii] Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

**FORM OF TENDER SECURITY FORM**

(to be on Banks's or Insurance letterhead)

WHEREAS .....(hereinafter called "the Tenderer") has submitted his tender dated ..... for the construction of .....  
..... (name of Contract)

KNOW ALL PEOPLE by these presents that WE ..... having our registered office at .....(hereinafter called "the Bank"), are bound unto .....(hereinafter called "the Employer") in the sum of Kshs..... for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors and assigns by these presents sealed with the Common Seal of the said Bank this ..... Day of .....20.....

THE CONDITIONS of this obligation are:

- a) If after tender opening the tenderer withdraws his tender during the period of tender validity specified in the instructions to tenderers

Or

- b) If the tenderer, having been notified of the acceptance of his tender by the Employer during the period of tender validity:
  - I. Fails or refuses to execute the form of Agreement in accordance with the Instructions to Tenderers, if required; or
  - II. Fails or refuses to furnish the Performance Security, in accordance with the Instructions to Tenderers;
  - III. Rejects a correction of an arithmetic error in the tender.

We undertake to pay to the Employer up to the above amount upon receipt of his first written demand, without the Employer having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by him is due to him, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the said date.

\_\_\_\_\_  
[date]

\_\_\_\_\_  
[signature of the Bank]

\_\_\_\_\_  
[witness]

\_\_\_\_\_  
[seal]

**(Amend accordingly if provided by Insurance Company)**

**PERFORMANCE BANK GUARANTEE (UNCONDITIONAL)**

To: \_\_\_\_\_(Name of Employer) \_\_\_\_\_(Date)  
\_\_\_\_\_ (Address of Employer)

Dear Sir,

WHEREAS \_\_\_\_\_(hereinafter called “the Contractor”) has undertaken, in pursuance of Contract No. \_\_\_\_\_ dated \_\_\_\_\_ to execute \_\_\_\_\_ (hereinafter called “the Works”);

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognised bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee:

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of Kshs. \_\_\_\_\_ (amount of Guarantee in figures) Kenya Shillings \_\_\_\_\_ (amount of Guarantee in words), and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of Kenya Shillings \_\_\_\_\_ (amount of Guarantee in words) as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

We further agree that no change, addition or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract documents which may be made between you and the Contractor shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any change, addition, or modification.

This guarantee shall be valid until the date of issue of the Certificate of Completion.

SIGNATURE AND SEAL OF THE GUARANTOR \_\_\_\_\_

Name of Bank \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_

**(Amend accordingly if provided by Insurance Company)**

## BANK GUARANTEE FOR ADVANCE PAYMENT

To: \_\_\_\_\_ [name of Employer] \_\_\_\_\_ (Date)  
\_\_\_\_\_ [address of Employer]

Gentlemen,

Ref: \_\_\_\_\_ [name of Contract]

In accordance with the provisions of the Conditions of Contract of the above-mentioned Contract, We, \_\_\_\_\_ [name and Address of Contractor] (hereinafter called "the Contractor") shall deposit with \_\_\_\_\_ [name of Employer] a bank guarantee to guarantee his proper and faithful performance under the said Contract in an amount of Kshs. \_\_\_\_\_ [amount of Guarantee in figures] Kenya Shillings \_\_\_\_\_ [amount of Guarantee in words].

We, \_\_\_\_\_ [bank or financial institution], as instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to \_\_\_\_\_ [name of Employer] on his first demand without whatsoever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding Kshs \_\_\_\_\_ [amount of Guarantee in figures] Kenya Shillings \_\_\_\_\_ [amount of Guarantee in words], such amount to be reduced periodically by the amounts recovered by you from the proceeds of the Contract.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract documents which may be made between \_\_\_\_\_ [name of Employer] and the Contractor, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

No drawing may be made by you under this guarantee until we have received notice in writing from you that an advance payment of the amount listed above has been paid to the Contractor pursuant to the Contract.

This guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until \_\_\_\_\_ (name of Employer) receives full payment of the same amount from the Contract.

Yours faithfully,

Signature and Seal \_\_\_\_\_

Name of the Bank or financial institution \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_

Witness: Name: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**TENDER QUESTIONNAIRE**

Please fill in block letters.

Full names of tenderer

.....

Full address of tenderer to which tender correspondence is to be sent (unless an agent has been appointed below)

.....

Telephone number (s) of tenderer

.....

Telex address of tenderer

.....

Name of tenderer's representative to be contacted on matters of the tender during the tender period

.....

Details of tenderer's nominated agent (if any) to receive tender notices. This is essential if the tenderer does not have his registered address in Kenya (name, address, telephone, telex)

.....

.....

\_\_\_\_\_  
Signature of Tenderer

Make copy and deliver to: \_\_\_\_\_ (Name of Employer)

**DECLARATION FORM**

Date \_\_\_\_\_

Date \_\_\_\_\_

To:

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

Ladies and Gentlemen,

The Tenderer i.e. (full name and complete physical and postal address) \_\_\_\_\_

\_\_\_\_\_ declare the following: -

- a) That I/ We have not been debarred from participating in public procurement by anybody, institution or person.
- b) That I/ We have not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement anywhere.
- c) That I/We or any director of the firm or company is not a person within the meaning of paragraph 3.2 of ITT (Eligible Tenderers) of the Instruction to Bidders.

