

No. 30/2016/TT-BXD

Hanoi, December 30, 2016

## CIRCULAR

### ON GUIDELINES FOR ENGINEERING, PROCUREMENT AND CONSTRUCTION CONTRACTS

Pursuant to the Law on Construction No. 50/2014/QH13 dated June 18, 2014;

Pursuant to the Government's Decree No. 37/2015/ND-CP dated April 22, 2015 on guidelines for construction contracts;

Pursuant to the Government's Decree No. 46/2015/ND-CP dated May 12, 2015 on quality management and construction maintenance;

Pursuant to the Government's Decree No. 59/2015/ND-CP dated June 18, 2015 on project management;

Pursuant to the Government's Decree No. 62/2013/ND-CP dated July 25, 2013 defining the functions, tasks, entitlements and organizational structure of the Ministry of Construction;

At the request of Director of Department of Construction Economics,

The Minister of Construction promulgates a Circular on guidelines for Engineering, Procurement and Construction contracts.

#### **Article 1. Scope**

1. This Circular provides guidelines for Engineering, Procurement and Construction contracts (hereinafter referred to as EPC contracts) for construction projects prescribed in Clause 2 Article 1 the Government's Decree No. 37/2015/ND-CP dated April 22, 2015 on guidelines for construction contracts (hereinafter referred to as Decree No. 37/2015/ND-CP) including: rules for applying EPC contracts; preparation and signing of EPC contracts; management of performance of EPC contracts; rights and obligations of entities entering into EPC contracts; EPC general contractors; guidelines for application of EPC contract template.

2. In case of any discrepancy between the text of an international treaty to which the Socialist Republic of Vietnam is a signatory or accedes and regulations of this Circular, such text shall prevail.

#### **Article 2. Regulated entities**

1. Entities relating to the formation and management of EPC contracts within the scope prescribed in Article 1 hereof.

2. Entities relating to the formation and management of EPC contracts not within the scope prescribed in Article 1 hereof are recommended to apply this Circular.

### **Article 3. Rules for applying EPC contracts**

1. According to characteristics, nature, and scope of each project, EPC contract package and regulations of law, the investment decision maker shall decide the form of EPC contract for such project and contract package, and take legal responsibility for the effectiveness of construction projects.

2. An EPC contract applies solely to construction projects and contract packages of which execution time is required to be shortened; or those with high requirements for engineering, technology and the uniformity from the engineering design, procurement, construction phases to the training in commissioning and project transfer phases.

3. An EPC contractor must meet requirements pertaining to experience, financial situation, practice and operation qualifications within the entire scope of work to be performed of the EPC contract, including: engineering design, procurement, provision of training services, commissioning, technology transfers, and construction in accordance with legislation on construction investment and requirements of Bidding Documents. The EPC contractor may not subcontract more than 60% of the work quantity within the EPC contract.

4. The EPC contract costs shall be managed in such a manner as not to exceed the EPC contract price in conformity with its agreements.

5. Engineering designs of projects or contract packages using EPC contracts must satisfy requirements prescribed in Clause 1 Article 54 of the Law on Construction No. 50/2014/QH13.

6. EPC contracts shall be concluded and managed in such a manner in accordance with regulations of law on construction contracts.

### **Article 4. Preparation and signing**

1. During the contract preparation, signing, and performance, the Contractor is encouraged to propose initiatives, measures and apply its experience to complete the work specified in the EPC contract, ensure the safety, quality, schedule, objectives, requirements, and improve the effectiveness of the project/contract package.

2. The parties shall, before the signing of EPC contract, at least reach an agreement on the following contents:

a) Estimated scope of work

b) Location, routes, type, and level of facility; scope, capacity, and chosen procurement plan, use capacity;

c) Materials, and data on natural conditions, geotechnical engineering, hydrogeology, and hydrography of the area where the facility is built;

d) Requirements pertaining to construction engineering design and some initial design parameters;

- dd) Plans for technology, engineering, equipment, and commerce; origin of equipment and products;
- e) Plan for infrastructure connections within and beyond the scope of facility; fire prevention measures within the scope of EPC contract;
- g) Construction-related measures, primary materials to be used;
- h) Requirements pertaining to construction quality control, testing, commissioning, guarantees, and maintenance;
- i) Solutions to architecture, ground, cross, and vertical section of the facility, sizes and main structure of the facility within the scope of EPC contract;
- k) List and levels of standards, technical standards to be used in engineering, procurement, and construction;
- l) Technical instructions on supply and equipment, technical services;
- m) Requirements pertaining to qualifications of the Contractor in the contract package, including: qualifications in engineering, procurement and construction;
- n) Requirements pertaining to environment protection, safety assurance, and fire prevention, and other issues.
- o) Requirements pertaining to procedures for approval; numbers of documents and deadline for submission of these documents to the Employer;
- p) Schedule and milestones for completion of essential work and/or items and the whole facility to be put into operation and use;
- q) Allocate responsibilities between Employer and Contractor with respect to supply of electricity, water, communications, internal roads, and other available services in the facility, and processing of interface between contract packages within the same construction project;

### 3. Preparation

Terms, general and special conditions of the EPC contract must be prepared in conformity with guidelines prescribed in Article 18 hereof.

### 4. Signing

a) An EPC contract is signed only when all rules for signing of the construction contract prescribed in Article 4 of Decree No. 37/2015/ND-CP are satisfied.

#### b) Requirements for the EPC Contractor

The EPC Contractor must have obtained adequate operation and practice qualifications in accordance with law on construction investment, in particular:

- Its registered lines of business are consistent with the work of the contract package. If the Contractor is a joint venture, a joint venture agreement is required, in which a JV's Party acts as the head of the joint venture, takes general responsibility and commits to undertake the tasks assigned by Contractors, and registered lines of business of each JV's Party are consistent with the assigned tasks;

- It has adequate qualifications to perform tasks specified in the EPC contract, namely: experience engineering; qualifications as building contractors of projects/contract packages with equivalent technical requirements and scope. In the organizational structure of the Contractor, there are units in charge of design consultancy, processing and manufacturing, procurement and construction;

- It satisfies financial requirements of the project/contract package and proves its capital mobilization to perform the EPC contract.

c) The negotiation and signing of the EPC contract shall be carried out according to requirements in the Bidding Documents, Bids, approved results of bidder selection, or written direct contracting issued by competent authorities;

d) The schedule of negotiation and signing of the contract must be consistent with the general schedule and ensure the effectiveness of the project.

#### **Article 5. Performance management**

The performance of EPC contract shall be managed in accordance with Article 7 of Decree No. 37/2015/ND-CP and the following regulations:

1. Manage scope of the work according to objectives of the contract package and list of tasks specified in the contract; inspect whether documents on survey and engineering have applied to the tasks of EPC contract with accuracy, adequacy, and conformity.

2. Manage the schedule of tasks in conformity with the general schedule of the project and the EPC contract.

3. Inspect and manage quality and quantity of tasks to be performed in the EPC contract.

4. Manage expenses associated with tasks in the EPC contract; control, pay, and adjust the EPC prices.

5. Manage the safety, fire prevention, and environment hygiene;

6. Manage the adjustments to the EPC contract and its other necessary contents.

#### **Article 6. Management of construction survey and construction design within the scope of EPC contract**

1. The construction survey within the scope of EPC contract must be consistent with Section 1 Chapter IV of the Law on Construction No. 50/2014/QH13; Chapter II of the Government's Decree No. 46/2015/ND-CP dated May 12, 2015 on construction quality control and maintenance (hereinafter referred to as Decree No. 46/2015/ND-CP); Circular of the Minister of Construction on

guidelines for construction quality control and maintenance; and regulations of relevant law provisions.

## 2. Management of construction design

a) The construction design within the scope of EPC contract must be consistent with regulations on design prescribed in the Law on Construction No. 50/2014/QH13; Chapter III of the Government's Decree No. 46/2015/ND-CP; Section 1 Chapter III of the Government's Decree No. 59/2015/ND-CP dated June 18, 2015 on management of construction projects (hereinafter referred to as Decree No. 59/2015/ND-CP); Circular of the Minister of Construction on guidelines for construction quality control and maintenance; and regulations of relevant law provisions.

b) Management of appraisal, assessment, approval and amendments to construction design:

- Engineering designs made by the Contractor must be appraised, assessed and approved as prescribed in Articles 24 and 25 of Decree No. 59/2015/ND-CP and Point e Clause 2 Article 32 of Decree No. 37/2015/ND-CP.

- The Contractor may create engineering designs for parts of the facility in accordance with technical stages which are submitted to construction authorities, investment decision maker, and investor for appraisal, assessment, and approval as prescribed.

- The appraisal of construction design shall be consistent with Article 83 of the Law on Construction No. 50/2014/QH13, other than regulations in Clause 7 Article 83 of the Law on Construction No. 50/2014/QH13; Circular No. 18/2016/TT-BXD dated June 30, 2016 of the Minister of Construction on guidelines for assessment and approval for projects and construction designs and estimates (hereinafter referred to as Circular No. 18/2016/TT-BXD); and regulations of relevant law provisions.

- The appraisal, assessment and approval for construction design shall apply to each construction part or item or the whole facility/project.

## **Article 7. Management of procurement of material and technological equipment within the scope of EPC contract**

1. Prior to the procurement for EPC contract, the Contractor shall submit requirements for the procurement to the Employer for its consent if agreed upon in the contract. The Employer's consent will not diminish responsibility of the Contractor for the procurement for EPC contract.

2. The Contractor may perform the direct procurement or subcontract the procurement for the EPC contract. If the procurement is subcontracted, the Contractor shall, prior to the selection of subcontractors, reach an agreement with the Employer on requirements for the subcontractor provided that requirements pertaining to engineering, origin, technology specified in the signed EPC contract remains unchanged.

## **Article 8. Management of construction within the scope of EPC contract**

1. The Contractor may begin the construction only when it satisfies all conditions prescribed in Decree No. 46/2015/ND-CP; Decree No. 59/2015/ND-CP; Circular No. 18/2016/TT-BXD; Circular of the Minister of Construction on guidelines for construction quality control and maintenance; and

other relevant law provisions, namely: The engineering design of facility to be executed has been assessed, appraised, and approved as prescribed; a construction license for the part of facility to be executed has been obtained, except for cases eligible for exemption from construction licenses as prescribed.

2. The management of construction specified in the contract must be consistent with Chapter IV of Decree No. 46/2015/ND-CP; Circular of the Minister of Construction on guidelines for construction quality control and maintenance.

3. Management of selection of subcontractors: The selection of subcontractors must satisfy requirements prescribed in Article 47 of Decree No. 37/2015/ND-CP.

4. In case of any absent regulations on management of construction in this Circular, available regulations in Decree No. 37/2015/ND-CP and Circular No. 09/2016/TT-BXD dated March 10, 2016 of the Minister of Construction on guidelines for construction contract shall apply.

### **Article 9. Management of performance schedule of EPC contract within its scope**

The parties shall reach an agreement on performance schedule of the contract prescribed in Article 14 of Decree No. 37/2015/ND-CP in which the milestones of primary tasks must be specified: engineering, procurement, construction of main items which are consistent with schedule specified in the Bid, Proposal, and schedule of the project.

### **Article 10. Quality control within the scope of EPC contract**

1. Tasks, items, and facilities to be delivered must meet quality conditions as prescribed in regulations on construction quality control and Article 13 of Decree No. 37/2015/ND-CP The Contractor must adopt appropriate measures for controlling quality of the work performed by itself or the subcontractor.

2. All facilities, work items within the scope of EPC contract to be put into operation must meet the conditions prescribed in Clause 4 Article 31 of the Government's Decree No. 46/2015/ND-CP dated May 12, 2015 on construction quality control and maintenance and Circular of the Minister of Construction on guidelines for construction quality control and maintenance.

### **Article 11. Management of safety, environment protection, and fire prevention within the scope of EPC contract**

When the EPC contract is performed, apart from regulations prescribed in Article 48 of Decree No. 37/2015/ND-CP the parties must comply with the following regulations:

1. The Employer shall inspect the Contractor's adoption of measures for labor safety, environment protection, and fire prevention as agreed upon in the signed EPC contract and relevant law provisions.

2. Labor safety management:

a) Adhere to applicable regulations of the Government on labor safety:

b) The Contractor shall provide training in safety for its labor and provide adequate personal protective equipment and necessary rescue equipment;

c) The Contractor shall regularly inspect, test, repair, and control protective equipment, scaffolding, working platforms, jacks, transporting, lifting, lighting and protective equipment, and standards for replacing those devices;

d) Ensure the availability of fences, lighting and protective system of the facility until its completion and delivery.

### 3. Management of environment:

a) The Contractor must adopt measures for environment assurance for labor on site and surrounding environment;

b) The parties shall inspect and monitor the construction environment protection, and be subject to the inspection of environment authorities. If the Contractor fails to comply with regulations on environment protection, the Employer or a competent authority is entitled to suspend the construction and require the Contractor to strictly adopt measures for environment protection;

c) Any entity causing harm to environment during the construction process shall take legal responsibility and compensate for damage at its/his/her faults.

### 4. Management of fire prevention:

a) Involved parties in the EPC contract must comply with regulations on fire prevention;

b) Install and maintain a system of fire safety so as to control, alert, or make reasonable predictions, and avoid possible occurrence of damage to people and property from fire;

## **Article 12. Management of amendments to EPC contract and other essential contents within the scope of EPC contract**

1. The amendments to the EPC contract must be consistent with regulations in Section 5 Chapter II of Decree No. 37/2015/ND-CP.

2. The involved parties of the contract shall also, according to the characteristics and nature of the contract, apply other regulations of legislation on construction investment for the purpose of managing the contract performance properly.

## **Article 13. Management of contract price, payment and settlement of EPC contract**

1. Lump sum contract is a basic form of contract price applicable to an EPC contract. If the EPC contract applies other forms of contract price as prescribed in Article 15 of Decree No. 37/2015/ND-CP the investment decision maker shall, according to characteristics, nature, and scope of each EPC project/contract package, select an appropriate form of contract price, provided that it satisfies conditions prescribed in Clause 5 Article 15 of Decree No. 37/2015/ND-CP and take legal responsibility for the project's effectiveness.

2. When the form of lump sum contract is used, a price schedule of tasks and work items must be enclosed with EPC contract so as to facilitate the management of amendments to the EPC contract during its performance.

3. The payment of EPC contract shall be consistent with Article 19 of Decree No. 37/2015/ND-CP.

4. The settlement of EPC contract shall be consistent with Article 22 of Decree No. 37/2015/ND-CP.

5. The adjustments to the EPC contract price shall be consistent with Circular No. 07/2016/TT-BXD dated March 10, 2016 of the Minister of Construction on guidelines for adjustments to construction contract price.

#### **Article 14. Rights and obligations of Employer in management of contract performance**

1. The Employer has rights to:

a) Refuse the acceptance of unqualified products as agreed upon in the contract; refuse the acceptance of technological equipment inconsistently with the contract in terms of quantity, quality, types, origin, and products in infringement of intellectual property rights;

b) Inspect the performance of the Contractor according to the signed contract without prejudicing the Contractor's ordinary course of business;

c) Suspend the contract performance and request remedial measures upon the occurrence of any work performed by the Contractor that breaches agreed contents in the signed contract or violate regulations of law;

d) Request the Contractor to deliver documents relating to the products of the contract in accordance with the agreed contents;

dd) Consider a list of eligible subcontractors that have not been included in the EPC contract upon the Contractor's request;

e) Other rights as prescribed.

2. The Employer has obligations to:

a) Carry out the acceptance, payment, and settlement of contract on time as prescribed;

b) Assign key personnel to manage and perform the contract and notify the Contractor of such assignment in writing;

c) Provide the Contractor with information, materials, and means deemed necessary to perform the work as agreed upon in the EPC contract;

d) Accept, assess, approve or submit construction design to the competent authority for approval, including: description, spreadsheets, drawings, and relevant survey materials, maintenance procedures of facilities and work items as prescribed;



dd) Apply for construction licenses as prescribed, hand over the premises to the Contractor as agreed in the EPC contract;

e) Monitor whether the tasks have been performed in conformity with the signed contract; inspect whether measures for labor safety, environment protection, and fire prevention have been adopted in accordance with regulations of law;

g) Reach an agreement with the Contractor on Bidding Documents on procurement of technological equipment in conformity with the signed EPC contract;

h) Ensure copyright in the contract-related consultancy products;

i) Provide training courses in commissioning of facilities for administrative officers and workers;

k) Other obligations as prescribed.

