

“Section Two”

Contract General Terms and Conditions

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General Conditions

(Chapter One)

Definitions and General Provisions

Article (1): Definitions and Interpretations

1-1: The following words and expressions shall have the meanings ascribed thereto, unless the context requires otherwise:

A- Employer (First Party):

It shall mean the administrative entity that invites for submission of bids to execute the (works) or any other statutory representative or successor to it.

B- Contractor (Second Party):

It shall mean the natural or legal person who has been awarded the contract, including its representative, successor and replacement and it shall be approved by the employer.

C- Contractor's Representative:

It shall mean the person nominated by the contractor to represent it in following up the contractual works.

D- Contract:

It shall mean the main contract document, the general and private conditions, documents, appendices, plans, drawings, specifications, BOQs, requirements and obligations pursuant to which the works shall be executed.

E- Main Contract Document:

It shall mean the main contract agreement including the contract elements, basis and documents signed by both parties.

F- Engineer:

It shall mean the natural or legal person appointed by the employer to technically supervise the site and the offices to ensure the specific quality of works in accordance with the contract terms and conditions, plans and specifications.

G- Engineer's Representative:

It shall mean any resident engineer or works controller appointed by the engineer to follow up the technical supervision of the site. He shall perform his tasks according to the powers entrusted to him and notified to the contractor in writing by the engineer.

H- Works:

They shall mean all the works, temporary or permanent to be executed under the contract.

I- Temporary Works:

They shall mean non-permanent works of any type, and which can be removed, replaced or cancelled during or after execution, except for the contractor's equipment required in the site for the purpose of executing, completing and repairing the permanent works.

J- Contract Term:

It shall mean the period of time specified in the contract for works execution, completion and delivery. It may be expressed in days, weeks, months or years. It shall include any related extensions duly approved by the First Party. Vacations and public holidays shall be deemed a part of the contract term (unless otherwise specified in the contract).

K- Construction Equipment:

It shall mean the machinery, tools and all what shall be used to execute the temporary or permanent works. This shall not include the materials or items allocated as a part of the permanent works.

L- Plans:

They shall mean the plans mentioned in the contract and any modifications thereto instructed in writing by the contractor from time to time during execution.

M- Site:

It shall mean lands and places on, in, through or under which works are being executed and any other lands and places provided by the employer for the purpose of the contract execution, as well as any places identified in the contract as a part of the site.

N- Submissions

They shall mean any detailed information or practical proposals provided in writing

for approval by the contractor to the engineer concerning the project execution.

O- Approvals

They shall mean any approvals given in writing by the engineer or employer to the contractor based on the detailed information or practical proposals provided by the latter concerning the project execution, including written confirmations successive to any previous verbal approvals.

P- Project Manager:

It shall mean the natural or legal person appointed by the employer, on its behalf, to procedurally and executively manage the project pursuant to the powers and responsibilities assigned by the employer.

Q- Subcontractor:

It shall mean any natural or legal person nominated in the contract as a subcontractor or any person appointed and approved as a subcontractor to execute one or more sections of the works, including legal successors.

R- Maintenance Warranty:

It shall mean the maintenance period specified in the contract (one Gregorian year) starting from the works initial takeover date until the final takeover. During this period, the contractor shall maintain and repair any defects that may arise in the executed works pursuant to the contract terms and conditions.

S- Decennial Liability Insurance:

It shall mean the (ten years) period specified in the contract starting from the works initial takeover date. During this period, the contractor shall guarantee the repair of whole or partial destruction of what has been constructed if such destruction is found to be caused by execution defects.

T- Physical Difficulties:

They shall mean the natural physical conditions and the exceptional artificial obstacles that may face the contractor in the site while executing the works and which cannot be predicted by all means. They may also make it difficult for the contractor to comply with its obligations. These include the subsurface and hydrological conditions, and not the climate conditions.

1-2: Plural and Singular Use:

Words used in this contract in the singular shall be deemed to include the plural and

vice versa, unless the context requires otherwise.

1-3: Headings and Footnotes:

Headings and footnotes used in this contract shall not be deemed a part thereof and shall not be considered when interpreting it.

Article (2): General Provisions:

2-1: Scope of contract:

The contract includes the following:

A- Executing all the contractual works detailed in the works requirements, specifications and BOQs, completing and guaranteeing them pursuant to the specifications, drawings, conditions and documents of the contract.

B- Providing workers, construction materials and equipment and executing temporary works.

C- Executing the other contract conditions and works required, even if not explicitly provided for in the contract.

2-2: Language of contract and correspondences:

Arabic is the approved language for interpreting and executing this contract. Either Party may draft the contract or any part thereof in a foreign language along with the Arabic. However, in case of conflict between the Arabic and non-Arabic texts, the Arabic text shall prevail. contract-related correspondences shall also be in Arabic and the contractor may use another language, provided translating same into Arabic at its own expense. In cases of dispute, the Arabic version shall prevail.

2-3: Complying with laws and regulations:

The contractor shall comply with the laws, regulations and decisions passed by the competent authorities concerned with temporary or permanent works. It shall also comply with the laws and regulations of the public entities and relevant companies and to be accountable for violating any of the same.

2-4: Payment of charges, taxes and fines:

The contractor shall, at its own expense, pay the due taxes, charges and fines in a timely manner and in due amounts to the relevant agency pursuant to applicable laws.

2-5: Customs and importation provisions:

The contractor shall respect the importation laws and provisions applicable in KSA on supplying and shipping any products or any parts thereof to KSA, including provisions relating to prohibition of importation.

2-6: Bid adequacy

It is hereby understood that the contractor has obtained the necessary information about the risks, contingencies and other circumstances that may affect its bid or the works prior to submission, and that it has reviewed the works quantities and verified their nature and the materials required for completion, as well as the means of accessing the site and the needed facilities. It shall also gather other necessary information and take into consideration all factors that may affect its bid, and ensure that the prices included in the BOQs and the price lists will cover all of its contractual obligations.

2-7: Site examination and engineering designs review:

2-7-1: Before submitting its bid, the contractor shall duly examine the site and its surroundings and check in person the site, dimensions and conditions that may affect the execution of works. It may require the employer, if necessary, to provide any data or information about the site, and the latter shall make all the information and data in its possession concerning the site and soil conditions available to the contractor.

2-7-2: Before submitting its bid, the contractor shall review the detailed technical and engineering designs to ensure their integrity and consistency with the site and shall notify the employer of any defects or failures detected in the plans and drawings.

2-8: Communication and notices:

contract-related communications, correspondences and notices shall be delivered by hand against an acknowledgment of receipt, by registered or official mail or by the electronic means mutually agreed upon. These shall be valid and legally enforceable if communicated as previously stated to any of the following addresses in KSA:

- For the employer -----

- For the contractor -----

Addresses may be changed upon notification of the other party at least thirty days prior to the date of change.

(Chapter Two)

Site Handover and Soil Conditions

Article (3): Site handover

3-1: The employer shall handover the site or parts thereof to the contractor to start executing the works within (60) days from the date of being notified of the award.

The contractor shall start executing the works pursuant to the execution approved timeline.

3-2: In case of any delay by the employer to handover the site or parts thereof to the contractor causing the latter to incur additional costs or affecting the project execution timeline, the contractor shall have the right to claim for financial and/or time compensation for the damages inflicted pursuant to the provisions of Chapters Eleven and Thirteen herein.

3-3 In case of any delay by the employer to handover the site for more than ninety days from the date specified for handover or the agreed upon deadline, the contractor may ask for contract termination pursuant to Chapter Nineteen herein.

Article (4): Soil conditions

4-1: The contractor shall make precautionary examination of the soil to the extent practically possible and shall make the required soil borings before execution and shall provide the employer and the contractor with a copy of the soil report.

4-2: Should the contractor find the soil condition different from the one specified in the contract documents, and which requires amending or modifying these documents, it shall suspend digging or any other related works (except in cases that endanger the safety of people, works or properties). In such case, it shall notify the employer and the engineer in writing and continue to suspend works until receiving a written order from the employer. The provisions of Chapter Eleven herein shall apply.

4-3 Upon receiving the contractor's notice pursuant to paragraph 4-2 of this Article, the engineer shall check the soil condition to determine if the employer shall make additional borings or testing and provide a technical report to the employer and a copy thereof to the contractor. If so requires a change in specifications, the employer shall issue a change order to reflect and document related consequences. The contractor may, if such change results in additional cost or a change in the timeline, claim for

amending the contract price and/or the completion term pursuant to the provisions of Chapters Eleven and Thirteen herein.

Article (5): Main points and work sites:

5-1 The employer shall carry out cadastral works to determine the main points, basic lines, dimensions and levels necessary to enable the contractor to start the works execution.

5-2 The contractor shall fix dimensions and properly execute works at the designated sites linking same to the main points, basic lines, dimensions and levels provided by the engineer. The contractor shall be responsible for the accuracy of fixing all parts of the works and shall repair any errors in the places, levels, measures or works straights. If such errors are a result of inaccurate information provided by the engineer, causing the contractor to delay execution or incur additional costs, it may claim for compensation pursuant to the provisions of Chapters Eleven and Thirteen herein.

5-3 The engineer's examination of works execution at their sites or of the points, lines, dimensions and levels shall not release the contractor from the responsibility for their properness.

5-4 The contractor shall be responsible for protecting and maintaining the main points identified for works execution and the indicative marks and it shall not change their locations without the employer's prior written consent. In case any of the main points or their indicative marks are destroyed or need to be relocated due to a change in slopes or locations, it shall notify the engineer and shall be responsible for restoring them or accurately relocating them.

5-5 The site borders shall be those detailed in the contract plans. If the contractor, for the purpose of executing works related to the contract, needs a land beyond the site borders, it shall acquire the same at its own expense.

Article (6): Underground facilities networks:

6-1 The contractor shall maintain all the underground utilities networks and shall acknowledge that the information and data indicated in the contract documents concerning utilities networks at the site or the surrounding area do not include all the underground utilities networks related information. For this regard, the contract value shall cover all the following items costs. The contractor shall be responsible for:

- a. Reviewing all the data and information about the underground utilities network.
- b. Determining the location of the utilities included in the contract.

- c. Coordination with the utilities' owners, including the employer, during the works execution.
- d. Securing and protecting these networks and repairing any failure therein that may be caused by the works execution.

6-2 If a utilities network is found at the site which is either not included or misrepresented in the contract documents, the contractor shall, once informed of the same and before making any diggings, any changes that may affect these networks or executing any related works, notify the network owner of the same in writing and a copy of this notice shall be submitted to the employer and the engineer. The latter shall then check the network and decide to what extent the contract documents shall be changed. In the meantime, the contractor shall secure and protect this network and stop working at these sites until being notified by the employer or the engineer to resume the works.

6-3 If the contractor deems it necessary to change or amend the contract document to reflect and document the consequences of detecting a utilities network at the site or the surroundings, it shall issue a change order after having the employer's consent to the same. If so results in a delay in execution inflicting additional costs to the contractor, the latter may claim for amending the contract value and/or completion term pursuant to Chapters Eleven and Thirteen herein.

Article (7): Physical difficulties:

If during execution the contractor faces any extraordinary physical difficulties which can't be reasonably predicted by any experienced contractor, it shall immediately notify the engineer in writing within no more than ten days from the date of detecting such difficulties. The engineer in such a case shall submit a related report to the employer indicating his opinion on the additional costs, if any, caused by these difficulties and the proposed duration for executing such works pursuant to Chapters Eleven and Thirteen herein.