Yours sincerely,

\_\_\_\_\_

Name of Tenderer

\_\_\_\_\_

Signature of duly authorized person signing the Tender

\_\_\_\_\_

Name and Capacity of duly authorized person signing the Tender

\_\_\_\_\_

Stamp or Seal of Tenderer

**CONFIDENTIAL BUSINESS QUESTIONNAIRE**

All Tenderers are requested to give the particulars indicated in Part 1 and either Part 2 (a), 2 (b) or 2 (c) whichever applies to your type of business. Tenderers are advised that it is a serious offence to give false information on this form.

**Part 1 – General**

**Business Name**.....

**Location of business premises**.....

Plot No. ....Street/ Road .....

Postal Address ..... Postal Code .....

Tel No.....

Facsimile.....

Mobile and CDMA No.....

E-mail:.....

Nature of your business .....

Registration Certificate No.....

Maximum value of business which you can handle at any time KSh.....

Name of your Bankers .....Branch... ..

\*Names of Tenderer’s contact person(s) .....

Designation/ capacity of the Tenderer’s contact person(s) .....

Address, Tel, Fax and E-mail of the Tenderer’s contact person(s) .....

.....

**Part 2 (a) Sole Proprietor**

Your name in full .....

Age..... Nationality .....Country of origin .....

**Part 2 (b) Partnership**

Give details of partners as follows: -

Names	Nationality	Age	Shares (%)
-------	-------------	-----	------------

1.....

2.....

3.....

**Part 2 (c) Registered Groups**

Give details of members as follows: -

Names	Nationality	Age	Gender	Shares (%)
-------	-------------	-----	--------	------------

1.....

2.....

3.....



**Part 2 (d) Registered Company**

Private or Public .....

State the nominal and issued capital of company-

\*Nominal in KSh. ....

\*Total Issued KSh. ....

Give details of all directors as follows

Name	Nationality	Age	Shares (%)
------	-------------	-----	------------

1.....

2.....

3.....

Name of duly authorized person to sign for and on behalf of the tenderer .....

Capacity of the duly authorized person.....

Signature of the duly authorized person.....

**STATEMENT OF FOREIGN CURRENCY REQUIREMENTS**

(See Clause 60[5] of the Conditions of Contract)

In the event of our Tender for the execution of \_\_\_\_\_ (*name of Contract*) being accepted, we would require in accordance with Clause 21 of the Conditions of Contract, which is attached hereto, the following percentage:

(Figures)..... (Words).....

of the Contract Sum, (Less Fluctuations) to be paid in foreign currency.

Currency in which foreign exchange element is required:

.....

Date: The ..... Day of ..... 20.....

Enter 0% (zero percent) if no payment will be made in foreign currency.

Maximum foreign currency requirement shall be \_\_\_\_\_(percent) of the Contract Sum, less Fluctuations.

\_\_\_\_\_  
(Signature of Tenderer)

**MANUFACTURER’S AUTHORIZATION FORM**

**(To Be Submitted On Manufacturer’s Letterhead)**

To:

**Rural Electrification and Renewable Energy Corporation**

Ground Floor: Kawi House, South C; Off Red Cross Road, Behind Boma Hotel

P.O. 34585 – 00100

NAIROBI,

KENYA

**WHEREAS WE** ..... (*Name of the manufacturer*) who are established and reputable manufacturers of .....

(*name and description of the goods*) having factories at .....(*full address and physical location of factory(ies) where goods to be supplied are manufactured*) do hereby confirm that

.....  
(*name and address of Supplier*) is authorized by us to transact in the goods required against your Tender ..... (*Insert reference number and name of the Tender*) in respect of the above goods manufactured by us.

We commit to comply with all the Guaranteed Technical Particulars (GTP) provided by the bidder authorized above and confirm that where the said supplier has signed and stamped the GTP the same shall be binding to us as a Manufacturer.

**WE HEREBY** extend our full guarantee and warranty as per the Conditions of Contract for the goods offered for supply by the above firm against the Invitation to Tender.

DATED THIS.....DAY OF.....20.....

\_\_\_\_\_  
Signature of duly authorized person for and on behalf of the Manufacturer.

\_\_\_\_\_  
Name and Capacity of duly authorized person signing on behalf of the Manufacturer

**NOTES TO TENDERERS AND MANUFACTURERS**

- *Only a competent person in the service of the Manufacturer should sign this letter of authority.*
- *Manufacturers seal*

**LETTER OF NOTIFICATION OF AWARD**

Address of Procuring Entity

\_\_\_\_\_

\_\_\_\_\_

To: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

RE: Tender No. \_\_\_\_\_

Tender Name \_\_\_\_\_

This is to notify that the contract/s stated below under the above mentioned tender have been awarded to you.

\_\_\_\_\_

\_\_\_\_\_

Please acknowledge receipt of this letter of notification signifying your acceptance.

The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.

You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

*(FULL PARTICULARS)*

\_\_\_\_\_

\_\_\_\_\_

SIGNED FOR ACCOUNTING OFFICER