

GENERAL CONDITIONS OF SUB-CONTRACT

- 1.0 INTERPRETATION, DEFINITION ETC
- 1.1 Unless otherwise specifically stated a reference in the Articles of Agreement, the reference to Conditions or the Appendices to any Clause means that Clause of the Conditions.
- 1.2 The Articles of Agreement, the Conditions and the Appendices are to be read as a whole and the effect or operation of any Article or Clause in the Conditions or item in the Appendices must therefore unless otherwise specifically stated be read subject to any relevant qualification or modification in any other Article or any other Clauses in the Conditions or item in or entry in the Appendices.
- 1.3 Unless the context otherwise requires or the Articles or the Conditions or an item in or entry in the Appendices specifically otherwise provides, the following words and phrases in the Articles of Agreement, the Conditions and the Appendices shall have the meaning given below or as ascribed in the Article, Clause or Appendix item to which reference is made.
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| 'Appendices' | Appendix 1, 2 and 3 to the Conditions as completed by the parties |
| 'Arbitrator' | the person appointed under Clause 60 to be the Arbitrator. |
| 'Article or Articles of Agreement' | the Articles of Agreement to which the Conditions are annexed and references to any Recitals are to be Recitals set out before Articles |
| 'Conditions' | the Clauses 1 to 65 |
| 'Date of Commencement' | the date seven (7) days after the date of an order in writing to commence issued by the Contractor to the Sub-Contractor. |
| 'Defects Liability Period' | the period named in Appendix 1 (see Clause 55). |
| 'Employer' | the person named as employer in the Articles of Agreement and shall include his successors, permitted assigns, representatives, servants and agents. |
| 'Final Account' | See Clause 57. |
| 'Interim Payment' | any one of the payments to which Clause 57 refers |
| 'Contract' | the Main Contract briefly described in the First Recital |
| 'Main Contractor' | Misi Setia Oil & Gas Sdn. Bhd. |
| 'Schedule of Defects' | the Schedule of Defects as provided under Clause 55 |
| 'Specifications Drawings' | the specifications and drawings set out in the and Drawings' Sub- contract and documents. |
| 'Statutory Requirements' | see Clause 58. |
| 'Sub-Contractor' | the person(s) named as Sub-contractor in the Articles of Agreement. |
| 'Sub-Contract Completion Period' | the date or period named in Appendix 1 (see Clause 47). |
| 'Sub-Contract Works' | the Sub-contract Works briefly described in the Third Recital and referred to in the Sub-Contract Documents. |
| 'Variations' | see Clause 36 |
- 1.4 The headings and marginal notes in these Conditions shall not be deemed part thereof to be taken Into consideration in the interpretation or construction thereof or of the Contract.
- 1.5 Words importing the singular shall include the plural and vice versa where the context requires.
- 1.6 Words importing persons of parties shall include firms and corporations and any organization having legal capacity.
- 1.7 Wherever in the Subcontract provision is made for the giving or issue of any notice, consent, approval, certificate, confirmation or determination by any person, unless otherwise specified such notice, consent, approval, certificate, confirmation or determination shall be in writing and the words "notify", "certify", "confirm" or "determine" shall be construed accordingly.
2. NOTICE AND OBSERVANCE OF THE MAIN CONTRACT
- 2.1 The Contractor shall make the Main Contract Documentations(other than the details of the Contractor's prices there under as stated in the bills of quantities or schedules of rates and prices as the case may be) available for inspection to the Subcontractor and, if so requested by the Sub-contractor, shall provide the Sub-contractor with a true copy of the Main Contract (less such details of the Contractor's prices), at the cost of the Sub-contractor. The Sub-contractor shall be deemed to have full knowledge of the provisions of the Main Contract (less such details of the Contractor's prices).
- 2.2 The Sub-contractor is deemed to have full notice of all the provisions and requirements of the Contract Documents, except for details of prices included therein.
- 2.3 The Sub-Contractor further hereby undertakes to observe, perform and comply with all the said Contract provisions and requirements in so as they relate and apply to the Sub-contract Works (or any portion thereof) and as if the same were fully set out herein.
- 2.4 The Sub-contractor shall further ensure that such conditions as are necessary to enable the Sub-contractor to fulfill his obligations under this Sub-contract are included in any agreement with his subsequent sub-contractors;
- 2.5 Nothing herein shall be constructed as creating any privity of contract between the Sub-contractor and the Employer.
- 2.6 The Sub-contractor shall irrevocably undertake and agree to fully indemnify and shall at all times indemnify and keep indemnified and save the Contractor harmless from and against any indirect, damages, incident or consequential losses, actionable torts, demands, claims, legal costs, expenses, law suits, and causes of action and any obligations or

liabilities, any related settlements arising from or proceedings whatsoever liability suffered, incurred or for which the Sub-contractor may become liable to as a result of any claims, suits instituted, initiated or commenced by or against the Contractor hereinafter by any third party and Contractor are entitled at their own absolute discretion to deduct whatsoever costs from monies due to the Sub-contractor.

- 2.7 The Sub-contractor shall indemnify the Contractor against every liability which the Contractor may incur to any person whatsoever and against all claims, demands, proceeding, damages, cost and expenses made against or incurred by the Contractor by reason of any breach by the Sub-contractor of the Sub-contract.
- 2.8 The Sub-contractor hereby acknowledges that any breach by him of the Sub-contract may result in the Contractor's committing breaches of and becoming liable in damages under the Main Contract and other contracts made by him in connection with the Main Works and may occasion further loss or expenses to the Contractor in connection with the Main Works and all such damages loss and expense are hereby agreed to be within the contemplation of the parties as being probable results of any such breach by the Sub-contractor.
- 3.0 CONTRACTOR'S INDEMNITY
- 3.1 The Sub-contractor shall indemnify and keep harmless the Contractor against and from any or all liability of the Contractor to the Employer in respect of the Contract.
- 3.2 The Sub-contractor shall be liable for and shall indemnify the Contractor against any damage, expense, liability, loss, claim or proceedings whatsoever whether arising at common law or by statute in respect of personal injury to or death of any person whomsoever arising out of or in the course of or by reason of the execution of Sub-contract Works.
- 3.3 The Sub-contractor shall be liable for and shall indemnify the Contractor against any damage, expense, liability, loss, claim or proceedings due to injury or damage of any kind to any property real or personal (including the Sub-contract Works and any other property of the Employer and the Contractor) insofar as such injury or damage arises out of or in the course of or by reason of the execution of the Sub-contract Works.
- 3.4 The indemnities given by the Sub-contractor under Clauses 3.2 and 3.3 shall not be defeated or reduced by reason of any negligence or omission of the Employer, the Employer's representatives, the Contractor or their servants and/or agents in failing to ensure proper performance at any obligation of the Sub-contractor under this Sub-contract.
- 3.5 Provided that nothing contained in this Sub-contract shall impose any liability on the Sub-contractor in respect of any negligence or breach of duty on the part of the Employer, the Contractor, other sub-contractors or their respective servants and/or agents nor create any privity of contract between the Sub-contractor and the Employer or any *other* sub-contractor.
- 3.6 The Sub-contractor shall irrevocably undertake and agree to fully indemnify and shall at all times indemnify and causes of action and any obligations or liabilities, any related settlements arising and causes of action and any obligations or liabilities, any related settlements arising incurred or for which you may become liable to as a result of any claims, suits instituted, suits instituted, initiated or commenced by or against the Contractor hereinafter by any third party. The Contractor are entitled at his own absolute discretion to deduct whatsoever costs from monies due or may be become due from the Sub-contractor to Contractor
- 4.0 SUB-CONTRACTOR GENERAL OBLIGATIONS
- 4.1 The Sub-Contractor shall upon and subject to the Conditions hereof execute and complete the Sub-contract Works and the making good of defects pursuant to the provisions of Clause 55 in accordance with all the provisions and requirements of the Sub-contract.
- 4.2 The said execution and completion of the Sub-contract Works shall be carried out with due care and diligence and be to the joint satisfaction of the Contractor in accordance with the provisions of this Sub-Contract and the Employer in accordance with the provisions of the Contract. Any applications or requests to be made by the Sub-contractor to the Contractor pursuant to the provisions of this Sub-contract shall be in strict accordance with the requirements set out herein. Any applications or requests received by the Contractor *after* the time specified shall not be entertained.
- 4.3 The Subcontractor shall given prompt notice to the Contractor if any error, omission fault or other defect in the design of or specification for the Subcontract works which he discover when reviewing the Sub-contract and/or the Main Contract or executing the Sub-contract Works.
- 4.4 The Sub-contractor shall, with due care and diligence, design (to the extent required by the Sub-contract) execute and complete the Sub-contract Works and remedy any defects therein in accordance with the provisions of the Clause 55 in the Sub-contract. The Sub-contractor shall provide all superintendence, labor, materials, plant, Sub-contractor's equipment and all other things, whether of a temporary or permanent nature, required in and for such design, execution, completion and remedying of any defects, so far as the necessity for providing the same is specified in or is to be inferred from the Sub-contract.
- 4.5 If the Sub-contract requires the Sub-contractor to obtain security for his proper performance of the Sub-contract, he shall obtain and provide to the Contractor such security in the sum stated in the Special Provisions hereto. Such security shall be in the form annexed to the Conditions of Sub-contract or in such form as agreeable to the Contractor. The institution providing such security shall be subject to the approval of the Contractor. The cost of complying with the requirements of this clause shall be borne by the Sub-contractor.
- 4.6 The performance security shall be valid until the Sub-contractor has executed and completed the Sub-contract Works and remedied any defects therein in accordance with the Subcontract and such security shall be returned to the Subcontractor within 28 days of the issue of the said Defects Liability Certificate/Warranty Period of the Main Contract.
- 4.7 The Sub-contractor shall, within 7 days after the date of the Contractor's Letter of Award, submit to the Contractor for his consent a program, in such form and detail as the Contractor shall reasonably prescribe, for the execution of the Subcontract Works. The Sub-contractor shall, whenever required by the Contractor, also provide in writing for his information a general description of the arrangements and methods which the Sub-contractor proposes to adopt for the execution of the Sub-contract Works.
- 4.8 If at any time it should appear to the Contractor that the actual progress of the Sub-contract Works does not conform to the program to which consent has been given, the Subcontractor shall produce, at the request of the Contractor, a revised program showing the modifications to such program necessary to ensure completion of the Sub-contract Works within the Sub-contractor's Time for Completion.
- 4.9 The Sub-contractor shall not, without the prior consent of the Contractor (which consent shall be at the sole discretion of the Contractor), assign the Sub-contract or any part thereof, or any benefit or interest therein or there under.
- 4.10 The Sub-contractor shall not subcontract the whole of the Sub-contract Works, nor shall he sub-contract any part of the Sub-contract Works without the prior consent of the Contractor. Any such consent shall not relieve the Sub-contractor from any liability or obligation under the Sub-contract and the Sub-contractor shall be responsible for the acts, defaults and neglects of any of his sub-contractors, including such sub-contractor's agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Subcontractor, his agents, servants or workmen.
- 4.11 In the event of a sub-contractor having undertaken towards the Sub-contractor in respect of the works executed, or the goods, materials, plant or services supplied by such Subcontractor, any continuing obligations extending for a period exceeding that of the Defects Liability Period/Warranty Period under the Main Contract in respect of the Main Works or of the Section or Sections or part thereof in which the Sub-contract Works are comprised, as the case may be, the Subcontractor shall at any time after the expiry of such Period, assign to the Contractor at the Contractor's request and cost, the benefit of such obligation for the unexpired duration thereof.
- 4.12 In consideration of the Sub-contractor constructing, designing (to the extent required by the Sub-contract) and completing the Sub-contract Works and making good any defects whatsoever to the Sub-contract Works in conformity in all respects to the Main Contract and the terms and conditions of this Sub-contract, the Contractor shall pay the Sub-contractor the Sub-contract Sum as set out in the Bills of Quantities or such other sum as shall become payable at the time and in the manner specified in the Conditions of Sub-contract.
- 4.13 The Sub-contractor shall indemnify the Contractor against every liability which the Contractor may incur to any person whatsoever and against all claims, demands, proceeding, damages, cost and expenses made against or incurred by the Contractor by reason of any breach by the Sub-contractor of the Sub-contract.
- 4.14 The Sub-contractor hereby acknowledges that any breach by him of the Sub-contract may result in the Contractor's committing breaches of and becoming liable in damages under the Main Contract and other contracts made by him in connection with the Main Works and may occasion further loss or expenses to the Contractor in connection with the Main Works and all such damages loss and expense are hereby agreed to be within the contemplation of the parties as being probable results of any such breach by the Sub-contractor.