(Chapter Three)

Employer

Article (8): Employer's obligations

8-1: Project manager:

- a. The employer may appoint a manager for the project to be responsible for the procedural and executive affairs on its behalf, in accordance with the responsibilities and powers entrusted to him. The project may be managed by a

private consultation office or by the employer itself through its representatives.

8-2: Accessing the site:

The employer shall enable the contractor to access the site pursuant to Article (3) herein for the purpose of executing the works. The contractor shall enable the engineer or any authorized person, at all times, to inspect the works and access the site, workshops and all places where work is prepared, and materials and machines required for works are delivered. Besides, it shall provide all facilities and assistance to do this.

8-3: Assistance provided by the employer:

The employer shall provide reasonable and possible assistance to the contractor with regards to the following:

- a. Obtaining the licenses, permits and approvals referred to in Article (14) herein.
- b. Hiring workers and technicians to execute the contract.
- c. Supplying the contractor's machinery and equipment and re-exporting them when removed from the site.

8-4: employer's personnel

The employer shall ensure that its personnel and those of other contractors working with it at the site are cooperating with the contractor in order to implement the provisions of this contract.

8-5 Employer's financial arrangements:

8-5-1 The employer shall notify the contractor in writing of the financial arrangements necessary to confirm the availability of cash flow and liquidity to pay the contract value and notify the contractor in case of intending to make any substantial amendment to the financial arrangements within 28 days of receiving a related request from the contractor.

8-5-2 If the employer is obliged to reallocate the costs for a period exceeding the period specified for the contract execution due to lack of financial liquidity, the contractor may request extension of the contract term and/or compensation for incurred damage in accordance with the provisions of Chapters Eleven and Thirteen herein.

8-6 Employer's default:

The employer shall be responsible for the management and execution of the contract conditions in good faith and to comply with the deadlines for the issuance of

approvals, the determination of claims, the review and approval of engineering designs and the payment of the contractor's entitlements on due dates. If the employer violates any of the contract conditions or fails to pay within the specified time, the contractor may claim for compensation for the damages it incurred as provided in the contract terms and conditions.

8-7 Employer's claims:

8-7-1 If the employer deems that it has the right to receive a payment, make any deductions or impose fines under any of the contract documents and conditions or for any other reason, it shall notify the contractor in writing and provide it with the claim details. Except for the aforementioned, the employer is not required to send any notices about its due amounts in terms of the consumption of water, electricity, gas, equipment, materials or any other services provided by the employer in accordance with the contract terms and conditions.

Said notice shall be submitted as soon as possible after the employer becomes aware of the event that causes this claim to happen. This shall not prejudice the employer's right to make deductions before or after notifying the contractor of the same.

8-7-2: The contractor may request the recovery of any amount paid or deducted from its entitlements if it deems that the employer's claim is unreasonable. In such case, it shall submit its claim to the employer within 30 days from the date of receiving the amount subject of the claim.

(Chapter Four)

Contractor

Article (9): Execution guarantee (final guarantee)

9-1:

The contractor shall, within ten days from the date of being officially notified from accepting its bid, submit to the employer a bank guarantee equivalent to five percent (5%) of the Bid value as an insurance for the contract execution. The employer may give the contractor an extension for ten days from the lapse of the specified period. Said guarantee shall be irrevocable and valid throughout the contract term and until the final handover after which the bank guarantee shall be released within no later than seven days.

9-2:

The guarantee may take the form of any of the following:

- a. Letter of guarantee issued from a local bank.
- b. Letter of guarantee issued from a foreign bank through one of the banks registered in KSA.

9-3

This guarantee shall comply with the requirements and form of the bank guarantees stipulated in the Government Tenders and Procurement Law and its Implementing Regulations.

9-4:

If the contractor does not submit the bank guarantee referred to in paragraph 9-1 of this Article, the employer shall have the right to delete the awarding resolution and confiscate the value of the bid bond provided by the Bidder, pursuant to the Government Tenders and Procurement Law without a need to a warning, a notice, or a court judgment.

Article (10): The contractor's supervision and appointing a representative for it at the site:

1-10: Contractor's supervision:

The contractor shall perform the necessary supervision during and after the work execution to the extent that the engineer deems necessary to fulfill its contractual obligations in a proper manner.

2-10 Contractor's representative

The contractor shall appoint, prior to the commencement of the works, a representative approved by the employer, to be continuously and permanently present at the works site and to devote all his time to supervise the works execution.

10-2-1 The contractor's representative at the site shall receive, on behalf of the contractor, instructions and directives issued by the engineer within the limits of the latter's powers referred to in Chapter Five herein or in any other terms and conditions of the contract.

10-2-2: If the contractor's representative cannot speak Arabic, the contractor shall provide at the site at all times an Arabic translator.

10-2-3: If the employer desires to remove the contractor's representative for substantial reasons related to the work interest, upon receiving a related notice, the contractor shall remove its representative from the site and appoint a replacement approved by the employer within no more than two weeks from the date of receiving said notice.

Article (11): Engineer's instructions, preparation and reviewing the designs:**11-1: Compliance with the engineer's instructions:**

The contractor shall perform, complete, maintain and ensure the works pursuant to the contract terms and conditions. For this regard, it shall comply with the instructions of the engineer, his representative and their written instructions related to the works as per the engineer's powers referred to in Chapter Five herein. If the contractor observes any negligence, disruption or delay from the engineer in issuing the approvals and deciding on claims, it shall notify the employer immediately of the same.

11-2: Preparing plans and the executive designs:

Unless otherwise specified in the contract, the contractor shall prepare the plans and executive designs and have them approved by the engineer.

11-3: Reviewing the engineering plans on execution:

Without prejudice to the provisions of Article 2-7-2 herein, the contractor shall, when starting execution, review the amendments, deletion and alterations in the engineering

and technical designs and their details and shall notify the employer of any mistakes or observations detected in the original or amended engineering designs.

Article (12): Weekly meetings at the site:

12-1: Weekly meetings shall be held at the site during the course of the work, to be attended by the engineer and his representative, the contractor's representative and the other engineers involved in the project to coordinate the different works, overcome any difficulties in execution and ensure the contractor's commitment to the execution timeline.

12-2 A minutes signed by the engineer and the contractor's representative shall be prepared to document what was discussed during each meeting. These minutes shall be deemed a document to prove the responsibility of either party for delaying the execution of the works.

12-3 The contractor shall have at the site an appropriate office for the purpose of following up the execution of works, keeping of work plans and holding meetings.

Article (13): Assignment of the contract and subcontractors

13-1 Assignment of the contract or part thereof

Without prejudice to the terms and conditions of the contract assignment specified under the Government Tenders and Procurement Law, the contractor shall not assign the contract or any part thereof or assign any profit or interest arising therefrom to a third party without the prior written consent of the employer. The contractor shall remain accountable before the employer, jointly with the assignee, for the execution of the contract. In the event that the contractor assigns the contract or any part thereof without the consent of the employer, the latter shall have the right to withdraw the works from the contractor in accordance with the provisions of Article 45-1 herein.

13-2: Subcontracting (Subcontractors):

13-2-1 The contractor shall not execute the whole contractual works through subcontractors.

13-2-2 Without prejudice to the provisions of paragraph 13-2-1 of this Article, the contractor may, for the purpose of executing parts of the works, unless otherwise specified in the contract, assign such parts to subcontractors, provided that the subcontractors are certified in the area of the works assigned to them. Subcontracting shall be under the employer's prior written consent which shall not relieve the contractor from the contractual liability and the contractor shall remain responsible for any action, fault or negligence committed by the subcontractor, its agents, employees

or workers.

13-2-3 Employment contracts or procurement contracts entered into by the contractor for the purpose of executing the contract shall not be deemed subcontracts under this Article.

13-2-4 The contractor shall pay the subcontractors' entitlements in accordance with the contracts concluded with them and approved by the employer.

13-2-5 The employer has the right to prevent any subcontractor from working even if it has been previously approved, if the employer is convinced that the subcontractor is not competent for executing the works assigned to it or there is a substantial justification for being excluded, and the contractor shall respond to the employer's request.

13-2-6 If the contractor subcontracts in a way that violates the provisions of this Article, the employer shall have the right to withdraw the works from the contractor in accordance with the provisions of Article (45-1) herein.

Article (14): Obtaining licenses and permissions:

14-1 The contractor shall obtain the licenses, permits and approvals required under the regulations related to the execution and completion of the permanent or temporary works.

14-2 In case the relevant agency delays the issuance of the licenses, clearances or approvals for more than ten days from the specified date, the contractor shall immediately notify the employer to contact these agencies and find out the reasons for the delay and it shall keep on seeking the required licenses. The contractor shall have the right to demand extension of the contract Term and/or claim compensation for the damage caused by such delay by the relevant agencies in accordance with the provisions of Chapters Eleven and Thirteen herein.

Article (15): Fulfilment of the standard specifications

The contractor shall ensure the materials used, both local or imported, for the execution of the contract meet the standard specifications approved by the Saudi Standards, Metrology and Quality Organization or the Saudi Building Code. For the materials not covered by the Saudi standards, these shall conform to any of the recognized international standards approved by the employer or that may be specified in the contract terms and conditions.

Article (16): Priority of national products

Without prejudice to the provisions of Article (15) herein, the contractor shall give

procurement priority to national products or the similar products of other countries for the purpose of executing the contract in accordance with the rules adopted for the preference of national products.

Article (17): Safety procedures:

17-1 Upon commencement of the works, the contractor shall prepare a safety and security plan to be approved by the engineer.

17-2 The contractor shall provide, at its own expense, all lighting, guarding, surveillance and fencing materials for the project and its components, and shall use warning signs to protect the works and to ensure the public and personnel safety until the initial takeover. It shall coordinate this with the engineer, its representative or any other public authority. The employer or its representative shall inspect the safety and protection measures adopted by the contractor and to ensure the application of safety and guarding procedures.

17-3 The contractor shall inform the relevant agencies of the incidents occurring at the site resulting in injury or death to persons, damage or damage to public or private property.

17-4 The contractor shall be fully responsible for any cash losses, damages to property or any injuries, accidents or deaths due to its negligence in the safety and guarding procedures.

Article (18): Environment protection:

The contractor shall apply the environment protection laws and endeavor to take all necessary steps to protect the environment (inside and outside the site). It shall also limit the disturbance or damage to individuals or property resulting from pollution, noise or otherwise. Besides, the contractor shall ensure that the amount of emissions, surface drainage and related flow do not exceed the amounts permitted as per the specifications attached to the contract or the values specified in applicable laws and regulations.

Article (19): Electricity, water and gas:

- a. The contractor shall be responsible for the provision of energy, water, electricity and other services required for the execution of the contract.
- b. The contractor shall have the right to use electricity, water, gas and other services available at the site for the purpose of executing the works after the employer's written consent provided that such means are safe and do not affect the services of the facility or the loads specified therein based on the details and the prices specified by the employer. The contractor shall, at its own

expense and responsibility, provide any tools and materials required for such uses and to measure the quantities consumed.

Article (20): Traffic and road rights:

20-1 The contractor shall execute the permanent or temporary works within the scope identified by the requirements of the contract and shall respect applicable laws and the requirements of public convenience and shall not hinder the access or use of public and private roads and passages or entry and exit of properties whether owned by the employer or by any other entity.

20-2 The contractor shall apply the rules of public traffic safety or those issued by the employer. In this regard, it shall take all reasonable means and precautions to prevent the malfunction or damage to any of the public roads or bridges connected to the site or connected with the roads leading to it, by itself or by any of its subcontractors in accordance with applicable regulations.

20-3 The contractor shall particularly choose and use the roads and the vehicles, identify and distribute loads so as to control as much as possible any unusual traffic inevitably arises from the transfer of equipment and materials from or to the site to avoid possible malfunction or damage to such roads and bridges.

