

THE
COAL
AUTHORITY

Conditions of Contract

for

Works and Services

***June
2007***



INVESTOR IN PEOPLE

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CONDITIONS OF CONTRACT
FOR
WORKS AND SERVICES**

JUNE 2007 EDITION

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CONDITIONS OF CONTRACT FOR WORKS AND SERVICES

1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions of Contract (unless the context otherwise requires) the following expressions have the following meanings:-

1.1.1 "Authority" means The Coal Authority, established pursuant to Section 1 of the Coal Industry Act 1994;

1.1.2 "Call Off Order" means the request for specific works ordered by the Authority in accordance with the Contract;

1.1.3 "Commencement Date" means the date for the commencement of the Works in accordance with Condition 4.1;

1.1.4 "Contract" means the agreement between the Authority and the Contractor for the execution of the Works comprising as the case may be (either):-

(a) the Invitation to tender issued by the Authority, the Contractor's tender (together with any documents and drawings referred to therein) and the Authority's acceptance thereof, and in the case of a term contract, any Call-Off order by the Authority in accordance therewith; or

(b) the Authority's offer and the Contractor's acceptance thereof; or

(c) the Contractor's offer and the Authority's acceptance thereof

in the case of (b) or (c) whether made (wholly or in part) orally or in writing and together in any case with these Conditions of Contract, any Special Conditions and any specifications or other document incorporated in the Contract by express reference;

1.1.5 "Contractor" means the person, firm or company with

whom the Contract is made.

- 1.1.6 "Contractor's Representative" means the person appointed for the time being by the Contractor under Condition 3.1;
- 1.1.7 "Contract Price" means the sum to be ascertained and paid to the Contractor for the execution of the Works in accordance with the Contract;
- 1.1.8 "Date for Completion" means:-
- (a) the date specified in the Authority's Letter of Acceptance or Letter of Offer
 - (b) the date specified in the Call-Off Order; or
 - (c) the date specified by or ascertained in accordance with the Contract for the completion of the execution of the Works or as extended in accordance with Condition 10;
- 1.1.9 "Engineer" means the person firm or company appointed for the time being by the Authority under Condition 2.2 to act as the Engineer for the purposes of the Contract from time to time and notified in writing as such to the Contractor;
- 1.1.10 "Engineer's Representative" means any person or persons to whom the Engineer delegates any of his powers or functions under the Contract;
- 1.1.11 "Maintenance Period" means the period (if any) specified in the Contract;
- 1.1.12 "Machinery" means any plant or machinery belonging to the Authority which the Contractor is to repair under the Contract;
- 1.1.13 "Month" means, for the purpose of Condition 14 the monthly accounting periods of the Authority as advised to the Contractor.
- 1.1.14 "Section" means one of the Sections into which the

Works have been divided for phased completion and which are shown on the contract drawings or are otherwise described in the Contract;

- 1.1.15 "Site" means the location where the Works are to be executed by the Contractor;
- 1.1.16 "Statutory Requirements" means all acts and omissions required by any statute, statutory instruments, rule or order or any regulation or by-laws of local or other authorities or any approvals, consents, guidance notes and codes of practice which are or which may from time to time become applicable to the Works including any re-enactments and amendments thereto.
- 1.1.17 "The 1974 Act" means the Health and Safety at Work Act 1974 and all regulations and orders issued thereunder together with any amendments or re-enactments thereof.
- 1.1.18 "The 1990 Act" means the Environmental Protection Act 1990 and all regulations and orders issued thereunder together with any amendments or re-enactments thereof.
- 1.1.19 "The 1994 Regulations" means the Works Management Licensing Regulation 1994 together with any amendments or re-enactments thereof
- 1.1.20 "Timed Programme" means the programme for the execution of the Works specified by or contained in the Contract or, if no such programme is specified by or contained in the Contract, the approved programme referred to in Condition 4.4;
- 1.1.21 "Variation Order" means a written order made by the Engineer under Condition 12;
- 1.1.22 "Works" means all work or services (including any role defined in the CDM Regulations 2007 where applicable) to be performed and, where appropriate, any plant and equipment to be supplied and erected under the Contract or as varied by the Engineer under Condition 12.
- 1.1.23 "Intellectual Property" means know-how, inventions, copyright,

- registered or unregistered trade marks, registered or unregistered designs, or patents and any similar rights and applications for any other foregoing.
- 1.1.24 "Confidential Information" means all information (whether recorded or not and, if recorded, in whatever form or on whatever media and by whomsoever recorded), relating to any part of the Authority's affairs which is marked secret or confidential or sensitive or which is treated as such by The Authority or would be deemed to be such by a reasonable person.
- 1.1.25 "the Adjudicator" means the person appointed in accordance with Condition 46.
- 1.1.26 "Adjudication" means the dispute resolution procedure required by Condition 46.
- 1.1.27 "Construction Act" means the Housing Grants Construction & Regeneration Act 1996.
- 1.1.28 "CDM Regulations" means the Construction (Design and Management) Regulations 2007, together with such guidance notes as shall be issued from time to time by the Health and Safety Commission including but not limited to "Managing Construction for Health and Safety: Approved Code of Practice", "A guide to managing Health and Safety in Construction" and any amendments and re-enactments thereof;
- 1.1.29 "Construction Phase Plan" means the plan described in Regulation 2(1) and prepared by virtue of Regulation 23 of the CDM 2007 Regulations.
- 1.1.30 "CDM Co-ordinator" means the persons so described in Regulation 2(1), appointed under Regulation 14(1) to perform the duties specified in Regulation 20 and 21 of the CDM 2007 Regulations.
- 1.1.31 "Principal Contractor" means the persons so described in Regulation 2(1), and appointed under Regulation 14(2) to perform the duties specified in Regulation 22 to 24 of the CDM 2007 Regulations.

1.1.32 "Employee Liabilities"

means in relation to the employment of any person (whether or not by the person incurring the Employee Liability) all claims, demands, actions, proceedings and all damages, loss, costs and expenses (including legal costs) including (without limitation) claims in contract, in tort, under statute, for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for unlawful discrimination, claims for equal pay, and compensation for less favourable treatment of part-time or fixed workers or in relation to working time or national minimum wage complaints, personal injury, failure to carry out statutory consultation, data protection, human rights, payments made by way of settlement, and costs and expenses reasonably incurred in connection with a claim or investigation.

1.1.33 "TUPE"

means the Transfer of Undertakings (Protection of Employment) Regulations 2006, the Acquired Rights Directive (both as amended and as may in the future be amended or succeeded by similar legislation), laws based on that Directive, and any similar legislation aimed (in whole or in part) at preserving employment during the transfer of a business or a part of a business.

- 1.2 The headings of these Conditions of Contract shall not affect their interpretation.
- 1.3 All references herein to Clauses numbered in these Conditions of Contract and not to those in any other document forming part of the Contract.
- 1.4 Communications which under the Contract are required to be 'in writing' may be hand-written, typewritten or printed and sent by hand, post, or facsimile.
- 1.5 In the event of any conflict between any document incorporated into the Contract, any Special Conditions shall always prevail over the terms of these Conditions of Contract, but these Conditions of Contract shall prevail over any other document incorporated by virtue of Condition 1.1.4.

2 EXECUTION OF THE CONTRACT

- 2.1 The Contractor shall carry out and complete the Works with due diligence and in a timely manner in accordance with the Contract and to the satisfaction of the Engineer and in a workmanlike manner with all proper skill and care. The Contractor shall use the skill and care of a competent contractor experienced in performing Works of a similar scope and nature to the Works to ensure that the Works conform to any specification in the Contract and that any goods, equipment or materials required for the Works are of good quality for their intended purpose and conform to any specification applied to them in the Contract.
- 2.2 The Authority shall appoint a person to be the Engineer for the purposes of the Contract and, subject to Condition 2.4 and 2.5, to carry out the functions of the Engineer under the Contract. The Authority shall notify the Contractor in writing of his appointment (or of the appointment of any other person to succeed him).
- 2.3 The Engineer may give instructions to the Contractor about the execution of the Works as expressly provided in the Contract or as the Engineer considers necessary or expedient and the Contractor shall comply with any such instructions given by the Engineer. The Engineer shall give all instructions, decisions and orders as expeditiously as possible in the circumstances and will be confirmed in writing.
- 2.4 The Engineer may exercise the powers and carry out the duties specified in or implied from the Contract. The Engineer has deemed authority for the exercise of these powers subject to such limits on the Engineer's powers made known to the Contractor by the Authority from time to time.
- 2.5 The Engineer shall have no authority to amend these Conditions of the Contract nor to release the Contractor from any of his obligations under the Contract.
- 2.6 The Engineer may from time to time delegate to a representative any of his powers and functions under the Contract and will notify the Contractor in writing as to what powers and functions have been so delegated.
- 2.7 The Contractor shall afford reasonable facilities and assistance to the Engineer, the Engineer's Representative and any person assisting them to enable them to carry out their duties in connection with the Contract.

3 THE CONTRACTOR'S REPRESENTATIVE

- 3.1 As and when requested by the Engineer, the Contractor shall appoint a person to be responsible for and to manage the execution of the Works on behalf of the Contractor and shall notify the Engineer of his appointment (or of the appointment of any other persons to succeed him). The Contractor's Representative shall be fully conversant with the Contract and the Authority's health and safety and environmental requirements.