### **Article 15. Rights and obligations of Contractor in management of contract performance**

1. The Contractor has rights to:

a) Require the Employer to provide information, materials, and working facilities relating to the work as agreed upon in the EPC contract;

b) Make proposals for tasks arising beyond the scope of the contract to the Employer; refuse to perform the work beyond the scope of the contract without consensus of the both parties or unlawful requirements set by the Employer;

c) Organize and manage the work performance in accordance with the signed contract;

d) Other rights as prescribed.

2. The Contractor has obligations to:

a) Provide sufficient personnel, materials, machinery, equipment, and other facilities deemed necessary to perform the work specified in the contract;

b) Receive, manage, store, and hand over materials and facilities provided by the Employer in conformity with the signed EPC contract;

c) Notify the Employer of information or materials that are insufficient or working facilities that are unsatisfied to perform the work of the EPC contract;

d) Keep secrets of information relating to the contract as agreed upon in the contract or as prescribed by law;

dd) Perform the work of contract in consideration of safety, quality, schedule and other arrangements as specified in the EPC contract;

e) Create construction designs of work items and main works in conformity with fundamental design or Front End Engineering Design that has been approved, and submit them to the competent authority or investor for assessment and approval as prescribed in Clause 2 Article 6 hereof and regulations of law on construction;

g) Carry out the procurement meeting requirements and schedule of the contract; submit a list of subcontractors to the Employer for acceptance; and reach an agreement on contents of the Bidding Documents of procurement of technological equipment in conformity with the EPC contract;

h) Provide training courses in commissioning of facilities, technology transfers, and technical services as specified in the EPC contract for administrative officers and workers;

i) Carry out testing, adjustments, and commissioning synchronously in the facilities and deliver the completed facilities to the Employer as agreed upon in the contract and in accordance with applicable law;

k) Ensure that any products provided does not constitute infringement of intellectual property rights as prescribed by law;

l) Deliver documents relating to the products of the contract to the Employer in accordance with the EPC contract;

m) Other obligations as prescribed.

**Article 16. Rights and obligations of consultancy hired by Employer in management of contract performance (to be applicable if the Employer hires a consultancy)**

1. The consultancy of the Employer has rights to:

a) Require the Employer to provide information, materials relating to the consulting tasks, and working facilities as agreed upon in the consulting contract in conformity with the EPC contract;

b) Propose changes to conditions for providing consultancy services in the interests of the Employer or upon the occurrence of any elements affecting the consulting service quality;

c) Refuse performance of unreasonable work beyond the scope of contract and unlawful requirements made by the Employer;

d) Have its consultancy service's copyright protected as prescribed by law;

dd) Request the Employer to fulfill the obligations as specified in the EPC contract within its rights and responsibilities.

e) Other rights as prescribed.

2. The consultancy of the Employer has obligations to:

a) Complete the work on schedule and with quality as specified in the contract;

b) Store and return the materials and working facilities that have been provided by the Employer upon the completion of work as specified in the EPC contract.

c) Notify the Employer of information and materials that are insufficient and working facilities that are unsatisfied in writing;

d) Keep secrets of consultancy services as required by the contract or regulations of law;

dd) Sign documents relating to the management of EPC contract within the consulting obligations as specified in the consulting contract.

e) Other obligations as prescribed.

### **Article 17. Management of all-inclusive EPC contract**

1. All-inclusive EPC contract means a form of contract relating to engineering, procurement and construction of all facilities in a construction project.

2. The management of all-inclusive EPC contract shall be consistent with regulations of Article 5 through Article 12 of this Circular within the entire scope of the project.

3. Rights and obligations of EPC general contractor: In accordance with Article 15 hereof within the entire scope of the project and the following obligations:

a) Manage scope of the work according to objectives of the contract package and list of tasks specified in the contract; inspect whether documents on survey, design and engineering have applied to the tasks of all-inclusive EPC contract with accuracy, adequacy, and conformity.

b) Manage the schedule of tasks in conformity with the general schedule of the project and the all-inclusive EPC contract.

c) Control all construction means and methods within the construction site of the entire project.

d) Make addition or replacement of subcontractors to ensure the quality, price, and schedule of the work specified in the contract with the investor's consent;

dd) Manage expenses associated with the work in the contract; control, pay and adjust the contract price as agreed and relevant law provisions.

e) The EPC general contractor shall manage the operation within or beyond the construction site for the purpose of performing all-inclusive EPC contract safely and effectively; coordinate subcontractors to use auxiliary works and support facilities properly and un wastefully; use and protect the premises and keep security and order at the construction site.

g) Cooperate with the investor in providing training courses in commissioning of the facilities for administrative officers and workers.

4. The all-inclusive EPC contract costs shall be included in its contract price.

## **Article 18. Guidelines for using EPC contract template enclosed with this Circular**

1. The EPC contract template enclosed with this Circular includes 2 parts:

Part I. Bases for signing of contract

Part II. Terms and conditions of contract

2. Guidelines:

a) The EPC contract template enclosed with this Circular is a form of contract used by the investor and the contractor; in a case where the Employer is a contractor, this template shall be applied in such an appropriate manner.

b) The template is used for the purposes of reference and proper application in actual conditions of the project, facilities, and EPC contract package. In case of using the template, the involved parties shall reach an agreement in accordance with regulations Decree No. 37/2015/ND-CP guidelines in this Circular and relevant regulations of law.

c) The parties shall reach an agreement on specific time limits, namely payment time limit, performance security time limit, deadline for reply, contract termination period, and similar time limits.

d) If the scope and work requirements in a specific contract package differ from those specified in the contract template, amendments may be allowed provided that they are consistent with regulations of Decree No. 37/2015/ND-CP.

dd) If the scope of acceptance work agreed by the parties differs from that specified in the contract template, amendments may be allowed provided that they are consistent with regulations of Decree No. 37/2015/ND-CP.

e) If the contractor is a joint venture, the parties shall reach an agreement on performance security and bank guarantee for advance payment in accordance with Decree No. 37/2015/ND-CP.

g) The parties shall reach an agreement on an advance amount in accordance with requirements of each type of work in the contract and Decree No. 37/2015/ND-CP.

h) The parties shall reach an agreement on type of currency and methods of payment in the contract in accordance with requirements of the Bidding Documents and regulations of law on foreign exchange.

i) This contract template shall apply to lump sum contract. In case of a contract applying fixed price, adjustable price, or mixed price, the parties shall make appropriate amendments to the contract in accordance with regulations of Decree No. 37/2015/ND-CP and this Circular.

## **Article 19. Transitional provisions and entry into force**

1. Transitional provisions

a) With regard to an EPC contract which has been signed before the effective date of this Circular, the involved parties shall keep complying with regulations on construction contract before such effective date and arrangements specified in the contract.

b) With regard to an EPC contract in the progress of negotiation that has been not signed, any terms and conditions specified in this contract not consistent with this Circular shall be reported to the investment decision maker for decision in consideration of quality assurance, schedule, effectiveness of the construction projects without prejudicing rights and legitimate interests of the parties.

c) With regard to EPC contract-related contents in Bidding Documents or Request for Proposals, contents that have not been published not in accordance with this Circular shall be amended properly, those that have been published subject to amendments shall be communicated to all bidders that have bought Bidding Documents or Request for Proposals for appropriate amendments to their Bids and Proposals. In case of Bid closing, Point b of this Clause shall apply.

2. Other contents relating to the EPC contract not guided in this Circular shall be consistent with regulations of Decree No. 37/2015/ND-CP Circular No. 07/2016/TT-BXD dated March 10, 2016 of the Minister of Construction on guidelines for price adjustments to construction contracts, Circular No. 08/2016/TT-BXD dated March 10, 2016 of the Minister of Construction on guidelines for construction consulting contracts and Circular No. 09/2016/TT-BXD dated March 10, 2016 of the Minister of Construction on guidelines for construction.

3. This Circular comes into force from February 20, 2017.

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**PP. MINISTER  
DEPUTY MINISTER**

**Bui Pham Khanh**

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### **TEMPLATE OF EPC CONTRACT**

*(Issued together with Circular No. 30/2016/TT-BXD of the Minister of Construction on guidelines for Engineering, Procurement and Construction Contracts (EPC contracts))*

**THE SOCIALIST REPUBLIC OF VIETNAM**  
**Independence– Freedom – Happiness**

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[Location]...[date]...

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-  
**ENGINEERING, PROCUREMENT AND CONSTRUCTION CONTRACT**

-  
-  
-  
-  
*No. .... / ... (Year) / ... (symbol)*

**PROJECT (PROJECT'S NAME) OR CONTRACT PACKAGE (CONTRACT PACKAGE'S NAME)**  
**NO. ...**

**OF PROJECT (PROJECT'S NAME) ...**

-  
**BETWEEN**

-  
**(EMPLOYER'S BUSINESS NAME)**

-  
**AND**

-  
**(CONTRACTOR'S BUSINESS NAME)**

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**PART 1 - BASES FOR SIGNING OF CONTRACT**

Pursuant to the Law on Construction No. 50/2014/QH13 dated June 18, 2014;

Pursuant to the Government's Decree No. 37/2015/ND-CP dated April 22, 2015 on guidelines for construction contracts;

Pursuant to Circular No. 07/2016/TT-BXD dated March 10, 2016 of the Minister of Construction on guidelines for adjustments to prices of construction contracts;

Pursuant to Circular No.30/2016/TT-BXD of the Minister of Construction on guidelines for Engineering, Procurement and Construction Contracts (EPC contracts);

Pursuant to feasibility study report (or FEED) that has been approved in Decision No. ...;

Pursuant to ..... (other bases, if any); Pursuant to results of bidder selection as specified in the document No. .. and record of EPC contract finalization dated .....

**PART 2 - TERMS AND CONDITIONS OF CONTRACT**

On .....[date], at .....[location] ....., we are:

**1. Employer:**

Business name: .....

Representative (or the authorized person as specified in the Power of attorney No...dated...)

Mr./Mrs. .... Position: .....

Address: .....

Account: .....

TIN: .....

Phone number: .....Fax: .....

Email: .....

and:

**2. Contractor:** *(in case of a contractor being joint venture, sufficient information about each JV's Party shall be specified, especially the head of the joint venture)*



Business name:

Representative (or the authorized person as specified in the Power of attorney No...dated...)

Mr./Mrs. .... Position: .....

Address: .....

Account: .....

TIN: .....

Phone number: ..... Fax: .....

Email: .....

hereby reach a consensus to conclude a EPC contract of the contract package/project (contract package/project's name) as follows:

### **ARTICLE 1. DEFINITIONS AND INTERPRETATION**

Words and phrased used herein shall, unless the context otherwise requires, have the meanings below:

**1.1. Employer** means (business name of the employer as specified in "Contracting parties").

**1.2. Contractor** means..... (name of contractor as specified in "Contracting parties").

**1.3. Employer's Representative** means a person named by the Employer in the Contract or appointed from time to time and manage the work on behalf of the Employer.

**1.4. Contractor's representative** means a person named by the Contractor in the Contract or appointed in writing and manage the work on behalf of the Contractor.

**1.5. Consultant** means an entity that has been hired by the Employer as specified in an agreement to perform one or multiple professional tasks relating to the management of the contract performance.

**1.6. Consultant's Representative** means a person appointed by the Consultant to perform the tasks assigned by the Consultant.

**1.7. Project** means ... (project's name).

**1.8. Work** means all engineering services, procurement services, and construction work to be executed by the Contractor in conformity with requirements of the Contract and Employer's Requirements properly so as to provide the Employer with the Works that are completed, safe, and effective.

**1.9. Contract** means all contract documents as specified in Clause 2.1. [*Contract Documents*].

**1.10. Bidding Documents** (or Request for Proposals) of the Employer mean all documents as prescribed in Appendix No. ... *[Bidding Documents (or Request for Proposals) of the Employer]*.

**1.11. Bid** (or Proposals) of the Contractor means Letter of Bid bearing the Contractor's signature and all other documents submitted to the Employer by the Contractor as specified in the Contract as prescribed in Appendix No. ... *[Bid (or Proposal) of the Contractor]*.

**1.12. Project Standards** means regulations on engineering, economic and technical norms, procedures for performing tasks, criteria, technical indicators, natural condition indicators to be used in the Project/the Works as specified in the Appendix No. ... *[Project standards]*.

**1.13. Specifications** means a set of technical requirements according to National Technical Regulation, project standards pertaining to materials, products, and equipment to be used in the Works and the construction, surveillance, and work acceptance as specified in Appendix No. ... *[Technical instructions]*.

**1.14. Engineering Design** includes all drawings, calculations, technical specifications and other documents relating to the Works, etc. (The Works' name) made by the Contractor that have been approved by the Employer.

**1.15. Front End Engineering Design (FEED)** means engineering design which is conducted after approval of the construction project as the basis for conducting detailed design of the Works with foreign consultants in conformity with international practice.

**1.16. Letter of Bid** means a proposal made by the Contractor that has been approved by the Employer clarifying bid price for engineering, procurement, construction and completion of The Works in conformity with the Contract.

**1.17. Party** means **the Employer or the Contractor**, as the context requires.

**1.18. Commencement Date** means the date notified under Clause 10.1. *[Commencement Date and Time for Completion]*, otherwise specified in Contract Agreement.

**1.19. Time for Completion** means the time for completing the Works or a Section (as the case may be) under Clause 10.2 *[Time for Completion]*, with any extension under Clause 10.4. *[Extension of Time for Completion]*, calculated from the Commencement Date (or another specific date agreed upon by the Parties).

**1.20. Taking-Over Certificate** means a certificate issued under Article 9 *[Employer's Taking Over]*

**1.21. Day** means a calendar day and "month" means calendar month.

**1.22. Working Day** means a calendar day, except for a Sunday or a holiday as prescribed in Vietnam's law.

**1.23. Contractor's Equipment** means all apparatus, machinery, vehicles, and other things required for the execution and completion of the work and the remedying of any defects (if any).

**1.24. Permanent Works** means the permanent works ...(names) to be executed by the Contractor under Contract.

1.25. Section means a Permanent Work or a part of single Permanent Work specified in the Contract (if any).

1.26. Temporary Works means all temporary works for the execution and completion of the Permanent Works.

1.27. Works means the Permanent Works and the Temporary Works.

1.28. Employer's Equipment means apparatus, machinery and vehicles made available by the Employer for the use of the Contract in the execution of the work, as stated in the Appendix No. ... [Bidding Documents (or Request for Proposals) of the Employer].

1.29. Force Majeure is defined in Article 23 [Force Majeure].

1.30. Laws means the whole system of laws of the Socialist Republic of Vietnam.

1.31. Site means the places which the Employer assigns to the Contractor for execution of the Works, and any other places as may be specified in the Contract.

1.32. Variation and Adjustments means any change to the scope of work, Specifications, Drawings, Contract Price, or Schedule upon written prior consent of the Employer.

## ARTICLE 2. CONTRACT DOCUMENTS AND PRIORITY OF DOCUMENTS

### 2.1. Contract Documents

Contract Documents include bases for concluding Contract; terms and conditions of this Contract and other documents:

2.1.1. Notification of Bid Acceptance (or Notification of Direct Contracting or Notification of Acceptance);

2.1.2. Special Conditions of Contract, terms of reference;

2.1.3. Investment Project (or Technical and Economic Report) that has been approved;

2.1.4. Bidding Documents (or Request for Proposals) of the Employer;

2.1.5. Project Standards, Specifications and Engineering Design (FEED or basic engineering);

2.1.6. Bid (or Proposal) of the Contractor;

2.1.7. Note of Contract Negotiation and written amendments;

2.1.8. Contract Appendices;

2.1.9. Other relevant documents.

## **2.2. Priority of Documents**

The documents forming the Contract are integral parts and to be taken as mutually explanatory of one another. The Parties shall reach a consensus on any ambiguity or discrepancy. In a case where the Parties fail to reach a consensus on priority of documents forming the Contract, the priority shall be in accordance with the following sequence:

2.2.1. Notification of Bid Acceptance (or Notification of Direct Contracting or Notification of Acceptance);

2.2.2. Special Conditions of Contract, terms of reference;

2.2.3. Investment Project (or Technical and Economic Report) that has been approved;

2.2.4. Project Standards; Engineering Design and Specifications;

2.2.5. Bidding Documents (or Request for Proposals) of the Employer;

2.2.6. Bid (or Proposal) of the Contractor;

2.2.7. Note of Contract Negotiation and written amendments;

2.2.8. Contract Appendices;

2.2.9. Other relevant documents.

(In case of any changes to the abovementioned priority of documents, the Parties shall reach a consensus on them).