20-4: Special loads:

20-4-1 If the contractor has to move one or more of the construction equipment, machinery, units or parts of the work units through a public road or bridge, which may cause damage to this road or bridge if no preventive or special measures are taken, the contractor shall, before moving the same on such a road or bridge, send a written notice to the engineer or his representative indicating the weight and specifications of the load to be transported along with suggestions for the protection and reinforcement of said road or bridge. The contractor shall comply with the engineer's instructions in this regard. However, if the engineer, or his representative, does not respond within fourteen days from the date of receiving said notice with a notice indicating that there is no need to take any preventive measures, the contractor shall, at its own expense, execute its suggestions or any amendments to such suggestions made by the engineer.

20-4-2 The contractor shall bear all the expenses and fees necessary to secure the special or temporary traffic rights needed to access the site. It shall also provide at its expenses any additional off-site facilities required for the purposes of the works and shall comply with any arrangements or procedures issued by the relevant agencies.

Article (21): Providing opportunities to the other contractors

21-1 The contractor shall provide the opportunity to other contractors hired by the employer to enable them to carry out their work. It shall also provide the same

opportunity to the personnel of such contractors or government staff working on or near the site to perform any work not covered by the contract, or to execute any contract stipulated by the employer in connection with the contractual works or complementing them. The contractor shall comply with the instructions issued by the engineer to coordinate between the personnel working at the site.

21-2 If the contractor's compliance with the obligation specified in paragraph (21-1) of this Article causes any delay in the term set for execution or any additional cost, the contractor shall have the right to claim for compensation and/or extend the contract term in accordance with the provisions of Chapters Eleven and Thirteen herein.

Article (22): Work progress reports:

22-1 The contractor shall submit to the engineer on a monthly basis or as requested by the employer in the special conditions a detailed report on the progress of the works, including the drawings and the supporting documents.

If the engineer considers at any time that the work progress is slow in a manner inconsistent with the timeline specified in Article (28) herein and to the extent that it cannot be ascertained that the work will be completed within the specified period or not, he shall warn the contractor in writing. The contractor shall take the steps it deems necessary and which shall be approved by the engineer to expedite the work pace in such a way to enable the works completion within the prescribed period. The engineer shall, after reviewing the contractor's reports, write down his recommendations and observations and attach them in the periodic reports he submits to the employer.

Article (23): Intellectual and industrial property

The contractor shall protect and indemnify the employer for all claims and actions arising from infringement of any right, franchise, design, trademark, name, patent or other intellectual or industrial property rights relating to any construction equipment, machinery or materials used for the completion of works, drawings, plans, designs and programs executed by the contractor or related to the temporary works or any other works related to the execution of this contract, as well as all claims, actions, damages, expenses, fees and expenses incurred due to the works execution or any related works, regardless of their value.

Article (24): Discovered artifacts and valuable objects:

Any monies, valuables, buildings, artifacts and other objects of geological or archaeological value discovered at the site shall be the property of the employer. The contractor shall take appropriate precautions to prevent its personnel or any other person from removing, transporting or destroying any of these objects. If any of these are found, the contractor shall immediately, prior to their transfer, notify the employer or its representative and the relevant agency, and shall abide by the instructions of the

employer and the relevant agency with respect to their disposition.

If this results in the delay of execution and/or additional cost, the contractor shall have the right to claim compensation and/or extend the contract term in accordance with the provisions of Chapters Eleven and Thirteen herein.

(Chapter Five)

Engineer

Article (25): The engineer's responsibilities and powers:

25-1 The employer shall appoint the engineer to supervise the execution of the works and notify the contractor of the same. Without prejudice to the engineer's responsibilities and powers specified under this contract and the contract concluded with him, the engineer shall perform his duties and exercise his powers at a high professional level in accordance with the profession best practices. The engineer shall particularly perform the technical and administrative supervision to ensure the quality of work, make a list of the accepted deliverables, review contractor's submissions and decide on them, taking into account the work timeline. He shall also prepare progress reports, and recommend necessary actions.

25-2 The engineer shall have no authority to amend the provisions of this contract, release the contractor from any of its contractual duties or obligations, order any action that may result in delay in the works execution or to increase the employer's financial obligations without the latter's prior written consent. The engineer shall not make any change in the works except as expressly provided in this contract.

25-3 Without prejudice to the provisions of Chapter Ten herein, if the engineer deems it necessary to execute additional or supplementary works to complete the contract or change the Scope of Work, he shall prepare a detailed report as per the procedures specified in Chapter Ten herein and seek the approval of the employer who shall take a decision within no more than 28 days for the works that have similar works in the contract and 56 days for other works. The contractor shall have such approval and shall provide it to the engineer.

25-4 Any authentication, audit, acceptance, inspection, notice, proposal, request for testing or issuing any instruction or similar conduct by the engineer, including ignoring required approvals, shall not release the contractor from any contractual liability for errors, omissions, inconsistencies or non-compliance with the conditions.

25-5 The employer shall provide the contractor with a copy of the powers entrusted to the engineer. In case of change in such powers, the employer shall notify the contractor.

25-6 The employer may replace the engineer at any time without the objection of the contractor. However, the employer shall notify the contractor of its intention of this replacement within a period not less than (15) days.

Article (26): Representative of engineer:

The engineer may from time to time delegate his representative in writing to exercise any of the powers entrusted to him, provided a copy of this written authorization is submitted to the contractor. The written instructions and approvals issued by the engineer's representative to the contractor within the limits of the authorization shall be binding on both the contractor and the employer as if they are issued by the engineer himself. The following shall always be taken into account:

- a. Without prejudice to the engineer's liability for the errors of his representative, the default of the engineer's representative to refuse or accept any work or materials shall not affect the authority of the engineer who may subsequently refuse such work or materials and to order their amendment or removal.
- b. If the contractor is not satisfied with any decision taken by the engineer's representative, it may refer the case to the engineer to consider, approve, amend or cancel the decision and if it is not satisfied with the engineer's decision or if 21 days have passed without any action from the engineer in this regard, the contractor may take appropriate action in accordance with the term of the contract and it shall execute the employer's decision issued in this regard.

Article (27): Providing the contractor with drawings to keep them:

27-1 The engineer shall keep copies of the contract documents, including the project drawings and specifications, and shall deliver to the contractor – free of charge – a hard copy and a soft copy (if any) of the same, as well as a copy of the design inputs and data when needed. The contractor shall notify the engineer or his representative in writing if it needs more copies at its own expense. The engineer shall provide the contractor with the same within 7 days from the date of the request. The contractor shall return all the drawings and documents delivered to it by the engineer after the works completion.

27-2 The engineer shall provide the contractor from time to time during the contract execution with any additional plans or information necessary to fulfill its obligations.

27-3 The contractor undertakes to keep a copy of the drawings at the works site. These copies shall be ready at all times for review and use by the engineer, the engineer's representative or any other person authorized in writing by the engineer or the employer.

27-4 The contractor shall execute comply with the plans and specifications. If the quantities specified therein are more than the quantities specified in BOQs, or if there is a shortage or change in materials and their quality which may result in an increase or decrease in prices, these shall be submitted to the engineer to prepare a related report to be submitted to the employer for approval as per the provisions of Chapter Ten herein.

27-5 The employer shall reserve the copyrights and intellectual property rights for each of the plans, specifications and other documents prepared by or for the employer. Unless the contract prescribes otherwise, the contractor shall not permit any third party to use, reproduce or circulate such documents.

(Chapter Six)

Works Execution Timeline

Article (28): Works execution within the specified timeline

28-1 Submission of the timeline

The contractor shall submit to the engineer the preliminary timeline for works execution no later than (28) days from the award date. The timeline shall be in line with the professional productivity standards and shall take into consideration any practical restrictions that may affect execution as well as any requirements specified in the contract for the execution of the works and the specified period for completion of such requirements.

28-2 Setting the timeline

The contractor shall set the timeline using an acceptable approach for this purpose, and the critical path method with an appropriate scale, taking the following into consideration:

- a) Using days to express the time period for project activities.
- b) Illustrating the link between activities only by demonstrating the relationship between the end of the preceding activity and the start of the next one.
- c) Indicating the dates of starting and ending each activity, project critical path and grace period for non-critical activities.
- d) Scheduling the supply of materials and supporting works by subcontractors and suppliers as to be consistent with the professional productivity standards.
- e) Indicating the dates of submission of the engineer's shop drawings and different

samples.

- f) Indicating dates scheduled to provide work elements, site sections and information provided by the employer and the engineer pursuant to the contract terms and conditions.

28-3 engineer's review of the timeline:

The engineer shall review the timeline and submit it for the employer's approval no later than (15) days from the date of receiving it from the contractor. If the employer does not object during such period, the timeline shall be deemed approved and applicable.

28-4 Time reserve:

The contractor may include a time reserve at the end of the timeline as a part of the works completion term. In case of completion without using the time reserve or using a part thereof, no deduction from the contractor's entitlements shall be made. The latter may benefit from the time reserve to cover all delays for which it is accountable. The remaining time reserve, if any, may be used by the contractor to cover the delays caused by the employer and/or the engineer.

28-5 The contractor may use and manage the grace period for non-critical activities. For the contractor to be compensated for the grace period use (upon the engineer's request), the engineer shall prove that the contractor's delay in executing the project is due to such use.

28-6 The contractor shall attach a schedule to the timeline as planned, indicating the quantity of work in each activity and work elements (workers and equipment) to be provided by the contractor in order to execute each activity, and indicating the date of arrival and departure of each work element to and from the site, periods of equipment maintenance and periods of not being operated (if any), and these shall be in line with the activities execution dates and terms.

28-7 Reasons for the engineer's disapproval of the timeline:

- a) Failure to comply with the specifications of the timeline stated in paragraph (28-1) hereof.
- b) If the timeframe does not demonstrate the required information, stated in paragraph (28-2) hereof.
- c) If the contractor's plans for works execution are not acceptable or if the timeline for the accepted plans is not realistic.
- d) The timeline does not comply with the contract terms and conditions and

specifications, the execution term and any amendments thereto.

28-8: Daily reports prepared by the engineer's representative

- a) The engineer's representative shall prepare a daily report on the site works, including the activities that were started or completed during that day as well as the ongoing and resumed activities, and the suspended or delayed activities, indicating the party accountable for such delay or suspension pursuant to the scheduled timeline (and any amendments thereto approved by the engineer). A copy of this report shall be provided to the contractor's representative.
- b) The engineer's representative shall keep such daily reports in the delays and amendments record to document delays occurred to project activities, party accountable for such delays and days of delay. A copy of which shall be submitted monthly to the engineer who shall, in turn, submit a copy to the contractor and the employer. The contractor shall review the record within seven days from the date of receipt, and in case of no objection during such period, the record shall be deemed acceptable and valid for use.

28-9 The contractor's update of the timeline:

The contractor shall, periodically and upon the engineer's request, update the project timeline, taking into consideration the execution delays. The contractor may, if required, redistribute its work elements. The update of the timeline submitted to the engineer shall be accompanied by a report highlighting the work progress in the project since the last report. This report shall include the following:

- Any documents proving the work progress made.
- Rescheduled activities and reasons of rescheduling.
- Activities added or cancelled and reasons for such.
- Details of any expected delay or problems that may affect the activities end date along with the remedies that shall be taken by the contractor.

The engineer shall review the timeline update and submit it for the employer's approval no later than (15) days from the date of being received. If such period ends without an objection from of the engineer, the timeline shall be deemed acceptable. This updated timeline shall become effective on the day following its approval or by the end of the review period without any objection thereon.