- 3.2 The Engineer shall be entitled to object to the appointment of a particular person as the Contractor's Representative or to require at any time the person appointed as the Contractor's Representative to be replaced by another person satisfactory to the Engineer.
- 3.3 The Engineer shall give instructions to the Contractor about the execution of the Works through the Contractor's Representative if so appointed under Condition 3.1 or, otherwise, by writing to the Contractor's last known business address or the Contractor's registered office.

4 COMMENCEMENT AND COMPLETION OF THE WORKS

- 4.1 The Contractor shall commence the Works either within the response times specified in the Contract or if a date is specified in the Contract by that date, and if no such date or response time is specified, as agreed with the Engineer.
- 4.2 The execution of the Works shall be completed by the Contractor on or before the Date for Completion.
- 4.3 If no Date for Completion is specified in the Contract the Contractor shall complete the Works within a reasonable time and on the commencement of the Works, notify the Engineer of the date by which the Contractor proposes to complete the Works and, if approved by the Engineer, that notified date shall be treated as the Date for Completion for the purpose of the Contract.
- 4.4 If the Contract provides for a Timed Programme, the Contractor shall carry out the Works in accordance with that Timed Programme. If no Timed Programme is specified in the Contract, the Contractor shall submit, if requested by the Engineer, his proposed programme to the Engineer for approval as soon as practicable before the Commencement Date, in which event that program shall take effect when approved by the Engineer, as the Timed Programme for the Works.
- 4.5 The Engineer may, at any time prior to the Commencement Date dictate the matters or additional matters reasonably to be included in the Timed Programme. Unless the Engineer agrees otherwise, the Timed Programme shall, in any event, include where appropriate the following matters:-
- 4.5.1 the resources to be deployed in the execution of the Works;
 - 4.5.2 where appropriate the proposed date of accomplishment of all major stages in the execution of the Works;
 - 4.5.3 if the Contract provides for sectional completion of the Works all material events and milestones relating to each section and the proposed date of completion; and
 - 4.5.4 where appropriate, the time of any activities to be carried out by the

Authority or any other party which need to be co-ordinated with the carrying out by the Contractor of any part of the Works.

- 4.6 If at any time the execution of the Works by the Contractor falls behind the Timed Programme, or it appears likely that it will fall behind, the Engineer may require the Contractor to submit a modified Timed Programme showing modifications to the original Programme to the Engineer for approval. The approval by the Engineer of a modified Timed Programme shall not relieve the Contractor of his obligation under this Condition 4 except to the extent that the Date for Completion is extended in accordance with Condition 9. The Contractor shall use its best endeavours to put the Contract back on Programme.
- 4.7 At any time the Engineer may fix a date for completion of the Works earlier than the Date for Completion (or any extension thereof already granted) or may direct the Contractor to modify any Timed Programme if in his opinion the fixing of such an earlier date or such modification of the Timed Programme is reasonable having regard to any Variation Order issued under Condition 12 for the alteration or omission of any part of the Works and the earlier date shall thereupon become the Date for Completion.

5 ACCESS TO THE SITE

- 5.1 The Authority and any persons authorised by the Engineer shall at all times when they consider it necessary have access to the Site and Works and to all workshops or premises where work, materials or plant and equipment are being prepared in connection with the execution of the Works. The Contractor shall afford reasonable facilities and assistance to the Authority in this respect.
- 5.2 As from the Commencement Date, the Authority shall within a reasonable time give to the Contractor possession of so much of the Site and access thereto as may from time to time reasonably be required to enable the Contractor to commence and proceed with the Works.
- 5.3 Thereafter, the Authority shall during the course of the Works use all reasonable endeavours to give the Contractor possession of such further portion of the Site as may be required in accordance with the timed programme approved by the Engineer and such further access as is necessary to enable the Contractor to proceed with the Works with due despatch.
- 5.4 If the Authority fails or is otherwise unable to give access in accordance with Condition 5, the Contractor shall not be entitled to any damages or loss suffered by the Contractor as a result of such failure save in accordance with Condition 5.5.
- 5.5 If the Contractor suffers delay and/or incurs any extra cost from failure on the

part of the Authority to give possession or access in accordance with the terms of this Condition 5 the Engineer shall take such delay into account when determining any extension of time to which the Contractor is entitled under Condition 9.

6 SETTING OUT

- 6.1 Except as otherwise provided in the Contract, the Contractor shall take full responsibility for the adequacy, and the true and proper setting out of the Works and as required for the safe and effective completion of the Works in accordance with the Contract.
- 6.2 If at any time during the execution of the Works any error appears or arises in the position, levels, dimensions or alignment of any part of the Works set out by the Contractor, the Contractor shall at its own cost rectify such error to the satisfaction of the Engineer unless the error is based on incorrect data supplied in writing by the Authority in which case the costs of rectifying the same shall be paid by the Authority.
- 6.3 The checking of any setting-out or any line or level by the Engineer or the Engineer's Representative shall not in any way relieve the Contractor of its responsibility for the correctness thereof and the Contractor shall carefully protect and preserve all bench-marks sight rails pegs and other things used in setting out the Works.

7 CARE OF THE WORKS AND FURTHER OBLIGATIONS

- 7.1 The Contractor shall take all reasonable and proper steps for the care of the Works including without limitation the adequacy, stability and security of his site operations, ensuring that the site is kept clean and tidy and that all buildings and structures for which the Contractor is responsible are maintained to a reasonable standard from the Commencement Date until the Authority has confirmed in writing completion of the Works, provided that the Contractor shall continue to take such steps in respect of any parts of the Works not completed on such confirmation of completion until those parts are in fact completed.
- 7.2 Without prejudice to Conditions 20 and 21 if any defect, damage or loss appears in or happens to the Works or to any part of them by reason of any failure by the Contractor under Condition 7, the Contractor shall at his cost repair and make good the same so that, on the completion of the execution of the Works, the Works are in good order and condition and in conformity with the requirements of the Contract. To the extent that any such defect, damage or loss arises from any other cause, the Contractor shall if required by the Engineer repair and make good the same at the cost of the Authority.
- 7.3 If for any reason during the execution of the Works or during the

Maintenance Period any remedial or other work or repair is in the opinion of the Engineer urgently necessary and the Contractor is unable or unwilling at once to do such work or repair, the Authority may (by their own workmen or other contractors) do such work or repair as they consider necessary. If the work or repairs done by the Authority is work which the Contractor was liable to do at his cost under the Contract all costs incurred in connection therewith shall be paid by the Contractor.

- 7.4 The Contractor shall have full regard for the safety of all persons upon the Site (whether entry is effected legally or not) or any other person who the Contractor may reasonably expect to be affected by the Works and shall keep the Site and perform the works in a manner appropriate to the avoidance of danger to such persons. The Contractor shall take all steps reasonably required by the Engineer to prevent unauthorised persons being admitted to the Site and provide and maintain at his own cost all lights, guards, fencing, warnings signs and watching when and where necessary or required by the Engineer or the Engineer's Representative or by any competent statutory or other authority for the protection of the Works or for the safety and convenience of the public or others.
- 7.5 All operations necessary for the performance of the Works shall, so far as compliance with the requirements of the Contract allows, be carried on so as not to interfere unnecessarily or improperly with:-
- 7.5.1 the convenience of the public; or
 - 7.5.2 the access to or use of, public or private roads, footpaths or properties whether in the possession of the Authority or of any other person.
 - 7.5.3 The Contractor shall ensure that all work carried out under the Contract shall be completed without unreasonable noise or disturbance or other pollution. The Engineer shall have the power to instruct the Contractor to amend his method of working, or, if applicable any method statement set out in the Contract or to take such other steps as may be necessary (including replacement of any particular item of plant or equipment whether provided by the Authority or not) to ensure that noise emanating from the site is kept to a level where it does not constitute a nuisance. Any steps taken under this Condition shall be at the Contractor's expense.

8 DESIGN

- 8.1 Unless otherwise stated in the Contract, the Contractor shall not be responsible for the design or specification in whole or in part of the Works. The Contractor shall exercise all reasonable skill care and diligence in the design of any part of the Works or for any specification for the Works which he has prepared or for which he is or becomes responsible under the Contract.

9 EXTENSION OF TIME

9.1 The Contractor may apply to the Engineer for an extension of time to complete the execution of the Works if completion is delayed by any of the following events or matters:-

9.1.1 a Variation Order;

9.1.2 suspension of the execution of the Works as provided for in Condition 11;

9.1.3 any acts, omissions, defaults or delays on the part of the Authority, its workmen, agents or contractors in connection with the Contract;

9.1.4 industrial disputes affecting the progress of the Works involving the Authority's employees;

9.1.5 modifications to the Timed Programme or the Date for Completion required by the Engineer as a result of any of the events or matters mentioned in Paragraphs 9.1.1 to 9.1.4 above.

9.2 The Engineer shall consider the Contractor's application and shall grant an extension of time if he is reasonably satisfied that there has been a delay to the completion of the Works by the events or matters referred to in the Contractor's application in accordance with Condition 9.1. The extension of time which the Engineer shall grant on being so satisfied shall be for so long a period as he considers reasonably reflects the extent of delay suffered by reason of those events or matters and the Date for Completion shall be amended accordingly.