5.0 SUB-CONTRACTOR'S DRAWINGS

- 5.1 The Sub-contractor shall provide and shall cause all subsequent sub-contractors or suppliers to provide the Contractor with full, complete and sufficient shop drawings for all of the Sub-Contract Works or any part thereof.
- 5.2 The Sub-contractor shall also submit shop drawings for all temporary works, system formwork, access road, scaffoldings, etc. to the Contractor before any erection of such temporary works.
- 5.3 The Contractor shall also prepare all co-ordinate shop drawings for approval by the Employer.
- 5.4 Such drawings or details shall in the first instance be checked and verified by the Sub-contractor before submitting to the Contractor for approval.
- 5.5 Such drawings shall be submitted in ample time for checking and for re-submission for any amendments described so as not in any way to jeopardize the time for completion of the Sub-contract.
- 5.6 No works shall be carried out until the relevant shop drawings have been approved by the Contractor.
- 5.7 It should be clearly understood that the approval of shop drawings by the Contractor is solely an approval of subject matters in principle and does not constitute checking of detail dimensions or acceptance of auxiliary units or material unless specifically mentioned in writing by the Contractor.
- 5.8 Any approvals by the Contractor shall not relieve the Sub-contractor from any of his contractual obligations contained herein.
- 5.9 The Sub-contractor shall keep and maintain a complete set of Sub-contract Drawings and specifications on Site with all latest amendments, revisions and the like.
- 5.10 As the work progresses, the Sub-contractor shall make all deviations and changes from the Sub-contract Drawings thereon Approved in accordance with Clause 36 due to Site conditions, variations/change orders, and any other reasons, keeping an accurate record of work as actually installed.
- 5.11 After consultation with the Employer/Contractor for correct presentation and contents and at the completion of the Works, the Sub-contractor shall supply a complete full set of prints to the Company for approval, prior to the Certificate of Initial Acceptance. The prints shall show in detail the full extent of the installations in a logical sequence. Shop Drawings shall not be used as Record Drawings or As-built Drawings.
- 5.12 Drawings and prints shall be at the Contractor's cost and expense

6.0 ACCIDENTS, FAILURES ETC

- 6.1 If my accident, failure or other event occurs due to any cause whatsoever to, or in connection with the Sub-contract Works or any part thereof either during the execution of the Sub-contract Works or during the Defect Liability Period, the Sub-contractor shall immediately report the accident, failure or event to the Contractor, and unless otherwise directed by the Contractor generally or in any particular respect, the Sub-contractor shall conduct a full investigation into the said accident, failure or event in order to determine the cause or reason for the accident, failure or event and submit a report thereon to the Contractor together with his proposals for remedial works in respect thereof.
- 6.2 Where the Employer and/or the Contractor and /or its respective employee or any person or body appointed or authorized by it carries out any investigation in relation to any accident, failure or other event which has occurred to, or in connection with the Sub-Contract Works or any part thereof for the purpose of determining the cause or reason for the said accident, failure or event, the Sub-contractor shall render all such necessary assistance and facilities as may be required by the Employer and/or the Contractor and/or its respective employees or such person or body including the giving of access to all specification, designs, records or others available information relating to the Sub-contract Works.

7.0 URGENT REPAIRS

If by reason of any accident or failure or other event occurring to or in connection with the Sub-contract Works, or any part thereof, either during the execution of the Sub-contract Works or during the Defects Liability and Maintenance Period, (if so stipulated) any remedial or other work or repair shall, in the opinion of the Employer or the Contractor be urgently necessary for the safety of the Sub-contract Works and the Sub-contractor is unable or unwilling at once to carry out such work or repair, the Contractor may employ and pay any other persons to carry out such work or repair. If the work or repair so done by the Contractor is work which, in the opinion of the Contractor, the Sub-contractor was liable to do at his own expense under the Sub-Contract, all expenses properly incurred by the Contractor in so doing shall be recoverable from the Sub-contractor by the Contractor or may be deducted by the Contractor from any moneys due or which may become due to the Sub-contractor. Provided always that the Contractor shall, as soon after the occurrence of any such event as may be reasonably practicable, notify the Sub-contractor thereof in writing.

8.0 SUBSEQUENT SUB-CONTRACTORS AND SUPPLIERS NOMINATED BY THE CONTRACTOR

- 8.1 These subsequent sub-contractors and suppliers nominated by the Contractor shall include all specialists, merchant, Tradesmen and others executing work or services, or supplying any materials or goods for which **Prima Cost Sums** (or P.C. Sums) are included in the Sub-contract Documents or for which the Contractor has given written instructions in regard to the expenditure of Provision items.
- 8.2 Such subsequent sub-contractors and suppliers although nominated by the Contractor shall be employed by and upon the Contractor's instructions enter into agreement with the Sub-contractor who shall ensure that all the Sub-contractor's obligations in this Sub-Contract are complied with.
- 8.3 The Contractor or the Sub-contractor if so instructed in writing by the Contractor, shall obtain tenders for work or services to be executed or for the supply of materials or goods by the subsequent sub-contractors or suppliers nominated by the Main Contractor.
- 8.4 The Sub-contractor shall be entitled to object in writing to the Contractor's nomination within fourteen (14) days from the Contractor's instruction under Clause 8.2. if the Contractor shall consider such objection to be reasonable then the said nomination shall not be made.
- 8.5 It pursuant to Clause 8.4 the Sub-contractor is not required to enter into agreement with the subsequent sub-contractor or supplier nominated by the Contractor then the Contractor shall do one of the following:
 - 8.5.1 nominate an alternative subsequent sub-contractor or supplier as the case may be, subject to the application of Clause 8.5:
 - 8.5.2 by order under Clause 36 vary the Sub-contract Works, or works, services, materials or goods forming the subject of the Prime Cost Sums or Provisional Sums as aforesaid, including if *necessary* the omission of the same or any portion thereof, so that they may be provided by, workmen, sub-contractors or supplier, as the case may be employed by the Contractor either concurrently with the Sub-contract Works or at same other date.
 - 8.5.3 In accordance with Clause 8.5.2 arrange for the Sub-contractor to execute such work or services, or to supply such materials or goods.
- 8.6 The Interim Amount due to the Sub-contractor from the Contractor pursuant to Clause 57 shall state separately the amounts due to each of the subsequent sub-contractors or suppliers nominated by the Contractor as the value of the work or services executed or materials and goods delivered at the relevant date under the said Clause 57 which amount shall be paid by the Sub-Contractor to such sub-contractors or suppliers nominated by the Contractor within seven (7) days of receipt by the Sub-contractor of the interim Amount from the Contractor.

8.7.1 In the event the Sub-contractor *has* failed to make payment in accordance with Clause 8.6 to the subsequent sub-contractor or suppliers nominated by the Contractor, the Contractor shall be entitled to do one of the following:

- i) pay direct to the subsequent sub-contractor or supplier nominated by the Contractor such amounts due but which have not been paid by the Sub-Contractor;
- ii) pay direct to the subsequent sub-contractor or supplier nominated by the Contractor such amounts which may subsequently become due to the said subsequent sub-contractor or supplier nominated by the Contractor.

8.7.2 The amounts so paid direct to the subsequent sub-contractors or suppliers nominated by the Contractor shall be deducted from any sums due or which may become due from the Contractor to the Sub-contractor

8.8 Nothing contained in any of the Sub-contract Documents shall create privity of contract between the Contractor and any subsequent sub-contractor or supplier nominated by the Contractor nor render the Contractor liable in any manner to any of them.

9.0 RESPONSIBILITIES OF SUB-CONTRACTOR FOR SUBSEQUENT SUB-CONTRACTORS AND/OR SUPPLIERS NOMINATED BY THE MAIN CONTRACTOR

9.1 The Sub-contractor shall be fully responsible to ensure that the subsequent sub-contractors and suppliers nominated by the Main Contractor shall fully conform to this Sub-contract and shall be fully responsible for the act, default and/or emissions of the subsequent sub-contractors or suppliers nominated by the Contractor as these subsequent sub-contractors or suppliers were engaged by the Sub-contractor himself. In no circumstances shall the Contractor be liable to the Sub-contractor for such subsequent sub-contractors or suppliers nominated by the Contractor.

9.2.1 In the event the agreement between the Sub-contractor and the subsequent sub-contractor or supplier nominated by the Main Contractor is abandoned, repudiated or in any manner terminated for any reason then the Sub-contractor shall either :

- (i) with the consent of the Contractor employ another competent subsequent sub-contractor or supplier to complete the agreement; or
- (ii) himself undertake to complete the said agreement.

9.2.2 In either case the Sub-contractor shall be entitled to be paid the same sum for the work or services to be executed or materials or goods to be supplied as would have been payable had the subsequent sub-contractor or supplier originally nominated had completed the agreement without any default on his part.

10 - PROGRAMME OF SUBCONTRACT WORKS

10.1 As soon as practicable after receipt by the Sub-contractor of the Letter of Acceptance Contract but before he signing of the Sub-contract the Sub-contractor shall (unless already previously submitted) submit to the Contractor for his approval, a work program conforming to the Contractor's Work Program under the Contract showing the order or procedure and method in which the Sub-contractor proposes to carry out the Sub-contract Works and shall whenever required by the Main Contractor or his representative furnish for his information particulars of the Sub-contractor's arrangement for carrying out of the Sub-contract Works and of the construction plant and temporary works, if any, which the Sub-contractor intends to supply, use or construct as the case maybe. The approval of the Contractor of such work program or the furnishing of such particulars shall not relieve the Sub-contractor of any of his duties or Responsibilities under his Sub-contract.

10.2 The Sub-contractor shall additionally be required to provide Daily and Weekly activity and output program reports to the Contractor for the entire duration of the Sub-contract Completion Period. These detailed programs must also conform to the Contractor's program under the Contract.

10.3 If at any time it should appear to the Contractor that the actual progress of Sub-contract Works does not conform to the approved work program referred to hereinbefore, the Sub-Contractor shall produce, at the request of the Contractor, the revised work programs showing the modifications to the approved work program necessary to ensure completion of the Sub-contract Works within the time for completion provided for in Clause 47.3 hereof *or* under any extended time as may be allowed under Clause 50.

11.0 CLEANLINESS OF SITE

11.1 The Sub-contractor shall ensure that the portion of the Site where the Sub-contract Works is carried out is reasonably free from all unnecessary obstruction and shall at his own expense properly remove all surplus materials, wreckage, rubbish and/or temporary works no longer required to the designated dumps at the Site during the Sub-contract period.

11.2 Upon completion of the Sub-contract Works the Sub-contractor shall similarly at his own expense clear away and remove from the Site where the Sub-contract Works is carried out to the designated dumps on the Site all tools, equipment, surplus materials, rubbish, temporary works of every and any kind so as to leave the Site in a condition satisfactory to the Contractor.

11.3 In the event the Site is not left in a condition satisfactory to the Contractor then the Contractor shall without any further notice to the Sub-contractor to undertake such works on behalf of the Sub-Contractor or employ third parties to carry out the same. All costs and expenses incurred together with an administrative fee of not less than 25% of the value of the work done shall be recoverable from the Sub-contractor by the Contractor or may be deducted by the Contractor from any moneys rightfully due or which may become due to the Sub-contractor or by way of demand on the Performance Bond or part thereof.

12.0 QUALITY CONTROL

12.1 The Sub-Contractor shall conform with and adhere to all quality control procedures which may be introduced and implemented by the Contractor from time to time.

12.2 The cost of such conformity and adherence shall be included in the Sub-contract Sum.

13.0 TEMPORARY FACILITIES

13.1 The Contractor shall make available such temporary facilities as are listed out at Appendix 3 for use by the Sub-Contractor in the execution and completion of the Sub-Contract Works.

13.2 Such usage of temporary facilities by the Sub-contractor shall be charged at the rates set out at Appendix 3, in accordance with the record of usage kept by the Project Manager.

13.3 The charges incurred by the Sub-Contractor shall be a debt owing from the Sub-contractor to the Contractor for which the Contractor shall be entitled to set-off from any amounts due to the Sub-Contractor.

13.4 Nothing contained herein shall render the Contractor liable for the usage in any manner by the Sub-Contractor of the Temporary Facilities.

14.0 ASSIGNMENT AND SUB-CONTRACTING

14.1 The Sub-contractor shall not assign any benefit, interest any moneys due or which may be due under this Sub-contract.

14.2 The Sub-contractor shall not sub-let the whole of the contracting Sub-contract of Works, the whole Sub-Contract Works.

14.3 The Sub-contractor shall not further sub-contract any part of the Sub-contract Works except with the consent of the Contractor which consent shall be at the sole discretion of the Contractor. Any such consent shall not relieve the Sub-contractor from any liability or obligation under the Sub-contract and he shall be responsible for the acts, defaults and neglects of any sub-contractor (including in this instance "labour only" sub-contractors) his agents, servants or workmen as fully as if they were the acts, defaults or neglect of the Sub-contractor, his agents, servants or workmen.

Provided that the Sub-Contractor shall not be required to obtain such consent for:

- (i) the provision of labour on a piecework basis; or
- (ii) the purchase of materials which are in accordance with the standards specified in the Sub-contract.

14.4 In the event of a subsequent sub-contractor having undertaken towards the Sub-contractor in respect of the work executed, or the goods, materials, plant or services supplied by such subsequent sub-contractor, any continuing obligation extending for a period exceeding that of the Defect Liability Period under the Contract and /or Sub-contract, the Sub-contractor shall at any time, after the expiration of such Period, assign to the Contractor, the benefit of such obligations for the unexpired duration thereof.