28-10 employer's approval of the timeline update

The timeline update, accepted by the engineer and approved by the employer as stated in paragraph (28-9) hereof, shall not be deemed a final approval to extend the term of

the contract and exempt the contractor from the delay penalty unless a written approval of the extension is issued by the employer pursuant to the contract terms and conditions.

(Chapter Seven)

Employees and Workers

Article (29): Technicians and workers hired for execution of works

29-1 Competence of the contractor's technicians and workers:

The contractor shall provide in the site the required number of experienced and skilled engineers, technical assistants and workers within their respective competencies as well as highly qualified foremen and supervisors for the works execution, maintenance and supervision according to contract terms and conditions.

29-2 Misconduct

The contractor shall at all times take all the necessary precautions to prevent acts of violence and public disorder by its personnel and ensure the safety of people and properties at the site and the surroundings. The engineer may, in all circumstances, require the contractor to immediately withdraw from the site any of its personnel who demonstrates misconduct, incompetency or negligence in performing their duties or causes any harm to the works. In such a case, said person may not be reemployed without the engineer's written consent, and the contractor shall replace him with another worker accepted to the engineer.

29-3 Persons hired by the employer:

The contractor shall not hire, or use the services of any of the personnel of the employer, engineer or any of the employer's contractors whether on a full time or part time basis.

29-4 Application of the laws related to workers employment.

The contractor shall comply with applicable laws and regulations related to the workers employment and treatment, whether nationals or residents, in particular, the laws of labor, social insurance, residence and health insurance. It shall also respect their legal rights, explain their obligations under said laws and regulations and require them to comply with them.

29-5 Wage rate:

The contractor shall pay its personnel the wages specified in their employment contracts and to take into consideration the conditions of employment so that the rate

of wages is not less than the common rate in the trade, construction and building industries in the area where the works are executed and shall not be less than the minimum wage rate set by the relevant agencies.

29-6 Working hours:

Except as provided in other conditions of the contract, the contractor shall not execute any part of the works beyond the regular working hours, indicated in the terms of the competition. Furthermore, work shall not be executed during night, on Fridays or during public holidays without a written permission from the engineer or his representative unless such work is deemed necessary, indispensable for saving lives or properties or for the works safety, provided that, in such case, the contractor shall immediately notify the engineer or his representative.

29-7 Saudization:

The contractor shall comply with all the laws and decisions governing the rates of national labor and personnel to be employed by the contractor pursuant to the special conditions and related decisions. The salaries and rights of these personnel shall not be less than the salaries and rights of the employees working in other sectors and not lower than the minimum wage set by the competent authorities.

29-7 Records of the contractor's personnel and equipment:

The contractor shall provide the engineer with detailed records, stating the number of its personnel classified by their skills and the number of equipment classified by type. Such records shall be submitted to the engineer on a monthly basis or pursuant to the special conditions until the completion of the project works.

29-10 Industrial safety instructions:

The contractor shall take the necessary measures to maintain the health and safety of its personnel. It shall, in the major projects specified by the employer, provide the required health staff, appropriate arrangements for the requirements of public health, prevention of outbreaks of epidemics and adherence to the instructions of industrial safety pursuant to the Labor Law and other relevant laws and regulations. The contractor shall also hire a qualified supervisor to be in charge of the prevention of accidents within the site. Such supervisor shall be in charge of drafting instructions, taking health and preventative measures to avoid accidents. The contractor shall also notify the engineer of all the measures and actions taken to maintain the health and safety of the workers and avoid accidents including the details of any accident upon occurrence as required by the engineer.

29-11 Violating the provisions of this article:

The employer may take all measures to ensure the contractor's commitment to this Article, including the employer's right to withdraw the works from the contractor pursuant to the provisions of Chapter Five herein.

(Chapter Eight)

Materials and Customary Industrial Principles:

Article (30): Customary industrial principles (workmanship):

30-1 Subject to Article (15) herein regarding the materials specifications, the contractor shall set a mechanism for quality assurance provided that it is in conformity with the details and conditions of the contract. The engineer may verify any of the procedures and processes of such mechanism.

30-2 The contractor shall, before supplying any materials to the site, submit to the engineer upon his request one or more samples of the materials to be supplied from three different sources, indicating their specifications and all the information required by the engineer on such materials for analysis and approval within (21) days from the date of submission.

30-3 Upon the approval of any sample, the contractor shall provide at least one model to be maintained at the sample room on the site to verify the supply process. Mechanical, electrical and electronic systems or otherwise that cannot be supplied shall be excluded, as in such case, retaining approved catalogues is enough.

Article (31): Transfer of materials, equipment and temporary works:

Equipment, temporary works and materials submitted by the contractor after being brought to the site shall be entirely and exclusively allocated to the completion of works. The contractor shall not, without the engineer's written consent, transfer them or part thereof from the site unless from one location to another within the same site. The engineer shall not abstain from giving his written consent unless reasonably justified. The employer as well shall not, at any time, be liable for any loss or damage to any of the Equipment, temporary works or materials unless explicitly provided in these conditions that the employer shall be liable for the same.

Article (32): Use of explosives:

The contractor may not use any explosives without the engineer's prior written permission and the approval of the competent authority. The engineer shall, before the explosion is carried out, make sure that the contractor has complied with the relevant regulations and instructions, and taken all the safety precautions. The engineer may not

withhold such permission without a reasonable justification.

(Chapter Nine)

Testing

Article (33): Testing materials, plants and workmanship:

33-1 Pursuant to Articles 30 and 33(5) herein, all materials, plants and workmanship shall be subject to any testing stated in the contract documents, required by the nature of works, or deemed necessary by the engineer. Testing shall be conducted in the place of where such materials are manufactured, at the site, or at any other appropriate place. Technical inspection shall be conducted through locally or internationally accredited laboratories.

33-2 Testing time and place:

The contractor shall notify the engineer in writing of the time and place of testing at least seven days before being conducted. If the engineer or his representative does not show on the specified time, the contractor may proceed with testing, unless otherwise instructed by the engineer, and such testing shall be deemed conducted with the presence of the engineer. If this fails, the engineer shall be held liable for any delay in implementing activities related to the said testing (if any), and this shall be recorded in the daily report on the site works referred to in Article (28-8) herein. This shall be from the date specified for the testing to any other date specified by the engineer to conduct the same provided that the engineer or his representative attend the testing.

33-3 Testing cost:

The contractor shall bear the cost of the testing required under the contract specifications or by the nature of works as well as the cost of re-testing in case of non-conformity. As for the testing requested by the engineer, which are not required under the specifications or by the nature of works or materials, the contractor shall bear related costs if the result does not conform to the contract specifications. However, if such additional testing is found to be in conformity with the specifications, the employer shall bear related costs and be responsible for the delay of any related activities, if any. This shall be recorded in the daily report of the site works referred to in Article (28-8) herein.

33-4 Rejecting testing materials, plants and workmanship:

If it is found through any inspection, examination, measurement or testing that any material, plant or workmanship, is defective or not conforming to the contract requirements, the engineer may reject such materials, plants or workmanship upon a notice to the contractor, stating the reasons for rejection. The contractor shall remedy

the defect in the rejected item until it conforms to the contract requirements.

If the engineer requests retesting any of the defected materials, plants or workmanship, such retesting shall be conducted under the same terms and conditions. In case of incurring any additional costs by the employer due to rejection and retesting, the contractor shall pay such costs to the employer.

33-5 Removal of non-conforming works and materials:

33-5-1 Despite any previous testing, acceptance of works, settling any part of their costs, the engineer shall have the right to issue the following instructions to the contractor:

- a- Removing any non-conforming plants or materials from the site during the period specified by the engineer and replacing the same with valid and appropriate materials.
- b- Removing or repairing defective works and properly re-executing them if the engineer deems such work not to be in conformity with the contract whether in terms of materials or manufacturing principles.
- c- Executing any work the engineer deems urgent for the safety of works due to an accident, unforeseen incident or otherwise.

33-5-2 the contractor shall comply with the engineer's instructions concerning repairs and to execute them during the period specified by the engineer or immediately if it is related to an urgent Work.

33-5-3 If the contractor fails to comply with the engineer's instructions concerning repairs, the employer may execute the same at the contractor's expense, in accordance with the contract terms and conditions.

33-6 Inspection of work before coverage:

33-6-1 Any work shall not be covered or blocked from the sight without the engineer's consent. The contractor shall, when the work is ready or about to be ready, submit to the engineer a written notice to attend for inspecting and measuring the same no later than (24) hours from the notice date, or (72) hours if the supervision is provided by a direct administrative entity. If the engineer does not attend during the said period, the contractor shall immediately notify the employer.

33-6-2 the contractor shall uncover any part(s) of the works or make some holes as directed by the engineer. The contractor shall return such part(s) to the previous state in a manner acceptable to the engineer. If the part(s) has been covered after inspection, and were uncovered or holed for reasons beyond the contractor's will, costs of

uncovering and returning to the previous state shall be incurred by the employer, provided the works are conforming to the contract; otherwise all costs shall be incurred by the contractor.

33-7 contractor's commitment to examine the causes of defect, errors or malfunctions:

The contractor shall, upon a written request from the engineer, examine the causes of any defect, malfunction or error, as instructed by the latter. If the defect, malfunction or error is found to be the contractor's responsibility, the search costs shall be incurred by the contractor, in which case, it shall repair, rectify and correct such defect, malfunction or error on its own expense. If the defect, malfunction or error is not caused by the contractor, search costs shall be incurred by the employer.

33-8 Completion test:

The contractor shall conduct the "Completion Test" pursuant to the provisions and procedures of this Article. The contractor shall submit to the engineer, before conducting this test, an original copy of the As Built Drawings, detailed maintenance and operation manuals and devices and equipment warranty documents, to enable the employer maintain, operate, dismantle, install, calibrate and repair that part of works. Such part of works shall not be deemed completed for the purpose of the takeover until providing the engineer with the relevant documents and manuals.

The contractor shall notify the engineer no later than (21) days from the date of the contractor readiness for conducting the completion test. Unless otherwise agreed upon, testing shall be within (14) days from such date on the day(s) specified by the engineer.

When submitting the results of the "Completion Tests", the engineer shall consider a variation margin for the impact of employer's utilization of works on the works performance or their characteristics. When works or any part thereof are deemed to pass the "completion test" phase, the contractor shall submit a report on the test results to the engineer.

33-9 Delay of the completion test:

If the employer unjustifiably delays the completion test causing the contractor to incur additional costs or a delay in the works handover, the contractor may claim temporal and/or financial compensation pursuant to the provisions of Chapters Eleven and Thirteen herein.

If the "Completion Test" is unjustifiably delayed by the contractor, the engineer shall send a notice to the contractor to conduct the test within (21) days from the date of receiving the notice. The contractor shall conduct the test within the same period on

the day(s) specified by the contractor, provided the engineer is notified of the same.

If the contractor fails to conduct testing during such period, the employer may do the same at the contractor's expense and responsibility. Such testing shall be deemed conducted at the presence of the contractor.

33-10: Retesting on completion:

If works or any part thereof fail to pass the "completion test", either the engineer or the contractor may request retesting any defective work, provided that the retesting be subject to the same terms and conditions. If the works or parts thereof fail to pass the retesting, the employer may reject the defective works and bind the contractor to repair the same or be repaired at its expense pursuant to the contract terms and conditions.

33-11: Securing energy supply and inspection and testing devices and equipment:

Unless otherwise provided in the contract, the contractor shall, at its own expense, secure the devices and equipment for inspection and testing and energy supply, including electricity, water and otherwise for the purpose of experimental operation and conducting testing and inspection necessary for works before the initial takeover.