## **ARTICLE 3. GENERAL PROVISIONS**

### **3.1. Laws and Language**

3.1.1. The Contract shall be governed by the system of laws of the Socialist Republic of Vietnam and relevant guiding documents.

3.1.2. The language for communications shall be Vietnamese (if a Contract is involved by a foreign party, the language for communications that is whether Vietnamese or foreign language shall be subject to the agreement of the Parties. In case of any dispute, the Vietnamese version shall be treated as original copy, the dispute shall be settled according to the Vietnamese version).

### **3.2. Assignment**

No Party is entitled to assign the whole or a part of the Contract or any interests or benefits in the Contract. However, a Party may assign a part of the Contract provided that such assignment is in accordance with prescribed regulations of law with prior consent of the other Party. The Parties may use the Contract as a security at a bank or a financial institution.

### **3.3. Confidentiality**

Except for necessary cases to fulfill obligations or comply with regulations of law, the Parties shall treat the Contract confidential. The Contractor may not disclose any information of the Works to a third party without consent of the Employer.

### **3.4. Compliance with Laws**

The Parties shall, in performing the Contract, comply with applicable Laws:

3.4.1. The Employer must ensure that the conditions for commencement of the Works are satisfied as prescribed by law;

3.4.2. The Contractor must give all notices, pay all taxes, duties and fees, and obtain all permits, licenses and approvals, as required by the Laws in relation to the work; the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to comply with regulations of law.

### **3.5. Several and Joint Liability**

If the Contractor is a joint venture:

3.5.1. Each JV's Party shall be deemed to be jointly and severally liable.

3.5.2. The Contractor shall notify the Employer of their leader who shall have authority to bind JV's Parties;

3.5.3. The leader of joint venture is approved to have authority to bind JV's Parties to form the Contractor in all issues relating to the Contract.

3.5.4. The Contractor shall not alter its composition or legal status without the prior consent of the Employer.

In order to avoid misunderstanding, the several and joint liability of each JV's Party forming the Contractor does not intend to be affected or affected by the Joint Venture Agreement in Appendix No. ...

### **3.6. Communications**

Wherever the terms and conditions of the Contract provide for the issuing of approvals, certificates, consents, determinations, notices and discharges, these communications shall be:

a) in writing and delivered by hand (against receipt), send by post, fax, or email.

b) delivered, sent or transmitted to the address for the recipient's communications.

If the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and If the recipient has not stated otherwise, any notices or requests sent by a Party to the other accordingly as follows:

**Employer:**

+ Address: .....  
+ Phone number: .....  
+ Email: .....  
+ Fax: .....  
+ Website: .....

**Contractor** (in case of a joint venture, sufficient information of JV's Parties shall be specified)

**- In a foreign country (in case of foreign contractor):**

+ Address: .....  
+ Phone number: .....  
+ Email: .....  
+ Fax: .....  
+ Website: .....

**- In Vietnam:**

+ Address: .....  
+ Phone number: .....  
+ Email: .....  
+ Fax: .....  
+ Website: .....

**ARTICLE 4. SCOPE OF WORK**

The Contractor shall execute the engineering, procurement, and construction as specified in the Appendix No. ... [Bidding Documents (Request for Proposals) of the Employer] according to the Contract Price under Article 12 [Contract Price, Advance and Payment], as generally specified, but not limited to the following Clauses and remedying all errors under its responsibility.

Work includes engineering, procurement, and construction to be executed by the Contractor in conformity with requirements of the Contract and Employer's Requirements properly so as to provide the Employer with facilities that are completed, safe, and effective. The Contractor shall:

**4.1. Provide engineering design, construction drawing design and other services relating to the work;**

4.2. Provide or arrange to provide necessary personnel, management, and equipment for the purpose of executing the work except for special cases specified in the Contract;

4.3. Procure, promote, and inspect to provide all supply and equipment for the work, Temporary Works and necessary supply for the construction in conformity with the Engineering Design and the Contract;

4.4. Make an Execution Plan and perform the construction work as specified in Appendix No. ... [Bidding Documents (or Request for Proposals) of the Employer];

4.5. Establish processes and sufficient reporting and management systems for the purpose of controlling quality and rate of progress closely and providing the Employer with sufficient information to evaluate the actual quality and rate of progress independently;

4.6. Construct all Temporary Works and maintain all of those Sections safely and effectively for the performance of the work until they are relived of the Site or returned as required by the Contract;

4.7. Conduct recruitment, training, management, and supervision of Subcontractor and personnel on the Site for the performance of the work and ensure that they are provided with guidelines for appropriate working methods and labor safety and environment hygiene;

4.8. Provide, manage, and regulate the traveling in the Site; the access to the Site safely and orderly by personnel of the Contractor, including: workers at the job site, management and supervision staff, site management staff, personnel of Suppliers and Subcontractors;

4.9. Prepare the testing and commissioning as prescribed in Appendix No. ... [Bidding Documents (or Request for Proposals) of the Employer];

4.10. Undertake the testing and commissioning as prescribed in Appendix No. ... [Bidding Documents (or Request for Proposals) of the Employer];

4.11. Supervise and direct the testing and commissioning;

4.12. Make preparations of customs procedures, including securities, storing, and transport in the Vietnam's territory applicable to those supply and equipment, imported goods serving the construction;

4.13. Cooperate with Subcontractors, Suppliers, and other Parties hired by the Contractor relating to the work and technology license holders (if any) to ensure that all equipment will be used in the Works in conformity with the Contract;

4.14. Provide all other necessary equipment and services to satisfy the requirements for taking-over and handover of the Works according to the Contract;

4.15. Perform the work safely at any time.

4.16. Provide personnel of the Employer with training and guidelines to operate and maintain the Works within the scope specified in the Employer's Requirements (if any).

4.17. Conduct the as-built procedures in accordance with applicable laws.

4.18. The Contractor shall perform any tasks, though not clarified in this Article but may be deemed in the Contract necessary for the completion of the work, and the cost of such task shall be deemed as concluded in the Contract Price, unless otherwise specified in the Contract.

## **ARTICLE 5. REQUIREMENTS PERTAINING TO ENGINEERING SERVICES**

### **5.1. General requirements**

The Contractor shall take responsibilities for technical design and construction drawing design of the work (or detailed design according to FEED) and their accuracy.

If the Contractor, during the process of technical design and construction drawing design identifies any defects or discrepancies in Employer's Requirements, it shall immediately give notices to the Employer before producing technical design and construction drawing design and request the Employer to make clarifications deemed necessary.

The Employer shall, at any time, upon the identification of defects in the design produced by the Contractor, the Employer shall request the Contractor to remedy such defects in accordance with Employer's Requirements.

Nevertheless, the Employer shall take responsibility for the accuracy of the following contents provided by the Employer or the Employer's Representative for the Contractor:

5.1.1. Documents, figures, and information specified in the Contract which are treated as unchanged or under responsibility of the Employer;

5.1.2. Purposes of the Works or a part thereof given by the Employer;

5.1.3. The Contractor shall ensure that its detailed design and documents must be consistent with:

a) Regulations of law of the Socialist Republic of Vietnam.

b) Contract Documents, including necessary amendments upon the request of the Employer.

### **5.2. Regulations and standards in design**

The technical design and construction drawing design to be produced by the Contract must comply with Project Standards, Specifications (if any) and the system of law of the Socialist Republic of Vietnam.

### **5.3. Requirements applicable to design drawings of the Contractor**

Design drawings of the Contractor shall include drawings, deliverables, and other necessary documents as prescribed in Bidding Documents (or Request for Proposals) The design drawings shall be written in the language as prescribed in Clause 3.1. [Laws and Language] unless otherwise prescribed by law.

If, upon Employer's Requirements or required by law, the design drawings of the Contractor shall be submitted to the Employer for considering approving, the following notice shall also be enclosed.



Unless otherwise prescribed in Employer's Requirements, the time for considering approval shall not exceed ... (number of days agreed upon by Parties) days from the date on which the Employer receives eligible design drawings from the Contractor. During the process of consideration, the Employer may notify the Contractor of any document in the design drawings not accordance with the Contract. Any document in the design drawings not accordance with the Contract shall be amended by the Contractor and resubmitted o the Employer for consideration under this Clause at the Contractor's expenses.

Any works of which design drawings are subject to approval of the Employer:

5.3.1. The construction shall only commence after the design drawings of the Contractor have been approved by the Employer;

5.3.2. The construction shall be executed in conformity with the design drawings approved by the Employer;

5.3.3. In case of any change of the design drawings, the construction shall only commence after the modified design drawings have been approved by the Employer.

The Contractor shall not be released from responsibilities and obligations inspect of the work regardless of any aforementioned agreement or consideration of approval (under this Clause or other Clauses).

#### **5.4. Responsibilities of the Contractor for design defects**

In the event the Employer detects any defects, omission, discrepancies, or in accordance with the Contract, the Contractor shall, at its expenses incur all costs of additional design or remedying those defects and repair defective Works or a portion thereof executed by the Contractor, even in the case that the Employer approve the design drawings.

### **ARTICLE 6. REQUIREMENTS PERTAINING TO PROCUREMENT**

6.1. Any kind of equipment provided for the Works shall undergo the verification (the verification entity shall be appointed by the Employer and at its expenses) to ensure the satisfaction of quality, kind, and origin as specified in the Contract.

6.2. The Contractor must take responsibility that all equipment operating throughout the progress of construction, completion of Works during the guarantee period and implementation of after-sale policies (the Contractor shall take responsibility for engineering and personnel, namely specialists, technicians who assist the Employer in the process of commissioning, remedying breakdown, and maintenance) within ... months from the expiry date of guarantees.

6.3. Machinery and equipment in production lines to be assembled must be those as specified in the Contract and in accordance with specifications requirements accepted by the Employer (according to technical standards and specifications) and be issued with Certificates of Origin (C/O) by the country in which the goods are produced and Certificates of Quality (CQ) The Contractor shall provide Certificates of the quality control system in accordance with standards of the country in which the goods are produced.

6.4. Any equipment transferred to the Works must obtain an assessment certificate issued by an authority in charge of assessment of origin, kind, and quantity satisfying requirements specified in the Contract and Bidding Documents (or Request for Proposals), Bids (or Proposals), commitments, and Clarifications of Bids.

6.5. Any technological equipment to be used in the Works must have clear origin, legitimate, and consistent with this Contract, and have undergone verification process.

6.6. Any equipment to be used in the Works must have capacity and specifications in accordance with the design drawings that have been approved by the Employer.

6.7. Equipment must be assembled accurately for the purpose of ensuring its normal operation and prolonging its service life. The equipment shall be assembled in accordance with the design and fabrication drawings and regulations specified in the equipment's manual in terms of assembly, operation, and profile. Any specifications absent from the design and equipment's manual shall apply the applicable Vietnam Standards.

6.8. Any equipment which is assembled in such a manner as unsatisfying the specifications (inconsistent with the design, equipment's manual recommended by manufacturer, and applicable technical standards and regulations, etc.) shall be refused to come to the taking over process and moved out of the Site within ... days.

6.9. The Contractor shall prepare the Site related to the equipment assembly, engineering staff, operating workers, repairing workers, energy sources, and necessary materials to serve the unload off-line taking-over.

6.10. During the online unload testing and load testing, the Contractor must make preparations of adequate engineering staff and workers on duty so as to timely handle any occurrence of breakdowns and defects.

6.11. The Contractor shall monitor and provide guidelines for assembly in accordance with specifications, design, and technical specifications of manufacturers, and cooperate with related parties in undertaking testing of equipment with the designed capacity so that the Employer may assess the equipment's assembly at its true quality.

6.12. The Contractor shall complete self-testing of the equipment assembly, prepare sufficient taking-over documents (records, as-built diagram, work logs, etc.), and inspect whether the equipment is assembled in accordance with technical requirements, and the testing satisfies the design requirements.

## **ARTICLE 7. REQUIREMENTS PERTAINING TO CONSTRUCTION**

7.1. The Contractor shall carry out the construction in accordance with applicable technical standards or Project Standards as specified in Appendix No. ... [Project Standards] and regulations of law on construction quality control;

7.2. Ensure that the Works is operating as required in Bidding Documents (or request for or Request for Proposals), Bids (or Proposals), commitments of the Contractor, Clarifications of Bid.

7.3. The Contractor shall make an Execution Plan, gather and arrange equipment in such a manner as not to affect surrounding activities; ensure that the Execution Plan satisfies engineering requirements, procurement and construction schedule and actual conditions at Site.

7.4. Make and submit general and monthly Time Schedules to the Employer (or Consultant) for approval as the basis for the Contract performance. Take measures to ensure labor safety, environment hygiene, fire prevention, and security and order during the construction process.

7.5. According to standards for execution and taking-over and the design drawings approved by the Employer, the Contractor shall make procedures and plans for quality inspection in accordance with regulations of law.

7.6. The Contractor shall execute and complete the Works and remedy any defects identified in the Works conforming to the design drawings approved by the Employer and comply applicable construction procedures and rules of the State and conditions of the Works and under guidelines of the Employer (or Consultant).

7.7. The construction and operation process must be strictly consistent with requirements of the design drawings approved by the Employer and recommended by manufacturers.

7.8. During the execution of the Contract, upon occurrence of any loss or damage to the Works, personnel, materials, or equipment, the Contractor shall repair or compensate for such loss or damage at its expenses.

7.9. The Contractor shall execute the construction satisfying technical requirements and Time for Completion as specified in the Contract.

7.10. After the construction, the Contractor shall plan to provide the Employer with training in operation. Operation manual, operation procedures, and maintenance manual shall be provided.

7.11. Within ... days after the testing, if the Works have passed the required performance tests, the Employer shall undertake the taking-over the Works to be put into service.

7.12. Upon completion of taking-over, the Contractor shall keep supervising the performance of the Works continuously within ... days and send reports on performance results to the Employer.

7.13. Ensure the effective performance of the whole of Works that satisfies Employer's Requirements as specified in the Contract.

## **ARTICLE 8. TESTS, CORRECTION AND COMMISSIONING ON COMPLETION (hereinafter referred to as Tests on Completion)**

### **8.1. Contractor's Obligations**

The Contractor shall give to the Employer (or Consultant) not less than ... days' notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within ... days after this date, on such day or days as the Employer (the Consultant) shall instruct.

### **8.2. Delayed Tests**

If the Tests on Completion are being unduly delayed by the Contractor, the Employer (or Consultant) may by notice require the Contractor to carry out the Tests. Within ... days after receiving the notice, the Contractor shall carry out the Tests within that period.

If the Contractor fails to carry out the Tests on Completion within the period of... days upon receipt of the notice given by the Employer (or Consultant), the Employer may proceed with the Tests at the risk and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

### **8.3. Retesting**

If the Works, or a Section, fails to pass the Tests on Completion, the Employer or (Consultant) may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

### **8.4. Failure to Pass Tests on Completion**

If the Works, or a Section, fail to pass the Tests on Completion repeated under Clause 8.3. *[Retesting]*, the Employer shall be entitled to:

(a) order further repetition of Tests on Completion under Clause 8.3. *[Retesting]*;

(b) if the failure deprives the Employer of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Employer shall have the same remedies as are provided in Point (c) Clause 21.4. *[Failure to Remedy Defects]*.

## **ARTICLE 9. EMPLOYER'S TAKING OVER**

### **9.1. Taking Over of the Works and Sections**

The Employer shall, within ... days after receiving the Contractor's application:

(a) issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, or

(b) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Clause.