14.5 It shall be a condition in any subsequent sub-contract entered into by the Sub-contractor that the employment of the subsequent sub-contractor under the subsequent sub-contract shall determine immediately upon the determination of the Sub-contractor's employment under this Sub-contract and that no claims whatsoever and howsoever shall be made against the Contractor for any work done and/or materials or goods supplied.

14.6 All subsequent sub-contractors employed in connection with the Sub-contract Work shall be employed from within the Districts where the Subcontract Works are situated and where such sub-contractors are not available in the said Districts, then from within the States where the Sub-contract Works are situated.

14.7 Any assignment or sub-contract entered into by the Sub-Contractor shall not create or deem to create any privity of contract or relationship of principal and agent or master and servant/employer and employee between the Contractor or any subsequent sub-contractor or their workers.

15.0 INSTRUCTIONS FROM THE MAIN CONTRACTOR

15.1 The Sub-contractor shall forthwith comply with all instructions issued by the Contractor in regard to any matter in respect of which the Contractor is Contractor's empowered by the Conditions herein to issue instructions including instructions pursuant to Clause 36 whether expressly or impliedly as is necessary and incidental to the carrying out and completion of the Sub-contract Works. It within three (3) day from receipt of a written notice from the Contractor requiring compliance of an instruction the Sub-contractor does not comply forthwith, then the Main Contractor may employ or pay other persons or firms to execute any work whatsoever which may be necessary to give effect to such instruction and costs and expenses incurred together with an administrative fee of not less than 25% incurred in connection with such employment may be deducted from any moneys due or become due to the Sub-contractor or may be recoverable from the Sub-contractor as a debt or by way of demand on the Performance Bond or part thereof.

15.2 The Sub-contractor shall not take my instructions whatsoever directly from any party other than the Contractor.

15.3 All instructions issued by the Main Contractor shall be in writing.

15.4 Any oral instruction by the Contractor shall have no immediate effect but shall be in writing by Contractor within three (3) days of the oral instruction aforesaid.

15.5 Provided always that if the Contractor shall not have confirmed such instructions in the manner and at the times as aforesaid but the Sub-contractor nevertheless complied with the same, then the Main Contractor may confirm the same in writing at any time prior to the issue of the Final Account and the said instruction shall thereupon be deemed to have taken effect on the on the date it was orally issued.

16.0 NOTICES

16.1 The Sub-Contractor shall by notice in writing, inform the Contractor of his address where notices and instructions under this Sub-contract may be served upon him and of my changes made thereto. In the event of the Sub-contractor failing to notify, notice or instructions shall deemed to have been served upon Sub-contractor, if they are left at his offices on the Site and and acknowledgement of the receipt of the notices or instructions is obtained from the Sub-contractor, his agent or authorized representative.

17.0 SUB-CONTRACT DOCUMENTS

17.1 The Sub-contract Documents as aforesaid shall remain in custody of the Contractor and shall be produced as and when required by the Sub-contractor.

17.2 immediately after the execution of this Sub-contract the Contractor shall furnish without charge to the Sub-Contractor (unless he shall have been previously furnished) with:

- (i) one certified true copy of the Sub-contract Documents;
- (ii) two copies of Sub-contract Drawings; and
- (iii) two copies of the unpriced Bills of Quantities and (if requested by the Sub-contractor) the copy of the priced Bills of Quantities

17.3 The Contractor shall, as and when necessary and without charge to the Sub-contractor, furnish him with two copies of such further working drawings or details as are reasonably necessary either to explain and amplify the Sub-contract Drawings or the Specification (if any) or to enable the Sub-contractor to design, construct and complete the Sub-contract Works in accordance with this Sub-contract. Provided that nothing contained in the said working drawings or details shall impose any obligation beyond those imposed by the Sub-contract Documents.

17.4 The Sub-contractor shall keep one copy of the Sub-contract Drawings, the Specifications (if any), unpriced Bills of Quantities and other like document referred to in Clause 17.3 hereof on the Site and the Contractor shall at all reasonable times have access to the same.

17.5 Upon final payment of the Final Account, hereof the Sub-contractor shall if so requested by the Main Contractor forthwith return to the Contractor all drawings, details, specifications, unpriced copy of Bills of Quantities and other documents of like nature.

17.6 None of the documents hereinbefore mentioned shall be used by the Sub-contractor for any purpose other than this Sub-contract.

18.0 SUFFICIENCY OF SUB-CONTRACT DOCUMENTS

18.1 The Sub-contractor shall provide everything necessary for the proper execution of the Sub-contract Works until its completion (including the making good of defects pursuant to Clause 55) according to true intent and meaning of the Sub-Contract Document taken together whether the same may or may not be particularly shown or described provided that the same can be reasonably referred therefrom.

18.2 Except if and to the extent provided under this Sub-contract, the provisions of the Articles of Agreement, the Conditions including any Conditions of Particular Application and the Appendices thereto shall over those of any other documents forming part of this Sub-Contract.

18.3 Subject to the provisions of Clause above, the Contract Document shall be taken as mutually explanatory of one another but where vagueness, ambiguities or discrepancies arise, such ambiguities or discrepancies shall be decided by the Contractor and the Sub-contractor shall comply with such decision.

18.4 If the Sub-contractor or the Contractor finds any discrepancy as is referred to in Clause 18.3 he shall immediately give the other written notice specifying the discrepancy.

- 18.5 Any Conditions of Particular Application annexed hereto shall be construed as and deemed to be part of the Sub-contract Conditions. in the event of any divergence' between the Conditions of Particular Application and the Sub-contract Conditions, the Conditions of Particular Application shall prevail.
- 19.0 MATERIALS GOODS AND WORKMANSHIP - TESTING AND INSPECTION
- 19.1 All materials, goods and workmanship shall so far as procurable be of the respective kinds and standards as described in the specifications referred to in Clause 17.3 provided that the Sub-contractor shall not substitute anything so described without the Contractor's consent in writing which consent shall be at the Contractor's absolute discretion and be final and binding. No such consent shall relieve the Sub-Contractor of his obligations.
- 19.2 The Sub-contractor shall where required entirely at his own cost provide samples of materials and goods for testing. The Sub-contractor shall further upon the request of the Contractor submit to the Contractor documents to prove that the materials and goods comply with Clause 19.1.
- 19.3 The Sub-contractor shall at the request of the Contractor open up for inspection, any work covered up or arrange for or carry out any test of any materials or goods (whether, or not already incorporated in the Sub-contract Works) or of any executed work and the cost of such opening up or testing (together with the cost of making good the consequence thereof) shall be added to the Sub-contract Sum, unless provided for in the Sub-contract Documents or unless the inspection or test shows that the work, materials, or goods are not in accordance with this Sub-contract.
- 19.4 The Contractor may issue instructions requiring the removal from the Site or rectification of any work, materials or goods which are not in accordance with this Sub-contract at the Sub-contractor's own cost.
- 20.0 UNFIXED MATERIALS AND GOODS
- 20.1 All Sub-contractor's Equipment, Temporary Works and materials provided by the Subcontractor shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the Sub-contract Works and the Sub-contractor shall not remove the same or any part thereof except for the purpose of moving it from one of the Site to another, without the consent of the Contractor.
- 20.2 The Sub-contractor shall be responsible and be liable for the loss of or damage to, any of these Equipment, Temporary Works or materials.
- 20.3 Unfixed materials and goods once delivered to Site, placed on or adjacent to the Sub-contract Works and intended for incorporation therein shall become the property of the Contractor but the Sub-Contractor shall remain responsible for loss or damage to the same.
- 20.4 The Sub-contractor shall ensure that in any contract for the supply of materials and goods, property shall pass from the supplier to the Sub-contractor upon passing of delivery to or placement on or adjacent to the Sub-contract Works so as to property comply with Clause 20.1 herein.
- 20.5 The said materials and goods shall not be removed without the consent of the Contractor except for use on the Sub-contract Works.
- 21.0 MATERIALS OF MALAYSIAN ORIGIN
- 21.1 The Sub-contractor shall use materials of Malaysian origin for incorporation in the to use Sub-contract Works save:
- (i) where materials of Malaysian origin are not available: and
 - (ii) if available, are not in accordance with the standards described in the Sub-contract Documents. and in the case of paragraph (i) and (ii) the Contractor's consent/approval should be sought.
- 22.0 NOTICES. FEES AND CHARGES
- 22.1 The Sub-contractor shall conform and cause its sub-contractors and respective personnel to conform in all respects with the provisions of the Local laws, byelaws, withholding taxations, regulations and of any local or other duly constituted authority which may be applicable to the Works including the necessary registration with the relevant authorities such as Construction Industry and Development Board(CIDB) etc. In the event of any non-compliance by the Sub-contractor and/ or its sub-contractors, the Sub-contractor shall keep both, the Contractor and the Employer harmless against any losses claims, demands, expenses and/or proceedings.
- 22.2 Sub-contractor comply with and give all notices required by any written law, regulation or by-law or any local authority or of any statutory authority which has jurisdiction with regard to the Sub-contract Works or with whose systems the same are or will be connected (all requirements to be so complied with being referred to in these Conditions as 'the Statutory Requirements') and the Sub-contractor shall submit to the Contractor all approvals received by the Sub-contractor in connection therewith.
- 22.3 The Sub-contractor shall pay and indemnify the Contractor against liability in respect of any fees or charges (including any rates or taxes) legally demandable under any written law, regulation or by-law of any local authority or of any statutory authority in respect of the Sub-contract Works which are due to any acts or omissions of the Sub-contractor. No adjustments shall be made to the Sub-contract Sum in respect of the amount of any such fees or charges(including any rates or taxes) unless they are stated by way of a Provisional Sum in the Sub-contract Documents.
- 22.4 If after the final date of me Letter of Acceptance, there is a variation in the Statutory Requirements affecting the Sub-contract Works which necessitates some amendment to the Sub-contract Works such amendment shall be treated as if it were an instruction of the Contractor under Clause 36.2 affecting a Variation and *if* such Variation is prior to the final date of the Letter of Acceptance the necessary amendment to the Sub-contract Works shall be at the Sub-contractor's own cost.
- 22.5 If any amendment to the Sub-contract Works becomes necessary for conformity with the terms of any permission or approval made by a decision of the relevant authority after the final date of receipt of the Letter of Acceptance such amendment shall be treated as *if* it were an instruction of the Contractor under Clause 36.2 effecting a Variation to this Sub-contract provided that such treatment is not precluded in the Sub-contract Documents.
- 23.0 TAXATION
- 23.1 The Sub-contractor shall be liable for the payment of and/or deduction for all taxes on such part of their payments in respect of this Sub-contract as is chargeable therewith under the prevailing withholding taxation Laws for the time being in force in Malaysia and the Sub-Contractor's country of residence.
- 23.2 The Sub-contractor's employees including any non-Malaysian personnel shall be liable to pay Income *Tax* in respect of their salaries as are chargeable therewith under the Laws for the time being in force in Malaysia and Sub-Contractor's country of residence and the Sub-Contractor shall perform such duties in regard to the deduction thereof as may be lawfully imposed on them by the Employer.
- 24.0 ANTIQUITES
- 24.1 All fossils, coins, antiquities and other object of interest or value which may be found on the Sites or in excavating the same during the progress of the Sub-contract Works shall become the property of the Employer and upon discovery of such an object the Sub-contractor shall forthwith:
- 24.1.1 use his best endeavours not to disturb the object and shall cease work if and in so far as the continuance or work would endanger the object or prevent or impede its excavation of its removal;

24.1.2 take all steps which may be necessary to preserve the object in the exact position and condition in which it was found; and

24.1.3 inform the Contractor of the discovery and the precise location of the object.

24.2 The Contractor shall issue instructions to what is to be done concerning an object reported by the Sub-contractor under Clause 24.1.3 and (without prejudice to the generality of his power) such instructions may require the Sub-contractor to permit the examination, excavation or removal of the object by a third party.

24.3 if compliance with the provisions of Clause 24.1 or with an instruction issued under Clause 24.2 has involved the Sub-contractor in direct loss and/or expense for which he would not be reimbursed by a payment made under any other provision of this Sub-contract then the amount of such loss and/or expense shall be added to the Sub-contract Sum.

25.0 COPYRIGHT, ROYALTIES AND PATENT RIGHTS

25.1 All royalties or other sums payable in respect of the supply and use in carrying out the Sub-Contract Works of any patented articles, processes or inventions or in respect of the supply and use for the Sub-contract Works of drawings or models of buildings the subject of any other protected right other than drawings or models provided by the Contractor shall be deemed to have been included in the Sub-contract Sum and the Sub-contractor shall indemnify the Contractor from and against all claims, proceedings, damages, costs and expenses which may be brought or made against the Contractor or which it may be put by reason of the Sub-contractor infringing or being held to have infringed any patent right in relation to any such articles, processes and inventions or infringing or being held to have infringed any other protected rights.