9.3 The Contractor shall not be entitled to any payment or compensation in respect of any extension of time granted to him under this Condition solely by virtue of the grant of such extension.

10 CLAIMS FOR EXTENSIONS OF TIME

10.1 The following provisions of this Condition shall apply to all claims for additional payment or for extensions of time to complete the execution of the Works by the Contractor:-

10.1.1 within seven days of such circumstances or events occurring, the Contractor shall inform the Engineer in writing of any circumstances or events occurring about which the Contractor knows or ought to know and in respect of which the Contractor is of the opinion that he may be entitled to an additional payment in connection with the Contract (other than under a Variation Order) or to an extension of time to complete the execution of the Works;

10.1.2 as soon as practicable after giving notice to the Engineer under Paragraph 10.1.1, the Contractor shall submit to the Engineer such further information concerning the Contractor's claim as the Engineer may require. The requirement by the Engineer for the Contractor to submit any information under Condition 10 shall in no circumstances constitute any admission on the part of the Engineer or the Authority that the Contractor is entitled to all or any part of the amount claimed. Furthermore, the provisions of this Paragraph are strictly without prejudice to the Contractor's obligation under this Condition 10.

10.2 Within two months (or such other period as the Engineer may agree) of the circumstances or events mentioned in Condition 10.1.1 occurring, the Contractor shall submit full and detailed particulars in a manner acceptable to the Engineer of the amount or extent of his claim and the grounds upon which his claim is based. If the Contractor is unable to submit full and detailed particulars of his claim within two months (or such other period as may have been agreed by the Engineer), the Contractor shall submit such particulars as he is able to provide within that time and indicate when he expects full and detailed particulars to be available for submission. The Engineer shall then fix a reasonable period for full and detailed particulars of the claim to be submitted and the Contractor shall submit such particulars within that time. The Engineer shall thereupon within two months of receiving full and detailed particulars of the Contractor's claim and the grounds upon which it is based notify the Contractor of the Authority's decision on the claim provided that, if it is impracticable for the Engineer to notify the Contractor of the decision on the claim within two months, the Engineer shall indicate within that period to the Contractor when it is anticipated that the decision on the claim will be notified to the Contractor.

10.3 The Contractor shall not be entitled to an additional payment or an extension of time to complete the execution of the Works if the Contractor does not comply with the provisions of Conditions 10.1 and 10.2.

11 SUSPENSION OF THE WORKS

11.1 The Engineer may by written notice at any time order the Contractor to suspend the execution of the whole or any part of the Works for the time being or for a specified period and in such manner as the Engineer may consider necessary and shall during such suspension properly protect and secure the work so far as is necessary in the opinion of the Engineer.

11.2 The Authority shall pay to the Contractor the Contractor's additional direct costs incurred as a result of complying with an order by the Engineer under Condition 11 provided that the Contractor has taken all steps as are practicable in the circumstances to avoid or reduce the same. The Contractor shall be paid in accordance with Condition 14 the extra cost (if any) incurred in giving effect to the Engineer's instruction under this Condition except to the extent that such suspension is; otherwise provided for in the Contract; or by some default on the part of the Contractor; or

necessary for the proper execution; or for the safety of the Works; or any part thereof in as much as such necessity does not arise from any act or default of the Engineer; or from any excepted risk.

- 11.3 The Engineer shall take any delay occasioned by a suspension order under this Condition (including that arising from any act or default of the Engineer) into account in determining any extension of time to which the Contractor is entitled under Condition 9 except when such suspension is otherwise provided for in the Contract or is necessary by reason of some default on the part of the Contractor.
- 11.4 The provisions of Condition 11 shall not affect the Authority's right to terminate the Contract under these Conditions and except as provided by Condition 11 the Contractor shall not be entitled to any payment from the Authority in respect of any suspension of the Works.

12 VARIATIONS

- 12.1 The Engineer may order the Contractor, by the issue of a Variation Order, to alter the design, nature or quantity of the Works or to undertake the addition, omission or substitution of any work. No Variation Order shall invalidate the Contract nor shall it entitle the Contractor to any compensation for loss of profit or overhead recovery in respect of work which he is no longer required to do or to any other payment except as provided for in this Condition.
- 12.2 The value of Variation Orders shall be added to or deducted from the Contract Price as the case may be and the Contract Price shall be treated as amended accordingly. The value shall be ascertained by the Engineer as follows:-
- 12.2.1 by measurement and valuation at the rates and prices (if any) shown in the Contract or those for similar work contained in the Contract;
 - 12.2.2 if Paragraph 12.2.1 does not apply, by measurement and valuation at fair and reasonable rates and prices; or
 - 12.2.3 if the value of Variation Orders cannot appropriately be ascertained by measurement and valuation, by the application of fair and reasonable rates and prices.
- 12.3 Payment in respect of any Variation Order shall be made in accordance with Condition 14.

13 CONTRACT PRICE

- 13.1 Subject to Condition 12, the Contract Price shall be, in accordance with the Contract, the fixed lump sum stated in the Contract and/or the value of the Works as calculated by measurement of the work done or by reference to the materials supplied and hours worked as valued in accordance with the fixed rates and prices contained in the Contract.
- 13.2 The Contract Price shall represent the amount due to the Contractor in respect of the performance in full of his obligations under the Contract, and shall in particular be inclusive of:-
- 13.2.1 the provision of all services, spares, plant, equipment, materials, packing and transport (including loading, unloading, freight, insurance and labour charges) except to the extent that the Contract otherwise provides;
- 13.2.2 all overtime payment necessary to complete the Works by the Date for Completion; and
- 13.2.3 all costs in respect of labour.
- 13.3 The Contractor shall be deemed to have satisfied himself before submitting his Tender as to the correctness and sufficiency of his Tender, and of the rates and prices upon which it was based, for performing all the Contractor's obligations under the Contract.
- 13.4 Where the Contract Price is to be assessed by measurement the Engineer shall, except as otherwise stated in the Contract, ascertain and determine by measurement the value of the Works completed in accordance with the Contract. The Contractor shall furnish all particulars required for this purpose and the Engineer shall, when he requires any part or parts of the Works to be measured, inform the Contractor who may attend or send a qualified agent to assist the Engineer in making such measurements.
- 13.5 The Contract Price is deemed to exclude VAT and the Authority shall pay such VAT as is properly chargeable on the supply of goods and services to them under the Contract.

14 PAYMENT

- 14.1 Where under the Contract the duration of the Works are less than 45 days, payment of the Contract Price shall be due following completion of the Works in accordance with the Contract and to the Engineer's complete satisfaction.
- 14.2 All payments under the Contract shall be subject to retention at the rate specified within the Contract.

- 14.3 The Authority's interest shall not be fiduciary either as Trustee for the Contractor or any other person or in any other capacity the relationship between the Authority and the Contractor with regard to retention shall solely be that of debtor and secured creditor subject to the terms hereof and the Authority shall have no obligation to invest the retention or any part thereof.
- 14.4 The Authority shall have no obligation to segregate the retention or any part thereof in a separate Bank account or any other manner whatsoever and shall be entitled to the full beneficial interest in the retention and every part thereof (and without limitation, interest thereon and arising therefrom) unless and until the retention is paid to the Contractor pursuant to this Contract.
- 14.5 Where under the Contract the Timed Programme for the completion of the Works is in excess of 45 days. The Contractor shall be paid on account a set proportion of the Contract Price at stages or periods specified in the Contract for Works completed or alternatively a sum representing the value of the work to date as ascertained with reference to the rates and prices within the Contract less any payment made to date retention and sums withheld under Condition 14.6.3.
- 14.6 Application for payment will be rendered and paid on the following basis:-
- 14.6.1 the Contractor when submitting an application for payment shall, on each application, state the basis on which the amount is claimed and calculated. The application should provide sufficient detail to enable the Engineer to verify the application. The payment shall become due 22 days from the submission of the Contractor's application.
- 14.6.2 the Authority may, no later than 27 days after the date of submission of the application, referred to in Condition 14.6.1, give to the Contractor a written notice stating the amount which the Authority proposes to pay and the basis on which the amount is calculated. Where no such notice is given, the amount to be paid is that properly due under the Contract, less any retention provided for in the Contract.
- 14.6.3 where the Authority intends to withhold payment of any amount properly due for payment, written notice must be given to the Contractor not later than 30 days after submission of the application for payment. The Authority, must state the amount to be withheld, the grounds for withholding payment and if there is more than one ground, each ground and the amount attributable to it. Payments in respect of amounts not disputed shall not be withheld.
- 14.6.4 the Contractor shall submit a revised application for payment for the amounts certified by the Authority under Condition 14.6.2 less the amount which the Authority intends to withhold in accordance with Condition 14.6.3 in the form of a valid tax invoice dated the date on which it is submitted. The final date for payment by the Authority shall be 60 days from the date of this invoice.