Within ... days, the Employer shall whether issue a Taking-Over Certificate or provide explanation for the refusal. Upon expiry of abovementioned period, if the Works or Section (as the case may be) are substantially in accordance with the Contract and the Employer gives no notice, the Taking-over Certificate shall be treated as issued.

### **9.2. Taking Over of Parts of the Works**

The Employer shall issue a Taking-Over Certificate for any part of the Permanent Works. The Employer may not use any part of the Works (other than as a temporary measure which is either specified in the Contract or agreed by both Parties) unless and until such part is issued with a

corresponding Taking-Over Certificate. Nevertheless, if the Employer does use any part of the Works prior to the issuance of the Taking-Over Certificate:

(a) the part which is used shall be deemed to have been taken over as from the date on which it is used;

(b) The Contractor shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Employer, and

(c) if requested by the Contractor, the Employer shall issue a Taking-Over Certificate for this part.

If the Contractor incurs Cost as a result of the Employer taking over and/or using a part of the Works, other than such use as is specified in the Contract and agreed by both Parties, the Contractor shall (i) give notice to the Employer and (ii) be entitled subject to Clause 24.1 [Contractor's Claims] to payment of any Cost plus profit, which shall be included in the Contract Price. After receiving this notice, the Employer shall proceed in accordance with Clause 13.4. [Determinations] to agree or determine this Cost and profit.

### **9.3. Interventions with Tests on Completion**

If the Contractor is prevented, for more than ... days, from carrying out the Tests on Completion by a cause for which the Employer is responsible, the Employer shall be deemed to have taken over the Works or Section (as the case may be) on the date when the Tests on Completion would otherwise have been completed.

The Employer (or the Consultant) shall then issue Taking-Over Certificate accordingly, and the Contractor shall carry out the Tests on Completion as soon as practicable, before the expiry date of Defects Notification Period. The Employer (or the Consultant) shall request the Tests on Completion to be carried out by given 14 days' notice and in accordance with the relevant provisions of the Contract.

If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Employer or Consultant and shall be entitled to:

(a) an extension of time for any such delay, if the completion is or will be delayed under Clause 10.4. [Extension of Time for completion] and

(b) payment of any such Cost plus profit, which shall be included in the Contract Price.

After receiving this notice, the Employer shall proceed in accordance with Clause 13.4. [Determinations] to agree or determine these matters.

### **9.4. Taking-Over Certificate to put the Works into service**

The Contractor's fulfillment of obligations shall not be deemed as completed if the Contractor has not been issued with Taking-Over Certificate to put the Works into service by the Employer, clarifying the date on which the obligations are fulfilled in accordance with the Contract.

The Employer (or Consultant) shall issue a Taking-Over Certificate to put the Works into service within ... days after expiry of Defects Liability Period or the Contractor has provided all its materials

and has completed the Tests on Completion of all the Works and Sections, including remedying defects.

### **9.5. Unfulfilled obligations**

After obtaining the Taking-Over Certificate to put the Works into service, each Party shall remain liable for the fulfillment of any obligation which remains unperformed (specified in the Taking-Over Certificate) at that time.

### **9.6. Clearance of Site**

Upon receiving the Taking-Over Certificate to put the Works into service, the Contractor shall remove any remaining Contractor's equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.

If the Contractor fails to remove remaining Contractor's equipment, surplus materials, rubbish and Temporary Works from the Site within ... days from the date on which the Employer has issued the Taking-Over Certificate to put the Works into service, the Employer may sell or otherwise dispose of these items. The Employer shall be entitled to be paid the costs incurred in connection with such sale, disposal and restoring the Site.

Any balance of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the Employer's costs, the Contractor shall pay the outstanding balance to the Employer.

### **9.7. Test runs in every portion of the Works**

This Clause shall apply to all test runs specified in the Contract, except for test run after completion (if any).

The Contractor must provide machinery, assistance, materials and other information, electricity, equipment, fuel, tools, personnel, and qualified employees so as to conduct the specific test runs efficiently. The Contractor shall reach a consensus with the Employer (or Consultant) on time, location to conduct the test run of equipment, materials, and other Sections.

The Employer (or Consultant) may, pursuant to Article 16 [*Price adjustments and Contract amendments*], change the location and details of specific test runs or instruct the Contractor to conduct additional test runs. If additional test runs or changes prove that equipment, materials, or qualifications of the Contractor are not consistent with the Contract, those expenses associated with the conducting of changes shall be covered by the Contractor, irrespective of other terms of the Contract.

The Employer (or Consultant) shall notify the Contractor of its intention to participate in the test run ... hours prior to the conducting of the test run. If the Employer (or Consultant) fails to participate in the test run at the place and time as agreed, Contractor may conduct the test run itself, and accordingly the test run shall be deemed to be conducted in the presence of the Employer, unless otherwise instructed by the Employer (or Consultant).

If the Contractor faces delay or incur costs as a result of compliance with the Employer's instructions or delays in the Employer's responsibility, the Contractor shall inform the Employer (or the

Consultant) ) and shall be entitled subject to the notice under Clause 24.1. [Contractor's Complaint] to:

(a) extend the time to cover the delay if the completion is delaying or will delay as prescribed in Clause 10.4. [Extension of Time for Completion] and

(b) pay expenses which are included in the Contract Price.

Upon receipt of this notice, the Employer (or Consultant) shall agree or determine these expenses as prescribed in Clause 13.4. [Determinations].

The Contractor shall submit confirmations of test runs to the Employer. When specific test runs are conducted completely, the Employer shall approve the test run record made by the Contractor. If the Employer does not participate in test runs, the confirmations of test runs shall be deemed accurate with the Employer's consent.

### **9.8. Refusal**

If the results of the inspection, monitoring, measurement or testing indicate that there are defects in the equipment, material, design or workmanship or are inconsistent with the Contract, the Employer (or the Consultant) may refuse equipment, materials, design or workmanship by giving notice of reasons to the Contractor. The Contractor shall correct the defects immediately and ensure that the rejected items are handled in accordance with the Contract.

If the Employer (or Consultant) requires that the equipment, materials, design or workmanship must be retested, testing will be conducted in accordance with the preceding procedures and conditions. If the refusal and retesting results in additional costs to the Employer, the Contractor shall be liable to pay such costs to the Employer as prescribed in Clause 13.2. [Employer's Complaint].

### **9.9. Repairs**

Notwithstanding tests that have already been completed or certified, the Employer (or the Consultant) may instruct the Contractor to:

(a) Remove from the Site or replace equipment or materials not conforming to the Contract,

(b) Remove and resume the work if inconsistent with the Contract, and

(c) Carry out urgent work to ensure the safety of the Works.

The Contractor shall comply with such instructions within a reasonable period of time, which is the time (if any) specified in the instructions or shall be immediate, if urgency is determined in accordance with paragraph (c) above.

If the Contractor fails to comply with the instructions, the Employer will, pursuant to Clause 13.3. [The Employer's Instructions] have the right to hire and pay some else to do the work. Unless the Contractor is entitled to be covered with the expenses associated with the work, the Contractor must pay full costs due to its non-compliance with the instructions as prescribed in Clause 13.2. [Employer's Complains].

### **9.10. Ownership of equipment and materials**

Each item of equipment and materials within the scope of the Contract will become the property of the Employer when the Contractor has been paid for the value of the equipment and materials.

## **ARTICLE 10. CONTRACT PERFORMANCE PERIOD AND SCHEDULE**

### **10.1. Commencement Date and Date for Completion**

Commencement Date is .... and the Employer (or Consultant) must given advance notice of Commencement Date to the Contractor no less than ... days and the Commencement Date is within ... days after the Contract takes effect.

The Contractor will commence the engineering, procurement, and construction immediately after the Commencement Date and complete the whole work before.... [date] or the Time for Completion will be adjusted according to the Performance Schedule approved by the Employer.

### **10.2. Time for Completion**

The Contractor must complete all or every part of the work (if any) within the Time for Completion including:

- a) It has passed the testing after completion of the Works or Sections as the case may be, and
- b) It has completed all of the work mentioned in the Contract or Sections for consideration as completed and accepted in accordance with Clause 9.1. [Taking-Over of Works].

### **10.3. Performance Schedule**

The Contractor shall submit to the Employer (or Consultant) detailed performance schedule within ... days after the Commencement Date. The Contractor will also submit the revised performance schedule if the previous schedule is not consistent with the actual progress or inconsistent with the Contractor's obligations. Except as otherwise stated in the Contract, each Schedule shall include:

- a) The contractor's performance order and milestone for each major period;
- b) The process and time for testing after completion are specified in the Contract, and
- c) Supplementary reports which include:

- General description of the methods that the Contractor intends to apply and the main stages in the engineering, procurement, and construction, and

- Details showing the Contractor's reasonable estimate of the number of each kind of Personnel and Contractor's Equipment required to perform the work for each of the main stages.

The Contractor shall follow this schedule and fulfil its obligations under the Contract unless the Employer (or the Consultant), within ... days after receipt of the Schedule, notify the Contractor that



the extent to which this schedule is inconsistent with the Contract. Employer's personnel will be allowed to only rely on this Schedule to make a plan for their activities.

The Contractor shall immediately notify the Employer (or the Consultant) of any particular event or situation that possibly occurs in the future that may adversely affect or delay the performance of the work or increase the Contract Price. In that case, the Employer (or the Consultant) may request the Contractor to report on the effects of future events and/or proposals under Clause 16.3. [Variation Procedure]

Any time the Employer (or the Consultant) informs the Contractor that the progress has not complied (within the identified scope) with the Contract or in accordance with the actual progress and submitted plans, the Contractor shall submit to the Employer a revised schedule in accordance with this Clause.

#### **10.4. Extension of Time for Completion**

Pursuant to Clause 24.1 [Contractor's CLAIMS], the Contractor shall be permitted to extend the Time of Completion if and to the extent that the completion for the purpose of Clause 9.1. [Taking-Over of Works] is being or will be delayed due to one of the following reasons:

a) There is a change (unless the adjustment of completion time has been agreed in accordance with Clause 16.3 [Variation Procedure] or an important change of part of the work included in the Contract;

c) The cause of the delay resulting in a prolonged period of time is consistent with a clause of these Conditions;

c) Delays and obstacles on the Site caused by the Employer, the Employer's personnel or other Contractors.

c) The lack of personnel or goods is unpredictable due to the activities of the Government;

e) In the event of force majeure events under the provisions of Article 23 [Risks and Force Majeure].

If the Contractor considers that it has been allowed to extend the Time of Completion, the Contractor shall give a notice to the Employer (or the Consultant) in accordance with Clause 24.1. [Contractor's CLAIMS]. When determining the extension of time under this Clause, the Employer (or Consultant) must review previous decisions and may increase but not reduce the total duration of the extension.

#### **10.5. Delays due to Authorities**

If the following conditions apply, such as:

a) The contractor has complied with the procedures prescribed by the State, but the authorities did not meet the deadline as prescribed or did not perform the work proposed by the Contractor and

b) The delay or failure to perform such work is unpredictable even by an experienced Contractor when submitting bid.

Such delay or failure to perform the work will therefore be considered a cause of delay in accordance with Clause 10.4. [Extension of Time of Completion].

### **10.6. Actual performance progress**

At any time:

a) The actual performance progress is too slow to complete the work within the given Time for Completion time, and/or

b) The actual progress has been or will be slower than the scheduled progress of the work under Clause 10.3. [Performance Schedule].

other than the reasons mentioned in Clause 10.4. [Extension of Time for Completion], then the Employer (or the Consultant) may instruct the Contractor, in accordance with Clause 10.3. [Progress of work performance], to submit of a revised schedule and a report describing the modifications proposed by the Contractor to follow progress and complete within the given Time for Completion.

Unless the Employer (or the Consultant) has given another notice, the Contractor shall apply these revised methods, which may require an increase in the number of work hours and the number of Contractor's personnel and/or the goods to which the Contractor is subject to risk and any costs. If these modifications result in additional costs to the Employer, pursuant to Clause 13.2. [The Employer's complaint], the Contractor will pay these costs to the Employer, in addition to the damage caused by the delay (if any) as prescribed in Clause 10.7 hereunder.

### **10.7. Damage caused by delays**

If the Contractor fails to comply with Clause 10.2. [Time for Completion], the Contractor shall, in accordance with Clause 13.2. [Employer's complaint] will pay the Employer for damage caused by this non-compliance. The damages will be the amount specified in Appendix No. ... [Performance Schedule] will be paid daily for the period between the Time for Completion and the date set forth in the Taking-Over Certificate. However, the total amount under this Clause shall not exceed the total maximum amount resulting from the damage due to delay (if any) set forth in Appendix No ...

The damages will be only damages caused by the Contractor's faults, rather than termination under Clause 18.7. [Termination by the Employer] before completing the work. This compensation does not relieve the Contractor's obligation to complete the work or any of its responsibilities or obligations under the Contract.

## **ARTICLE 11. PERFORMANCE SECURITY AND BANK GUARANTEE FOR ADVANCE PAYMENT**

### **11.1. Performance Security**

The Contractor shall pay the Employer the Performance Security corresponding to the amount and currency prescribed in Special Conditions of Contract.

The Contractor shall furnish the Performance Security to the Employer within ... days from the date on which the Contract is signed. The Performance Security shall be issued by a qualified bank or credit institution as required by law using the form in Appendix No. ... or another form approved by the Employer.

The Contractor shall ensure that the Performance Security will remain valid until the Contractor has completed the Works and has remedied defects. If the terms of the Performance Security specify the expiry date and the Contractor is not permitted to receive the Certificate of Performance... days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the work has been completed and all defects have been remedied.

The Employer may not collect Performance Security, except for the amount of money to which the Employer is entitled under the Contract in the following cases:

(a) The Contractor fails to extend the validity of the Performance Security; in this case the Employer may collect the full amount of the Performance Security.

(b) The Contractor fails to make payment of the debt as agreed to the Employer or the debt to be payable under Clause 13.2. [Employer's Claims] or Article 24 [CLAIMS and Settlement of Disputes], within ... days after the agreement or decision on the debt payable.

(c) The Contractor fails to correct defects within ... days after receiving the request of the Employer to remedy defects, or

(d) Where the Employer is allowed to terminate the Contract under Clause 18.7. [Termination by the Employer], regardless of a notice of termination.

Employers must compensate and bear disadvantages to the Contractor for damages, losses and expenses (including legal costs and fees) due to a complaint about the Performance Security to the extent that the Employer is not allowed to make a complaint.

The Employer must return the Performance Security to the Contractor within ... days after issuing the Taking-Over Certificate to put the Works into service and after the Employer has received the Guarantee of Works in accordance with the provisions of the Contract.

## **11.2. Bank Guarantee for Advance Payment**

The Contractor must furnish a Bank Guarantee for Advance Payment to the Employer within ... days after the effective date of the Contract corresponding to the amount and type of advance. The Bank Guarantee for Advance Payment shall remain valid until the advance payment is recovered and deducted corresponding to the amount of the recovered advance.

## **ARTICLE 12. CONTRACT PRICE, ADVANCE, AND PAYMENT**

### **12.1. Contract Price**

12.1.1. Except as otherwise provided by the Parties in the Specific Conditions, this Contract is a lump sum contract and shall only be governed by its terms and conditions.

12.1.2. After evaluating all of work performed and obligations fulfilled by the Contractor under the Contract, the Employer shall pay the Contractor the Contract Price including:

a) Vietnamese Dong: VND .....

In particular (if the parties have agreed to separate each portion of the work):

- Engineering: VND ....

- Procurement: VND ....

- Construction: VND ....

b) Foreign currency: ..... (insert foreign currency to be used).

In particular (if the parties have agreed to separate each portion of the work):

- Engineering: ....

- Procurement: ....

- Construction:....

c) Any additions or reductions approved by the Employer in accordance with the Contract.

12.1.3. Except as otherwise expressly provided in the Contract, the Contract Price includes all costs incurred to perform the work: all costs, fees, profits and all taxes relating to the work in accordance with regulations of law;

12.1.4. Contract Price includes all costs related to copyright, etc.

12.1.5. Except as otherwise expressly provided in the Contract, the Contractor shall bear all risks associated with the cost of performance and the Contractor shall be deemed to have acquired all necessary information and taken into account all circumstances that likely affect the costs when determining the Contract Price.