25.2 Provided that where in compliance with the Contractor's instructions the Sub-contractor shall be required to supply and use in carrying out the Sub-contract Works any patented articles, processes or inventions, the Sub-Contractor shall not be liable in respect of any infringement or alleged infringement of any patent or any other patent rights in relation to any such articles, processes and inventions and all royalties, damages or other moneys which the Sub-contractor may be liable to pay to the persons entitled to such patent or copyrights shall be added to the Sub-contract Sum.

25.3 Except where otherwise specified, the Sub-Contractor shall pay all tonnage and other royalties, rent, fees and other payments or compensation (if any) for getting sand, gravel, clay or other materials required for the Sub-contract Works.

26.0 SETTING OUT

26.1 The Contractor shall furnish to the Sub-contractor such information as shall enable the Sub-contractor to set out the Sub-contract Works provided always that the Sub-contractor shall be responsible for checking the accuracy of such information and shall entirely at his own cost amend any errors arising from his own inaccurate setting out.

27.0 INSPECTION OF SITE

27.1 The Sub-contractor shall be deemed to have inspected the Site and to have satisfied himself and allowed in the Sub-contract Sum as to the form and nature of the Site, the extent and nature of the work and materials necessary for the completion of the Sub-contract Works, the accommodation he may require and in general shall himself obtain all necessary information as to risks, contingencies and other circumstances which may influence or affect the Sub-contract Sum.

27.2 Where the Sub-contract incorporates an applied finish to any surface formation or prepared surfaces like prepared by the Contractor or other contractor for example but not limited to walls, floors, ceilings, roofs, woodwork roads and like areas it is the responsibilities of the Sub-contractor to ensure that the base provided by the Contractor is suitable in all respects for the Sub-contractor's work and in each and every case where it is not to notify the Contractor in writing to that effect before commencing work.

27.3 Where the Sub-contract incorporates materials likely to be affected by atmospheric conditions for example but not limited to kiln dried timber in flooring or joinery polishing and decorating or the like it is the responsibility of the Sub-contractor to ensure that the conditions are suitable in all respects before commencing the Sub-contract Works and in each and every case where they are not the Sub-contractor must notify the Contractor in writing to that effect.

27.4 Failure on the part of the Sub-contractor to conform to the requirements of liability sub-clause 27.2.1 and 27.2.2 of this Clause shall in no way relieve Sub-contractor from any contractual obligations or guarantees.

27.5 The Sub-Contractor shall be responsible for the protection of the Sub-contract Works against any damage from whatever cause arising and shall take all Works necessary precautions in carrying out the Sub-contract Works to prevent damage to other existing work.

28.0 EMPLOYMENT OF WORKMEN

28.1 The Sub-contractor shall employ in the execution of the Sub-Contract only Malaysian citizens as workmen. If in any particular trade or skill required to complete this Sub-contract, the Sub-Contractor can demonstrate to the satisfaction of the Contractor that Malaysian citizens are not available or that non-Malaysian specialist and others are required in connection with the installation and commissioning of specialist equipment goods or materials to be incorporated in the Sub-contract Works then the Sub-contractor may employ non-Malaysian citizens subject to the approval of the Ministry of Human Resources.

28.2 The Sub-Contractor shall provide all accommodation and messing for his workmen and employees as necessary and the cost thereof shall be deemed to be included in the Sub-contract price.

28.3 The ratio of Malaysian citizens who shall be employed by the Sub-contractor in the execution of this Sub-contract shall reflect the racial ratio of the citizens of this country as prescribed by the Employer from time to time.

28.4 The Sub-contractor shall on the commencement of the Sub-contract Works furnish to the Contractor all particulars connected with this Sub-Contract and such returns as may be called for from time to time in respect of labour employed by him and his subsequent sub-contractors (including 'labour only' sub-contractor) on the execution of this Sub-Contract. In accordance with the requirements of the Employment Act 1955, Employment (Restriction) Act 1968 and Internal Security (Registration of Labour) Regulation 1960 or any subsequent modification or re-enactment thereof. The Sub-contractor shall maintain on Site at all times during the progress of the Sub-contract works an up-to-date register containing particulars of all workmen employed by him.

28.5 All workmen employed in connection with the Sub-Contract Works shall be employed from within the Districts where the Sub-Contract Works are situated and where such workmen are not available in the said Districts, then from within the States where the Sub-contract Works are situated. The Sub-contractor shall immediately after the award of this Sub-contract arrange with the local labour office, District Officer/Pegawai Jayahan or Penghulu/Penggawal to effect such employment.

28.6 Provide always that the employment of the workmen in Clause 28.1 shall not create or be deemed to create the relationship of principal and agent or master and servant/employer and employee between the workmen and the Contractor and/ or the Employer.

28.7 The Sub-contractor shall cause his subsequent sub-contractor including the labour only sub-contractors to comply with Clauses 28.1 to 28.6.

29.0 COMPLIANCE WITH EMPLOYMENT ACT 1955 ETC

29.1 In the employment of workmen for the execution of this Sub-contract, the Sub-contractor shall comply and shall cause his subsequent sub-contractors (including "labour only" sub-contractors) to comply with all the requirements of the Employment (Restriction) Act 1968, Employees' Provident Fund Ordinance 1951, the Industrial Relations Act 1967 and any other law relating to employment of workmen or any subsequent modification or re-enactment thereof.

30.0 EPIDEMICS AND MEDICAL ATTENDANCE

- 30.1 The Sub-contractor shall maintain the Site in a clean and sanitary condition and shall comply with all requirements of the Contractor or Employer Health and Sanitary Authorities. In the event of any outbreak of illness of an epidemic nature the Sub-contractor shall comply with and carry out such regulations, orders and requirements as may be made by the Contractor or Employer or the local medical or health authorities for the purpose of dealing with and overcoming the same.
- 30.2 The Sub-contractor shall provide to the satisfaction of the Contractor and Employer or the Local Authorities concerned adequate medical attendance for his employees. In particular the Sub-Contractor shall provide first aid kits at the Site and shall instruct an adequate number of persons in their use. The names of the persons so instructed shall be made known to all employees of the Sub-contractor.

32.0 WAGE BOOKS AND TIME SHEETS

- 32.1 The Sub-contractor shall keep and shall cause his subsequent sub-contractors (Including 'labour only' sub-contractors) to keep proper wage books and time sheets showing wages paid to and the time worked by all workmen employed by him and his sub-contractors as aforesaid in and for the performance of this Sub-contract and shall produce such wage books and time sheets on demand for inspection by any persons duly authorized by the Contractor and shall furnish to the Contractor or his duly authorized representative such information relating to the wages and conditions of employment of such workmen as the Contractor may from time to time require.

33.0 DEFAULT IN PAYMENT OF WAGES

- 33.1 In the event of default being made in the payment of any money in respect of wages, a claim of which has been filed at against the Sub-contractor in an office of the Department of Labour and /or default in the payment in respect of Employee's Provident Fund contributions of any workmen employed by the Sub-contractor or his subsequent sub-contractors (including "labour only" ; sub-contractors) in and for the performance of this Sub-contract, then the Contractor having satisfied himself with the proof thereof furnished to him may, but shall not be bound to, upon the failure of the Sub-contractor to pay any such money for which he is liable under the relevant statutory provisions make payment of such claim to the Director General of Labour and/or Employee's Provident Fund Board, as the case may be, out of any monies at any time due to the Sub-contractor under this Sub-contract and such payment shall be deemed to be a payment made to the Sub-contractor by the Main Contractor under and by virtue of this Sub-Contract.

34.0 DISCHARGE OF WORKMEN

- 34.1 The Sub-Contractor shall only employ such technical staff foremen artificers and labourers on the Sub-contractor Works who are thoroughly efficient and of good characters. If, in the sole opinion of the Main Contractor any person employed by the Sub-Contractor misconducts himself or has caused delays or is incompetent, the Sub-Contractor when so directed by the Contractor in writing, shall at once remove such person from the Sub-contract Works and he shall not again be employed on the Sub-contract Works without the written permission of the Contractor. Upon removal of any such person the Sub-Contractor shall forthwith find a suitable replacement. Provided that the Sub-Contractor shall not be entitled to any claim for any expenses whatsoever incurred by him in respect of any direction given by the Contractor under this Clause.

35.0 ACCESS TO THE WORKS AND INFORMATION

- 35.1 The Contractor and any person authorized the by either of them shall at all reasonable times have access to the Site and Sub-contract Works or to such Works portion of the Site where the Sub-contract Works are being carried out and to the workshops or other places of the Sub-contractor where work is being prepared for this Sub-contract and where work is being so prepared in workshops or other places of a subsequent sub-contractor, the Sub-Contractor shall, by a term in the subsequent sub-contract so far as possible secure a similar right of access to those workshops or places for the Contractor and shall do all things reasonably necessary to make such right effective.
- 35.2 The Sub-Contractor shall provide the following to information and/or information and documentation to the Main Contractor to allow the Main Contractor to satisfy documents himself as to the progress of the Sub-contractor's procurement activities in accordance with the Sub-contract work program provided always that these provisions do not relieve the Sub-contractor of his contractual obligations contained herein:
- 35.2.1 Drawing Program including information release dates, production dates etc., updated during the currency of the Sub-contract Works and frequency as directed by the Contractor;
- 35.2.2 Procurement schedule showing information release, enquiry, vet. order, manufacture, test and transport periods as appropriate to each materiel or equipment updated during the currency of the Sub-contract Works and frequency as directed by the Contractor;
- 35.2.3 copies of Purchase Orders and Work Orders as and when placed;
- 35.2.4 expediting reports - showing the status of each order, its estimated ex-works and shipment dates, shall be issued at least at monthly intervals or as directed by the Contractor;
- 35.2.5 shipping programs - showing forecast and current shipments, the details of the materials, the approximate shipping weight or volume, the mode of transport, the name of the carrying vessel, flight number, etc., and the parts of departure and arrival together with the estimated time depdure, estimated time arrival, actual time departure end actual time arrival as appropriate;
- 35.2.6 notification of shipment, arrival at and clearance from the port of entry, arrival on site of all materials;
- 35.3.1 The Contractor hereby reserve the right to expedite and inspect specific items forming part of the Sub-contract Works. The Main Contractor will notify the Sub-contractor of his intention to expedite or inspect.
- 35.3.2 The Sub-contractor shall ascertain from the Contractor in adequate time before his goods are ready for shipment whether inspection is required or not. Such inspection shall not in any way relieve the Sub-contractor of his obligations pursuant to the Sub-contractor and on receipt of such notice the Sub-contractor shall arrange facilities for persons duly authorized to expedite and inspect.
- 35.4 Where the Sub-contractor is responsible for providing information to enable the Contractor to make provision for fixings the leaving of holes the forming of chases and any other such work the Sub-contractor shall provide all necessary information in sufficient time to enable the Contractor to make such provision before the relevant section of the Sub-contract Works is set out. Any additional cost involved in making provision after the setting out of the Contractor's work will be chargeable to the Sub-contractor.

36.0 VARIATIONS IN THE CONTRACT DOCUMENTS

- 36.1 The term Variation in the Sub-Contract Documents means:
- 36.1.1 a change in the Sub-contract Documents which makes necessary the alteration or modification of the design, quality or quantity of the Sub-contract Works as described by or referred to in the Sub-Contract Documents, otherwise than such as may be reasonably necessary for the purpose of rectification pursuant to Clause 19.4 including:
- (i) the addition, omission or substitution of any work;
 - (ii) the alteration of the kind or standard of any of the materials, goods to be used in the Sub-contract Works;
 - (iii) the removal from the Site of any work executed or materials or goods brought thereon by the Sub-contractor or the purposes of the Sub-contract Works other than work, materials or goods which are not in accordance with this Sub-contract.
- 36.2 The Contractor may issue instructions effecting a Variation in the Sub-contract Documents. No Variation effected by the Contractor shall vitiate his Sub-contract.

37.0 VALUATION OF VARIATIONS OR CHANGE ORDER WORKS

- 37.1 The valuation of additional or substituted work shall additional or be consistent with the values of work of similar character as set out in the Sub-Contract Bills of Quantities or Schedule of Rates making due allowance for any significant change in the quantity of the work. Where there is no work of a similar character as set out in the Sub-contract Bills of Quantities or Schedule of Rates, a fair valuation shall be made therefor.
- 37.2 The valuation of the omission of work shall be in accordance with the values of the Sub-contract Bills of Quantities or Schedule Of rates.
- 37.3 No allowance shall be made under Clause 37 for any effect upon the regular progress of the Sub-Contract Works or of any other direct loss and/or expense for which the Sub-contractor would otherwise be reimbursed.
- 37.4 Obvious works and the correction of discrepancies or errors in the drawings and the respective Contract and Sub-Contract Documents shall not be treated as Variations.
- 37.5 Effect shall be given to Clause 37 by addition to or deduction from the Sub-contract Sum provided always that such addition or deduction has been certified by the Contractor.
- 37.6 For items stated as Lumpsum (L.S.) or Sum, or LUMPSUM , such items shall be executed on a fixed lump sum basis and the lump sum price shall not subjected to any remeasurement or adjusted in the event of the actual quantities of work, material, goods and services to be supplied differs from any estimated quantities of work, material, goods and services to be supplied as provided under this Sub-contract.
- 37.8 For items marked PV or PROVISIONAL, the quantities set out in the Sub-contract Bill of Quantities are the estimated quantities for the Sub-contract Works. All these items shall be re-measured basing on the actual completed work done on site.
- 38.8 Where the Sub-contractor has been instructed by the Contractor to carry out work on a day work basis. The Sub-contractor shall be paid for such work at the rates and prices specified in the Day Work Rates included in the Sub-contract, or in the absence of such Day Work Rate, the Sub-contractor shall be paid based on the reasonable prevailing market rates.