- 14.7 The issue by the Engineer or Authority of any certificate under these Conditions of Contract or the payment of any invoice shall be evidence only as to the general sufficiency of the Work referred to in the certificate or invoice and shall not be conclusive evidence as to the satisfactory performance by the Contractor of his obligations (including his maintenance obligations) under the Contract nor that the Works (or any part of the Works) have been executed in accordance with and comply with the requirements of the Contract.
- 14.8 Within 14 days of the end of the Maintenance Period, the Contractor shall submit a Final Account Application.
- 14.9 The Final Account Application shall set out the value of the Works calculated in accordance with the Contract and the sum of the amounts already paid to the Contractor by the Authority. The difference (if any) between the two sums shall be expressed as a balance due to the Contractor from the Authority or to the Authority from the Contractor.
- 14.10 If the Contractor does not submit the Final Application within 14 (fourteen) days of the Maintenance Period, the Authority shall be entitled to prepare its own Final Account Application which it shall submit to the Contractor.
- 14.11 Subject to Condition 14.12, 14.13 and 14.14 upon expiry of 30 (thirty) days from the submission of the Final Account Application the amount stated as due within the Final Account Application shall be conclusive as to the balance due between the Parties except to the extent that the Contractor or the Authority disputes anything in the Final Account Application before the date on which but for the disputed matter, the balance would be conclusive.
- 14.12 Not later than 22 (twenty two) days after the date of submission of the Final Account Application the Authority may give to the Contractor a written notice stating the amount which the Authority proposes to pay against the Final Account Application and the basis on which this amount is calculated.
- 14.13 Where the Authority intends to withhold payment of any amount properly due for payment a written notice must be given to the Contractor not later than 27 (twenty seven) days after the submission of the Final Account Application. The Authority must state the amount to be withheld and the grounds for withholding payment and if there is more than one ground each ground and the amount attributable to it. Payment in respect of amounts not disputed shall not be withheld.
- 14.14 The Contractor shall submit a Revised Application for Payment for the amount certified by the Authority under Condition 14.12 less the amount which the Authority intends to withhold in accordance with Condition 14.13 in the form of a valid tax invoice dated the date on which it is the Final Date for payment by the Authority shall be 60 (sixty) days from the date of this invoice.

15 DAYWORKS AND OVERTIME

- 15.1 The Contractor shall not carry out work on a daywork basis unless there is provision in the Contract for specific work to be executed on such basis or unless requested to do so in writing by the Engineer. Where work is executed on a daywork basis the Authority shall pay the Contractor for such daywork at the rates and prices applicable to daywork agreed by the Authority. The Contractor shall keep proper records, in a form approved by the Engineer, of all items to be included in the cost of dayworks and shall produce the same to the Authority on demand.
- 15.2 The Contractor shall where facilities exist, ensure that dayworkers clock in immediately prior to commencing work and clock off immediately on completing work. The Contractor shall submit to the Engineer daily time sheets in triplicate for his approval and signature. One copy of the time sheet shall be retained by the Authority, one copy shall be retained by the Contractor and the third is to be submitted with the application for payment under Condition 14.
- 15.3 The Engineer may instruct the Contractor to work overtime. Except where such overtime has been provided for in the Contract Price in accordance with Condition 13, the Authority shall pay the Contractor for such overtime at the rates and prices applicable to overtime agreed by the Authority unless the Engineer requires the Contractor to work overtime because of any default on the part of the Contractor (including where it appears to the Engineer that the Contractor is unlikely to meet his obligations under Condition 4). The Contractor shall keep proper records of all overtime worked for which he intends to claim payment in accordance with Condition 14 and produce the same to the Authority on request.

16 PARTIAL POSSESSION BEFORE COMPLETION

- 16.1 The Authority may, before the completion of the Works, take possession of any section of the Works which has been completed to the satisfaction of the Engineer and in accordance with the Contract provided that the section is:-
- 16.1.1 a section specified in the Contract for possession to be taken before the completion of the Works; or
- 16.1.2 a section in respect of which the Authority and the Contractor agree or the Engineer gives an instruction that possession should be given before the Completion of the Works.
- 16.2 If the Contract provides for possession to be taken of a section or sections of the Works before the Completion Date, the provisions of Condition 4 shall accordingly apply to each section of the Works.
- 16.3 If, under Condition 16, possession of any section of the Works is taken before completion of the whole of the Works, the following provisions shall apply:-

- 16.3.1 the Engineer shall confirm completion for that section and the provisions of Condition 14 shall apply in respect of that section completed;
- 16.3.2 the Maintenance Period (if any) in respect of that section shall commence on the date the Engineer confirms completion for that section;
- 16.3.3 the Contractor shall be released from his obligations under Condition 7 in respect of that section upon confirmation of completion for that section.

17 LIQUIDATED DAMAGES

- 17.1 This Condition shall only apply if the Contract so provides.
- 17.2 Without prejudice to any other rights or remedies which the Authority may have, if the execution of the Works is not completed by the Contractor by the Date for Completion (as may be amended under Condition 9) the Contractor shall be liable to pay to the Authority liquidated damages in respect of the delay at the rate specified in the Contract for the period during which the execution of the Works remains uncompleted. The Authority may deduct liquidated damages in such circumstances from any subsequent payments made to the Contractor.
- 17.3 If the Contract provides for possession to be taken by the Authority of a specified section or sections of the Works before completion of the Works and a Date for Completion has been fixed for that section or those sections in accordance with the Contract, the provisions of Condition 17.2 shall apply to that section or those sections separately at the rate or rates and maxima for liquidated damages specified in the Contract in respect of that section or those sections.
- 17.4 No concession by the Authority to the Contractor in respect of the execution of the Works shall affect the right of the Authority to recover liquidated damages under this Condition.

18 DEFAULT BY THE CONTRACTOR

- 18.1 Without prejudice to any other rights or remedies which the Authority may have, the Authority may proceed in accordance with the provisions of Conditions 18.2 and 18.3 in any of the following events:-

- 18.1.1 if the Contractor fails to execute the whole or any part of the Works

in accordance with the Contract (including the commencement of the execution of the Works in accordance with the Contract or the Timed Programme or as agreed with the Engineer) or with due diligence and expedition or refuses or neglects to comply with any instruction given and confirmed in writing by the Engineer in connection with the Works provided that the Authority has first specified in writing the failure, refusal or neglect to the Contractor and the Contractor has failed to remedy it within 7 days or such other time period as the Engineer may require; or

18.1.2 if after a written warning given by the Engineer it appears that the time likely to be required for the execution of the Works by the Contractor will significantly exceed the Date for Completion because of the default of the Contractor; or

18.1.3 if the Contractor commits any other material breach of Contract.

18.2 The Authority may, on giving notice in writing to the Contractor, by their own workmen or other contractors carry out work to remedy the Contractor's failure, neglect, refusal or breach. The cost incurred by the Authority (including any tendering and administrative cost) in so doing shall be payable by the Contractor to the extent that it exceeds the amount (if any) which would have been payable by the Authority to the Contractor under the Contract for such work.

18.3 The Authority may, on giving notice to the Contractor, take the whole (or any part) of the Works out of the Contractor's hands. In this event the Contractor shall leave the Site (or, if the Authority takes only part of the Works out of the Contractor's hand, that part of the Site affected by the Authority's decision) at the direction of the Engineer. On receipt of such notice the Contractor shall not without the written consent of the Engineer remove from the Site any materials, plant, spares or equipment whether to be incorporated in the Works or not.

18.4 If, having taken the whole (or any part) of the Works out of the Contractor's hands under Condition 18.3, the Authority proceed to complete the Works (or that part of the Works) by their own workmen or other contractors:-

18.4.1 the Authority shall pay to the Contractor all sums which, at the date of taking the Works (or that part of the Works) out of the Contractor's hands, have already been certified by the Engineer as payable to the Contractor and (except for any sum subsequently certified by the Engineer in respect of any parts of the Works remaining in the Contractor's hands) shall only be obliged to make further payments to the Contractor in respect of work executed up to that date in accordance with Condition 18.5;

18.4.2 the Authority shall be entitled to recover from the Contractor all costs

(including any tendering and administrative costs) incurred by the Authority in completing the Works (or that part of the Works) in excess of the amount which would have been payable by the Authority to the Contractor under the Contract for such work;

18.4.3 if, having taken the whole (or any part) of the Works out of the Contractor's hands under Condition 18.3, the Authority does not proceed to complete the Works (or that part of the Works) or if, having completed the Works (or that part of the Works), the costs incurred by the Authority in so doing are less than the amount which would have been payable by the Authority to the Contractor under the Contract for such work, the Authority shall pay the Contractor for the work (if any) executed by him up to the date of taking the Works (or that part of the Works) out of his hands not previously certified for payment, provided that no payment shall be made to the Contractor greater than the difference between the costs incurred by the Authority in completing the Works (or that part of the Works) and the amount which would have been payable to the Contractor for such works.

18.5 For the purposes of carrying out work under the above provisions of this Condition, the Authority may take possession of and use any plant, spares and equipment at the Site not for incorporation in the Works without being liable for fair wear and tear or loss of or damage to the plant and equipment except as provided in Condition 20. The Authority may also require the Contractor to assign to them the benefit of any sub-contract entered by the Contractor in connection with the Works for the supply of goods or services.

19 RECOVERY OF SUMS DUE FROM THE CONTRACTOR

19.1 Whenever under the Contract a sum of money is recoverable by the Authority from, or payable by the Authority to the Contractor, the sum may be deducted from, or reduced by, the amount of any sum then due (or which may at any time afterwards become due) to, or from, the Contractor under the Contract or any other dealing with the Authority.