## **12.2. Advance**

12.2.1. After receiving the Performance Security and the Bank Guarantee for Advance Payment, the Employer shall advance the Contractor an amount (the total advance value must not exceed 50% of the contract value):

a) Vietnamese dong: VND...., in proportion to... % of Contract Price.

In particular (if the parties have agreed to separate each portion of the work):

- Engineering: VND...., in proportion to ...% of engineering value;

- Procurement: VND...., in proportion to ...% of engineering value;

- Construction: VND...., in proportion to ...% of engineering value;

b) Foreign currency: ..... (Unit of foreign currency), in proportion to .. % of Contract Price.

In particular (if the parties have agreed to separate each portion of the work):

- Engineering: (foreign currency's unit)...., in proportion to ...% of engineering value;

- Procurement: (foreign currency's unit)...., in proportion to ...% of engineering value;

- Construction: (foreign currency's unit)...., in proportion to ...% of engineering value;

c) Details of advances as specified in Appendix No. ... [Contract Price, Advance and Payment].

12.2.2. The advance will be withdrawn by deduction in the payments. The deduction rate will be based on the recovery rate specified in Appendix No. ... [Contract Price, Advance, and Payment]. The contract advance will be fully recovered when the payment value reaches 80% of the Contract Price as specified in Appendix No. ...[Contract Price, Advance, and Payment].

### **12.3. Payment**

#### 12.3.1. Currency and methods of payment

a) Currency used to pay the Contract is Vietnamese currency and .... (specify the type of foreign currency used in payment).

b) The method of payment is wire transfer (or in other forms agreed upon by the Parties in accordance with the relevant law); except for the contents relating to equipment that will be made in the form of irrevocable L/C.

#### 12.3.2. Milestones

The payments shall be made in ... installments, in accordance with the milestones as specified in Appendix No. ... [Contract Price, Advance, and Payment]. Where:

a) Engineering:

- First installment: ....% of Contract Price after the Contractor has completed the design of Sections or the work performance ... (agreed upon by the Parties).

- Second installment: ....% of Contract Price after the Contractor has completed the design of Sections or the work performance ... (agreed upon by the Parties).

- ... installment

- Last installment: ....% of Contract Price after the Contractor has completed the full design of the Works that has been approved by the Employer.

b) Procurement:

- First installment: ....% of Contract Price after the Contractor has furnished equipment of the Sections... ;

- Second installment: ....% of Contract Price after the Contractor has furnished equipment of the Sections... ;

- ... installment

- Last installment: ...% of Contract Price after the Contractor has furnished all of equipment as specified in the Contract.

c) Construction:

- First installment: ...% of Contract Price (or value of the completed Sections) after the Contractor has completed the Sections...(Sections' names).

- Second installment: ...% of Contract Price (or value of the completed Sections ) after the Contractor has completed the Sections...(Sections' names).

- ... installment

- Last installment: ...% of Contract Price (or remaining value) after the Contractor has completed the work and agreement in the Contract.

The Employer shall pay the Contractor the entire Contract Price after the Contractor has completed all work of the Contract which has been taken over and the Parties have completed the contract settlement as prescribed in Article 25. [Final Settlement and Completion] and after the Employer receives the Guarantee of the Works issued by the Contractor.

Payments are made according to these milestones. In case the actual work progress is later than the milestones of the Contract, the Employer may agree to determine the payment amounts according to the milestones specified in the Contract or make payments according to the actual work progress when the Contractor has completed the work.

#### 12.3.3. Payment documents

The Contractor will submit the payment documents in ... copies to the Employer upon the deadline for payment stated in the Contract. Payment documents include but not limited to the following documents (for a specific contract, the relevant Parties shall agree on other documents required):

- Taking-Over Certificate in the payment period with confirmations of Employer's representative or Consultant's representative (if any) and Contractor's representative. This Taking-Over Certificate is an acceptance certificate of the completed Works, Sections, or suitable to the Scope of Work to be performed under the Contract (without the need for certification of completed work quantity);

- Schedule of additional quantity value (if any) beyond the Scope of Work in accordance with the Contract, with the certification of the Employer's representative or Consultant's representative (if any) as stated in Appendix No. 3;

- The payment request made by the Contractor as prescribed in Appendix No. 1, including: the value of the completed quantity under the Contract as specified in Appendix 2, the value of the additional work quantity (if any), the advance deduction, the amount requested for payment in the period after the offsetting with certifications of Employer's representative and Contractor's representative.

#### 12.3.4. Deadline for payment

Except as otherwise provided in Clause 13.2. [Employer's Claims], after receiving complete payment documents in accordance with the Contract, the Employer will pay the Contractor within ... working days.

#### 12.3.5. Delayed payment

If the Contractor does not receive payment under Clause 12.3. [Payment], the Employer must pay the financial charges to the Contractor on the basis of the amount that was not paid during the late time at the overdue interest rate applicable to the first day of late payment quoted by the commercial bank where the Contractor opens a checking account until the Employer has made full payment to the Contractor.

#### 12.3.6. Payment of Retention Money

The Employer will pay all the retention money withheld by the Contractor when the Parties have sufficient grounds for determining the amounts of the payments and when the Contractor fulfills the obligation to guarantee the Works in accordance with the provisions of Clause 20.2. [Guarantee].

### **ARTICLE 13. GENERAL RIGHTS AND OBLIGATIONS OF EMPLOYER**

#### **13.1 Employer's Personnel**

13.1.1. The Employer must ensure that the Employer's Personnel and other Contractors on the Site will:

(a) Cooperate with the Contractor in accordance with Clause 15.3. [Cooperation]

(b) Act in a manner similarly to requirements applicable to the Contractor as prescribed in Points (a), (b) and (c) of clause 15.5. [Safety Procedures] and Clause 15.13. [Environmental Protection]

#### 13.1.2. Employer's Representative

The Employer may appoint a representative to perform the Contract. In this case, the Employer must provide the Contractor with notice of the name, address, duties and powers of the representative.

The Employer's representative shall carry out the duties assigned to him/her and exercise the powers authorized by the Employer. Unless the Employer gives notice to the Contractor, the Employer's representative shall be deemed to have full rights of the Employer under the Contract, except as specified in Clause 18.7. [Termination by the Employer].

If the Employer wishes to replace any person appointed as its representative, within no less than ... days, the Employer shall appoint the substitute and provide the Contractor with a notice of name, address, duties and power at the same time.

#### 13.1.3. Other personnel of the Employer

The Employer may appoint representatives to perform certain tasks in the Contract. In this case, the Employer must provide the Contractor with written notice of the names, contact information, duties and powers of these employees.

These employees must be qualified to perform the duties and authorized powers and proficiency in the communication language set forth in Clause 3.1. [Laws and Language]

#### 13.1.4. Authorized person

All persons, including the Employer's representative and persons assigned or authorized by the Employer, shall have the right to give instructions to the Contractor only in the circumstances specified in the authorization. Any approval, review, confirmation, consent, inspection, supervision, instruction, notice, recommendation, request, test or similar acts of the authorized persons, in conformity with the authorization, will have the same validity as if the act was done by the Employer. However:

(a) It shall not reduce any Contractor's responsibility under the Contract, including responsibility for defects, omissions, discrepancies and non-compliance, unless otherwise specified in the notice related to the authorized person for such action,

(b) Any failure to consent to any work, equipment or material shall not constitute an approval and, therefore, shall not prejudice the rights of the Employer in rejecting the work, equipment, or material;

(c) If the Contractor has any suspicion of a decision or instruction of the Assistant, the Contractor may raise the matter with the Employer, who shall promptly assert, reverse or alter that decision or instruction.

#### **13.2. Employer's Claims**

If the Employer considers that it is entitled to any payment in accordance with any of these Conditions or other provisions relating to the Contract, and/or for the extension of the Defects Notification Period, the Employer must give a notice and provide details to the Contractor.

The Employer shall give a notice as soon as possible upon the discovery of a problem or situation that results in a complaint. Notice of extension of Defects Notification Period must be made before the deadline for notice.

The basis for complaint must be specified in Article(s) or other complaint bases and include evidence of the amount and/or extension to which the Employer claims to be entitled in connection with the Contract. Subsequently, the Employers must follow the Clause 13.4. [Determinations] to reach a consensus or decide (i) amount (if any) for which the Employer has the right to request from the Contractor and/or (ii) extends Defects Notification Period (if any) as prescribed in Clause 21.3. [Extension of Defects Notification Period].

Employers can deduct this amount from any debt or amount to be owed by the Contractor. Employer is entitled to deduct or reduce the amount from the total Contractor's debt that has been confirmed or any other claim against the Contractor under this Clause.

#### **13.3. Employer's Instructions**

The Employer may provide the Contractor with necessary instructions to fulfill its obligations under the Contract. Each instruction must be in writing and state the obligations associated with it and the Clauses (or other clauses of the Contract) in which the obligations are specified. If guidance leads to an alternation, Article 16 [ADJUSTMENTS AND VARIATIONS] shall apply.



The Contractor shall receive instructions from the Employer, the Employer's representative or persons who are authorized by this Section.

#### **13.4. Determinations**

Whenever this Condition stipulates that the Employer must agree or resolve a matter, the Employer must discuss with the Contractor to try to reach an agreement. If no agreement is reached, the Owner must make an objective decision consistent with the Contract with careful consideration of all relevant contexts.

The Owner must notify the Contractor of any agreement or decision with specific evidence. Each party shall endeavor to respect the validity of each agreement or decision, unless the Contractor notifies the Employer of its dissatisfaction with a decision within ... days from the day on which the notice is received. Subsequently, the other Party may refer the dispute to the Dispute Resolution Board (if any) under Clause 24.4. [Conclusion of the Dispute Resolution Board].

#### **13.5. Permission for the Contractor to access the Site**

The Employer must give the Contractor the right to access and use all parts of the Site for the duration of the Contract. If no time is specified in Appendix No. ... [Bid (or Proposal) of the Employer], the Employer must allow the Contractor the right to access and use the Site for executing the construction in accordance with the performance schedule that has been submitted to the Employer under Clause 10.3. [Performance Schedule] Where the Contractor has not received the right to receive and use the Site due to the delay of the Employer and incur costs during this period, the Contractor shall notify the Employer and shall have the right, under Clause 24.1. [Contractor's Claims] to require:

(a) the extension of the execution period due to the delay if the completion is delaying or will delay as prescribed in Clause 10.4. [Extension of Time for Completion]

(b) the payment of expenses which are included in the Contract Price.

Upon receipt of this notice, the Employer (or Consultant) shall agree or determine these expenses as prescribed in Clause 13.4. [Determinations].

However, if and to the extent that the Employer does not allow such rights to the Contractor due to defects or delays of the Contractor, including a defect or delay in submitting any material, the Contractor will not be entitled to the extension of this time and cost.

#### **13.6. Enabling the Contractor to apply for permits to competent authorities**

The Employer shall (if he is in a position to do this) provide reasonable assistance to the Contractor, upon the request of the Contractor, in terms of obtaining a permit or written approval to perform the work in accordance with the law.

13.7. Other rights and obligations as prescribed by law.

### **ARTICLE 14. DUTIES AND ENTITLEMENT OF CONSULTANT**

**(To be applicable when the Employer hires a Consultant)**

#### **Article 14.1. Duties and rights of Consultant**

Consultant is a person who will perform the tasks assigned by the Employer under a consultant contract. The Consultant may be composed of individuals who have professional qualifications to carry out these tasks.

The Consultant has no right to modify the contract. The Consultant may exercise the rights attached to the title of Consultant as determined or implied as deemed necessary in the Contract. If the Consultant is required to obtain the Employer's approval prior to the exercise of a specific right, these requirements must be stated in the Contract. The Employer commits itself not to impose any constraints on the Consultant's rights, except for matters as agreed with the Contractor.

Unless stated otherwise under this condition:

(a) Whenever the Consultant perform a task or exercise a right that has been specified or implied in the Contract, the Consultant shall be deemed to be employed by the Employer.

(b) The Consultant has no right to reduce any of the duties, obligations or responsibilities under the Contract, to any Party, and

(c) Any Consultant's approval, inspection, certification, consent, review, inspection, notice, recommendation, request, test or similar actions (including the absence of objections) will also not exempt the Contractor from any responsibility under the Contract, including responsibility for defects, omissions, discrepancies and noncompliance.

#### **14.2. Authorization of the Consultant**

The Consultant may assign tasks and authorize certain individuals with the Employer's consent. These individuals may be a permanent resident Consultant and/or independent supervisor designated to supervise and/or test equipment and/or materials. The assignment, authorization or cancellation of the assignment or authorization of the Consultant must be in writing and effective only when both parties receive the written communication. However, unless otherwise agreed by both Parties, the Consultant will not authorize any matter under Clause 13.4. *[Determinations]*.

These individuals must have professional qualifications to carry out the tasks authorized and at the same time acquire proficiency in the communication language as defined in Clause 3.1. *[Laws and Language]*.

Each person assigned to the task or authorized is only entitled to give instructions to the Contractor within the scope of the authorization. Any consent, inspection, confirmation, review, instruction, notice, recommendation, request, test or similar act of an individual in accordance with the authorization will have the same effect as the performance of the Consultant. However:

(a) Any failure to consent to any work, equipment or material shall not constitute an approval and, therefore, shall not prejudice the rights of the Consultant in rejecting the work, equipment, or material.

(b) If the Contractor has any suspicion of a decision or instruction of an individual, the Contractor may raise the matter with the Consultant, who shall promptly assert, reverse or alter that decision or instruction.

### **14.3. Consultant's Instructions**

The Consultant may, at any time, provide the Contractor with additional instructions or drawings necessary for the construction of the Works and for the correction of any defects in accordance with the Contract. The Contractor will only receive instructions from the Consultant or its authorized representative. If an instruction constitutes a Variation, the Article 16 [ADJUSTMENTS AND VARIATIONS] shall apply.

The Contractor shall abide by the instructions given by the Consultant or its authorized representative on any matter relating to the Contract. Whenever possible, the instructions of the Consultant and the authorized person must be in writing. If the Consultant or an authorized person:

(a) gives oral instructions; and

(b) receives a written request for instructions from yourself but do not respond by giving written opinion within ... working days, upon receipt of a request

the request is the written instructions of the Consultant or the authorized person (as the case may be).

### **14.4. Replacement of Consultant**

If the Employer intends to replace the Consultant, no less than ... days before the intended replacement date, the Employer shall notify the Contractor of the respective details of the Consultant who is expected to replace. The Employer shall not replace the Consultant with any person for whom the Contractor expresses its refusal by giving notice to the Employer, together with the details, to explain the reasons.

### **14.5. Decision of Consultant**

These conditions require that when the Consultant (on behalf of the Employer) undertakes the work under this Clause to agree or resolve a matter, it should try to discuss with each Party to reach an agreement.

The Consultant should notify both Parties of each agreement or decision with his defense argument. Each party shall endeavor to respect the validity of each agreement or decision, unless they are subject to the consideration under Article 24 [CLAIMS and Settlement of Disputes].

## **ARTICLE 15. GENERAL RIGHTS AND OBLIGATIONS OF CONTRACTOR**

### **15.1. Contractor's General Responsibility**

The Contractor shall perform the engineering, procurement, and construction under the Contract and repair any defects in the Works. Upon completion, the Works must be in accordance with the purposes as defined in the Contract.

The Contractor shall furnish the Contractor's equipment and documents as set out in the Contract and all Contractor's personnel, goods, consumables, other items and services whether temporary or permanent as required in and for engineering, construction, completion and defect correction.

This work must include all the work required to meet the Employer's Requirements, or is covered by the Contract and all work (including absence from the Contract) necessary for the stability or the completion or the safety and well-functioning of the Works.

The Contractor is responsible for the appropriateness, stability and safety of site operations, construction methods and the entire Works.

The Contractor, whenever requested by the Employer, shall submit the details of the arrangement and methods proposed by the Contractor for the execution of the Works. No substantial changes to the arrangements and methods may be made without prior notice to the Employer.

### **15.2. Contractor's Representative**

The Contractor shall appoint a Contractor's representative and authorize the representative to perform the Contract on behalf of the Contractor.