38.0 PROVISIONAL SUM

- 38.1 The term Provisional Sum included in the Sub-contract Documents means a sum for work to be executed or the supply of materials or goods which cannot be entirely foreseen, defined or detailed before the date of the Letter of Acceptance and the Contractor shall issue instruction to the Sub-contractor in regard to the expenditure of such Provisional Sum.
- 38.2.1 Prices and Rates in the Tender submitted by the Sub-contractor shall be subjected to rationalization, prior consent of the Contractor as to their reasonableness. Such prior consent and any subsequent adjustment to the Prices and Rates in the Tender shall be made before the signing of this Sub-Contract. Hence, the Contractor hereby reserve the right to rationalize all the sub-contractor's tender rates so as to reflect the actual completion of actual work done on Site.
- 38.2.2 Any adjustment of Prices end Rates in the Tender submitted by the Sub-contractor pursuant to Clause 38.2.1 and any arithmetical error shall before the signing of this Sub-contract be adjusted and rectified so that the total amount in the Tender shall correspond to the lump sum amount tendered by the Sub-Contractor in the Form of Tender. Provided always the lump sum amount shown in the Form of Tender shall remain unaltered.
- 38.3 The value of works which are executed by the Sub-contractor in respect of a Provisional Sum shall be ascertained in accordance with Clause 37. At the settlement of the accounts the value of such work executed by the Sub-contractor shall be set against the Provisional Sum and the balance shall be added to or deducted from the Sub-contract Sum. The Provisional Sum if not used either wholly or in part shall as to the amount not used be deducted from the Sub-contract Sum.

39.0 SUB-CONTRACT SUM

- 39.1 The Sub-Contract sum shall not be adjusted or altered in any way whatsoever otherwise than in accordance with the express provision of the Conditions.
- 39.2.1 Prices and Rates in the Tender submitted by the Sub-contractor shall be subject to the prior consent of the Contractor as to their reasonableness such prior consent and any subsequent adjustment to the Prices and Rates in the Tender shall be made before the signing of this Sub-contract.
- 39.2.2 Any adjustment of Prices and Rates in the Tender submitted by the Sub-contractor pursuant to Clause 39.2.1 and any arithmetical error shall before the signing of this Sub-Contract be adjusted and rectified so that the total amount in the Tender shall correspond to the lump sum amount tendered by the Sub-Contractor in the Form of Tender. Provided always the lump sum amount shown in the Form of Tender shall remain unaltered.
- 39.3 Where in the Conditions it is provided that an amount duly approved and certified by the Contractor is to be added or deducted from the Sub-contract Sum or dealt with by adjustment of the Sub-Contract Sum, then as soon as such amount for in the is ascertained in whole or in part such amount shall be taken into account in the Interim Payment computation of the next Interim Payment following such whole or partial ascertainment.

40.0 OTHER SUB-CONTRACTORS

- 40.1 Where the Main Contractor requires the execution of work not forming part of this Sub-contract by the Main Contractor or by others employed or otherwise engaged by the Contractor, then the Sub-contractor shall permit the execution of such work on the relevant Site or any part thereof.

41.0 WRONGFUL USE OR INTERFERENCE WITH PROPERTIES OF OTHERS

- 41.1 The Sub-Contractor, his servants, employees or agents shall not wrongfully use or interfere with the plant, equipment, ways, scaffoldings, temporary works, appliances or other properties belonging to the Employer, the Main Contractor or its other sub-contractor, or be guilty of any breach or infringement of any Ordinance or by-law, regulation, order or rule made under the same or by any local or other public or competent authority.

42.0 CARE AND PROTECTION OF SUB-CONTRACT WORKS

- 42.1 The Sub-contractor shall be entirely responsible for the whole of the Sub-contract Works including all apparatus, equipment and materials furnished by him in connection with this work and special care shall be taken to protect all parts thereof in such a manner as may be necessary as directed by the Contractor. This protection shall include but is not limited to covers, crating, stores, sheds or other means to protect the apparatus, equipment and materials from the weather and the ingress or dirt, grit, plaster or other foreign substances. Special care shall be taken to keep all open ends of pipes, duct, etc.. closed while in storage or in the course of installation.

43.0 PROTECTION OF PROPERTY AND PERSONNEL

- 43.1 The Sub-Contractor shall take precautions to avoid causing unnecessary damage to the work of other trades. The Sub-Contractor's workmen will be required to conform with the general regulations governing personnel on the Site and must keep to the working space allocated to him. The interest of the project must be safeguarded in every way and any person interfering with the job or making himself objectionable will be liable to be dismissed.
- 43.2 All precautions shall be taken for the safety of personnel on Site. Barriers shall be erected and warning notices displayed where required and as directed by the Contractor.

44.0 INSURANCE AGAINST INJURY TO PERSONS AND DAMAGE TO PROPERTY

- 44.1 The Main Contractor is for the duration of the Contract, insured under a Contractor's All Risk Policy covering the Contract Sum incorporating Public Risk Policy Liability claims. All claims made under this policy shall be subject to the payment of an Excess per occurrence as set out in Appendix I.
- 44.2 In the event of any claim being made on behalf of the Sub-contractor or as a result of the Sub-Contractor's act or omission, the amount of Excess payable shall be borne by the Sub-contractor.
- 44.3 Nothing contained herein shall make the Contractor liable for failing to maintain the Policy or to give any notice to the Insurance Company or for any other matter relating to the Policy or any claim thereto.
- 44.4 Apart from any exclusions, where there is any legal liability arising out of the use by the Sub-contractor of any vehicle where indemnity is provided by any motor or other insurance policy or where any insurance or security is required by law to be taken out by the Sub-contractor, such liability shall be pursued by the Sub-contractor under the relevant policy on the Contractor's behalf with all due haste.
- 44.5.1 If any loss or damage affecting this Sub-contract Works or any part thereof or any unfixated materials or goods is occasioned by any one or more of the perils covered in the Policy the Sub-contractor shall notwithstanding that settlement of any insurance claim has not been completed with due diligence restore work damaged replace or repair any unfixated materials or goods which have been destroyed or injured remove and dispose of any debris and proceed with the carrying out and completion of the Sub-contract Works.
- 44.5.2 All monies received from the insurance referred to in Clause 44.1 shall be paid in the first place to the Contractor and then shall be paid to the Sub-contractor by installment on any payment certificate issued under Clause 57 and calculated as from the date of receipt of the moneys in proportion to the extent of restoration of work damaged replacement or repair of any unfixated materials or goods and the removal and disposal of debris carried out by the Sub-contractor.
- 44.5.3 The Sub-contractor shall not be entitled to any payment in respect of the restoration of work damaged the replacement and repair of any unfixated materials or goods and the removal and disposal of debris other than the monies received under the aforesaid insurances.

45.0 WORKMEN'S COMPENSATION AND SOCSO SCHEME

- 45.1 The Sub-contractor shall be liable and shall indemnify the Contractor from all liabilities arising out of claim by any and every workman employed in and for the performance of this Sub-contract for payment of compensation at common law, under or by virtue of the Workmen's Compensation Ordinance 1952 (Revised 1987) and the Employees' Social Security Act 1969 or any other law amending or replacing such law, and from all costs and expenses incidental and consequential thereto.
- 45.2 Without prejudice to his liability to indemnify the Employer and the Contractor under Clause 45.1 the Contractor is (subject to policy exclusions) for the duration of the Contract insured under a Workmen's Compensation Policy and shall assist the Sub-contractor in making claims hereon.
- 45.3.1 The Sub-contractor shall register his employees and contribute under the Social Security (SOCSO) Scheme In the places where the SOCSO Scheme is implemented and comply with the provision of the said Act. The Sub-contractor shall submit the code number and social security numbers of all the workers on site to the Contractor for checking.
- 45.3.2 The Sub-contractor shall make payment of all contributions from time to time on the first day on which the same ought to be paid and until the completion of the Sub-contract works and it shall be the duty of the Sub-contractor to produce to the Contractor contribution cards or stamp vouchers as evidence of all payments of such contribution whether demanded or not.
- 45.3.3 if any default is made by the Sub-contractor in complying with the terms of Clause 45.3 the Contractor may without prejudice to any other remedy available is to the Contractor for breach of any terms of this Sub-contract:
- (i) withhold an amount from any money which would otherwise be due to the Sub-contractor under this Sub-contract and which in the opinion of the Contractor will satisfy my claims for compensation by workmen that would have been borne by SOCSO had the Sub-contractor not made default in maintaining the contribution; and/or
 - (ii) pay such contributions as have become due and remain unpaid and deduct the amount of such contribution from any moneys due or become due to the Sub-contractor.
- 45.4 Nothing in this Clause shall be construed to take away or to waive or in any manner to modify the right of the Contractor to be indemnified by the Sub-contractor under Clause 47.1 in respect of all compensation, costs and other expenses whatsoever which by reason of the Sub-contractor's default or otherwise become payable by the Contractor under the legislation referred to Clause 45.1 or other law.

46.0 PERFORMANCE BOND

- 46.1 The Sub-contractor shall provide to the Contractor a Performance Bond in the form as set out in Appendix 2 from, a bank operating in Malaysia and approved by the Contractor in a sum equal to 5 percent of the Sub-contract Sum for the due observance and performance of this Sub-contract and the cost of obtaining the Performance Bond shall be borne by the Sub-Contractor and shall be deemed to have been included in the Sub-contract Sum.
- 46.2 The original of the Performance Bond shall be deposited with the Contractor as a condition precedent to the commencement of the Sub-contract Works and shall remain valid for the period named in Appendix 1.
- 46.3 If the Sub-contractor fails in any respect to execute this Sub-Contract or entitled to make commits any breach of his obligations in this Sub-contract, the Contractor may forthwith and without notice to the Sub-contractor make a demand or otherwise call an me Performance Bond or any part hereof.
- 46.4 The Contractor shall be entitled to utilise moneys received under the Performance Band in whatever manner the Main Contractor for deems fit.
- 46.5 The Performance Bond (or any balance thereof remaining for the credit of the to be returned Sub-contractor) shall be released or refunded to the Sub-Contractor on the expiration thereof.

47.0 COMMENCEMENT AND COMPLETION OF THE WORKS

- 47.1 No work under this Sub-contract shall commence unless and until the Performance Bond under Clause 46 has been deposited with the Contractor.
- 47.2 The Sub-contractor shall commence me Sub-contract Works within seven (7) days after the date of an order in writing under this Sub-contract from the Main Contractor to that effect or such other date stated therein and shall proceed with the same with due expedition.
- 47.3 The Sub-contractor shall complete the whole of the Sub-Contract Works within Completion Period the Sub-Contract Completion Period as stated in Appendix 1 or such extended time as may be allowed under Clause 50.
- 47.4 The whole of the Sub-contract Works shall have been deemed to be completed when accepted in accordance with the provisions of this Sub-contract (hereinafter referred to as the Date of Acceptance of the whole of the Sub-Contract Works). Provided Always that such acceptance shall not relieve the Sub-contractor's obligations to make good any defects pursuant to Clause 55.
- 47.5 The Sub-contractor shall conform to the Contractor's hours and days of work.
- 47.5.1 Where additional working hours for the Sub-contractor is deemed necessary by the Contractor then the Sub-contractor shall duly comply with the Contractor's direction.