20 LIABILITY AND INDEMNITY

20.1 The Contractor shall indemnify the Authority in respect of all claims, demands, fines, proceedings, damages, costs, charges, expenses ("Losses") incurred by the Authority arising directly or indirectly out of:-

20.1.1 the death or injury to any person;

20.1.2 the damage to any property, including property of the Authority;

20.1.3 the Contractor's duty of care under Condition 37;

20.1.4 the Contractor's obligations under Conditions 33, 34 and 36 to the extent that the Losses are caused by breach of Contract, negligence or breach of statutory duty by the Contractor, his employees, agents or sub-contractors or breach of statutory duty on the part of the Authority to the extent that it results from an act or omission of the Contractor, his employees, agents or sub-contractors.

20.2 The Contractor shall insure his liabilities under Condition 20.1 with an insurer approved by the Authority in a sum of not less than £2,000,000.00 or as otherwise provided for in the Contract in respect of any one incident or matter and shall if required by the Authority from time to time produce satisfactory evidence that the policy or policies of insurance have been effected and maintained in force. The approval by the Authority of the insurance of the Contractor shall not in any way limit or relieve the Contractor of his liabilities under Condition 20.1.

20.3 The Authority shall indemnify the Contractor against any loss or damage suffered or expenditure incurred by the Contractor arising out of the death of or injury to any persons or out of the damage to any property to the extent that such death, injury or damage is caused by any breach of contract, negligence or breach of statutory duty by the Authority, their employees or agents (except to the extent that any such breach of statutory duty results from any act or omission mentioned in Condition 20.1).

21 INSURANCE OF THE WORKS

21.1 This Condition shall apply unless specifically excluded.

21.2 The Contractor shall take full responsibility for the Works from the Commencement Date until the Works are completed, provided that if the Authority take over any portion of or part of the Works (as laid down in Condition 16) before they take over the whole of the Works, the Contractor shall cease to be responsible for that portion or part of the Works and responsibility therefore shall pass to the Authority. If any loss or damage from any cause whatsoever shall happen to the Works or any portion or part thereof while the Contractor shall be responsible for it the Contractor shall at his own cost, repair and make good the same so that at completion the whole of the Works shall be in good order and condition and in conformity in every respect with the requirements of the Contract. The Contractor shall also be liable for any loss or damage to the Works occasioned by him or any of his sub-contractors for the purpose of complying with his obligations under Conditions 7 and 32 and for any loss or damage becoming apparent or occurring during the Maintenance Period (if any) from a cause arising prior to the commencement of the Maintenance Period.

21.3 Without limiting his obligations and responsibilities under Condition 21.2, the

Contractor shall insure and keep insured in the joint names of the Contractor and the Authority each portion or part of the Works (and any plant or materials brought onto the Site for incorporation in the permanent part of the Works) for the full re-instatement value against loss or damage from any cause whatsoever until the Works are completed and also for any loss or damage becoming apparent or occurring during the Maintenance Period (if any) from a cause arising prior to the commencement of the Maintenance Period and for any loss or damage occasioned by the Contractor for the purpose of complying with his obligations under Conditions 7 and 32.

- 21.4 All materials, spares, plant, equipment and temporary facilities not intended for incorporation in the permanent part of the Works shall be insured by the Contractor.
- 21.5 The insurance required by Condition 21 shall be effected with an insurer approved by the Authority and the Contractor shall from time to time, if required by the Authority, produce satisfactory evidence that the policy or policies insurance have been effected and maintained in force. The approval by the Authority of the insurance shall not in any way limit or relieve the Contractor of his liabilities under Condition 21.

22 INSOLVENCY/CHANGE OF CONTROL

- 22.1 If the Contractor ceases or threatens to carry on business or there is at any time a material change in the management, ownership or control of the Contractor or if the Contractor (being a body corporate) enters into liquidation whether compulsorily or voluntarily (other than for the purposes of amalgamation or re-construction) or compounds with its creditors or has a receiver, manager or administrator appointed over all or any part of its assets or if the Contractor (being a firm) or a partner in the Contractor becomes bankrupt (or in Scotland becomes notarised bankrupt) or insolvent or enters into any arrangement or composition with creditors, the Authority may terminate either in whole or in part the Contract forthwith by notice to the Contractor (or to the liquidator, receiver, manager or administrator) and act as provided for in Condition 18 as if such notice had taken the whole or part of the Works out of the Contractor's hands.

23 OTHER POWERS OF TERMINATION

- 23.1 If the Authority for any reason whatsoever (including wholly or partly by reason of an event or circumstances referred to in Condition 18.1) decide not to proceed to completion of the Works either permanently or for the time being they may give notice in writing to the Contractor to terminate the Contract who shall do all that is necessary to ensure the orderly cessation of work at the date specified by the Authority.
- 23.2 If the Contract is terminated under Condition 23.1 the Contractor shall

(except where the termination is wholly or partly by reason of an event or circumstances referred to in Condition 30 or Condition 18.1) be paid:-

23.2.1 at the rates and prices stipulated in the Contract for Works which has been carried out by the Contractor up to the date of termination or, if the Contract Price is a lump sum as provided for in Condition 13, that proportion of the Contract Price which represents the extent of the Works which have been carried out by the Contractor up to the date of termination compared with the full extent of the Works; and

23.2.2 compensation in respect of any expenditure or loss (other than loss of profit and overhead recovery) reasonably incurred or suffered by the Contractor which is directly attributable to the termination in so far as such expenditure or loss shall not have been covered by the payment to the Contractor under Condition 23.2.1 or otherwise paid by the Authority under the Contract.

23.3 Except as provided in Condition 23.2, the Authority shall be under no liability to the Contractor in respect of the termination of the Contract under Condition 23.1.

24 ASSIGNMENT AND SUB-CONTRACTING

24.1 The Contractor shall not assign the whole or any part of the Contract or any interest in it without the prior written consent of the Authority.

24.2 Subject as hereafter provided, the Contractor shall not without the prior written consent of the Authority sub-contract the execution of the whole or any part of the Works and such consent shall not relieve the Contractor from any liability or obligation under the Contract.

24.3 The Contractor may (or shall if the Contract so provides) sub-contract the execution of those parts of the Works (if any) specified in the Contract to a sub-contractor agreed by the Authority or to one of the sub-contractors specified in the Contract approved by the Authority.

24.4 Where any part or parts of the Works are sub-contracted, the provisions of the Contract shall continue to apply in full as between the Authority and the Contractor as though the sub-contracted works were being carried out by the Contractor himself, who shall be liable for the acts and defaults of any sub-contractor, his servants and agents.

24.5 In respect of any part of the sub-contracted works, the Authority shall be entitled, upon serving notice to that effect upon the Contractor, to make payment direct to the sub-contractor.

24.6 Where notice has been served upon the Contractor in accordance with

Condition 24.5 the Contractor shall, if so requested by the Authority, inform the Authority as to the amount claimed as due by the sub-contractor to whom the notice applies.

- 24.7 Any payments made to a sub-contractor in accordance with this Condition shall be notified by the Authority to the Contractor and may be deducted from any sum payable to the Contractor under the Contract.
- 24.8 Notwithstanding direct payment by the Authority under this Condition, no contractual relationship shall be implied or inferred between the Authority and any sub-contractor nor shall the Contractor be relieved of any liability to the Authority in respect of the sub-contracted works.
- 24.9 The Engineer shall be at liberty after due warning in writing to require the Contractor to remove from the Works any sub-contractor who misconducts itself or is incompetent or negligent in the performance of its duties or fails to conform with any particular provisions with regard to safety which may be set out in the Contract or persists in any conduct which is prejudicial to safety, health or environment and such sub-contractor shall not be again employed upon the Works without the permission of the Engineer.

25 ADVERTISING AND CONFIDENTIALITY

- 25.1 The Contractor shall not without the prior written consent of the Authority publicly announce or advertise in any form that the Contractor is a contractor of the Authority.
- 25.2 The Contractor undertakes to the Authority that it shall not (and it shall procure that the Employee shall not) whether during the continuance of the Contract (except in the proper performance of its duties under the Contract) or at any time after it shall have been terminated make use of or divulge or communicate to any person any Confidential Information of the Authority.

26 MATERIALS AND WORKMANSHIP

- 26.1 All spares, materials and workmanship shall be of the types and qualities specified in the Contract or, if none are specified, of types and qualities suitable for their purpose and satisfactory to the Engineer. The Engineer may direct that tests are carried out on the spares, materials and workmanship and, unless otherwise provided in the Contract, the tests shall be carried out at the Contractor's cost.

27 PLANT AND EQUIPMENT, MATERIALS ETC

- 27.1 Except as otherwise stated in the Contract, the Contractor shall provide suitable plant and equipment for the execution of the Works.
- 27.2 If under the Contract the Authority is to provide specified plant and

equipment to the Contractor for the execution of the Works, the Contractor may, within one week of commencing use of such specified plant and equipment or within one month of such specified plant and equipment being first available for inspection by the Contractor (whichever is the sooner), reject it on the grounds of its unsuitability or poor condition but thereafter shall not be entitled to reject the plant and equipment nor make any claim against the Authority on such grounds.