(Chapter Ten)

Additional Works and Changes:

Article (34): Assigning additional works to the contractor:

34-1 The employer may, during the contract execution, increase the amount of works up to (10%) ten percent from the contract value, or decrease the amount of works up to (20%) twenty percent from the contract value, provided that in such case, the contract value be changed by increase or decrease, considering the following:

- a) Additional works shall be within the contract scope.
- b) Modifications or changes necessary to the works shall serve the interest of the facility, without prejudice to the conditions and specifications, modification in the nature of the contract or the financial imbalance thereof.
- c) The employer shall have sufficient cash to cover the value of additional works before being assigned to the contractor.
- d) Costs of additional works shall be calculated pursuant to the prices of similar items according to which the contract is made.
- e) If the additional works have no similar items in the contract, the contractor shall submit its price quotation for executing the same. Prices shall be reviewed

by the engineer based on the prevailing references and prices and in proportion with the quantities and qualities of the executed items and submitted to the employer. The employer shall submit the same to the bid examination committee or the purchasing committee, as the case may be, to examine the assignment of the works and the adequacy of prices. The contractor assignment to execute the works shall be subject to the prices recommended by the concerned committee. If the contractor rejects the decisions of the Committee, a contract shall be entered into with another contractor pursuant to the provisions of the contract and Government Tenders and Procurement Law.

- f) No additional works shall be assigned after the initial takeover of the contractual works.

34-2 Changes in works:

The engineer may, after the employer's consent or within the powers entrusted thereto, make any change in the form, type or quantity of works or parts thereof as required by the nature of the execution. The contractor shall be obliged to execute such changes without changing the subject of the contract, the financial imbalance thereof or exceeding the limits specified in paragraph (34-1) herein.

34-3: Evaluation of works:

34-3-1 The engineer shall calculate the costs that may be added to or deduced from the amount specified in the submitted bid because of any extra or additional work executed, modified or cancelled. The evaluation of the works shall be subject to the provisions of paragraph (34-1-d) herein. The engineer shall also evaluate the extension due to the contractor for the additional works and changes and submit a report thereon to the employer. Extending the term of the contract and payment of the additional works and changes value shall be subject to the provisions of this Article and Chapter Twelve herein. If the contract does not specify any rates applicable to the additional works, the employer and contractor shall agree upon setting the fair prices pursuant to the procedures referred to in paragraph (34-1-e) herein.

34-3-2 The contractor shall send to the engineer a statement of account monthly with a fully detailed explanation of the information on the requests related to the additional costs, which the contractor deems rightful for the extra and additional works ordered by the engineer according to the delegated powers and the contractor has executed during the previous month. The engineer shall examine the contractor request and submit to the employer no longer than (15) days from the date of submitting the same to the engineer. Requests relating to payments of the value of such works shall not be considered if such requests do not include the said relevant information as well as the monthly statement account and payment of the contractor's entitlements for the same,

in accordance with the payment terms specified in Chapter Twelve herein.

34-3-3 Without prejudice to the provisions of paragraph (34-1) herein, changes requested by the employer or its representative may include the following:

- a) Changing the quantities of any of the works items included in the contract.
- b) Changing the form or type of any of the works items.
- c) Changing the levels, locations or dimensions of any of the works items.
- d) Cancelling any item or part of the works.
- e) Executing any additional work or providing plants, equipment, materials or services necessary for the permanent works.
- f) Changing the sequence or timing of executing the works.

34-4: Change effect on the timeline:

The periods selected by the contractor for the timeline activities as scheduled indicate the quantity of works referred to in the BOQs. If the quantities of works in an activity increases or decreases due to an error in the BOQs or changes requested by the employer, the period allocated for such activity shall be modified according to the proportion of the executed works quantity to the works quantity referred to in the BOQs while considering the date of assigning the additional works, the effect of the date on the critical path, approximating the fractional days and amending the timeline accordingly.

The additional period for the said activity shall be recorded as working days, and then added to the total activity delays caused by the employer when examining the timeline as executed. If the time period for the said activity is decreased, such decrease shall be considered when developing the timeline pursuant to the provisions of Article (28) herein.

(Chapter Eleven)

Period of Works Completion, Delays and Suspension:

Article (35): Period of works completion:

35-1 Without prejudice to the provisions of Article (3) herein, the contractor shall execute and complete the works during the execution period and any modifications thereof while starting to execute works upon the site takeover pursuant to the approved execution timeline. The contractor shall consider any request referred to in the

specifications regarding the completion of any part of the works.

35-2 Extending the completion period:

The employer shall extend the contract term during the works execution if a delay occurs or is expected to occur that may affect the date of works handover or the timeline, in accordance with the procedures and powers specified herein and in the Government Tenders and Procurement Law for any of the following reasons:

- a- If the contractor is assigned any additional works pursuant to the terms of the additional works assignment specified in Chapter Ten herein or in case the employer changes or modifies the works, affecting the critical path of the approved timeline for works execution.
- b- Suspension of works or parts thereof on the employer's request or approval, in accordance with the provisions and conditions related to works suspension specified in Article (37) herein.
- c- If the project financial allocations are insufficient for covering the project costs during the specified execution period, in accordance with the provisions of Article (8-5) herein.
- d- If the employer or the engineer delays in granting the consents for the contractor's submissions or approving the samples for more than ten working days from the specified period, in accordance with the contract terms and conditions.
- e- If the employer's delay to handover the site or parts thereof to the contractor during the specified takeover period pursuant to Article (3) herein resulted in disruption of the contractor's plans, affecting the timeline of the project execution.
- f- If the contractor finds the soil condition different from the specifications of the contract, which requires a change, or if it faces an underground facility network or physical difficulties, in accordance with the provisions of Articles (4, 6 and 7) herein.
- g- If there is a delay in commencing the project works execution due to errors in determining the main points and locations of works, errors or modifications in the designs or plans if this is due to the employer.

- h- If the contractor cannot obtain the permissions and licenses necessary for the works execution within the specified or usual period for its issuance from the relevant agencies due to reasons attributed to the employer or the relevant agencies, in accordance with the provisions of Article (14) herein.
- i- If artifacts or valuable items are discovered in the site and works or parts thereof are suspended resulting in delay in the execution pursuant to Article (24) herein.
- j- If the testing or re-inspection of the works resulted in a delay of the approved related activities, the responsibility of which falls upon the employer or a delay in the execution of works or part thereof due to repairing the defects the responsibility of which falls on the employer pursuant to the provisions of Article (9) herein, resulting in disruption of the execution timeline.
- k- If the employer is late in paying the contractor's entitlements in a timely manner, in accordance with the provisions of Article (12) herein, resulting in an impact on the contractor's performance.
- l- Any delay, hindrance or prevention attributed to the employer or any of its personnel or the contractors working at the site.

35-3 The employer's extension of the works execution term in agreement with the ministry of finance:

Extending the contract term shall be agreed upon between the employer and Ministry of Finance in the following cases:

- a- Any delay in execution due to the employer's risks, in accordance with the provisions specified in Chapter Seventeen herein.
- b- Delay due to the contractor's compliance with the instructions of the relevant agencies or if such agencies are the reason for delay, which is unforeseen for the contractor.
- c- Any delay in execution due to exceptional circumstances beyond the parties' control.

35-4: Claiming for the contract term extension:

35-4-1 The contractor shall, if it deems itself eligible for the contract term extension

due to any of the reasons referred to in paragraphs (35-2, 35-3) herein or any other reason arising from the contract execution, submit its claim supported by the necessary documents and evidence to the engineer no later than (30) days from the date of the incident or its supposed knowledge of its occurrence or within the contract remaining period. Said claim shall specify the extension term and reasons. The submission of this claim in the specified manner shall be deemed interim if the incident or circumstance leading to the claim is persistent. The contractor shall, in all cases, submit its final claim within (28) days from the date of recovery from the impact of the incident or circumstance.

35-4-2 The engineer shall examine the contractor's claim within no more than (21) days from the date of receiving the same together with the full documents, prepare a detailed report including its reasoned recommendations and submit the same to the employer for review.

35-4-3 The employer shall, after receiving the engineer's report, technically and systematically examine the contractor's claim and then submit it to the Bid Committee to issue the required recommendation, in accordance with the provisions and conditions herein and the Government Tenders and Procurement Law within no more than (45) days from the date of receiving the engineer's report together with the full documents. The contractor shall be notified of the employer's decision.

35-4-4 If the contractor's claim for extension is based on the reasons referred to in paragraph (35-3) herein, the employer shall submit the approved minutes of the Bid Committee, together with the relevant documents to the Ministry of Finance to decide on extending the contract term, in accordance with the procedures specified herein and the Government Tenders and Procurement Law, provided that the Ministry of Finance issues the required decision within no more than (60) days from the date of receiving the full documents.

35-5 Delays due to the contractor:

- a- Delays that may be managed by the contractor do not entail an increase in the works execution term, even if they are based on the reasons referred to in paragraphs (35-2 and 35-3) herein, including delays due to his non-compliance with the contract terms and conditions or the approved timeline. Delays related to the subcontractors and suppliers are subject to the contractor's control.
- b- Delay in the execution of previous activities according to the timeline due to a reason controlled by the contractor.
- c- Suspension of any activity after the commencement of work due to the

contractor.

- d- If the contractor's work slows down in any activity for a period exceeding the one specified in the timeline due to the poor productivity and not a change in the works quantities.
- e- The contractor delays the materials testing beyond the dates specified in the timeline for the commencement of relevant activities.
- f- The contractor's non-scheduling of the provision of materials, plants, equipment and execution schemes and delay in submitting same for examination and review which is not consistent with the timeline.

Article (36): Delay penalty and supervision costs:

36-1: Delay penalty:

36-1-1 If the original contract term and any extension thereto ends, in accordance with the contract provisions, and the contractor has not completed the works, the engineer shall examine the timeline as executed and submit a report thereon to the employer. If the contractor is found accountable for the delay in works execution and delivery, it shall pay a fine for the delayed period as a compensation for the employer. This fine is calculated on the basis of the average daily cost of the project by dividing the contract value on its term, as follows:

- a- A fine for the first part of the delay period in an amount equivalent to the quarter of the average daily cost for each day of delay up to fifteen (15) days or (10%) ten percent of the contract term.
- b- A fine for the second part of the delay period in an amount equivalent to the half of the average daily cost for each day of delay up to thirty (30) days or (15%) fifteen percent of the contract term.
- c- A fine for the third part of the delay period in an amount equivalent to the full average daily cost for each day of delay up the longer period specified in paragraph (b) of this Article.
- a- If the employer considers that the delayed part does not permit the full utilization of the works on the completion due date, does not cause disruption in the utilization of any other facility or does not negatively affect the completed works, the fine shall only be deducted from the value of the delayed works according to the way of calculating the fine on original works without

exceeding (10%) ten percent from the value of the delayed works.

36-1-2 The total delay fines deduced from the contractor shall not exceed (10%) ten percent from the total contract value.

36-1-3 The employer may defer the fine deduction from the contractor's entitlements or part thereof to the end of the contract term, provided that the contractor's outstanding amounts cover all the amounts that may be requested from the contractor including the value of the said fine.

36-2 Supervision costs resulting from the delay:

36-2-1 In addition to the fine stated in paragraph (36-1), the contractor shall bear the engineer's fees while being subject to the delay fine. Said fees shall be calculated according to the costs of the engineer's contract after reconsidering the number of engineer's personnel to be in line with the phase of the project and the quantity and type of the remaining works.