- 47.5.2 All costs and expenses arising out of these additional working hours, including the Contractor's and Consultant Engineer's attendance fee, shall be borne by the Sub-contractor.
- 47.5.3 In the event the Sub-contractor is desirous of carrying out work beyond the hours observed by the Contractor, the Sub-contractor shall prior to the commencement of such work, obtain the written consent of the Contractor. In such event the Sub-contractor shall be liable for all costs and expenses arising therefrom including Main Contractor's and Consultant Engineer's attendance fee.
- 48.0 DAMAGES FOR NON-COMPLETION
- 48.1 If the Sub-contractor fails to complete the Sub-Contract Works within the Sub-contract Completion Period as stated in Appendix 1 or within any extended time under Clause 50 and the Main Contract certifies in writing that in his opinion the same ought reasonably so to have been completed the Sub-contractor shall subject to the maximum amount of damages which may be stipulated, pay or allow the Contractor a sum calculated at the rate as stated in Appendix 1 as Liquidated and Ascertained Damages (LADs) for the period during which such Sub-contract Works shall so remain and have remained incomplete and the Main Contractor may deduct such damages from any monies due to the Sub-contractor.
- 49.0 PARTIAL OCCUPATION
- 49.1 If at any time or times before the whole of the Sub-contract Works have reached completion, the Employer shall take possession of and occupy any part or parts of the same (any such part being hereinafter in this Condition referred to as "the relevant part") by issuing a Certificate of Partial Occupation to the Contractor in accordance with the provisions of the Contract then notwithstanding anything expressed or implied elsewhere in this Sub-Contract:
- 49.1.1 For the purposes of Clauses 48 and 55 hereof, the relevant part shall be deemed to have been completed and the Defects Liability Period in respect of the relevant part shall be deemed to have commenced on the date of the Certificate of Partial Occupation as provided for in Clause 49.1.
- 49.1.2 At the end of the Defects Liability Period of the relevant part and if in the opinion of Contractor any defects, imperfection, shrinkage or any other faults whatsoever in the relevant which he may have required to be made good under Clause 55 hereof, shall have been made good by the Sub-contractor, the Contractor shall issue a certificate to that effect.
- 49.1.3 The Liquidated and Ascertained Damages specified under Clause 48 for any period end of delay after such certification of the practical completion of the relevant part under 49.1 shall be reduced in the proportion which the total value of the relevant part bears to the Sub-contract Sum.
- 49.1.4 *It is expressly* agreed that nothing contained the preceding paragraphs shall entitle the Sub-contractor to release of the performance bond or any part thereof deposit by him under Clause 46, the intention being that the said Performance Bond or any part thereof shall be released or refunded only upon its expiration as stated in Appendix 1.
- 50.0 DELAY AND EXTENSION OF TIME
- 50.1 Upon it becoming reasonably apparent that the progress of the Sub-contract Works is delayed, the Sub-contractor shall within one (1) month give written notice of the causes of delay fully supported by all relevant documents to the Contractor together with an estimate of the likely delays and in the opinion of the Contractor the completion of the Sub-contract Works is likely to be delayed or has been delayed beyond the Sub-contract Completion Period or beyond any extended date for completion previously ascertained under this Clause:
- 50.1.1 by Force Majeure; or
- 50.1.2 by exceptionally adverse weather conditions ; or
- 50.1.3 by reason of loss or damaged occasioned by any one or more of the excepted risks contained in the Contractor All Risks policy taken up by the Contractor (provided and to extend that the same is not due to any act or negligence, default or breach of contract by the Sub-contractor or subsequent Sub-contractor whether in failing to take reasonable steps to protect the Sub-contract Works or otherwise); or
- 50.1.4 by reason of the Contractor's instruction issued under Clause 24.2 and 36.2 provided that such instructions are not issued due to any default or breach of Sub-contract by the Sub-contractor or subsequent sub-contractor; or
- 50.1.5 by reason of the Sub-contractor not having received in due time necessary instructions, decisions information or consent from the Contractor which the Contractor is obliged to provide or give under the Conditions, including a decision under Clause 18.3 for which he has specifically applied in writing provided that such application was made on a date which having regard to the date for completion or to any extension of time when fixed under Clause 50 was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same: or
- 50.1.6 by the execution of work not forming part of the Sub-Contract by the Employer itself the Contractor or by artists, tradesmen, sub-contractor or others employed or otherwise engaged by the Employer or the Contractor or failure to execute such work: then the Contractor shall soon as he is able to estimate the length of the delay beyond the date or time aforesaid make in writing a fair and reasonable extension of time for completion of the Sub-contract Works.
- 50.2 Provided always; the Sub-Contractor shall use constantly his best endeavors to prevent delay or further delay in the progress of his Sub-contract Works, howsoever caused;
- 51.0 NOTICES AND INSTRUCTIONS
- 51.1 All notices to be given to either the Contractor or the Sub-contractor and all instruction to be given to the Sub-contractor under the terms of the Sub-contract shall be sent by post, cable, telex or facsimile transaction to or left at the principle place of business of the Contractor or Sub-contractor, as the case may be, or such other address as the Contractor or Sub-contractor shall nominate for that purpose.
- 51.2 Either party may change the nominated address to another address by prior notice to the other party.
- 52.0 FIXED AND FIRM PRICE CONTRACT
- 52.1 Unless otherwise stated, notwithstanding any changes in legislations, regulations and byelaws during and throughout the Contract Period, this is a FIXED AND FIRM Price Sub-contract. Hence, there shall no adjustment to the contract rates whatsoever due to fluctuations or escalations or variation in prices or cost of materials, labour, rental, plants, fuel, power, currencies, equipment, taxes, duties, and etc.
- 53.0 TERMINATION FOR CONVENIENCE
- 53.1 In addition to the Contractor's rights set forth in Clause 59, the Contractor may, at any time without assigning any reason and at its absolute discretion, to terminate the Sub-contract or any part or parts thereof subject to seven (7) days prior notice in writing. In the event of such notification to terminate the Sub-contract, the Sub-contractor shall remove from the work Site all Sub-contractor's construction equipment owned by the Sub-contractor. In the event of such termination, the Sub-contractor shall be entitled to the payment for the part of the work performed by the Sub-contractor up to the date of such termination but shall be entitled to the anticipated profit or consequential or indirect damages arising from termination of this Sub-contract. The Sub-contractor shall hold harmless and indemnify the Contractor from and against any action, damages claims, demands whatsoever by the Sub-contractor's contractors and/ or third parties including costs, or legal fees which may be rendered against the Contractor arising from termination under this Clause.

54.0 COMPETENT SITE MANAGEMENT TEAM

- 54.1 For efficient administration and implementation of the Sub-contract Works, the Sub-contractor shall at its own cost appoint and engage competent staff including a full time site agent to carry out, supervise and implement the Sub-contract Works to the satisfaction of the Contractor.
- 54.2 The said site agent shall at all material times be authorized and empowered to receive instructions from the Contractor and act on them promptly. Such site agent shall not give any undertaking nor assume any liability on behalf of the Contractor without the prior written consent of the Contractor. The Sub-contractor hereby undertakes to indemnify the Contractor against all loss and expense suffered by the Contractor in consequence of any act or omission of the site agent.
- 54.3 The Sub-contractor shall only employ such technical staff, foreman, artifices and laborers on the Works as are thoroughly efficient and good character. If, in the sole opinion of the Contractor any person employed by the Sub-contractor misconducts himself or has caused delays or is incompetent, the Sub-contractor when so directed by the Contractor in writing shall at once remove such person from the Works and he shall not again be employed on the Works without permission of the Contractor. Any person so removed from the Works shall be replaced without delay by a competent substitute approved by the Contractor. Provided that the Sub-contractor shall not be entitled to any claim for any expense whatsoever incurred by him in respect of any direction given by the Contractor under this Clause.

55.0 OUTSTANDING WORK AND DEFECTS

- 55.1 The Sub-contractor shall complete the Sub-contract Works as required by Sub Clause 4.0 before the issue of the Certificate of Practical Occupation/Completion in respect of the Works. In case of the Partial Occupation, before a Certificate of Partial Practical Occupation/Completion is issued in respect of the Section or Sections or part of the Works in which the Sub-contract Works are comprised, the Sub-contractor shall continue to maintain the Sub-contract Works in the condition required by the Contract to the satisfaction of the Contractor/Employer. In either cases, the Sub-contractor shall remedy every defect therein from whatever cause arising until the said Certificate of Practical Occupation/Completion or its equivalent is issued in respect of the Works or such Section or Sections or any part or parts thereof. Subject to Clause 56, the Sub-contractor shall not be entitled to any additional payment for doing so.
- 55.2 After the issuance of the Certificate of Practical Occupation/Completion in respect of the Works or of the Section or Sections or any parts thereof in which the Sub-contract Works are comprised, as the case may be, the Sub-contractor shall remedy such defects in the Sub-contract Works throughout the Defects Liability Period as stipulated in Appendix -1.
- 55.3 The protection of the Sub-contract Works shall be the responsibility of the Sub-contractor. Any loss or damage to the Sub-contract Works shall be the sole risk of the Sub-contractor.
- 55.4 The plant, tools, equipment or other property belonging to or provided by the Sub-contractor shall be at the sole risk of the Sub-contractor and any loss or damage to the same or caused by the same shall be the sole liability of the Sub-contractor.
- 55.5 Notwithstanding the above, the Sub-contractor shall assume complete responsibility for any failure, defects, damage or fault in the Works, Equipment, Supplies, Material, Spare Parts, process and / or poor workmanship due to improper design, engineering, procurement, specifications, storage, construction, and quality of workmanship, whereby the Sub-contractor shall be liable to make the necessary corrective measures at his/her own expenses and costs.
- 55.6 In the event that due to mistakes, negligence, omissions or errors in the Works and for whatever reason falling within the Sub-contractor's obligations, there is a failure, defect, damage or fault in the Works, Equipment, Supplies, Material or Spare parts, and / or Sub-contractor is unable to undertake, perform or verify any of the Guarantees, or complete the Works, the Sub-contractor shall proceed to effect the rectifications, modifications, additions and / or changes which are necessary to eliminate the defects and / or faults and thereby to achieve the specified guarantees and criteria. The Sub-contractor shall provide, at no cost and expense to the Contractor, all necessary work services, Equipment, Material, Supplies, and Spare Parts to complete the Work. All remedial work shall be commenced within one (1) calendar week of Sub-contractor having been notified in writing by the Contractor of such failure, defect, damage or fault and shall be completed as soon as possible within the time to be determined by the Contractor.
- 55.7 If the Sub-contractor delays, neglects or refuses to take the necessary measures to eliminate the failure, defects, damage and / or faults expeditiously, then the Contractor may take such remedial steps as the Contractor deems necessary to eliminate the same and correct all associated problems. The cost of such steps taken by the Contractor shall be recoverable in any manner from the Contractor at the discretion of the Contractor in accordance with the provisions of this Sub-contract and applicable laws. Such remedial work as may be undertaken by the Contractor by way of employment another third party shall not discharge, alter or reduce the Sub-contractor's obligations under this Sub-contract.
- 55.8 With regards to defects found during inspection before the dispatch of Equipment, Material or Supplies, from the Sub-Contractors' shop or to defects materializing during erection or Pre-Commissioning or Commissioning tests at the Site or in the Works, Sub-contractor shall immediately advise the Contractor to the action proposed to be taken to replace or repair the defective Equipment, Material and/or Supplies in the shortest possible time. The Contractor shall have the right to approve or reject the proposed action without affecting Subcontractor's obligations under the Sub-contract. With respect to Spare Parts, if any defect is found in the Suppliers' supplied Spare Parts within the period during the valid guarantee period, the Sub-contractor shall immediately undertake necessary measures to have the Vendor replace the defective Spare Parts within the shortest possible time, including air freighting of the Spare Parts at the Sub-contractor's cost.
- 55.9 Whenever any of the defects referred to under this provision appear, and Sub-contractor has advised the Contractor thereof, the defective Material shall be examined by the Subcontractor and the Contractor's authorized representatives and the procedure specified hereunder shall apply in connection with any repair and/or replacement.
- 55.10 In the event that the defect and/or damage was been agreed by both parties to be a minor defect, the Sub-contractor shall satisfactorily rectify the same through the most expeditious means.
- 55.11 In the case of a major, serious or extensive defect or damage, the Sub-contractor shall propose to the Company the most efficient and expeditious method of making good the defect or damage and undertake at its own expense, one of the following methods subject however to considerations of efficiency, speed and the Schedule.
- (i) The undertaking of repair/rectification work or alteration at Site or
 - (ii) Removal of the defective or damaged Material from the Site and the undertaking of repair or rectification at a site for which Contractor shall stipulate the location where this repair or rectification will be performed or
 - (iii) Replacement of new Material.
- 55.12 Upon completion of such repair or replacement, the Contractor may require the Sub-contractor to carry out additional tests required under the Sub-contract before accepting the repair or replacement.
- 55.13 If Sub-contractor fails to demonstrate any of the Guarantees and tests as required, and if any one and/or other of the factors or reasons affect, impair or prevent the proper operation, capacity and deliverability of the Facilities/Equipment under the terms of the Contract, whether due to any discrepancies, or mistakes, errors and/or omissions in design, engineering, inspection, procurement and construction, Contractor shall require Sub-contractor to carry out such modification, correction, rectifications and replacement at no expenses to the Contractor. The time required if any to carry out each action by Contractor shall not in any way absolve it of any liabilities for the period of delay and/or application of Clause 3 i.e. Sub-contractor's Liability & Indemnity, Sub-contractor shall complete the above Sub-contract Works in conformity with the requirement of the Sub-contract without prejudice to any of the Contractor's other rights.
- 55.14 In the event that there are discrepancies or mistakes in design, process, engineering; instructions, specifications, inspections, procurement, fabrication and supply, civil engineering, erection, and errors and/or omissions (as the case may be), which require modification, corrections, rectifications and/or Equipment replacement, so as to correct and remove the defects related thereto, with or without replacement of any Equipment, parts and/ or materials or for any other reason which clearly is or is implied to be within Sub-contractor's responsibility and scope of Sub-contract Work, then the Contractor may at its discretion require the Sub-contractor to undertake such modifications, corrections, rectifications or Equipment replacement and to submit a detailed report to the Contractor specifying the extent, nature, degree and effect of the discrepancies, mistakes, errors and /or omissions above referred in relation to the Sub-contract Works.
- 55.15 The Contractor shall assess the full impact of such report, and following consultations with the Sub-contractor or with any other person, firm, or corporation as the Contractor may deem expedient (with or without the presence of the Sub-contractor), the Contractor shall provide the Sub-contractor with an allotted time upon specified conditions for the

undertaking of such modification(s), rectification(s), replacement(s), corrective engineering and (if applicable) the making good of faulty workmanship and defective materials.