- 27.3 The Works and any equipment, goods or materials owned by the Contractor shall when on Site be deemed to be the property of the Authority and shall not be removed from the Site without the written consent of the Engineer. Where such items are not immediately required for the purposes of completion of the Works, the Engineer's consent shall not be unreasonably withheld.
- 27.4 Subject to Condition 20 the Authority shall not be liable for the loss of or damage to any such equipment, goods or materials or Works referred to in 27.2, nor shall the Contractor or any sub-contractor appointed pursuant to Condition 24 be entitled to exercise any right of lien on any such equipment, goods or materials which have vested in the Authority under Condition 27.2 for any sums due from the Authority.
- 27.5 If the Contractor fails to comply with Conditions 28 or 39 within such a reasonable time as the Engineer may allow, then the Authority may sell or otherwise dispose of such items. From the proceeds of the sale of any such items, the Authority shall be entitled to retain any costs or expenses incurred in connection with their sale and disposal before paying any balance to the Contractor.
- 27.6 If the Authority provides any plant and equipment (other than plant and equipment specifically to be provided by the Authority under the Contract) to the Contractor for the execution of the Works, the Contractor shall not be entitled to make any claim against the Authority because of the unsuitability or condition of such plant and equipment. If such plant or equipment breaks down or becomes unusable, the Contractor shall at his cost repair or replace it.
- 27.7 The Contractor shall take proper care of and at his own cost maintain in good condition and working order and regularly inspect all plant and equipment provided by the Authority.
- 27.8 The Contractor shall ensure that all tools, plant or equipment used in connection with the Works (whether provided by or taken from the Authority or not or on hire to the Contractor) are safe and suitable for use under the working conditions and in the environment in which they will be employed. The Contractor shall further ensure that all such tools, plant and equipment comply with any Statutory Requirements and are properly operated and maintained in accordance with the manufacturers operating recommendations and, where appropriate, conform to any relevant specification in the Contract or any relevant requirements of the Authority

(whether specifically to be provided by the Authority under the Contract or otherwise) for the execution of the Works.

- 27.9 The provision by the Authority of any tools, plant equipment, facilities or other assistance shall not release the Contractor of any of his obligations under the Contract save to the extent that such provision is outside the Contractors reasonable control.

28 REMOVAL OF IMPROPER WORKS

- 28.1 The Engineer may during the execution of the Works order in writing the removal and proper re-execution (notwithstanding any previous examination thereof or interim payment therefore) of any work which has not been completed in accordance with the Contract.

- 28.2 If the Contractor fails to carry out any such order the Authority may (by their own workmen or by utilising any other Contractor) carry out the same and all costs incurred in connection therewith shall be paid by the Contractor.

29 EXAMINATION OF THE WORKS BEFORE COVERING UP

- 29.1 No work shall be covered up or put out of view without the approval of the Engineer and the Contractor shall afford full opportunity for the Engineer to measure any work which is about to be covered up or put out of view. The Contractor shall give due notice to the Engineer whenever any such work is ready or about to be ready for examination and the Authority shall without unreasonable delay attend for the purpose of examining and measuring such work unless they consider it unnecessary and advise the Contractor accordingly.

- 29.2 The Contractor shall uncover any part or parts of the Works or make openings in or through the same as the Engineer may direct and shall reinstate and make good such part or parts to the satisfaction of the Engineer. If any such part or parts have been covered up or put out of view after compliance with the requirements of Condition 29.1 by the Contractor and are found to have been executed in accordance with the Contract, any costs incurred in uncovering, making openings in or through, reinstating and making good the same shall be paid by the Authority but in any other case such costs shall be paid by the Contractor.

30 REPAIRS OF MACHINERY

- 30.1 Where the Works are or include the repair of Machinery and the Contract provides for an inspection of the Machinery prior to commencement of the repair, the Contractor shall on or before commencing the repair carry out an inspection of the Machinery by arrangement with the Engineer. On conclusion of the inspection, the Contractor shall immediately report back to the Engineer advising him of the repairs required, their cost and the time required to effect such repairs.

- 30.2 The Engineer may then either:-
- 30.2.1 arrange for the Contractor to receive a written instruction to carry out the repairs stipulating the price and time period;
 - 30.2.2 instruct the Contractor not to carry out the repairs.
- 30.3 If the Engineer gives an instruction under Condition 30.2.2 and no further work is required, the Contract shall thereupon terminate. The Authority shall pay to the Contractor the reasonable costs incurred by him in carrying out the inspection but other than that shall have no other liability to the Contractor as a result of the termination of the Contract.

31 CONTRACTOR TO SEARCH

- 31.1 The Contractor shall, if required by the Engineer, search for the cause of any defect, imperfection or fault in the Works. Unless the defect, imperfection or fault is one for which the Contractor is liable under the Contract, the cost of the work carried out by the Contractor in searching shall be borne by the Authority but if the defect, imperfection or fault is one for which the Contractor is liable under the Contract, the cost of the work carried out in searching shall be paid by the Contractor.

32 MAINTENANCE AND DEFECTS

- 32.1 During the execution of the Works and/or prior to the end of the Maintenance Period (if any) the Contractor shall promptly repair and make good any defect in or damage to the Works notified to him in writing by the Engineer and arising out of defective materials, workmanship or design of the Works (other than a design or part of a design furnished by the Authority) or out of any act or omission of the Contractor.
- 32.2 Where the Works are or include the repair of Machinery, the Contractor shall also make good:-
- 32.2.1 all damage to the Machinery (or any part thereof) attributable to any such defect or fault in the Works; or
 - 32.2.2 defects which are found or develop in the Machinery (or any part thereof) arising from the failure of the Contractor, his servants or agents or any of any sub-contractor or his servants or agents to carry out the Works in accordance with the Contract.
- 32.3 The provisions of Conditions 32.1 and 32.2 shall further apply to any part of the Works repaired or made good for a period equal to the Maintenance Period from the date of such repair or making good.

32.4 If the Contractor fails to do any Work under this Condition, the Authority may (by their own or other workmen) carry out such Work and all costs incurred in connection therewith shall be paid by the Contractor.

32.5 The provisions of Condition 32 shall be without prejudice to any other rights or remedies the Authority may have in respect of any breach of contract or other default on the part of the Contractor in connection with the Works.

33 COMPLIANCE WITH INSTRUCTIONS, STATUTORY REQUIREMENTS AND CONSENTS

33.1 The Contractor shall comply at his own expense with all the Authority's policies, codes, procedures applicable to the Works, the instructions of the Engineer given under the Contract, and any local arrangements or requirements at the Site for the proper conduct of the Works and in particular for the protection and improvement of the environment at the Site and in the local community.

33.2 The Authority shall be responsible for obtaining and notifying to the Contractor in due time any consent, authorisation, approval, licence or permission but only to the extent that the same may be necessary for the commencement of the Works.

33.3 Subject to Condition 33.4, the Contractor shall at his own expense comply with all conditions attached to any such consents, authorisations, approvals, licences or permission obtained pursuant to Condition 33.2 and shall further comply at his own expense with all Statutory Requirements.

33.4 The Contractor shall not be liable under this Condition 33 where and to the extent that such failure results solely from the Contractor having carried out the Works in accordance with the Contract or with any instruction of the Engineer.

33.5 The Contractor shall ensure that all his employees, agents and sub-contractors are aware of and comply in all respects with all Statutory Requirements.

34 HEALTH AND SAFETY

34.1 Without prejudice to the generality of Condition 33, the Contractor shall comply with the Authority's requirements relating to health and safety as set out in this Condition 34, any policy statement on health and safety from time to time issued by the Authority and notified to the Contractor any specification in the Contract and all Statutory Requirements (including but not limited to The 1974 Act) relating specifically to health and safety directly or indirectly touching upon the Contractor's performance of the Contract.

34.2 When applicable under the Contract the Contractor shall comply with the

required role and duties defined in the CDM Regulations 2007. The Contractor will be appointed as Principal Contractor and will undertake the duties specified. The Principal Contractor shall develop and maintain the Construction Phase Plan to be supplied and approved by the CDM Co-ordinator prior to commencement on Site. The Principal Contractor will provide all other information and co-operation as required by the CDM Regulations 2007.

35 CONTRACTOR'S SUPERVISION AND EMPLOYEES

- 35.1 No person shall be employed by the Contractor on any of the Works at the Site unless that person has been adequately instructed or trained in that work and is competent to do that work without supervision or that person is working under the instruction and supervision of some person competent to give instruction in and supervision in the doing of that work in the particular environment.
- 35.2 The Contractor shall ensure that all Work carried out under the Contract is under the supervision of a person appointed for that purpose by the Contractor and agreed by the Engineer subject to Condition 3. All persons supervising the Work on the Contractor's behalf shall be suitably qualified and have obtained the necessary standards of training and/or experience for the Work in hand to enable them to properly and competently supervise the Works.
- 35.3 The Contractor shall provide all necessary supervision having regard to the nature and extent of the Works, to secure the proper and safe execution of the Works in accordance with the Contract, including the provision of a competent and authorised agent or chargeman skilled in the type of work being executed and approved by the Engineer and who shall be on the Site at all times while work is in progress.
- 35.4 The Contractor shall also provide during the Maintenance Period such supervision as the Engineer may require.
- 35.5 The Authority shall have an absolute right to object without giving any reason to the engagement (whether as employee or independent contractor) by the Contractor or any sub-contractor of any person in or about the execution of the Works at the Site and immediately upon receipt of such objection the Contractor shall ensure that any such person ceases to be so engaged and to attend at the Site.
- 35.6 The Contractor shall if so required deliver to the Engineer a return in such form and at such intervals as the Engineer may require showing in detail the names and numbers of the labour from time to time employed by the Contractor or his sub-contractors on the Site in connection with the Works and shall if required by the Engineer immediately notify him of the name and class of labour of any workman taken on or removed from employment by the Contractor or any sub-contractor.