Unless the representative of the Contractor is named in the Contract, prior to the Commencement Date of the Works, the Contractor shall notify the Employer of name and details of the person requested to be the Contractor's representative for consideration. If this person is not accepted or being rejected thereafter, or if the appointed person is not qualified to act as a Contractor's representative, the Contractor shall, in such a similar manner, notify the Employer of name and details of another representative suitable for this position.

The Contractor may not discharge the Contractor's representative or appoint a substitute without prior consent of the Employer.

Contractor's Representative shall, on behalf of the Contractor, receive the instructions under Clause 13.3. *[Employer's Instructions]* or Clause 14.3. *[Consultant's Instructions]*.

The Contractor's representative may authorize its functions and powers to those who are capable and may revoke this authorization at any time. The authorization or revocation will only be effective when the Employer receives a prior consent bearing the signature of the Contractor's representative, authorized person's name and rights and powers vested or canceled.

Contractor's representative and aforementioned persons must be proficient in the communication language specified in Clause 3.1. *[Laws and Language]*.

### **15.3. Cooperation**

As stated in the Contract or Employer's Instructions (or the Consultant's Instructions), the Contractor shall be responsible for the cooperation with:

- (a) The Employer's Personnel,
- (b) Other Contractors hired by the Employer, and
- (c) Employees of competent authorities,

To be hired or sent to perform the work not included in the Contract.

Services provided for these persons and other Contractors, including the use of Contractor's equipment, Temporary Works or arrangement of access to the Site fall on the Contractor's responsibility. Where these services incur expenses not included in the Contract Price, the Parties shall consider these additional expenses.

The Contractor shall take responsibility for its construction operations on Site, and coordinate its operations with those of other Contractors to the extent (if any) identified in the Bidding Documents (or Request for Proposals) of the Employer.

Under the Contract, if the Contractor requests the Employer to give the right use any platform, structure, workshop or means of access at the request of the Contractor, the Contractor shall submit the request to the Employer (or the Consultant) in conformity with the time and format in the Bidding Documents.

#### **15.4. Location of boundary markers**

The Contractor must locate the Works by boundary markers and reference elevation as defined in the Contract. The contractor will be responsible for accurately identifying all of Sections and correcting the defects of location, height, size or lining of the Works.

The Employer will be responsible for any errors in the information provided in the sections indicated above or the notices for reference (boundary marks, linearity and elevation), but the Contractor must try to verify their precision before the use.

In the event that the Contractor suffers delay and/or incur Cost not at its faults, the Contractor shall give a notice to the Employer (or the Consultant) and shall be entitled subject to notice under Clause 24.1. *[Contractor's Claims]* to:

(a) an extension of time for any such delay, if the completion is or will be delayed, under Clause 10.4. *[Extension of Time for Completion]* and

(b) the payment of any such Cost, which shall be included in the Contract Price.

Upon receipt of such notice, the Employer (or the Consultant) shall proceed in accordance with the Clause 13.4. *[Determinations]* to agree or determine (i) whether and (if so) to what extent that errors cannot reasonably be detected, and (ii) the matters described in paragraph (a) and (b) above related to this extent.

#### **15.5. Safety Procedures**

The Contractor shall:

(a) comply with all applicable occupational safety regulations;

(b) take care for the safety of all persons entitled to be on the Site;

(c) Adopt measures for ensuring the safety of the Works and for those authorized to be on the Site.

#### **15.6. Site conditions**

The Employer shall have made available to the Contractor for its information about sub-surface conditions, hydrogeology and the content of the Site survey, including the environment aspects relating to the Contract.

To the extent which was practicable (taking accounting of cost and time), the Contractor shall be deemed to have obtained all necessary information as to the risks, contingencies and other circumstances which may influence or affect the Bid or Works. To the same extent, the Contractor shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have satisfied before submitting the Bid as to all relevant matters, including limitation):

(a) the form and nature of the Site, including sub-surface conditions,

(b) the hydrological and climatic conditions,

(c) the extent and nature of the work and Goods necessary for the execution and completion of the Works and the remedying of any defects.

(d) regulations of law on labor;

(e) the Contractor's requirements for access, accommodation, facilities, personnel, transport, water and other services.

The Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Site conditions in determining Contract Price.

### **15.7. Unforeseeable Physical Conditions**

In this Clause, "physical conditions" means natural physical conditions and man-made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the Works, including sub-surface and hydrological conditions but excluding climatic conditions.

If the Contractor encounters adverse physical conditions which he considers to have been Unforeseeable, the Contractor shall give notice to the Employer (or the Consultant) as soon as practicable. This notice shall describe the physical conditions, so that they can be inspected by the Employer (or Consultant), and shall set out the reasons why the Contractor considers them to be Unforeseeable. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the Employer (or Consultant) may give. If an instruction constitutes a Variation, the Article 16 [ADJUSTMENTS AND VARIATIONS] shall apply.

If and to the extent that the Contractor encounters physical conditions which are Unforeseeable, gives such a notice, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled subject to notice under Clause 24.1 [Contractor's Claims] to:

(a) an extension of time for any such delay, if the completion is or will be delayed, under Clause 10.4. [Extension of Time for Completion], and

(b) payment of any such Cost, which shall be included in the Contract Price.

However, before additional Cost is finally agreed or determined under paragraph (b), the Employer (or Consultant) may also review whether other physical conditions in similar parts of Works (if any) were more favorable than could reasonably have been foreseen when the Contractor submitted the Bid. If and to the extent that these more favorable conditions were encountered, the Employer (or Consultant) may proceed in accordance Clause 13.4 [Determinations ]to agree or determine the reductions in Cost which were due to these conditions, which may be included (as deductions) in the Contract Price and Payment Certificates. However, the net effect of all adjustments under paragraph (b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.

The Employer (or Consultant) shall take account of any evidence of the physical conditions foreseen by the Contractor when submitting the Tender, which shall be made available by the Contractor, but shall not be bound by the Contractor's interpretation of any such evidence.

### **15.8. Rights of Way and Facilities**

The Contractor shall incur the Cost of special and/or temporary rights-of-way which are necessary for the Works, including access to the Site. The Contractor shall obtain, at its risk and cost, any additional rights of way or facilities outside the Site which he may require for the purposes of the Works.

### **15.9. Avoidance of Interference**

The Contractor shall not interfere unnecessarily or improperly with:

(c) the convenience of the public, or

(d) the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Employer or of others.

The Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.

### **15.10. Access Route**

The Contractor shall be deemed to have been satisfied as to the availability and suitability of access routes to the Site. The Contractor shall use reasonable efforts to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. These efforts shall include the proper use of appropriate vehicles and routes.

Except as otherwise stated in these Conditions:

(a) the Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes;

(b) the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions;

(c) the Employer shall not be responsible for any claims which may arise from the use or otherwise of any access route;

(d) the Employer does not guarantee the suitability or availability of particular access routes; and

(e) Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

#### **15.11. Transport of Goods**

Unless otherwise stated in Particular Conditions:

(a) the Contractor shall give the Employer not less than ...(21 days' notice) of the date on which any Plant or a major item of other Goods will be delivered to the Site;

(b) the Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works; and

(c) the Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of Goods, and shall negotiate and pay all claims arising from their transport.

#### **15.12. Contractor's Equipment**

The Contractor shall be responsible for all Contractor's Equipment. When brought on to the Site, Contractor's Equipment shall be deemed to be exclusively intended for the execution of the Works. The Contractor shall not remove from the Site any major items of Contractor's Equipment without the consent of the Employer (or the Consultant) However, consent shall not be required for vehicles transporting Goods or Contractor's Personnel off Site.

#### **15.13. Protection of the Environment**

The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.

The Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the values stated in the Specification or prescribed by applicable Laws.

#### **15.14. Electricity, Water and other Services**

The Contractor shall, except as stated below, be responsible for the provision of all power, water and other services he may require.

The Contractor shall be entitled to use for the purposes of the Works such supplies of electricity, water, gas and other services as may be available on the Site and of which details and prices are given in the Employer's Requirements. The Contractor shall, at his risk and cost, provide any apparatus necessary for his use of these services and for measuring the quantities consumed.



The quantities consumed and the amounts due (at these prices) for such services shall be agreed or determined in accordance with Clause 13.2 [Employer's Claims] and Clause 13.4 [Determinations]. The Contractor shall pay these amounts to the Employer.

#### **15.15. Employer's Equipment and Free-Issue Materials (if any)**

The Employer shall make the Employer's Equipment (if any) available for the use of the Contractor in the execution of the Works in accordance with the details, arrangements and prices stated in the Specification. Unless otherwise stated in the Specification:

(a) the Employer shall be responsible for the Employer's Equipment, except that

(b) the Contractor shall be responsible for each item of Employer's Equipment whilst any of the Contractor's Personnel is operating it, driving it, directing it or in possession or control of it.

The appropriate quantities and the amounts due (at such stated prices) for the use of Employer's Equipment shall be agreed or determined in accordance with Clause 13.2 [Employer's Claims] and Clause 13.4 [Determinations]. The Contractor shall pay these amounts to the Employer.

Employer shall supply, free of charge, the "free-issue materials" (if any) in accordance with the details stated in the Employer's Requirements. The Employer shall, at his risk and cost, provide these materials at the time and place specified in the Contract. The Contractor shall then visually inspect them, and shall promptly give notice to the Employer of any shortage, defect or default in these materials. Unless otherwise agreed by both Parties, the Employer shall immediately rectify the notified shortage, defect or default.

After this visual inspection, the free-issue materials shall come under the care, custody and control of the Contractor. The Contractor's obligations of inspection, care, custody and control shall not relieve the Employer of liability for any shortage, defect or default not apparent from a visual inspection.

#### **15.16. Progress Reports**

Unless otherwise stated in the Particular Conditions, monthly progress reports shall be prepared by the Contractor and submitted to the Consultant in ... copies. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within ... days after the last day of the period to which it relates.

Reporting shall continue until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

Each report shall include:

(a) charts and detailed descriptions of progress, including each stage of design, procurement, manufacture, delivery to Site, construction, erection and testing;

(b) photographs showing the status of manufacture and of progress on the Site;

(c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:

- (i) commencement of manufacture,
- (ii) Contractor's inspections,
- (iii) Employer's tests, and
- (iv) shipment and arrival at the Site;
- (d) the details described in [Records of Contractor's Personnel and Equipment];
- (e) copies of quality assurance documents, test results and certificates of Materials;
- (f) list of notices given under Clause 13.2 [Employer's Claims] and notices given under Clause 24.1 [Contractor's Claims];
- (g) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
- (h) comparisons of actual and planned progress, with details of any events or circumstances with may jeopardize the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.

#### **15.17. Security of the Site**

Unless otherwise stated in Particular Conditions:

- (a) the Contractor shall be responsible for keeping unauthorized persons off the Site, and
- (b) authorized persons shall be limited to the Contractor's Personnel and the Employer's Personnel; and to any other personnel notified to the Contractor, by the Employer (or the authorized person), as authorized personnel of the Employer's other contractors on the Site.

#### **15.18. Contractor's Operations on Site**

The Contractor shall confine his operations to the Site, and to any additional areas which may be obtained by the Contractor and agreed by the Engineer as additional working areas. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the Site and these additional areas, and to keep them off adjacent land.

During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish and Temporary Works which are no longer required.

Upon the issue of a Taking-Over Certificate, the Contractor shall clear away and remove, from that part of the Site and Works to which the Taking-Over Certificate refers, all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave that part of the Site and the Works in a clean and safe condition. However, the Contractor may retain on Site,

during the Defects Notification Period, such Goods as are required for the Contractor to fulfil obligations under the Contract.

### **15.19. Training**

The Contractor shall provide personnel of the Employer with training and guidelines to operate and maintain the Works within the scope specified in the Employer's Requirements. If the Contract states that the training shall be provided before taking-over of Works, the Works shall not be deemed to be completed for taking over under Clause 9.1. [Taking Over of Works] until the training is completed.

### **15.20. As-built Documents**

The Contractor shall prepare and update promptly sufficient as-built documents on execution of the Works, indicating accurate location, size, and specifications of the Works in as they have been executed. These documents shall be kept in the Site and only used for the purposes of this Clause. The Employer shall be provided with ... copies before the commencement of the Tests on Completion.

In addition, the Contractor shall provide the Employer with as-built documents of the Works, indicating details of the Works as they have been executed and submit them to the Employer for approval under Article 5 [Requirements for engineering]. The Contractor will receive an acceptance of the Employer in terms of size, system of references, and other relevant details.

Before issuing the Taking-Over Certificate, the Contractor shall provide the Employer with detailed data and as-built documents as required by the Employer. The Works shall not be considered to be completed for the purposes of taking-over under Clause 9.1. [Taking Over of Works] if the Employer does not receive the abovementioned documents.

### **15.21. Operation and Maintenance Manuals**

Prior to the commencement of the Tests on Completion, the Contractor shall submit to the Employer operation and maintenance manuals in substantially sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair Equipment.

The Works shall not be considered to be completed for the purposes of taking-over under Clause 9.1. [Taking Over of Works] until official operation and maintenance manuals and other manuals specified in Employer's Requirements have been submitted to the Employer.

### **15.22. Other relevant issues**

All antiques, coins, antiquities or other relics or geological or archaeological items found on Site will be placed under the preservation and authority of the Employer. The Contractor shall cause his Personnel or others not to take away or damage any items found.

Upon discovery any of aforesaid items, the Contractor shall immediately give notice to the Employer for consideration. If the Contractor suffers delay and/or incurs Cost from complying with the Engineer's instructions under Clause 18.2 [Suspension of Work] and/or from resuming the work, the Contractor shall give notice to the Employer (or the Consultant) and shall be entitled subject to Clause 24.1 [Contractor's Claims] to:

(a) an extension of time for any such delay if the completion is or will be delayed under Clause 10.4. [Extension of Time for Completion]

(b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Employer [the Consultant] shall proceed in accordance with Clause 13.4 [Determinations] to agree or determine these matters.

15.23. Other rights and obligations as prescribed by law.

## **ARTICLE 16. ADJUSTMENTS AND VARIATIONS**

### **16.1. Adjustments**

16.1.1. The Contract Price shall be adjusted upon any changes to the quantities of any item of work included in the Contract. In case of any changes to the quantities of any item of work included in the Contract, the Parties shall make an additional Annex, in which quantities of additional work and price shall be specified.

16.1.2. In case of force majeure, Article 23 [Risks and Force Majeure] shall apply.

### **16.2. Variations**

Variations may be initiated by the Employer (or the Consultant) at any time prior to issuing the Taking-Over Certificate for the Works under Clause 9.1. [Taking Over of Works] either by an instruction or by a request to submit a proposal.

The Contractor shall execute each Variation or remedy the work solely with consent of the Employer (or the Consultant). Any amendment shall not reduce or invalidate the Contract's validity.

If the Contractor fails to make any changes required by the Employer, the Contractor shall immediately give notice to the Employer (or the Consultant) stating (with supporting particulars) that (a) the Contractor cannot readily obtain necessary equipment required for the Variation, (ii) such Variation triggers a substantial change in the sequence or progress of the Works or (iii) such changes will badly affect the achievement of performance guarantees. Upon receipt of this notice, the Employer (or the Consultant) shall either confirm or vary the instruction.

### **16.3. Variation Procedure**

If the Employer (or the Consultant) requests a Variation or the Contractor proposes a Variation, the Contractor shall respond in writing, either by giving reasons why he cannot comply (if this is the case) or by submitting:

a) a description of the proposed work to be performed and a program for its execution,

b) the Contractor's proposal for any necessary modifications to the performance schedule and time for completion under Article 10 [Performance Schedule], and

c) the Contractor's proposal for adjustments of Contract Price.

The Employer (or the Consultant) shall, as soon as practicable after receiving such proposal, respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response from the Employer (or the Consultant).

## **ARTICLE 17. SUBCONTRACTORS**

### **17.1. General provisions of Subcontractors**

17.1.1. The Contractor shall not subcontract the whole of the Works and shall be responsible for the quality, schedule and safety of the whole of the Works or defects of any Subcontractor.