36-2-2 If a government agency is carrying out the supervision, the engineer's fees shall be calculated as follows:

$$\frac{\text{Days of delay}}{\text{Contract term in days}} \times \frac{1}{100} \times \text{contract value}$$

36-2-3 If the supervision is exercised by an engineering office that supervises more than one project for the employer at the same time, the costs of the engineer's personnel for the delayed project shall be calculated as follows:

Supervision (monthly) fees for the delayed execution = the employee(s) monthly salary × the project value ÷ the total value of the projects supervised by the engineer.

After determining all the supervision monthly fees for the project, the supervision fees shall be deducted from the contractor's entitlements according to the delayed period.

Article (37): Works suspension:

37.1 Temporary suspension of works:

The employer may temporarily suspend all or part of the works for a specified period upon a written notice sent to the contractor, detailing the reasons behind such suspension. During the suspension period, the contractor shall protect works and guarantee that the project shall proceed at the pace envisioned by the engineer. The

employer shall not be held liable for any suspension if it occurs for the following reasons:

- a) In case the suspension period is stated in the contract terms and conditions.
- b) In case it is necessary for due execution of works, or in case it takes place due to the negligence of the contractor.
- c) In case it is necessary to ensure the safety of works or any part thereof, provided that such necessity does not arise from the actions or failures of the engineer and/or the employer.

37.2 Suspension caused by the employer

If the actions or negligence of the employer or engineer led to the suspension of works, the employer shall add the period of suspension to the period of work completion. If suspension led to any stoppage or halting any activity, this shall be included in the daily site works report referred to in Article (28.8) herein until the contractor files a request of extending the term of works completion.

37.3 Resuming work:

If the employer or the engineer issue instructions to resume works, both shall inspect the works, mechanical equipment, and material that become affected due to the suspension. The contractor shall repair any damage, malfunction or loss that may have occurred thereto during said period.

37.4 Consequences of suspension

Without prejudice to paragraphs (1,2 and 3) of this Article, if the suspension takes part in compliance with the employer's instructions or if it arises from action of the employer or engineer, and such suspension resulted in delaying the execution or caused additional cost, the contractor may request the following:

- a) Extending the completion period due to such delay.
- b) Any cost incurred by the contractor to be added to the contract value.

The contractor's claims shall be considered in accordance with Chapters Eleven and Thirteen herein.

It is understood and agreed that the contractor shall not extend the Completion term or recover the costs it incurred due to a repair resulting from a default in its designs, material or workmanship or its failure in protecting, storing or preserving works or any other reason related to its default in performing its obligations.

(Chapter Twelve)

Payment Terms and Works Measurement

Article (38): Procedures and conditions for payment of the contractor's dues

38/1: Advance payment to the contractor:

An advance payment shall be paid to the contractor not exceeding 10% of the contract's value in accordance with the conditions of the tender and after the conclusion of the contract, delivery of the work site and the provision of a bank guarantee of the same amount by the contractor. The amount shall be deducted from the contractor's actual entitlements of the same percentage. In case the project is initially handed over, the works has been taken or the contract has been terminated for any reason, the unpaid advance balance shall become due and payable immediately to the employer.

38/2: Payment of the contractor's periodic bills:

100% of the contractor's entitlements, including the cost of the extra and additional works, shall be paid according to the percentage of work accomplished and accepted according to the bills periodically approved by the engineer. The payments shall be made at least once every month.

38/3: Duration of the bill payment:

The duration of reviewing the bill and the procedures of payment shall not take more than (60) days from the date of submission of the contractor's bill to the engineer until its payment in case of completion of the payment's documents. The engineer shall complete the review and approval of the bill or return it to the contractor with written and specific observations within a period not exceeding (15) days from date of filing the bill by the contractor. If the bill is delayed for reasons due to the employer, the contractor shall have the right to demand compensation for the damage caused and/or to extend the period of the contract in accordance with the provisions of Chapters Eleven and Thirteen herein.

38-4: Payment of the final bill:

The payment of the final bill, which is not less than (10%) ten per cent of the value of the works performed shall be postponed until the initial takeover of the works and the contractor's submission of the following:

A- A certificate from the General Authority of Zakat and Tax confirming the payment of zakat or tax due.

B – A certificate from the General Organization for Social Insurance confirming the

register of the establishment in the Organization and the payment of insurance rights.

C- An original copy of all the engineering drawings as implemented (As Built Drawings) as provided in Article (33/8) herein.

38/5: Upon the initial takeover of the works and submitting the certificates and documents referred to in paragraph (38/4) hereof, the employer shall pay the value of the final bill after deducting the amount left of the advance payment value and the amounts already paid to the contractor in advance or any other amounts due to the contractor.

38/6: Payment of the value of raw materials:

The contractor shall be paid a maximum of 70% of the purchasing value of permanent materials and equipment supplied to the site (raw materials), provided that the amount paid to the contractor does not exceed (50%) of the value of each item.

According to the following conditions:

A- That materials shall be included in the annex to the contract and their price shall be paid when supplied to the work site.

B- The supplied materials or equipment shall comply with the conditions and specifications and be approved by the engineer.

C - The supplied materials shall be stocked at the work site and had a physical inventory from the reality of the work's categories and under the guard and responsibility of the contractor.

D- The contractor shall not transfer them to another site or use them for works other than stated in the contract.

E- Where the mechanical equipment and materials are entered as part of the permanent works, the payment of the remainder of their value shall be completed within the bill under which such items are paid.

38/7: Waiver of financial entitlements:

The contractor may, with the employer's prior written consent, assign all or some of its financial entitlements arising from this contract to banks, financial institutions and others in accordance with the waiver formula approved by the Ministry of Finance.

38/8: Payment of subcontractors' entitlements:

The contractor shall pay the subcontractors' entitlements approved by the employer in accordance with the contracts concluded with them and according to the quantities of

works carried out by them. In case of non-payment of such entitlements, the employer shall have the right to pay them by deducting from the entitlements of his/her contractor after having ascertained their entitlement and that the works are carried out in accordance with the terms of the contract.

38/9: Payment of the entitlements of contractor employees:

The contractor shall pay the salaries and entitlements of his workers and employees working in the project within the specified deadlines and submit to the engineer a statement thereof every three months. In case of delay in payment, the employer shall have the right to pay these rights directly to their owners or by the competent authorities, deducting from the contractor's entitlements.

38/10: Settlement of the final account and release of bank guarantees:

Upon final takeover of the works by the employer after the end of the annual warranty period, the final account of the project shall be settled and the final guarantee shall be released.

38/11 Payment currency:

Subject to the provisions of the regulations and instructions, all payments shall be in the currency of the Kingdom of Saudi Arabia unless the parties agree otherwise.

Article (39): Quantities and measurement of works:

39-1: The quantities mentioned in the bills of quantities list are the estimated amounts of work and any changes or additions to them that are dealt with in accordance with the provisions of Chapter Ten herein, and are calculated on the basis of the actual quantities that are implemented.

39-2: The engineer shall verify and estimate the value of the work performed in accordance with the contract (unless stated otherwise), and the engineer shall, when wanting to measure any part of the works, notify the contractor or his representative. They or any of them may attend or send an authorized agent to perform such a measurement, and the contractor shall submit to the engineer or the engineer's representative all required information. If the contractor or his representative fails to attend after being notified, the measurement made by the engineer shall be deemed acceptable.

39-3: works shall be measured on the basis of only net measurements and lengths unless expressly stated otherwise in the contract.

39.4: Metric system shall be used in all measurements and purposes related to this contract, except for matters covered by special provision in the terms of the contract.

(Chapter Thirteen)

Compensation and Contract Prices Adjustment

Article (40): Cases of compensating the contractor:

The employer shall compensate the contractor and amend the contract's prices in the following cases:

40-1 In case local regulations and legislations have been amended or new regulations and legislations have been enacted:

If the local regulations and legislations have been amended or new regulations or legislations have been enacted after the contractor's submission to its bid, which led to a change in the cost of the contract by increase or decrease, the value of the contract shall be amended by increasing or decreasing the difference. Payment of the difference resulting from the increase is subject to the following:

A- The contractor shall prove that it paid the difference in the increase on the basis of the categories amended by the increase as a result of his execution of works or supply of materials dedicated to the contract's works.

B- The change in the regulations and legislations shall not have taken place after the expiry of the period specified for the execution of the contract or the contractor bore the excess cost as a result of his delay in execution unless it proves that the delay is due to the employer or a matter beyond its control.

In any event, the amount of the difference in the cost of the contract shall be deducted from the contractor if the enactment or amendment of the legislation and regulations result in a reduction in its value unless the contractor proves its performance on the basis of the original categories prior to the amendment.

40-2 Compensation upon change of raw material prices:

If the specified prices of raw materials under this Article have changed by increase or decrease (cement, iron, asphalt, remicon, wood, pipes, cables) or any other raw materials specified or agreed by the Ministry of Finance or in agreement with them, the prices of the contract shall be adjusted by increase or decrease according to the following conditions:

A- The compensation or reduction of the prices of the items shall not be considered unless the price change in the market for an item exceeds a 10% decrease or increase according to the price indices issued by the relevant agency.

B- The change in prices shall take place after the date on which the contractor submits

its bid.

C- The reason for this is not due to the delay in execution because of reasons related to the contractor.

D- The contractor shall submit its claim to pay the price's differences according to the items actually executed to the engineer under a separate bill accompanying the original bill. The engineer shall study the contractor's request and submit it to the employer in accordance with the provisions of this Chapter. The compensation shall be considered according to the mechanism and procedures issued by the Ministry of Finance based on the price indices issued by the Ministry of Economy and Planning and related parties.

E- The employer (the agency responsible for the accounting of the contract) and the supervisor shall periodically review the prices of the contract and follow up the price indices issued by the relevant agency. If prices of the raw materials specified in paragraph (40) of this Article decrease, the value of the related items shall be reduced when the contractor's bills are paid in accordance with the mechanism and procedures issued by the Ministry of Finance.

40-3: Compensation for physical difficulties and soil conditions:

The contractor shall have the right to claim compensation for the additional costs he paid in the cases specified under the contract:

A- In case he encounters unexpected physical difficulties in accordance with the provisions of Article (7) herein.

B- In case he faces a soil condition that requires a change or amendment in the contract's documents in accordance with the provisions of Article (4) herein.

C- In case he encounters utilities networks requiring a change or amendment in the contract's documents in accordance with the provisions of Article (6) herein.

40-4: The actions and decisions of the employer or the competent authorities that result in the contractor's incurring of additional costs in the cases specified in the terms of the contract:

A- The employer is delayed in handing over the site for the specified period in accordance with the provisions of Article (3) herein.

B- The employer's mistake in determining the original points and works' sites in accordance with Article (5) herein.

C- The employer's delay in issuing, reviewing or approving the engineering designs

within the specified periods.

D- Delay of the employer or the competent authorities in issuing the approvals and approbations or licenses and permits in accordance with the provisions of Articles (8/6, 14) herein.

E- Delay of works or any part thereof or being affected due to the discovery of artifacts at the work site in accordance with the provisions of Article (24) herein.

F- Suspension of works or any part thereof for reasons not attributable to the contractor in accordance with the provisions of Article (37) herein.

G- The employer's delay in the payment of the contractor's dues for the deadlines stipulated in Article (38/3) herein.

40-5 Compensation for the employer's risks:

The contractor shall be compensated for the cost he pays for repairing the damage caused to the project due to the risks of the employer in accordance with the provisions of Article (52) herein.

40-6 Compensation to the contractor in case of terminating the contract:

If the employer terminates the contract for reasons unrelated to the contractor, the contractor shall be compensated at a rate not exceeding 10% of the value of the works performed in accordance with the provisions of Article (54/5) herein.