35.7 The Contractor shall ensure that all relevant terms of the Contract and in particular the provisions of these Conditions of Contract are brought to the attention of his employees and agents and of the employees and agents of his sub-contractors and shall ensure that they comply with such provisions of these Conditions of Contract.

36 COMMUNICATION AND EXCHANGE OF INFORMATION

36.1 The Contractor shall notify the Engineer of any prosecution or intended prosecution and/or of any notification of breach of Statutory Requirements or common law duties, which affects or may affect the performance of the Contract, and shall further allow the Authority to inspect any records, licences, transfer notes, descriptions or any other document required under any Statutory Requirements.

36.2 The Contractor shall provide all reasonable information required by the Authority in respect of shifts worked on the Contract, and shall ensure that his employees and agents:-

36.2.1 carry with them an adequate means of identification;

36.2.2 provide evidence of their competence to perform work, if so required by the Engineer;

36.2.3 before carrying out any work at the Site first receive written authority from the Engineer or his nominated official to undertake such work.

36.3 The Contractor shall notify the Authority in writing, wherever any goods offered or supplied under the Contract contain substances which are hazardous or harmful to handle, inhale or ingest or where precautions are necessary to avoid health and safety risks to anyone handling or using the goods or which otherwise engender risks to health and safety.

The Contractor shall submit a written report to the Authority immediately following any complaint made by a member of the public, Local Authority, other body or any third party.

36.4 The Contractor shall co-operate in relation to the following safety procedures:-

36.4.1 a site safety meeting shall if the Engineer so requires be held at the beginning of each new contract to discuss the safety aspects of the Contractor's method statement and all contract activities and to agree the safety arrangements to be implemented. The Engineer will decide who should attend the site safety meeting. The Authority shall have the right to call safety meetings at any time during the continuance of a contract upon reasonable notice.

- 36.4.2 any items affecting safety identified by the Contractor's employees shall be considered for action by the Contractors' Management. Any remedial action implemented as a result of such representation will be the responsibility of the Contractor.
- 36.4.3 unless specifically excluded by the Engineer, in all contract activities in which ten or more Contractors' employees are employed at any one site, a daily site inspection for safety and environmental issues, shall be undertaken by a Contractors' Official who shall submit a written report each day on such inspections to the Engineer.
- 36.4.4 if required by the Engineer, the Contractor's Safety Official shall make weekly site inspections for safety and a written report on such inspections shall be presented to any safety meetings required to be held and included in any existing procedure for review of safety reports by the Authority.
- 36.4.5 any action required by the Engineer to improve site safety and environmental issues shall be taken by the Contractor.
- 36.4.6 when applicable under the Contract, the Contractor shall develop and submit a Health and Safety Plan to the Planning Supervisor prior to commencement of the Works.
- 36.5 In the case of all reportable accidents and dangerous occurrences, the site of the incident shall not be disturbed until the Engineer or his nominated official gives permission to do so. A written report shall then be submitted which should include personal details, a brief narrative of the accident/incident and recommendations by the Contractor for avoidance of a recurrence. Accident/incident reporting action required by this Procedure will not absolve the Contractor from any of his statutory accident reporting duties.
- 36.6 In addition to the above, any accident, injury and disease (however small) shall be reported to the Engineer.
- 36.7 The Contractor shall at all times provide its full assistance to facilitate the carrying out by the Authority from time to time of financial, health and safety environmental and any other audit carried out by the Authority or on its behalf.

37 ENVIRONMENTAL PROTECTION

- 37.1 The Contractor shall comply with all Statutory Requirements in relation to environmental protection and disposal of waste, and The Authority's environmental policy statement and code of practice. The Contractor shall ensure that the Representative and operatives are aware of the Authority's environmental requirements.

- 37.2 The Contractor shall be responsible for all waste or hazardous substances generated by or in connection with the Works. Property in all such waste or hazardous substances shall at all times be vested in the Contractor.
- 37.3 The Contractor shall observe and at his own expense fully comply with the Duty of Care contained in Section 34 of The 1990 Act, and any relevant regulations or codes of practice from time to time issued in relation to it. In particular the Contractor shall:-
- 37.3.1 ensure any controlled waste is only carried by a Registered Waste Carrier;
 - 37.3.2 ensure that on transfer to any controlled waste there is a transfer note and a full description of the waste carried;
 - 37.3.3 ensure that the controlled waste is disposed of by the holder of a waste management licence or the holder of an exemption registered under the 1994 Regulations;
- 37.4 The Authority shall have the right at any time by giving notice in writing to the Contractor to terminate the contract forthwith in the event of the Contractor committing any breach (be it material or otherwise) of any of the terms of this Condition.
- 37.5 The Engineer has the right to inspect, test and sample any material imported to the Site and to reject any material which does not comply with the required standard. The Contractor shall inform the Engineer when materials are to be brought on to and removed from the Site.

38 FACILITIES FOR OTHER CONTRACTORS ETC.

- 38.1 In accordance with the requirements of the Engineer the Contractor shall afford reasonable facilities for any other contractors employed by the Authority and for the workmen of the Authority who may be employed in the execution on or near the Site of any work not included in the Contract or of any contract which the Authority may enter into in connection with or ancillary to the Works.
- 38.2 The Contractor shall not intentionally interfere with any existing works, whether the property of the Authority or of any other party and whether the position of such works is indicated to the Contractor by the Authority or not, except where such interference is specifically described as part of the Works, either in the Contract or in an instruction by the Engineer.

39 CLEARANCE OF THE SITE

- 39.1 On the completion of the execution of the Works or the termination of the Contract, the Contractor shall promptly upon receipt of the Engineer's agreement clear away and remove from the Site all plant and equipment, unused materials, rubbish and temporary works and leave the whole of the Site and the Works clean and in a condition satisfactory to the Engineer.
- 39.2 Any scrap material and/or redundant equipment that the Authority so require shall remain the property of the Authority. The Contractor must stack any such material/equipment in a position as directed by the Engineer.

40 INTELLECTUAL PROPERTY

- 40.1 If the Contractor shall during the continuance of the Contract create, make or discover any work, invention or design or make any addition, modification, improvement or development to or derivation from any existing work, invention or design whether or not the same has or is capable of having Intellectual Property Protection and whether alone or in conjunction with an Employee or any such person, he shall immediately disclose them to the Authority and shall treat such work, invention or design as confidential. All such Intellectual Property and all Intellectual Property Rights, or other rights therein and the benefit thereof will be the sole and absolute property of the Authority. The Contractor shall notwithstanding any prior termination of the Contract, at the Authority's request and expense do all such acts and execute all such documents as may be necessary to vest all rights in or relating to any such work, invention, design or improvement in the name of the Authority to the intent that all such rights and any such works, inventions, designs or improvement shall become the absolute property of the Authority. Nothing contained in this provision shall limit any statutory or other right of the Authority in relation to any such work, invention, design or other right.
- 40.2 The Contractor shall whether during or after termination of the Contract at the request and cost of the Authority sign, execute and do all such deeds, and documents, acts and things as the Authority or its authorised agents may reasonably require to defend any proceedings in respect of any Intellectual Property, works, inventions, designs or similar rights to which Clause 40.1 applies and any opposition proceedings or petitions or applications for revocation of such rights and to assist the Authority in relation to any litigation, arbitration or other proceedings relating to any such rights.
- 40.3 The Contractor shall indemnify the Authority against any costs, damages, expenses, losses or royalties arising out of proceedings brought against the Authority by any third party in respect of any Intellectual Property used or provided by the Contractor in connection with the performance of his duties under the Contract, and the Contractor shall, at his own expense, provide all such assistance and execute all such deeds and documents as the Authority or its authorised agents may reasonably require in order to defend such proceedings.
- 40.4 If, at any time during the continuance of the Contract, the Contractor (whether alone or in conjunction with any other person or persons) creates

any copyright work, the Contractor shall, at the request of the Authority, and in recognition of the provisions of Condition 40.1 above, indicate the Authority's ownership of the copyright in the work by means of the inclusion of one or both of the following copyright notices:

© Coal Authority [DATE] OR

"No part of this publication may be re-produced or transmitted in any form or by any means, or stored in any retrievable system of any nature without prior written permission, except according to permitted fair dealing under the Copyright Designs and Patents Act 1988, or in accordance with the terms of a licence issued by the Copyright Licensing Agency in respect of photocopying and/or reprographic re-production. Application for permission for other use of copyright material shall be made to the Coal Authority. Full acknowledgement of author, publisher and source must be given".