17.1.2. The Contractor shall not be required to obtain consent of the Employer (or the Consultant) to suppliers solely of Materials, or to a subcontract for which the Subcontractor is named in the Contract.

17.1.3. the prior consent of the Employer (or the Consultant) to other proposed Subcontractors.

17.1.4. The Contractor shall give the Employer (or the Consultant) not less than ... days' notice of the intended date of commencement of such work on Site.

17.1.5. Each subcontract shall include provisions which would entitle the Employer to require the subcontract to be assigned to the Employer under Clause 17.2. [Assignment of Benefit of Subcontract] (if or when applicable), or in the event of termination under Clause 18.7. [Termination by Employer].

### **17.2. Assignment of Benefit of Subcontractor**

If a Subcontractor's obligations extend beyond the expiry date of the relevant Defects Notification Period and the Employer (or the Consultant), prior to this date, instructs the Contractor to assign the benefit of such obligations to the Employer, then the Contractor shall do so. Unless otherwise stated in the assignment, the Contractor shall have no liability to the Employer for the work carried out by the Subcontractor after the assignment takes effect.

### **17.3. Definition of "Nominated Subcontractors"**

For the purpose of this Contract, "Nominated Subcontractor" means a Subcontractor:

(a) who is nominated to act as a Subcontractor for the Contractor by the Employer to carry out a portion of the work with high technical requirements or when the Contractor fails to meet the performance schedule after receiving the Employer's request, or

(b) whom the Employer (or the Consultant) instructs the Contractor to employ as a Subcontractor.

### **17.4. Objection to Nomination**

The Contractor shall not be under any obligation to employ a nominated Subcontractor against whom the Contractor raises reasonable objection by notice to the Employer (or the Consultant) as soon as practicable, with supporting particulars. An objection shall be deemed reasonable if it arises from (among other things) any of the following matters, unless the Employer agrees in writing to indemnify the Contractor against and from the consequences of the matter:

(a) there are reasons to believe that the Subcontractor does not have sufficient competence, resources or financial strength;

(b) the nominated Subcontractor does not accept to indemnify the Contractor against and from any negligence or misuse of Goods by the nominated Subcontractor, his agents and employees; or

(c) the nominated Subcontractor does not accept to enter into a subcontract which specifies that, for the subcontracted work (including design, if any), the nominated Subcontractor shall:

(i) undertake to the Contractor such obligations and liabilities as will enable the Contractor to discharge his obligations and liabilities under the Contract, and

(ii) indemnify the Contractor against and from all obligations and liabilities arising under or in connection with the Contract and from the consequences of any failure by the Subcontractor to perform these obligations or to fulfil these liabilities, and

### **17.5. Payment to nominated Subcontractors**

The Contractor shall pay to the nominated Subcontractor the amounts to be due in accordance with the subcontract. These amounts plus other charges shall be included in the Contract Price in accordance with sub-paragraph (b) of Clause 13.5 [Provisional Sums], except as stated in Clause 17.6 [Evidence of Payments].

### **17.6. Evidence of Payments**

Before issuing a Payment Certificate which includes an amount payable to a nominated Subcontractor, the Employer (or the Consultant) may request the Contractor to supply reasonable evidence that the nominated Subcontractor has received all amounts due in accordance with previous Payment Certificates, less applicable deductions for retention or otherwise. Unless the Contractor:

(a) submits this reasonable evidence to the Engineer, or

(b) satisfies the Employer (or the Consultant) in writing that he Contractor is reasonably entitled to withhold or refuse to pay these amounts, and submits to the Consultant reasonable evidence that the nominated Subcontractor has been notified of the Contractor's entitlement,

Then the Employer may (at his sole discretion) pay, direct to the nominated Subcontractor, part or all of such amounts previously certified (less applicable deductions) as are due to the nominated Subcontractor and for which the Contractor has failed to submit the evidence described in sub-paragraphs (a) or (b) above. The Contractor shall then repay, to the Employer, the amount which the nominated Subcontractor was directly paid by the Employer.

## **ARTICLE 18. SUSPENSION OR TERMINATION BY EMPLOYER**

### **18.1. Notice to Correct**

If the Contractor fails to carry out any obligation under the Contract, the Employer may by notice require the Contractor to make good the failure and to remedy it within ... days.

## **18.2. Suspension of Work**

The Employer (or the Consultant) may at any time instruct the Contractor to suspend progress of part or all of the Works if the Contractor fails to meet requirements for quality, progress, and labor safety under the Contract. During such suspension, the Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.

The Employer (or the Consultant) may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Contractor, the Contractor shall suffer the consequences of the suspension.

## **18.3. Consequences of Suspension**

If the Contractor suffers delay and/or incurs Cost from complying with the Engineer's instructions under Clause 18.2 [*Suspension of Work*] and/or from resuming the work, the Contractor shall give notice to the Employer (or the Consultant) and shall be entitled subject to Clause 22.1 [*Contractor's Claims*] to:

(a) an extension of time for any such delay if the completion is or will be delayed under Clause 10.4. [*Extension of Time for Completion*] and

(b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Employer [the Consultant] shall proceed in accordance with Clause 13.4 [*Determinations*] to agree or determine these matters.

The Contractor shall not be entitled to an extension of time for, or to payment of the incurred in, making good the consequences of the Contractor's faulty.

## **18.4. Payment for Plant and Materials in Event of Suspension**

The Contractor shall be entitled to payment of value (as at the date of suspension) of Plant and Materials which have not been delivered to Site, if:

a) the work on Plant or delivery of Plant and/or Materials has been suspended for more than ... days, and

b) the Contractor has marked the Plant and/or Materials as the Employer's property in accordance with the Employer [or the Consultant]'s instructions.

## **18.5. Prolonged Suspension**

If the suspension under Clause 18.2 [*Suspension of Work*] has continued for more ... days, the Contractor may request the Employer [the Consultant]'s permission to proceed. If the Employer [the Consultant] does not give permission within ... days after being requested to do so, the Contractor may, by giving notice to the Employer treat the suspension as an omission. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Clause 19.2 [*Termination by Contractor*].

## **18.6. Resumption of Work**

After the permission or instruction to proceed is given, the Contractor and the Parties shall jointly examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension.

### **18.7. Termination by Employer**

The Employer shall be entitled to terminate the Contract if the Contractor:

(a) fails to comply with Clause 11.1 [Performance Security] or with a notice under Clause 18.1 [Notice to Correct],

(b) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract or continual ... days of non-performance of the work under the Contract,

(c) without reasonable excuse fails to proceed with the Works in accordance with Clause 10 [Commencement, Delays and Suspension],

(d) subcontracts the whole of the Works or assigns the Contract without the required agreement,

(e) becomes bankrupt.

In any of these events or circumstances, the Employer may, upon giving ... days' notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in the case of sub-paragraph (e), the Employer may by notice terminate the Contract immediately.

The Employer's election to terminate the Contract shall not prejudice any other rights of the Employer, under the Contract.

The Contractor shall then leave the Site and deliver any required Goods, all Contractor's Documents, and other design documents made by or for him, to the Employer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.

After termination, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.

The Employer shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Employer, these items may be sold by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

### **18.8. Valuation at Date of Termination**

As soon as practicable after a notice of termination under Clause 18.7 [ Termination by Employer] has taken effect, the Employer shall proceed in accordance with Clause 13.4 [ Determinations ] to



agree or determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.

### **18.9. Payment after Termination**

After a notice of termination under Clause 18.7 [Termination by Employer] has taken effect, the Employer may:

(a) proceed in accordance with Clause 13.2 [Employer's Claims].

(b) withhold further payments to the Contractor until the costs of design (if any), execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established, and/or

(c) recover from the Contractor any losses and damages incurred by the Employer and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Clause 18.8 [Valuation at Date of Termination]. After recovering any such losses, damages and extra costs, the Employer shall pay any balance to the Contractor.

### **18.10. Employer's Entitlement to Termination for Convenience**

The Employer shall be entitled to terminate the Contract, at any time for the Employer's convenience, by giving notice of such termination to the Contractor. The termination shall take effect ... days after the later of the dates on which the Contractor receives this notice or the Employer returns the Performance Security. The Employer shall not terminate the Contract under this Clause in order to execute the Works himself or to arrange for Works to be executed by another contractor.

After this termination, the Contractor shall proceed in accordance with Clause 19.3 [Cessation of Work and Removal of Contractor's Equipment] and shall be paid accordance with Clause 18.9 [Payment on Termination].

## **ARTICLE 19. SUSPENSION AND TERMINATION BY CONTRACTOR**

### **19.1. Contractor's Entitlement to Suspend Work**

If the Employer [the Consultant] fails to comply with Clause 12.3 [Payment], the Contractor may, after giving not less than ... days' notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

The Contractor's action shall not prejudice his entitlements to financing charges under Section 12.3.5 [Delayed Payment] and to termination under Clause 19.2 [Termination by Contractor].

If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Clause and in the above notice) before a notice of termination, the Contractor shall resume normal working as soon as reasonably practicable.

If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Clause, the Contractor shall give notice to the Employer and shall be entitled subject to Clause 24.1 [Contractor's Claims] to:

(a) an extension of time for any such delay, if the completion is or will be delayed, under Clause 10.4. [Extension of Time for Completion], and

(b) payment of any such Cost plus profit, which shall be included in the Contract Price.

After receiving this notice, the Employer shall proceed in accordance with Clause 13.4. [Determinations] to agree or determine these matters.

## **19.2. Termination by Contractor**

The Contractor shall be entitled to terminate the Contract if:

(a) the Contractor does not receive the amount due under an Interim Payment Certificate within ... days after the expiry of the time stated in Point 12.3.2 [Payment] within which payment is to be made (except for deductions in accordance with Clause 13.2 [Employer's Claims].

(b) the Employer substantially fails to perform his obligations under the Contract.

(c) The Contractor suspends the work in continual ... days at the Employer's faults.

(d) a prolonged suspension affects the whole of the Works as described in Clause 18.5 [Prolonged Suspension], or

(e) the Employer becomes bankrupt or goes into liquidation.

In any of these events or circumstances, the Contractor may, upon giving ... days' notice to the Employer, terminate the Contract. However, in the case of paragraph (e), the Employer may by notice terminate the Contract immediately.

## **19.3. Cessation of Work and Removal of Contractor's Equipment**

After a notice of termination under Clause 18.10 [Employer's Entitlement to Termination for Convenience], or Clause 19.2 [Termination by Contractor] has taken effect, the Contractor shall promptly:

(a) cease all further work, except for such work as may have been instructed by the Employer for the protection of life or property or for the safety of the Works.

(b) hand over Contractor's Documents, Plant, Materials and other work, for which the Contractor has received payment, and

(c) remove all other Goods from the Site, except as necessary for safety, and leave the Site.

## **19.4. Payment on Termination**

After a notice of termination under Clause 19.2 [Termination by Contractor] has taken effect, the Employer shall promptly:

(a) return the Performance Security, Bank Guarantee for Advance Payment to the Contractor and other guarantees,

(b) pay the Contractor in accordance with Clause 18.9 [Payment on Termination], and

(c) pay to the Contractor the amount of any loss or damage sustained by the Contractor as a result of this termination.

## **ARTICLE 20. INSURANCE AND GUARANTEE**

### **20.1. Insurance**

Parties shall purchase compulsory insurance as prescribed by law; and other voluntary insurance agreed upon by Parties.

### **20.2. Warranty**

After receiving the Taking-Over Certificate for the Works and Sections to be put in use, the Contractor shall:

- Offer warranty for the Works of special class or class 1 within ... (not less than 24 months) months with the warranty amount of 3% of Accepted Contract Amount; or offer warranty for the Works of class 2, 3, 4 and other Works within ... (not less than 12 months) months with the warranty amount of 5% of Accepted Contract Amount; and offer warranty for equipment as recommended by manufacturers;

- Provide the Employer with a warranty security within ... days from the day on which the Taking-Over Certificate for the Works and Sections to be put into use is received. The warranty security shall remain valid until the expiry of the warranty period and be issued by a natural or juridical person using the form prescribed in Appendix No. ... [Forms] or another form subject to the Employer's consent;

- In the warranty period, the Contractor shall remedy any defects by a cause for which the Contractor is responsible in the course of executing the Works at the Contractor's costs. The remedying defects shall begins not later than ... days after receiving the Employer's notice of such defects. Beyond the expiry of the aforementioned period, if the Contractor fails to begin remedying defects, the Employer shall be entitled to employ another Contractor (a third party) to carry out the work and the Contractor shall pay to the Employer the costs reasonably incurred in remedying the defect by the third party. The Contractor shall pay to the third party within ... days after receiving such notice of the Employer. Upon expiry of the payment period, if the Contractor fails to pay these costs, the Employer shall subject to Article 24 [Claims and Dispute Settlement] require the Contractor to make payment.

## **ARTICLE 21. DEFECTS LIABILITY**

### **21.1. Completion of Outstanding Work and Remedying Defects**

In order that the Works and Contractor's Documents, and each Section, shall be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the relevant Defects Liability Period, the Contractor shall:

(a) complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Employer, and

(b) execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Employer on or before the expiry date of the Defects Notification Period for the Works or Section.

If a defect appears or damage occurs, the Contractor shall be notified by the Employer.

### **21.2. Cost of Remedying Defects**

All work referred to in paragraph (b) of Clause 21.1 [Completion of Outstanding Work and Remedying Defects] shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:

(b) Plant, Materials or workmanship not being in accordance with the Contract,

(c) by the Contractor to comply with any other obligation.

If and to the extent that such work is attributable to any other cause, the Contractor shall be notified promptly by the Employer, and Clause 16.3 [Variation Procedure] shall apply.

### **21.3. Extension of Defects Liability Period**

The Employer shall be entitled subject to Clause 13.2 [Employer's Claims] to an extension of Defects Notification Period or the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or by reason of damage attributable to the Contractor. However, a Defects Notification Period shall not be extended by more than .. years (agreed by Parties).

If delivery and/or erection of Plant and/or Materials was suspended under Clause 18.2. [Suspension of Work] or Clause 19.1 [Contractor's Entitlement to Suspend Work], the Contractor's obligations under this Clause shall not apply to any defects or damage occurring more than (two) years after the Defects Notification Period would otherwise have expired.

### **21.4. Failure to Remedy Defects**

If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the Employer, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.

If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor under Clause 21.2 [Cost of Remedying Defects], the Employer may (at his option):

(a) carry out the work himself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work; and the Contractor shall subject to Clause 13.2 [Employer's Claims] pay to the Employer the costs reasonably incurred by the Employer in remedying the defect or damage;

(b) determine a reasonable reduction in the Contract Price in accordance with Clause 13.4 [Determinations]; or

(c) if the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

### **21.5. Removal of Defective Work**

If the defect or damage cannot be remedied expeditiously on the Site and the Employer gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Contractor to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security.

### **21.6. Further Tests**

If the work of remedying of any defects or damage may affect the performance of the Works, the Engineer may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within ... days after the defect or damage is remedied.

These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Clause 21.2 [Cost of Remedying Defects], for the cost of the remedial work.

### **21.7. Contractor to Search**

The Contractor shall, if required by the Employer [the Consultant], search for the cause of any defect, under the direction of the Consultant. Unless the defect is to be remedied at the cost of the Contractor under Clause 21.2 [Cost of Remedying Defects], the Cost of the search plus profit shall be agreed or determined by the Employer in accordance with Clause 13.4 [Determinations] and shall be included in the Contract Price.

## **ARTICLE 22. REWARDS AND PENALTIES FOR BREACH OF CONTRACT AND LIABILITIES FOR DAMAGE**

### **22.1. Reward for early completion**

If the Contractor succeeds to complete the project ahead of schedule specified in the contract, the Employer shall consider rewarding a certain amount of money for each day/week/month...the work is completed ahead of schedule equivalent to ...% of contract price, but not exceeding ....

### **22.2. Penalties for breaches of agreement:**

If the Contractor violates Performance Schedule not caused by any force majeure events or through no fault of the Employer, the Contractor shall face a fine of .... (1) % Contract Price for each late week. Total fine value does not exceed 12% of the violating part of Contract.