Article (41) Submission of compensation claims:

41/1: The contractor may, if he believes that he is entitled to any financial compensation under any of the conditions of the contract or due to his execution of the contract's works, submit his claim along with the supporting documents and proofs to the engineer within a period not exceeding (60) days from the occurrence of the incident or his knowledge of its occurrence or during the remaining period of the contract. The submission of a claim during this period may be considered to be temporary if the incident or circumstance that led to the claim has a continuous effect and in all cases, the contractor shall submit his final claim within a period not exceeding (28) days from the end of the effects of the incident or circumstance.

41/2: The engineer shall study the contractor's claim referred to in paragraph (41/1) of this Article within a period not exceeding (21) days from the date of receiving the claim with complete documents and submit a report to the employer.

41/3: After receiving the engineer's report, the employer shall study the contractor's request for technical, financial and legal compensation and submit it to the Tender Examination Committee to issue the necessary recommendation within a period not

exceeding (45) days from the date of receiving the engineer's report with complete documents.

41/4: The employer shall submit the minutes of the Tender Examination Committee after being approved by the relevant agency together with the documents related to the claim to the Committee for the Consideration of contractors' Compensation at the Ministry of Finance to consider the contractor's entitlement to be compensated and issue the necessary decision in this regard within a period not exceeding (45) days from the date of receipt of the claim with complete documents.

41.5: The costs of additional works and changes shall be paid by the employer in accordance with the provisions of Chapter Ten herein.

41/6: Compensation to the contractor shall not exceed (20%) of the total value of the contract pursuant to resolutions issued by the administrative entity in accordance with the terms and conditions of this contract. Payment of compensation shall be made by the employer directly and from the funds allocated to the project.

41/7: Any other claims for compensation provided by the contractor except as expressly provided in the contract and its terms and conditions to be considered by the employer, or any objection by the contractor to the employer's estimates of compensation, the contractor may submit his claim thereon to the competent judicial authority.

41/8: The contractor's entitlement to compensation as provided in the contract terms and conditions shall require proof of damage or additional cost incurred as a result of carrying out the work.

(Chapter Fourteen)

Works Takeover

Article (42): Initial takeover of works after completion:

42/1 If the duration of the original contract and the extensions thereto have expired and the contractor has not delivered the work, the employer shall form a technical committee to inspect the works and prepare a joint report with the contractor to identify the work completed and the percentage of completion and determine the causes for the delay in execution.

42/2 Upon completion of the work and leaving the site as stipulated in Article (43) herein, the contractor shall send a written notification stating the above to the employer to set a date for the inspection in preparation for the initial takeover and the employer may set a date for the inspection of the project and the initial takeover thereof. The contractor shall be notified in writing within a period not exceeding

fifteen days from the date of the contractor's notice of completion of the works.

42/3: The employer shall inspect the works in accordance with the provisions of the previous paragraph (42/2). If the inspection shows that the works have been carried out in accordance with the terms and conditions of the contract, they shall be primarily received in the presence of the contractor or his representative and the engineer. A record of the initial takeover shall be made and the contractor shall receive a copy thereof. The date of the contractor's notice to the employer of his willingness to deliver shall be considered as the date of completion of the works and the commencement of the year of the guarantee, if the inspection is done on time and it is proved that the works are initially receivable on that date. If the inspection shows that the work is not fully executed, the Preliminary Receiving Committee shall determine the reasons for refusing the takeover and the works to be completed by the contractor. The contractor shall complete such works before submitting a second request for the takeover of the works. This shall be confirmed in the record and the takeover shall be postponed until completion of the works required to be carried out or repaired.

42/4: If, upon initial takeover, there are items or sections of the works that are not performed by the contractor and the employer finds that the incomplete works do not preclude the utilization and use of the project for the purpose for which it is created, the employer may preliminarily receive the works and request the contractor to complete the uncompleted works during the period specified for the completion of such works. If the contractor does not complete it, the employer shall have the right to deduct the value of these works from the contractor's entitlements or assign others to execute them at the contractor's expense and request him to pay the differences in prices.

42/5 The employer may receive any completed part of the project if the project is segmented or the employer has the desire to benefit from the completed part.

42/6 The employer may not use any part of the works other than the temporary use provided for in the contract, or where agreed between the parties, unless this part was not received as an initial takeover.

42/7 If the employer uses the project or any part of it prior to takeover, contrary to the provisions of paragraph (42/6) of this Article, the project or the part used shall be deemed to have been received preliminarily from the date of its use. The responsibility for caring for such part shall be transferred to the employer.

Article (43): Evacuation of the site after completion of the works:

43/1 Upon completion of the works, the contractor shall leave the site and transfer all construction equipment, unused materials, waste, and temporary works of any kind, and shall ensure that the site and all works are clean and ready for use or in a condition

approved by the employer.

43/2 The materials stored in the site which the employer has paid for shall be the property of the employer, and the contractor shall store them or transfer them to the place designated by the employer.

43/3 If the contractor does not remove the equipment, materials and supplies referred to in paragraph (43/1) of this Article, the employer shall be entitled to sell or dispose of such items which the contractor has not removed after the contractor's notice thereof in writing and the passage of fifteen days from the date of receipt of the notice with the contractor bearing the costs incurred by the employer to complete the sale or disposal of such materials and the cleaning of the site. The employer shall return to the contractor the remainder of the sale proceeds.

Article (44): Final takeover:

44/1 The contractor may submit a written notice to the employer prior to the end of the guarantee year within a period not less than fifteen days to set a date for inspection in preparation for the final takeover. The employer may set a date for inspection and final takeover not later than 30 days from the date of receipt of the contractor's notice. If the inspection proves the works to be in conformity with the conditions and specifications, they shall be received permanently pursuant to a report signed by both parties.

44/2: If the inspection shows that there is a defect or malfunction in some works, which is the responsibility of the contractor in accordance with the terms of this contract, the final takeover shall be postponed and the guarantee year shall be extended until such defect or malfunction is rectified by the contractor within a reasonable period specified by the employer. If the period expires and the defect or malfunction is not rectified, the employer may perform the necessary repairs at the expense of the contractor and under his responsibility or deduct their value from the value of the final guarantee or any other entitlements to the contractor.

(Chapter Fifteen)

Works Withdrawal and Execution at the Contractor's Expense

Article (45): Withdrawal of works and procedures of withdrawal and execution at the expense of the contractor

45/1: Withdrawal of work from the contractor

Without prejudice to the provisions of the relevant regulations, the employer may withdraw the works from the contractor and seize the site and carry out the work at the expense of the contractor, while retaining the right of compensation from the

contractor for any damage resulting therefrom, in any of the following cases:

A: If it is proved that the contractor, by himself or through others, directly or indirectly, bribed one of the employees of the entity (owner of the project) or other entities or won the contract through bribery.

B: If he is late to start work or is slow to execute it or violates any of the terms and conditions of the contract and does not rectify the situation within fifteen days from the date of being notified in writing to correct the situation.

C: If he waives the contract or becomes a subcontractor without the prior written consent of the employer.

D: If he becomes bankrupt, or files for bankruptcy, or is proved to be insolvent or an order was issued for placing him under custody or was a company which was terminated or liquidated.

45/2: If the work is withdrawn from the contractor according to the reasons referred to in this Article, paragraph (45/1) and the employer is shown that there is an interest in not continuing to execute the project with the same conditions and specifications of the contract or if the project is canceled, the employer shall only terminate the contract and confiscate the final guarantee provided by the contractor.

45/3: If the contractor dies and his personal qualifications are considered in the contract, the contract shall be terminated, his dues shall be settled and his guarantees shall be returned. The employer may continue to contract with the heirs if they have adequate technical and financial guarantees.

45/4: Procedures for withdrawal of work:

45/4/1: The work shall be withdrawn from the contractor by written notification based on a recommendation from the Tender Examination Committee or the purchasing authority, as the case may be, without the need to take any judicial action. The contractor shall be notified by a registered letter.

45/4/2 The employer may, in the circumstances that he or she deems appropriate, take the appropriate measures to ensure that the required specifications are carried out within the specified period by managing the project by him or by assigning it to a consulting firm without resorting to withdrawal of work.

45/4/3 In the case of withdrawal of work from the contractor, the employer shall confine the contractor's entitlements and extend the final guarantee provided for him so that it remains valid until he makes a final decision to confiscate it to cover his claims against the contractor until the final accounting of the project works is done.

45/5 Procedures for executing the works at the contractor's expense:

45/5/1: The works shall be carried out at the expense of the contractor in one of the following ways:

A: The agreement with the second bidder, following the contractor's tender to perform the work at the same prices contracted. In case he refuses to agree, negotiations with other bidders shall be made in order. If contracted prices are not reached, negotiations shall be made with all applicants for execution for a value not exceeding the prevailing prices at the time of negotiation.

B: If the employer is not able to carry out the work as referred to in the preceding paragraph of this Article, it shall be executed by direct purchase if its value is within that limit and not exceeding the prevailing prices.

C: If the employer is not able to carry out the work as referred to in the previous two paragraphs of this Article, the withdrawn works shall be offered for public tender in accordance with the provisions of the Government Tenders and Procurement Law and its Implementing Regulations.

D: If the work withdrawn from the procurement contracts which are excluded from public tenders, as specified under Article (47) of the Government Tenders and Procurement Law, are executed at the expense of the contractor in accordance with the method prescribed for the purchase under the Law.

E. If the value of the withdrawn works does not exceed 100,000 riyals, the employer shall insure them in the manner he deems appropriate and shall not exceed the prevailing prices.

45/5/2 The employer shall draft a record with the contractor from whom the works are withdrawn or his representative attesting to the status of the project at the time of the withdrawal, and the tools, materials and other equipment found in the site. The contractor shall have no right to object to what is stated in the record, if he or his representative does not attend after being notified thereof.

45/5/3: The employer shall have the right to keep the materials and equipment on the site, and the contractor from whom the works are withdrawn after settling the account and paying the amounts due to him, shall recover the equipment and machinery belonging to him.

45/5/4: The employer shall have the right to use the materials and equipment on the site to complete the execution of the withdrawn works after proving their condition, provided that the value of the items and the similar fees for the use of the equipment are estimated according to the prevailing prices.

(Chapter Sixteen)

Defects and Works Warranty

Article (46): Maintenance warranty

46-1

The contractor shall be responsible for the maintenance and repair of any defects or deficiencies in the works executed in accordance with the terms of the contract within a full calendar year from the initial takeover of the works until the final takeover. The contractor shall be fully responsible for such defects. If initial takeover is segmented, the guarantee period for each segment shall commence on the date of initial takeover.

46-2 The contractor shall carry out any repair, amendment, or re-construction works as required by the employer or engineer in writing during the guarantee period or upon final takeover.

46-3 The work delivered to the employer at the end of the annual warranty period shall be in a state of quality and proficiency, and shall not be less than that which existed at the beginning of the warranty period except as may result from wear and tear. The initial takeover by the employer without pointing out the defects or non-conformity with the specifications shall not relieve the contractor from his obligations with regard to the warranty and maintenance in accordance with the contract terms and conditions.

46-4 The contractor shall perform all repair work during the year of warranty at his own expense if the cause of the defect is due to any design the contractor is considered responsible for, or the contractor's submission of instrumental, material or professional equipment in violation of the terms of the contract or if the reason is due to negligence or default in the performance of any express or implied obligation under the contract.

46-5: If the contractor declines to perform any of the maintenance and repair work required under this Article, the employer shall have the right to execute such works at the contractor's expense and the costs of such works shall be deducted from the contractor's entitlements or the final guarantee value.