41 OWNERSHIP OF THE AUTHORITY DRAWINGS AND DOCUMENTS

41.1 All information, written or otherwise, provided by the Authority in connection with the Contract shall be treated by the Contractor as confidential. Except so far as confidential disclosure to agents, sub-contractors or suppliers is necessary for the performance of the Contract, the use of all information shall be confined to the Contractor's Employees properly engaged in the execution of the Contract and for the purposes of the Contract. The Contractor shall ensure that such Employees, Agents, Sub-Contractors, or Suppliers are subject to like obligations of confidentiality as bind the Contractor.

41.2 All documents (including drawings, plans photographs, specifications and computer programs), and all copies thereof, held by the Contractor (or by any Employee) relating to the affairs or business of the Authority whether or not the same were prepared by the Contractor or the employee or were supplied by the Authority, shall be delivered up by the Contractor (or the Employee) forthwith upon request by the Authority and in any event upon the termination of the Contract (howsoever arising).

42 BRIBERY AND CORRUPTION

42.1 If the Contractor or a person employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) corruptly offers, gives or agrees to give to any person a gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of the Contract, or any other contract with the Authority, or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Authority, or if in relation to any contract with the Authority the Contractor or a person employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) commits an offence under the Prevention of Corruption Acts 1889-1916, the Authority shall be entitled to terminate the Contract and the provisions of Condition 18 shall apply to such termination.

43 FOSSILS ETC

43.1 All fossils, coins, articles of value or antiquity and other remains or things of geological or archaeological interest discovered on the Site shall, as between the Authority and the Contractor, be deemed to be the absolute property of the Authority. The Contractor shall take reasonable precautions to prevent his workmen or any other persons from removing or damaging any such items and shall immediately upon their discovery and before removal acquaint the Authority of the discovery and carry out the Engineer's instructions as to their disposal at the cost of the Authority.

44 NOTICES

44.1 Any notice to be served under these Conditions shall be in writing (which shall include facsimile) and shall be sent by first-class post, or facsimile to or left at, in the case of a notice to be sent to the Authority, the address from which the Authority's letter of acceptance or order was sent, or, in the case of a notice to be sent to the Contractor, the registered office or last known business address of the Contractor.

44.2 Any notice to be served under these Conditions by or on the Engineer shall be sent by first-class post, or facsimile to or left at the business address of, as the case may be, the Contractor's Representatives or the Engineer.

44.3 Any notice shall be deemed to have been served as follows:-

44.3.1 in the case of, facsimile or delivery by hand, on the first business day after transmission or delivery;

44.3.2 in the case of service by first-class mail, on the second business day after the day on which it was posted; provided that, in the case of transmission by facsimile, a copy of the facsimile is also sent by the first available first class post after the facsimile transmission.

44.4 All notices sent by the Contractor to the Authority and the Engineer as set out in this Condition shall be copied by the Contractor to the Engineer and Authority respectively in a like manner.

44.5 In this Condition the expression "business day" shall mean any day other than Saturday, Sunday or any other day which is a public holiday in the place at which such notice is left or sent.

45 LAW OF CONTRACT

45.1 Subject to the adjudication provisions contained in Conditions 46.1 to 46.5 the Contract shall in all respects be subject to English Law and the parties shall submit to the non exclusive jurisdiction and procedure of the English Courts or the Scottish Courts respectively.

46 ADJUDICATION

- 46.1 If any dispute arises between the Parties they shall and shall procure their representatives shall, in good faith, attempt to resolve such dispute with the assistance of the Parties' personnel engaged in the performance of this Contract.
- 46.2 If the attempts by the Parties and/or their representatives to resolve the dispute are not successful within 15 Business Days of the dispute being notified by one Party to the other Party in writing, either Party will be able to request in writing that a senior executive officer of each Party shall meet to resolve the dispute.
- 46.3 Within 15 Business Days of such request the senior executive officers shall meet and attempt to resolve the dispute on the basis of the utmost good faith.
- 46.4 In the event of a dispute arising between the parties relating to part of the works which constitute a Construction Operation as defined by the Construction Act and the same has not been determined by agreement between the parties in accordance with Condition 46.1 it shall be determined by an adjudicator (the "Adjudicator") appointed in accordance with the Institute of Civil Engineers Adjudication Procedure 1997.
- 46.5 The dispute referred to the Adjudicator shall be determined by the Institute of Civil Engineers Adjudication Procedure 1997 subject to the enclosed schedule of amendments and the provisions of this Condition 46.
- 46.6 The Adjudicator shall be a qualified professional in the relevant field in relation to the dispute and shall be an experienced adjudicator.
- 46.7 The decision of the Adjudicator shall be binding until the dispute is finally determined by the Court or by agreement.
- 46.8 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith and any employer or agent of the Adjudicator is similarly not liable.
- 46.9 Costs including without limitation professional fees and disbursements and the fees and disbursements of the Adjudicator arising in relation to the dispute and related dispute which are referred for determination to the Adjudicator shall be borne as between the Contractor and the Authority as the Adjudicator shall in his absolute discretion direct on the usual principals that costs follow the event and for the avoidance of doubt paragraphs 6.5 and 6.6 of the ICE Adjudication Procedure (1997) are excluded from the Contract.
- 46.10 The Adjudicator shall provide reasons for his decision together with copies of any advice that he has obtained from other parties pursuant to his decision.
- 46.11 All matters certified or otherwise determined by any adjudication shall be

performed or otherwise carried into effect on the date determined by the Adjudicator or in default of any such decision not later than the fifth working day of such decision provided that where the Adjudicator certifies or otherwise determines that an amount is due from the payer to the payee but does not determine a date upon which the amount should be paid the amount shall not become due and payable as a debt until the fifth working day after the day on which the payee demands the same in writing. The amount shall accrue interest monthly for each day on which any payment is overdue compounded at a rate of 2% per annum above the base lending rate of the National Westminster Bank.

- 46.12 Subject to the provisions of the Contract and termination, the performance of this contract shall continue during discussions, adjudication, mediation, conciliation or court proceedings pursuant to the foregoing provisions of this Condition 46 provided that, if it is subsequently determined that a party has done or refrained from doing anything which it is not obliged to do or refrained from doing in accordance with this Contract, such party shall be entitled to receive compensation from the other party in respect of a loss and/or expenses incurred in doing or refraining from doing the same.
- 46.13 In the event that either party shall not give effect to the decision of the Adjudicator within the time specified by the Adjudicator or otherwise by Condition 46 the decision of the Adjudicator shall be enforced by summary proceedings within the High Court.
- 46.14 No party to an adjudication under this Condition 46 (including but not limited to the Adjudicator) shall without the approval of the Authority part to any third party details of the procedure or dispute except as far as is necessary to determine the dispute or give effect to the decision.
- 46.15 The parties agree that the decision of any Adjudicator shall be binding upon them unless and until the dispute is finally determined by way of proceedings in the High Court and agree to abide by and given immediate effect to the said decision.

47 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 47.1 A party who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

48 ENTIRE AGREEMENT

- 48.1 The Contract constitutes the entire agreement and understanding between the parties in relation to the matters contemplated by the Contract and supersedes all previous Contracts between the Authority and the Contractor.
- 48.2 Each party acknowledges that it does not enter into the Contract in reliance

on any warranty, representation or undertaking other than those contained in the Contract provided that this shall not exclude any liability which either party would otherwise have to the other party in respect of any statements made fraudulently by that party prior to the date of the Contract.

49 ILLEGALITY

49.1 If any provision or term of the Contract shall become or be declared illegal, invalid or unenforceable for any reason whatsoever including, but without limitation, by reason of the provisions of any legislation or other provisions having the force of law or by reason of any decision of any Court or other body or authority having jurisdiction over the parties or the Contract such terms or provisions shall be divisible from the Contract and shall be deemed to be deleted from the Contract provided always that if any such deletion substantially affects or alters the commercial basis of the Contract the parties shall negotiate in good faith to amend and modify the provisions and terms of the Contract as may be necessary or desirable in the circumstances.

50 TUPE INDEMNITY

50.1 The parties agree that upon partial or complete termination of this Contract the parties shall proceed on the basis that TUPE will not apply and that accordingly the Authority and any subsequent supplier of the Works to the Authority shall have no obligation to employ any person engaged by the Contractor in the provision of the Works. The Contractor shall fully indemnify and hold harmless and keep fully indemnified the Authority and any subsequent supplier of the Services to the Authority in respect of all Employee Liabilities including those:

50.1.1 arising out of or in connection with any claim by any person who alleges or establishes that TUPE applies to transfer any such person's employment to

50.1.1.1 The Authority; or

50.1.1.2 a subsequent supplier of the Works to the Authority; or

50.1.2 relating to any employee or former employee of the Contractor, responsibility for which passes by virtue of TUPE or otherwise to

50.1.2.1 the Authority ; or

50.1.2.2 a subsequent supplier of the Works to the Authority ; or

50.1.3 which relates to the dismissal or termination of employment of any employee or former employee of the Contractor whether by the Contractor, the Authority or any subsequent supplier of the Works; or

50.1.4 arising out of or in connection with any failure to comply with Regulation 13 of TUPE.

50.2 The parties agree that upon partial or complete termination of this Contract the Authority or any subsequent supplier of the Works to the Authority shall be permitted to make to any employee of the Contractor performing the Works at the date of partial or complete termination an offer of employment and that where such an offer is made and accepted by the target employee, the employee shall be permitted to leave employment of the Contractor without working the employee's notice period, if the employee so requests.