55.16 he extension and time allowed to the Sub-contractor hereby shall not in any way relieve Sub-contractor of any liabilities for the period of delay and /or application of Clause 3 and Clause 59 as the case may be. The Sub-contractor shall complete the above Sub-contract Works in conformity with the requirements of the Contract and shall, at the discretion of the Contractor, be granted such further extensions as may be necessary without prejudice to any of the Contractor's rights as aforementioned.

55.17 he Contractor shall extend the period of validity of the Performance Bond to be commensurate with the period of Extension of Time being granted by the Contractor.

55.18 Subject to the Contractor's right to hire assistance from any other sub-contractor at their sole discretion, the Sub-contractor's obligation to modify Work and rectify the defects and to take corrective steps including the replacement of Supplies, Material and/or Spare Parts shall be continuous and unabated, for the successive periods authorized by the Contractor in writing as stipulated under Clause 55.17 above and in accordance with the term of the Sub-contract with all costs to be borne by the Sub-contractor. Notwithstanding the exercise by the Contractor of its rights to hire external assistance, and /or exercise other remedies pursuant to this Sub-contract, the obligations of the Sub-contractor herein shall not end until all of the proper and necessary changes are made.

55.19 Notwithstanding anything to the contrary elsewhere in the Sub-contract, the Sub-contractor's obligations to execute the modification, corrections, rectifications, and replacement of Material, Supplies and/or Spare Parts shall be unlimited.

55.20 Any extension of time granted to the Sub-contractor under the provisions of this Clause 55 shall be without prejudice to any rights or remedies of the contractor whatsoever under this Sub-contract, should the Sub-contractor fail to accomplish the work within the given extended time.

55.21 No extension of time, whether on the Contractor's initiative or on the application of the Sub-contractor, shall be deemed to have been granted unless the Contractor specifically states so in writing to the Sub-contractor.

56.0 INSURANCES

56.1 The Sub-contractor shall affect such insurance policies as specified in the Special Provisions and a All Risk Physical Damage Insurance covering loss or damage to the Sub-contractor's Equipment and other property of the Sub-contractor at the Site. The Sub-contractor shall keep in force such insurance from the time that so much of the Site and such access is made available to him as may be required to enable him to commence and proceed with the execution of the Sub-contract Works in accordance with the Sub-contract until he has finally performed his obligations under the Sub-contract.

56.2 Provided that the Sub-contractor shall insure against the liability in respect of any person employed by him on the Sub-contract Works in such manner that Employer and/or the Contractor is indemnified under the policy.

56.3 The Contractor shall keep in force, until such time as a Completion Certificate is issued in respect of the Main Works or the Main Works have ceased to be at his risk under Main Contract, the Contractor's All Risk Policy and the Workmen's Compensation Policy.

56.4 In the event of the Sub-contract Works, Temporary Works, Materials or other things belonging to the Sub-contractor being destroyed or damaged during such period in such circumstances that a claim is established in respect thereof under the said policy, then the Sub-contractor shall be paid the amount of such claim, or the amount of his loss, whichever is the less, and shall apply such sum in replacing or repairing that which was destroyed or damaged. Save as aforesaid the Sub-contract Works shall be at the risk of the Sub-contractor until a Completion Certificate is issued in respect of the Main Works or, if a Completion Certificate is issued in respect of a Section or Sections or part or parts of the Main Works, until a Completion Certificate is issued in respect of the last of the Sections or parts of the Main Works in which the Sub-contract Works are comprised. The Sub-contractor shall make good all loss or damage occurring to the Sub-contract Works prior thereto at his own expense. The Sub-contractor shall also be liable for any loss or damage to the Sub-contract Works occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations under Sub-Clause 55.2

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

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

57.0 PAYMENTS

57.1 All quantities and measurement shall be made jointly by the representatives of the Contractor and Sub-contractor at the site according to the actual work done and agreed upon before the Sub-contractor submits his monthly progress claim as mentioned Sub-Clause 57.2 hereof. Such quantities and measurements shall be certified by the Project Manager/Site Agent and approved by the Senior Project Manager or the Project Director of the Contractor.

57.2 No Interim Payment Certificates of the Contractor (whether the quantity is measured or not) shall be considered as conclusive evidence as to the quantity of any work carried out or materials or goods supplied. The Contractor may issue any certificate to make any correction or modification in any previous certificates which have been issued by him.

57.3 No Certificate other than the Statement of Final Accounts incorporating the final measurements and rates/prices issued by the Senior Project Manager or Project Director shall be considered as final and binding.

57.4 The Sub-contractor shall in accordance with the provisions of the Main Contract submit a statement of work done on a monthly basis at least seven (7) days before the Contractor submits the claim to the Employer.

57.5 All interim payments shall be made to the Sub-contractor within the agreed period of honoring interim payment upon receipt by the Contractor of the same from the Employer under the terms of the Main Contract.

57.6 All interim payments shall be subjected to a 10% (Ten Per centum) retention to a maximum limit of 5% (Five Per centum) of the Sub-contract Sum. The First Moiety of retention monies shall be released after issuance of Certificate of Occupation/Practical Completion of the Contract or date of finalization of the final accounts whichever is the later. The Second Moiety of retention monies shall be only released upon the issuance of Certificate of making good defects or the Final Certificate from the Employer, whichever is the later.

57.7 Unless otherwise provided, there shall be no advance payment in this Sub-contract.

57.8 The Contractor shall be entitled to deduct from or set off against each progress payment due from him to the Sub-contractor (including any retention money, damages, liquidated damages etc.) any sum or sums which the Sub-contractor may be liable to pay to the Contractor under the terms of this Sub-contract. In the event that the amount in a relevant progress payment is insufficient to allow the Main Contractor to deduct there from the full sum under the provisions of this Sub-contract the Contractor is entitled to deduct from the next or subsequent progress payment such balance due.

58.0 STATUTORY AND OTHER OBLIGATIONS

58.1 The Sub-contractor shall comply with and give all notices required under any Statutes or instrument rule or regulation made by Government Departments and Local or other Authorities affecting the Sub-contract Works and shall indemnify the Contractor against any breach of or non-compliance with such obligations. Provided always that the Sub-contractor shall not be entitled to any claim for additional cost payment and extension of time for completion whatsoever in respect of his compliances with this Clause.

58.2 Occupational Safety and Health Act

The Sub-contractor shall comply with the provisions of the OCCUPATIONAL SAFETY AND HEALTH ACT 1994 (OSHA 1994) or any modification thereof or any other law relating thereto and rules made there under from time to time and the Sub-contractor shall observe and give effect to the provisions of any law for the time being in force.

58.3 The Sub-contractor shall indemnify and keep indemnified the Contractor against any claim or penalties under the OSHA 1994 and any other law relating thereto that may be suffered by the Contractor for the non-compliance or non-observance by the Sub-contractor of the aforesaid laws.

58.3 In the employment of workmen for the execution of the Sub-contract, the Sub-contractor shall comply with all the requirements of the Employment Act 1955, Employment (Restriction) Act 1968, Employee's Provident Fund Act revised 1991, the Industrial Relations Act 1967 and any other law relating to the employment of workmen, or any subsequent modification or re-enactment of the same.

58.4 Employees' Social Security Act 1969

If the workers employed by the Sub-contractor in the Sub-contract Works are liable for coverage under the Employees' Social Security Act 1969 and any statutory modifications or re-enactment thereof the Sub-contractor shall register his employees and contribute under the Social Security Scheme and comply with the provisions of the said Act. The Sub-contractor shall produce to the Contractor the Code Number and Social Security Numbers of all workers on site and the receipts of his contribution.

59.0 DETERMINATION OF SUB-CONTRACTOR'S EMPLOYMENT

59.1 if the Sub-contractor fails to execute the Sub-contract Works in accordance with the Sub-contract in any respect or neglects to carry out any of his obligations under the Sub-contract, the Contractor shall reserve the rights to undertake or to employ and pay other persons to execute such work or to carry out such obligations which the Sub-contractor has failed to execute or carry out; and all costs thereby incurred shall be deducted from any money (including any sum retained as retention fund pursuant to Clause 47 or any amount that are rightfully due or become due to the Sub-contractor).

59.2 If the Sub-contractor fails to perform in any aspects in the following manners :-

- (i) without reasonable cause suspends the carrying out of the Sub-contract Works or any section thereof before completion; or
- (ii) if he fails to proceed regularly and diligently with the performance of his obligations under the Sub-Contract; or
- (iii) fails to adhere to the Work program of works under Clause 10; or
- (iv) fails to execute the Sub-contract Works in accordance to Sub-contract or persistently neglects to carry out his obligations under the Sub-contract ; or
- (v) without the prior consent of the Contractor assigns his right to receive any payment under the Sub-contract or sublet the whole or any section or part of the Sub-contract Works; or
- (vi) if he refuses or persistently neglects to comply with a written instructions from the Contractor to remove and replace any defective work or improper materials or goods; or
- (vii) if he in any manner defaults on any of his obligations contained herein, then the Contractor may give to him a notice by registered post or by recorded delivery specifying the default and if the Sub-contractor either shall continue such default for seven (7) days after receipt of such notice or shall at any time thereafter repeat such default (whether previously repeated or not) then the Contractor may, without prejudice to any other rights or remedies he may possess, thereupon by a notice sent by registered post or by recorded delivery determine the employment of the Sub-contractor under the Sub-contract.

59.3 Alternately, if the Sub-contractor:

- (i) commits act of bankruptcy; or
- (ii) becomes insolvent or compounds with or makes arrangement with his creditors; or
- (iii) being a company, has a winding up order made against him; or
- (iv) has a provisional liquidator receiver or manager of his business or undertaking duly appointed or possession taken by or on behalf of creditors or debenture holders secured by a floating charge of any property comprised in or subject to the said floating charge.
- (v) then in any such event, without prejudice to any other rights it may possess, the contractor may by a notice sent by registered post forthwith determine the employment of the Sub-Contractor under this Sub-Contract.

59.4 if the Contractor's employment under the Contract is determined for any reason whatsoever then the sub-Contractor's employment hereunder shall also forthwith automatically determine, In such event the provision of the Contract as are applicable to the Contractor shall also apply in full force and effect on the Sub-Contractor,

59.5 In the event of the Contractor's employment under this Contract being determined under Clause 59.2 or 59.3 the provisions under Clause 59.5.1 to 59.5.6 shall apply:

59.5.1 the Sub-Contractor shall immediately cease all operations on the Sub-contract Works, remove his personnel and workmen from the Site or such portions of the Site where the Sub-Contract Works are being carried out leaving all temporary buildings, plant, tools, equipment, goods and unfixed materials belonging to him upon the Sites save only such as he may at any time be specifically directed in writing by the Contractor to remove therefrom.

59.5.2 the Contractor may carry out and complete the Sub-Contract Works or and pays a third party to carry out and complete the Sub-Contract Works which remains incomplete at the time of determination and he or they may enter upon the Sub-Contract Works and use all temporary buildings, plants, tools, equipment, goods and materials intended for, delivered to or placed on or adjacent to the Sub-Contract Works and may purchase all materials and goods necessary for the carrying out and completion of the Sub-Contract Works. The Contractor shall also be allowed access to such design information as may be held by the Sub-Contractor but only insofar as such information shall relate to the Sub-Contract Works and have been paid for under this Sub-Contract.

59.5.3 The Sub-Contractor shall if so required assign to the Contractor without payment the benefit or any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Sub-contract.

59.5.4 The Main Contractor shall have power but shall not be obliged to pay any supplier or subsequent sub-contractors for any materials or goods delivered or any work executed for the purposes of this Sub-contract (whether before or after the date of determination) for which the Sub-Contractor has failed to make payment.

59.5.5 The Sub-contractor shall as and when required remove from the Site any temporary buildings, plant, tools, equipment, materials and goods belonging to or hired by him within such reasonable time as the Contractor may specify in a written notice to him and in default the Contractor may (but without being responsible for any loss or damage) remove and sell any such property belonging to the Sub-Contractor holding the proceeds less all cost incurred to the credit of the Sub-Contractor.

59.5.6 No further sum shall be due to the Sub-Contractor until after the completion of the Sub-Contract Works under Clause 59.5.2.