46-6: If the defect or damage deprives the employer from the full benefit of the works or any principal part thereof, the employer, while retaining any other rights, shall have the right under the contract to recover all amounts paid for the works or to that part (as the case may be) plus any other expenses paid by the employer.

46-7: If the defect or damage cannot be repaired on site, the contractor may, after obtaining the consent of the employer, transfer any parts of the instrumental equipment that are defective or damaged from the site for the purpose of repair. The employer may require the contractor to increase the value of the performance guarantee by the

equivalent of the full replacement value of the transferred instrumental equipment or to provide other appropriate guarantee.

Article (47): Decennial liability insurance

The contractor shall guarantee the total or partial destruction of what he has built within ten calendar years from the date of delivery of the project to the employer, if it is due to a defect in the execution, unless the parties have agreed to keep the facilities for a shorter period. The insurance shall include the substantial defects that entail a threat to the durability and safety of the work and do not relieve the engineer of his responsibility towards the employer due to the failure of the supervision process.

(Chapter Seventeen)

Risks and Liability

Article (48): Liability:

48/1: Contractor's liability:

The contractor shall indemnify and protect the employer, its members and agents from all claims, damages, burdens and expenses including (fees and litigation expenses) in respect of:

A) Physical injuries, illness, morbidity or death that may be inflicted on any person, whether caused by or during or because of the contractor's designs, if any, or the execution and completion of the works and the repair of any defects therein unless the cause is intentional or due to negligence, or breach of the contract by the employer or his employee or agents.

B) Damage or loss to real estates or personal property (other than works), if caused by the execution of the works or by the contractor's designs or caused by negligence, intentional act or breach of contract by the contractor, its employees or any of their agents.

48-2: Employer's liability:

The employer shall indemnify and defend the contractor, its employees and agents against any claims, damages, losses or expenses including (fees and litigation expenses) unless covered by insurance in respect of:

A) Physical injuries, illness, morbidity or death attributable to negligence, intentional act or breach of contract by the employer or his employees or any of their agents;

B) the employer's risks.

Article (49): The contractor's care of works:

The contractor shall be fully responsible for the works, the materials and equipment included therein from the date of the commencement of the works until the initial takeover of the project. This liability extends to the defects in initial delivery as well as the works the damage of which took place prior to receiving it from the contractor. If there is damage or loss of works, materials or equipment, the contractor shall rectify such damage or loss in accordance with the directions of the engineer.

Article (50): Employer's risks:

The employer's risks are defined as the risks specified under this Article, the damages of which are borne by the employer unless they are covered by insurance. These risks include:

- A) Wars, acts of aggression, whether declared or not, and foreign enemies' acts within the borders of the State.
- B) Civil wars, acts of terrorism and military disturbances of any kind within the borders of the State.
- C) Turmoil, riot, or disturbances of order within the borders of the State carried out by persons other than the users of the contractor or the users of the subcontractors.
- D) Military ordnance, explosives, nuclear radiation or contamination of nuclear radiation within the borders of the State, except as may be the result of the contractor's use of such ordnance, explosives, or radiation.
- E) Pressure waves resulting from aircraft and air transport that accelerate at the speed of sound or supersonic speed.
- F) Natural disasters such as earthquakes, volcanoes and floods, which are unforeseen and an experienced contractor cannot take the necessary precautions to prevent them.
- G) The employer's use or occupancy of any part of the permanent work except as provided in the contract.
- H) Design any part of the works prepared by the employer's users or by others whom the employer shall be responsible for unless there is a failure by the contractor to disclose any errors in such designs.

Article (51): Force Majeure:

51-1 Force majeure means any sudden occurrence taking place after the conclusion of the contract and before its completion so that the execution of the contract or part

thereof becomes impossible.

51-2 Force Majeure shall not exist unless the following conditions are satisfied:

a- The impossibility of execution shall be due to a sudden accident that takes place after the conclusion of the contract and before or during the execution thereof and the contractors have no involvement therein.

b- The contractor shall not be able to predict it prior to contracting.

c- Neither party is able to avoid or address it reasonably when it occurs.

d- No contractor has contributed by his mistake in achieving the impossibility of execution.

Article (52): Implications of employer's risks and force majeure:

52-1 If the execution of the contract or any part thereof becomes impossible for any of the causes of the employer's risks or force majeure, the employer shall send a notice to the other party informing him of the incident and the commitments which have become or will become impossible within a period not exceeding 45 days from the date of the occurrence or knowledge of the incident.

After the contract parties have ascertained the impossibility of execution, the contract shall be terminated by mutual agreement 90 days after the date of notification.

The contractor shall be compensated and his dues shall be settled in accordance with the provisions of Article 54 (paragraphs 3, 4, 5) herein.

If the impossibility of execution is limited to part of the contract, the contractor shall be exempted from the execution of this part unless this leads to the non-utilization of the entire project; in such case, the contract shall be terminated.

52-2 If the completion of the works or any part thereof becomes possible after the risks no longer exist, the contractor shall resume the works after notifying the engineer of the same and shall repair any damage to the works, supplies, materials or contractor's documents. If there is a delay or the contractor incurs any cost due to the repair of works, consideration for compensation, financial and/or temporal, shall be made in accordance with the provisions of Chapters Eleven and Thirteen herein.

(Chapter Eighteen)

Insurance

Article (53): The scope and conditions of insurance

53-1: The contractor shall insure (in his name and the name of the employer jointly) with a local cooperative insurance company the following:

A - Insurance of the project and its components:

Insurance of the project and its components, including machinery equipment and materials, in an amount exceeding the total cost of replacing the works and the included 10% to cover any damages required for any loss or damage whatsoever, including demolition and removal of rubble. The insurance shall also include any loss or damage that the contractor is responsible for due to reasons that occurred prior to works takeover and against any loss or damage that may be caused by the contractor during the repair of defects. The insurance policy shall enter into force from the date of commencement of the works until the initial takeover of the project.

B- Insurance against injury to persons:

Liability insurance for the parties against any claims, damages, losses or expenses, including litigation fees resulting from the death or injury of any person as a result of the works performance or maintenance or for any reason related thereto, whether by the persons employed by the contractor or others.

C) Insurance for damages to property:

Liability insurance for the parties against any loss, damage, or any claims or compensation for loss or damage to any third party property that may arise as a result of the performance or maintenance of the works or any reason related thereto.

53-2: Risks excluded from insurance:

Unless otherwise stated in the terms of the contract and competition documents, the following risks are excluded from insurance:

A) the risks of the employer specified under the provisions of this contract.

B) What has been insured (for workers) by the General Organization for Social Insurance (GOSI) or any insurance or guarantees required from the contractor under applicable laws and regulations.

C) What is associated with using the site for the purpose of executing the contract.

53-3: The contractor shall remain liable for the total value of any claims even if the value is greater than the minimum specified in the insurance policy.

53-4: Employer's receipt of the insurance documents:

The contractor shall submit to the employer the insurance documents required of him

under this contract within a period not exceeding ten days from the date of delivery of the contractor's work site. In the event of the contractor's delay in issuing or extending the required insurance, the employer shall have the right to issue and/or extend the insurance at the expenses of the contractor. In this case, the insurance value shall be deducted from the contractor's entitlements. The contractor shall have the right to reduce the value of the contract by its cost if he thought that there is no need to issue it. The contractor shall, upon payment of each premium, provide copies of the payment receipts to the employer and notify the engineer accordingly.

53-5: Any provision of this Chapter shall not limit or relieve the contractor of any duties, obligations or responsibilities under other provisions of this contract and the contractor shall bear any amounts not insured or not collected from the insurance agencies subject to the terms of the contract.

53-6 The provisions of this Article shall not apply to contracts with a cost of five million riyals or less.

(Chapter Nineteen)

Termination of Contract

Article (54): Termination of contract:

54/1 Termination of contract for public interest:

The employer shall be entitled to terminate the contract at any time as necessitated by public interest after notifying the contractor of the same. The termination shall be effective 30 days from the date of the notice.

The employer may not terminate the contract under this Article to carry out the works himself or arrange for its execution by another contractor. After receiving the notice of the contract termination, the contractor must stop working and remove his equipment and settle his accounts in accordance with the provisions of paragraph (3) of this Article.

54/2: Termination of contract by agreement of the parties:

The contract may be terminated by agreement of the parties in the following cases:

A) If the employer delays the delivery of the work site to the contractor for a period of more than ninety days after the expiry of the period specified for delivery of the site under Article (3) of these terms or from the last date agreed upon as a deadline for delivery of the site, and after 25 days from the date of notifying him of the notice without submitting the site or taking acceptable procedures for the delivery of the site. The failure of the employer to deliver the parts of the site shall not be covered by the

provisions of this Article so long as the contractor can work on the other parts.

B) If the employer continues to suspend the entire work in accordance with the provisions of Article (37) herein for a period exceeding (180) days from the date of the letter of order to suspend the works for reasons not related to the contractor and after the contractor notifies the employer to enable him to resume the works, and after the lapse of 25 days from the date of notification without enabling the contractor to resume the works or to take acceptable measures to enable him to work.

C) If the works execution becomes impossible for the presence of force majeure or the employer's risks in accordance with the provisions stipulated in Chapter Seventeen herein.

54/3: Effects of contract termination:

If the contract is terminated in accordance with the provisions of this Article or due to the risks of the employer or the force majeure referred to in Articles (50 and 51) herein, the contractor shall:

A) Cease the performance of any work unless such work has been directed by the engineer for the purpose of protecting persons or property or for the safety of the works.

B) Hand over to the employer the project documents, instrumental equipment, materials and other works on the site which are the property of the employer in accordance with the terms of the contract.

C) Remove all other supplies from the site except what is necessary for safety and leave the site.

54/4: After the notice of termination becomes effective, the employer shall:

1- Hold the contractor accountable for all works performed on the site and restore the remaining balance of the advance payment amount, if any.

2 - Pay to the contractor the value of supplies and stored materials on site approved before the date of notice of termination of work and also pay the contractor the value of materials and supplies that the contractor had already purchased and imported for the purpose of the contract and was not included in the site for lack of arrival provided that the contractor shall submit what proves the purchase for the purpose of executing the work. All materials and stored items paid for by the employer shall be deemed as his property.

3- Release the advance payment guarantee and the final guarantee.

54-5: Unless the contract is terminated because of the contractor, the employer shall indemnify the contractor with an amount not exceeding 10% of the amounts paid from the contract value for the following costs and expenses:

A- The project administrative expenses, including bank fees.

B- The cost of removal of temporary works and contractor's equipment and the evacuation and cleaning of the site.

C – The cost of transporting the contractor's employees and full-time workers to carry out the works of the project.

(Chapter Twenty)

Settlement of Disputes

Article (55): Resolving the disputes arising from the execution of this contract:

55.1: Amicable settlement of disputes:

The Parties undertake to fulfill the terms of the contract in good faith and to seek to prevent any disputes that may affect the execution of the works, to settle any dispute between them, by mutual understanding, whenever possible, and to ensure that disputes do not preclude the contractor from continuing to fulfil his obligations in accordance with the terms of the contract.

55-2: Settlement of the dispute through the judiciary:

The high administrative court of the Kingdom of Saudi Arabia shall be the competent authority to adjudicate the dispute, if the parties are unable to resolve the dispute amicably.

55-3: Dispute settlement by arbitration:

The parties may agree to reach a final settlement of any dispute arising between them through arbitration, in accordance with the Saudi Arbitration Law and its Implementing Regulations and after approval of the Ministry of Finance. In contracts executed outside the Kingdom by a foreign contractor the same shall be applied.

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