If the Contractor violates term of quality in the Contract and that of regulations of law in force, the Contractor must demolish and reconstruct relevant part of Works. The Contractor shall incur Cost of demolition and reconstruction, and any other damage. In case of late completion of the Works, the Contractor shall also liable for a fine of breaking the said Performance Schedule.

### **22.3. Indemnities**

Apart from the fine amounts for breach of Contract under Clause 22.2 [*Penalties for breaches of Contract*], the Parties shall take responsibility for breaches of construction contract as prescribed in Article 43 of Decree No. 37/2015/ND-CP dated April 22, 2015 of the Government on guidelines for construction contracts.

### **22.4. Contractor's Care of the Works**

The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under Clause 9.1. [*Taking Over of Works and Sections*]) for the Works, when responsibility for the care of the Works shall pass to the Employer. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any Section or part of the Works, responsibility for the care of the Section or part shall then pass to the Employer.

After responsibility has accordingly passed to the Employer, the Contractor shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Clause 23.1 [*Risks and Force Majeure*], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.

The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking- Over Certificate has been issued and which arose from a previous event for which the Contractor was liable.

### **22.5. Intellectual and Industrial Property Rights**

In this Clause, "infringement" means an infringement (or alleged infringement) of Property Rights any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.

Whenever a Party does not give notice to the other Party of any claim within 28 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Clause.

The Employer shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:

(a) an unavoidable result of the Contractor's compliance with the Contract, or

(b) a result of any Works being used by the Employer:

(i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or

(ii) in conjunction with anything not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Commencement Date or is stated in the Contract.

The Contractor shall indemnify and hold the Employer harmless against and from any other claim which arises out of or in relation to (i) the design, manufacture, or construction of the Works, or (ii) use of Contractor's Equipment or (iii) use of the Works.

If a Party is entitled to be indemnified under this Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.

## **22.6. Limitation of Liability**

Total liability of the Contractor to the Employer, under or in connection with the act other than under Clause 15.14 [Electricity, Water and Gas], Clause 15.15. [Employer's Equipment and Free-Issue Materials], Clause 22.3. [Indemnities] and Clause 22.5. [Intellectual and Industrial Property Rights], shall exceed ...(the sum resulting from the application of a multiplier (less or greater than one) to the Accepted Contract Amount.

This Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

## **ARTICLE 23. RISKS AND FORCE MAJEURE**

### **23.1. Risks and Force Majeure**

a) Risk means the risk which negatively affects the performance of the Contract.

b) Force Majeure means a risky event occurring objectively which is unpredictable before entering into the Contract and could not reasonably overcome despite all the necessary measures and possibilities, namely: earthquake, hurricane, flood, tsunami, conflagration, hostilities or other force majeure events.

c) If a Party faces force majeure circumstances, then it shall given notice to the other Party as soon as practicable.

### **23.2. Consequences of Risks**

If and to the extent that any of the risks listed in Clause 23.1 above results in loss or damage to the Works, Real Estate, Equipment or Contractor's Documents, the Contractor shall promptly give notice to the Employer and shall rectify this loss or damage to the extent required by the Employer.

If the Contractor suffers delay and/or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to the Employer and shall be entitled subject to Clause 24.1 [Contractor's Claims] to:

a) an extension of time for any such delay if the completion is or will be delayed under Clause 10.4. [Extension of Time for Completion];

b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this further notice, the Employer shall proceed to agree or determine these matters.

### **23.3. Responsibilities of the Contractor for risks**

The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under Article 9 [Taking Over of Works and Sections] for the Works, when responsibility for the care of the Works shall pass to the Employer. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any Section or part of the Works, responsibility for the care of the Section or part shall then pass to the Employer.

After responsibility has accordingly passed to the Employer, the Contractor shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Clause 23.1 [Risks and Force Majeure], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.

The Contractor shall also be liable for any loss or damage which occurs after a Taking- Over Certificate has been issued and which arose from a previous event for which the Contractor was liable.

### **23.4. Indemnities**

The Contractor shall indemnify and hold harmless the Employer against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

(a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the Contractor's execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents, and

b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss:

- arises out of or in the course of or by reason of the Contractor's execution and completion of the Works and the remedying of any defects;



- attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer's Personnel, or anyone directly or indirectly employed by any of them.

The Employer shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of bodily injury, sickness, disease or death, which is attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents.

### **23.5. Notice of Force Majeure**

If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given as soon as practicable after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

### **23.6. Consequences of Force Majeure**

If the Contractor is prevented from performing its substantial obligations under the Contract by Force Majeure of which notice has been given under Clause 23.5. [Notice of Force Majeure], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Clause 24.1 [Contractor's Claims] to:

- a) an extension of time for any such delay if the completion is or will be delayed under Clause 10.4. [Extension of Time for Completion];
- b) if the event or circumstance is of the kind described in Points (c) Clause 23.1 [Risks and Force Majeure] and payment of any such Cost.

After receiving this further notice, the Employer shall proceed to agree or determine these matters.

### **23.7. Termination due to Force Majeure, Payment and Release**

If the execution of substantially all the Works in progress is prevented for a continuous period of ... days by reason of Force Majeure of which notice has been given under Clause 23.5. [Notice of Force Majeure], or for multiple periods which total more than ... days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect ... 7 days after the notice is given.

Upon such termination, the Employer shall issue the Contractor with a Payment Certificate which shall include:

- a) the amounts payable for any work carried out for which a price is stated in the Contract;

b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;

c) other Costs or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractor in the expectation of completing the Works;

d) the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works;

e) the Cost of compensation of the Contractor's staff and labor employed wholly in connection with the Works at the date of termination.

## **ARTICLE 24. CLAIMS AND DISPUTE SETTLEMENT**

### **24.1. Contractor's Claims**

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Employer, describing the event or circumstances giving rise to claim. The notice shall be given as soon as practicable, and not later than ... days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of ... days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Clause shall apply.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim. Without admitting the Employer's liability, the Employer may, after receiving any notice under this Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Employer to inspect all these records, and shall (if instructed) submit copies to the Employer.

Within ... days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Employer, the Contractor shall send to the Employer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

(a) this fully detailed claim shall be considered as interim;

(b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Employer may reasonably require; and

(c) the Contractor shall send a final claim within ... days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Employer.

Within ... days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Employer and approved by the Contractor, the Employer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period.

Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

The Employer shall proceed in accordance with Clause 13.4 [*Determinations*] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Clause 10.4. [*Extension of Time for Completion*], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

The requirements of this Clause are in addition to those of any other Clauses which may apply to a claim. If the Contractor fails to comply with this or another Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Clause.

#### **24.2. Appointment of the Dispute Board (to be used when the Parties agree to settle disputes through reconciliation by Dispute Board)**

Disputes shall be referred to a Dispute Board (hereinafter referred to as DB) for decision in accordance with Clause 24.4 [*Obtaining Dispute Board's Decision*]. The Parties shall appoint a DB ... days after a Party give notice to the other Party of its intention to refer to a DB for dispute settlement.

The DB shall comprise, as stated in the Particular Conditions, either one or three suitably qualified persons ("the members"). If the number is not so stated and the Parties do not agree otherwise, the DB shall comprise three persons.

If the DB comprises three persons, each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.

However, if a list of potential members has been agreed by the Parties and is included in the Contract, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the DB.

The agreement between the Parties and either the sole member or each of the three members shall incorporate by reference the General Conditions of Dispute Board Agreement contained in the Appendix to these General Conditions, with such amendments as are agreed between them.

The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DB consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

If at any time the Parties so agree, they may appoint a person or persons suitable for replacing one or multiple DB's members. Unless otherwise agreed by Parties, they appointment shall take affect if a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment. A replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Clause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DB (including each member) shall expire when the discharge shall have become effective.

### **24.3. Failure to Agree on the Composition of the Dispute Board**

If any of the following conditions apply, namely:

(a) the Parties fail to agree upon the appointment of the sole member of the DB by the date stated in Clause 24.2;

(b) either Party fails to nominate a member (for approval by the other Party), or fails to approve a member nominated by the other Party, of a DB of three persons by such date;

(c) the Parties fail to agree upon the appointment of a third member (to act as chairman) of the DB by such date;

(d) the Parties fail to agree upon the appointment of a replacement person within ... days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, then the appointing entity or official named in the Particular Conditions shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.

### **24.4. Obtaining Dispute Board's Decision**

If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Employer, either Party may refer the dispute in writing to the DB for its decision, with copies to the other Party and the Employer under Clause 24.2. [Appointment of Dispute Board] and Clause 24.3. [Failure to Agree on Dispute Board Such reference shall state that it is given under this Clause.

For a DB of three persons, the DB shall be deemed to have received such reference on the date when it is received by the chairman of the DB.

Both Parties shall promptly make available to the DB all such additional information, further access to the Site, and appropriate facilities, as the DB may require for the purposes of making a decision on such dispute. The DB shall be deemed to be not acting as arbitrator(s).

Within .. days after receiving such reference or provisional sums in accordance with Appendix No. ... [Dispute Board]. Conditions of the Dispute Board Agreement, within any later period, or within such other period as may be proposed by the DB and approved by both Parties, the DB shall give its decision, which shall be reasoned and shall state that it is given under this Clause. However if no Party makes full payment as indicated in invoices submitted itself under Appendix No. ... [Dispute Board]. Dispute Board is not required to make a decision until these invoices are fully paid. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.

If either Party is dissatisfied with the DB's decision, then either Party may, within 28 ... after receiving the decision, give a Notice of Dissatisfaction to the other Party . If the DB fails to give its decision within the period of ... days (or as otherwise approved) after receiving such reference, then either Party may, within ... days after this period has expired, give a Notice of Dissatisfaction to the other Party.

In either event, this Notice of Dissatisfaction shall state that it is given under this Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in Clause 24.7 [Failure to Comply with Dispute Board's Decision] and Clause 24.8 [Expiry of Dispute Board's Appointment], neither Party shall be entitled to commence lawsuit or arbitration of a dispute unless a Notice of Dissatisfaction has been given in accordance with this Clause.

If the DB has given its decision as to a matter in dispute to both Parties, and no Notice of Dissatisfaction has been given by either Party within ... days after it received the DB's decision, then the decision shall become final and binding upon both Parties.

#### **24.5. Amicable Settlement**

Where a Notice of Dissatisfaction has been given under Clause 24.4. [Obtaining Dispute Board's Decision], both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a Notice of Dissatisfaction should move to commence lawsuit or arbitration after the ... day from the day on which a Notice of Dissatisfaction was given, even if no attempt at an amicable settlement has been made.

#### **24.6. Dispute settlement by Court or Arbitration**

Any dispute between the Parties arising out not settled amicably and in respect of which the DB's decision (if any) has not become final and binding shall be finally settled by Court or Arbitration. In this case, the procedures for settlement of disputes shall be consistent with regulations of law or arbitration rules.

#### **24.7. Failure to Comply with Dispute Board's Decision**

In the event that:

(a) no Party gives a Notice of Dissatisfaction in a given time prescribed in Clause 24.4 [Obtaining Dispute Board's Decision].

(b) the Dispute Board's decision (if any) is final and binding.

(c) a Party fails to comply with the Dispute Board's decision, then the other Party may refer the failure itself to arbitration or a court under Clause 24.6 [Dispute settlement at Court or Arbitration], Clause 24.4. [Obtaining Dispute Board's Decision] and 24.5. [Amicable Settlement] shall not apply to this reference.

#### **24.8. Expiry of Dispute Board's Appointment**

If a dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works and there is no DB in place, whether by reason of the expiry of the DB's appointment or otherwise:

(a) Clause 24.4. [Obtaining Dispute Board's Decision] and Clause 24.5. [Amicable Settlement] shall not apply, and

(b) the dispute may be referred directly to arbitration or court under Clause 24.6. [Dispute settlement at Court or Arbitration].

### **ARTICLE 25. FINAL STATEMENT AND COMPLETION**

#### **25.1. Final Statement**

Within ... days after receiving the Taking-Over Certificate and a Performance Certificate issued by the Employer, the Contractor shall submit to the Employer ... copies of a draft final statement at completion with supporting documents showing in detail in a form approved by the Employer, showing the value of all work done in accordance with the contract, any further sums which the Contractor considers to be due to him, and other agreements, including:

(a) Taking-Over Certificate for the whole of the Works under scope of the Contract;

(b) Certificate of additional quantities of any item of work (if any) beyond the scope of the Contract;

(c) calculations of Statement at completion (hereinafter referred to as Statement A-B), clarifying paid sums and outstanding sums payable to the Contractor by the Employer;

(d) as-built documents, logs of executing the Works;

(e) Other documents (as agreed in the Contract, if any).

If the Employer disagrees or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Employer may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall prepare and submit to the Employer the final statement as agreed.

However if, following discussions between the Employer and the Contractor and any changes to the draft final statement which are agreed, the Employer shall make payments as specified in the Final Statement in accordance with Clause 12.3. [Payment].

When submitting the Final Statement, the Contractor shall submit a discharge which confirms that the total of the Final Statement represents full and final settlement of all money due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective when the Contractor has received the Performance Security and the outstanding balance of this total, in which event the discharge shall be effective on such date.

The Employer shall subject to Clause 12.3. [Payment] pay to the Contractor total outstanding sums after deducting total sums to which the Employer is entitled under Clause 13.2. [Employer's Claims].

### **25.2. Cessation of Employer's Liability**

The Employer shall not be liable to the Contractor for any matter or thing under or in connection with the Contract, except to the extent that the Contractor shall have included an amount expressly for it:

a) in the Final Statement and also

b) (except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statement at completion described in Clause 25.1. [Statement at Completion].

However, this Clause shall not limit the Employer's liability under his indemnification obligations, or the Employer's liability in any case of fraud, deliberate default or reckless misconduct by the Employer.

### **25.3. Completion**

The Parties shall conduct the completion within ... days but not exceeding 90 days from the date on which:

a) They has fulfilled obligations completely under the Contract;

b) The Contract is terminated under Clause 18.7. [Termination by Employer] or Clause 19.2. [Termination by Contractor] or the Contract is annulled as prescribed by law.

## **ARTICLE 26. GENERAL PROVISIONS**

26.1. Both Parties commit to comply with terms and conditions in this Contract. This Contract consists of ... pages, and ..... Appendices which are made in ... copies in Vietnamese having the same legal effect. The Employer shall keep ... copies in Vietnamese. The Contractor ... copies in Vietnamese (in case of using at least two languages, the number of Contract in other languages shall be specified).

26.2. This Contract takes effect from .... (or at the time agreed by the Parties) and after the Employer receives the Performance Security under Clause 11.1. [Performance Security].

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**CONTRACTOR'S REPRESENTATIVE**  
(signatures and seals, if any, of all JV's  
Parties)

**EMPLOYER'S REPRESENTATIVE**

APPENDIX 1

PAYMENT REQUEST

[Date].....

**Project's name:**

**Name/number of Contract:**

**Employer:**

**Contractor:**

**Payment installment No.:**

According to the quantity of work that has been taken over, the Contractor requires the Employer to make payment as follows:

No.	Item	Unit	Amount (VND)	Notes
1	2	3	4	5
1	Value of quantity of work done under Contract (specified in Appendix 2)			
2	Value of quantity of additional work beyond the Contract (specified in Appendix 3)			
3	Reduction of Advance Payment (under Contract)			
4	Value of payment required (1+2-3)			





	<b>Total</b>							

In words:

-

**Contractor**

*(Signature, full name, position and seal)*

**Employer**

*(Signature, full name, position and seal)*

-

**APPENDIX 3**

**SCHEDULE OF ADDITIONAL QUANTITIES OF WORK BEYOND THE SCOPE OF CONTRACT**

[Date].....

*Project's name*

*Name/number of Contract:*

*Employer:*

*Contractor:*

*Payment installment No.:*

*Bases:*

No.	Description	Unit	Additional	Unit (VND)	Amount (VND)	Notes
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			quantity	Under Contract	Additional Unit	Under Contract	Additional Unit	
1	2	3	4	5	6	7	8	9
	<b>Total</b>							

In words:

-

**Contractor**  
*(Signature, full name, position)*

**Employer**  
*(Signature, full name, position)*

-

Notes: column (5) and (7) is used in case the Parties agree to use the Unit in the Contract to apply any work arising beyond the scope of the Contract and any work arising in similar nature.