59.6 The Sub-Contractor shall allow or pay to the Contractor the amount of any loss and/or damages caused to the Contractor by the determination of his employment under this Sub-contract including but not limited to the following:

59.6.1 if or as soon as the arrangement for the completion of the Sub-Contract Works made by the Contractor enable them to make a reasonably accurate assessment of the ultimate cost to the Main Contractor of completing the Sub-contract Works following the determination of the Sub-Contractor's employment and the engagement of other contractors or persons, the Contractor may issue a statement of the amount of the costs so incurred or to be incurred by the Contractor;

59.6.2 the statement referred to in Clause 59.6.1 shall state separately the sums previously paid to the Sub-Contractor by the Contractor, the sums paid or due or ;

- 59.6.3 to become due to the other contractors or persons engaged by the Contractor to complete the Sub-Contract Works, any sums paid to sub-contractors or suppliers under Clause 59.5.3 and any other costs or expenditure incurred or to be incurred by the Main Contractor in completing the Sub-Contract Works (all such costs herein referred to as 'the Sub-Contract Completion Costs');
- 59.6.4 the statement shall also state the final Sub-contract Sum allowing for any Variations or other matters which would have resulted in an adjustment of the original Sub-Contract Sum and for any other sums which the Contractor might be entitled under the terms of the Sub-Contract to deduct therefrom, would have been payable under the Sub-Contract had the Sub-contractor's employment not been determined; if the final Sub-Contract Sum is less than the Sub-contract Completion Cost, the difference shall be a debt payable by the Sub-Contractor to the Main Contractor;
- 59.6.5 within a reasonable time after the completion at the Sub-contract Works and the issuance of the Certificate of Completion of Making Good Defects the Contractor shall issue a final version of the statement referred to in Clause 59.6.1 to 59.6.4 indicating the actual loss and/or damage properly incurred by the Contractor for completing the Sub-contract Works together with an administrative fee of not less than twenty-five percent (25%) of the value of the Sub-Contract completion costs.
- 59.7 Notwithstanding the provisions of Clause 59.6.4 if the actual loss and/or damage is more than the final Sub-contract Sum, the difference shall be a debt payable by the Sub-Contractor to the Contractor. And if the actual loss and /or damage is less than the final Sub-Contract Sum, the difference shall be a debt due by the Contractor to the Sub-Contractor ;
- 59.8 all other losses and expenses incurred by the Contractor

60.0 SETTLEMENT OF DISPUTES

- 60.1 If any dispute or difference shall arise between the Contractor and the Sub-contractor, (whether during the progress of the Sub-contract Work, or after their completion and whether before or after the termination or breach of this Sub-contract) as to the construction of this Sub-contract or any matter or thing or whatsoever nature in connection with or arising under this Sub-contract, then either the Contractor or the Sub-contractor shall give a notice of such dispute to the other party, in which case the parties shall attempt for the next fifty-six (56) days to resolve such dispute amicably before the commencement of arbitration. Such notice shall state that it is made pursuant to this Sub clause.
- 60.2 Any dispute or difference which has not been amicably settled within fifty-six (56) days after the day on which such notice is given shall be referred to arbitration and final decision of a person to be agreed between the parties to act as the sole Arbitrator.
- 60.3 Within twenty-one (21) days of a reference being made to arbitration as provided in this Clause, if the parties have not agreed on an Arbitrator, then either party may apply to the President of the Institution of Engineers, Malaysia ("the President") to appoint the Arbitrator. Arbitration under provision of this Sub clause shall be conducted in accordance with the Rules of Arbitration of the Institution of Engineers, Malaysia.
- 60.4 No steps shall be taken in the reference to the arbitration until after the completion or alleged completion of the Main Works or, with the written consent of the Contractor, until the Sub-contract Works have been certified as completed by the Employer. The Sub-contractor shall not be entitled to suspend or stop work during the intervening period and shall proceed with the Sub-contract Works regularly and diligently until completion of the Sub-contract Works.
- 60.5 The Arbitrator shall be such person as is agreed between the parties or failing agreement, be a person appointed by the Director of the Regional Arbitration Centre in Kuala Lumpur .
- 60.6 The place of arbitration shall be the Regional Centre of Arbitration in Kuala Lumpur in accordance with the Rules of the Centre unless mutually agreed otherwise.
- 60.7 This Sub-contract shall be deemed to be a Malaysian Contract and shall accordingly be construed according to the laws for the time being in force in Malaysia: the Arbitrator as provided for in Clause 60 shall have exclusive jurisdiction to hear and determine all actions and proceedings arising out of this Sub-contract and the Sub-contractor hereby submits to the jurisdiction of the Arbitrator for the purpose of any such actions and proceedings.
- 60.8 The Sub-contractor binds himself to acknowledge and accept as final in all respects any decision or award of an Arbitrator in relation to any dispute in relation to any dispute between the parties under his Sub-contract.

61.0 WARRANTIES AND GUARANTEES

- 61.1 The Contractor warrants that the Works shall be completed within the Completion Period as stipulated in Appendix 'T'.
- 61.2 The Contractor warrants that at all times before Commissioning, and during the Defects Liability Period/Warranty Period and any extension thereof, the Works pursuant to this Contract and specifically the Equipment, Material, Supplies, Spare Parts, design, engineering and workmanship incorporated into the Works conforms with all requirements of the Contract and shall be free from any deficiencies, faults and defects.
- 61.3 The Contractor warrants that the procurement services will be performed recognizing the Contractor/Employer 's long-term dependence on Vendors for service information, assistance and Spare Parts.
- 61.4 The Sub-contractor warrants that all inspections and tests will be performed in accordance with pertinent codes and standards to ensure that only Equipment and Material meets the Contract requirements and specification are provided; and
- 61.5 The Sub-contractor warrants that it shall use due diligence in performing, expediting and shipping services to comply with the Schedule.
- 61.6 The Sub-contractor warrants that the Works shall be executed in accordance with the certified "Approved for Construction" Drawings; that all applicable standards, codes, safety regulation and quality requirements have been met; that the quality of construction work has been checked by suitable means including radiography of welds, regular concrete test, pressure testing, etc., and that proper record have been kept of all these test results; and that all inspections and tests relating to the construction of the Facilities have been properly carried out.
- 61.7 The Sub-contractor warrants that all Equipment, Supplies and Material shall, when installed, be new and unused, of correct/ current design and workmanship, within and/or above the specification, or if no such specification exist, fully suitable for the use intended and the Sub-contractor shall without prejudice to the Sub-contractor's own guarantee hereby obtain in the name of the Contractor the best obtainable suitable guarantees and warranties in this respect from the Suppliers of Equipment, Material, Supplies and Spare Parts and shall assume complete responsibility for all the terms of guarantee provisions and such other criteria established by this Contract, inclusive of the warrant ability and fitness for purpose of the Equipment, Material, Supplies and Spare Parts intended for use in the construction and realization of the Works.
- 61.8 If for the purpose of fulfillment by the Sub-contractor of its obligations under this provision any item of Equipment, Material, Supplies or Spare Parts have to be remedied or replaced, the Sub-contractor may exercise its rights under the relevant supplier's guarantee as referred to under this Clause 61.5 to the extent that such item of Equipment, Material, Supplies or Spare Parts is remedied or replaced as the case may be, and the Sub-contractor shall exercise such rights in order to recover all that appears to be recoverable under the applicable guarantee.
- 61.9 Should the Sub-contractor fail to take any action required according to Clause 61.5, the Contractor shall be entitled to take such action or to have such action taken to recover and/or withhold to the extent possible from the Sub-contractor the costs thereof and /or relating thereto.

- 61.10 The Sub-contractor warrants that Equipment and Material will be designed and conform to the requirements of the Contract, governing regulations and codes, standards and practices.
- 61.11 The Sub-contractor warrants the mechanical and structural integrity of Equipment and Material. The Sub-contractor shall repair or make good, any defect or fault resulting from imperfect or defective Works done or Equipment or Material furnished, including engagement of Vendor for such purpose if necessary, without cost to the Contractor.
- 61.12 The Sub-contractor shall, without prejudice to its own warranty, obtain the best obtainable and suitable warranties of all Equipment and Material from its Vendor. Such warranties shall include warranties of materials, construction or manufacture, and performance. Warranties shall be made for the benefit of the Employer. Sub-contractor shall be responsible to procure all Vendor warranties for the Employer.
- 61.13 The Sub-contractor agrees upon request by the Contractor to deliver to the Contractor all warranties, bonds or other Forms of Guarantee, or indemnity of manufacturer of Material or Equipment and execute assignments thereof.
- 61.14 Should the Sub-contractor be required as part of the Works to carry out design and engineering works pertaining to the Facilities or any part thereof, the Sub-contractor shall then warrant that the such design and the engineering works are free from deficiencies and conform to applicable governmental legislation and Regulations, codes and standards, generally engineering practice, establish methods and procedure and in accordance with the requirement of the Contract.
- 61.15 In the event that from the date of Commissioning through the end of Defects Liability Period/Warranty Period it appears that the warranty by the Sub-contractor under this Clause 61 have not been or are no longer met, the Contractor shall as soon as possible notify the Sub-contractor in writing thereof. Promptly upon receipt of the Contractor written notice as aforesaid, the Sub-contractor shall do everything required to have such guarantee met and to repair, replace or make good without cost to the Contractor all deficiencies, faults or defects in Works, Facilities, Equipment, Material, engineering and workmanship.
- 61.16 The Sub-contractor shall when fulfilling its obligations referred to under this Clause 61 keep the Contractor fully informed of the action that will be taken and the result obtained. Each such action shall require prior approval of Contractor, which will not be unreasonably withheld.
- 61.17 If for the purpose of fulfillment by the Sub-contractor of its obligation referred to under this Clause 61 any item Equipment or Material has to be repaired or replaced, the Contractor shall be deemed to have permitted Sub-contractor to exercise the Contractor rights under the relevant Vendor's warranties as to warrantability and fitness of the Equipment and Material to the extent that such item of Equipment and Material a repaired or replaced, as the case may be. Such action taken by the Contractor shall not detract from the Subcontractor's own warranty of Equipment and Material under this Contract.
- 61.18 Should the Sub-contractor fail to take any action required according to under Clause 61 the Contractor shall entitled to take such action or/to have such action taken and to recover and/or withhold from Contract the cost thereof and/or relating thereto.
- 61.19 Sub-contractor guarantees in the event of any deficiency, omission, fault or defects arising during the Defects Liability Period, in respect of such deficiency, fault or defect shall be extended without limit to the number of extension, for a period of twelve (12) months from the of rectification(s) to the satisfaction of the Contractor/Employer for the affected items.
- 61.20 To the extent that any of Sub-contractor's warranties are more comprehensive than Contractor warranties, or extended for longer periods of time, such warranties shall accrue to the benefit of the Contractor.
- 61.21 Unless expressly stated otherwise, nothing in any of these warranties shall in any way limit the liability of the Sub-contractor.

62.0 LAW GOVERNING THIS CONTRACT

- 62.1 This Sub-contract shall be end shall be deemed to be a Malaysian Contract and shall accordingly be construed according to the laws for the time being in force in Malaysia: the Arbitrator as provided for in Clause 60 shall have exclusive jurisdiction to hear and determine all actions and proceedings arising out of this Sub-contract and the Sub-contractor hereby submits to the jurisdiction of the Arbitrator for the purpose of any such actions and proceedings.
- 62.2 The Sub-contractor binds himself to acknowledge and accept as final in all respects any decision or award of an Arbitrator in relation to any dispute in relation to any dispute between the parties under his Sub-contract.

63.0 STAMP DUTY

- 63.1 The proper stamp duty, if any, and this Sub-contract shall be borne by the Sub-Contractor.

64.0 LANGUAGE OF THE CONTRACT

- 64.1 The language in which the Sub-contract shall be construed and interpreted shall be English. Correspondence between the parties shall be either in Bahasa Malaysia *or* English. All drawings, specifications, operating manuals and the like shall be in English. If in any other language shall be accompanied by an English version thereof, which English version shall prevail in the event of any divergence of discrepancy.

65.0 MISCELLANEOUS

- 65.1 Time whenever mentioned shall be of the essence on this Sub-contract.
- 65.2 The parties hereto represent and warrant to one another that the transaction herein contemplated have been duly and validly authorized by all necessary corporate action where relevant on the part of each of them and each have full corporate power and lawful authority to execute and deliver this Sub-contract and to consummate and perform the transactions contemplated herein.
- 65.3 Amendments to or modifications of this Sub-contract may be made only by mutual agreement of the parties hereto in writing.
- 65.4 In the event that any part of this Sub-contract shall be held invalid as contrary to any law statute or regulation in that regards the invalidity of such part shall in no way affect the validity of any other part of this Sub-contract and each and every part shall be severable from each and every other.
- 65.5 The waiver, expressed or implied by any of the parties hereto of any hereunder or any failure to perform or any breach hereof by the other party hereto shall not constitute or be deemed as a waiver of any other right hereunder or of any other failure to perform or breach hereof by such other party whether of similar or dissimilar nature thereto.
- 65.6 This Sub-contract supersedes all written memoranda and agreements and any representations or understandings written or otherwise between the parties hereto.
- 65.7 All items and conditions appearing in or annexed to or referred to in the Sub-contractor's tender and/or quotation other than the terms and conditions of the Main Contract shall not form part of the Sub-contract.
- 65.8 This Sub-contract shall remain valid throughout the whole Main Contract period and defects liability period or to any period extended in accordance to the provisions of the Sub-contract.