

Interference with Tests.

32. If by any act of the Purchaser or of the Engineer, or by the use of the plant, the Contractor shall be prevented from carrying out the "taking-over test" within two months from the date on which the Contractor has notified the Engineer that the plant is completed and ready for test, unless in the meantime the plant shall have been proved not to be substantially in accordance with the contract conditions, the plant shall be deemed to be taken over as on the last day of the said two months, and payments to the Contractor shall be made as if final satisfactory "taking-over tests" had taken place, but nevertheless the Contractor shall make the said tests during the period provided for maintenance as and when required by the Engineer upon fourteen days' notice in writing; and the obligations and liabilities of the Contractor in connection with such tests shall be the same as his obligations and liabilities in connection with the tests specified, provided that the Purchaser shall pay the extra cost (if any) to the Contractor of such tests.

Rejection of Defective Work.

33. If the completed works, or any portion thereof, before being taken over, be defective, or fail to fulfil the requirements of the Contract, the Engineer shall give to the Contractor notice setting forth particulars of such defects or failure and the Contractor shall forthwith make the defective Works good, or alter the same to make them comply with the requirements of the Contract. Should he fail to do so with due despatch, the Engineer may reject and replace, within a reasonable time, and at a proper price at the cost of the Contractor, the whole or any portion of the works as the case may be, which are defective or fail to fulfil the requirements of the Contract.

The Contractor's full and extreme liability under this clause shall be satisfied by the payment to the Purchaser of the extra cost, if any, of such replacement, and by the repayment of any sum paid by the Purchaser to the Contractor in respect of such rejected portion of the works. Should the Purchaser not so replace the rejected portion of the works within a reasonable time, the Contractor's full and extreme liability under this clause shall be satisfied by the repayment of all moneys paid by the Purchaser to him in respect of such works, if such supply of defective plant shall have caused delay in the completion of the Contract so as to give rise to a claim for damages on the part of the Purchaser under the Penalty Clause, nothing contained in this clause shall interfere with or prejudice any rights of the Purchaser with respect to such claims.

Use of Rejected Work.

34. If the defective portion of the works be required by the Purchaser for commercial use, he shall be entitled to make use of the same in a proper manner, for a time sufficient to enable him to obtain other plant to replace it, the Contractor being allowed a proper sum for the use of the same, but the Purchaser shall not be entitled to any damages under the Penalty Clause in respect of such time.

In cases where the Contractor, although willing so to do, is unable to repair defects in certain part of the contract work in consequence of the Purchaser not being able to place such parts into his hands for the requisite time owing to their being in use, the Contractor shall be paid in full for such portion of the contract works on giving an undertaking with security to the satisfaction of the Purchaser if required, to remedy the defects so soon as the same can be placed in his hands for the purpose.

35. Time shall be considered by the Contractor as of the essence of the Contract. In case the Contractor fails to complete by the time mentioned in the Contract or by any later date by which the period of completion may have been extended in writing by the Engineer, for each week by which the contract period is exceeded the Purchaser shall be entitled to deduct from the moneys due to the Contractor as liquidated damages the sum of one per cent. of the Contract value of such portion of the works as cannot be put to full commercial use without serious risk or inconvenience to the Purchaser.

Damages for Delay in Completion.

36. Should in the opinion of the Engineer an extension of the time of completion become necessary owing to delay (either before or after the Contract time or the extended time fixed for completion) due to or caused by strikes, lock-outs, civil commotion, default of specified sub-contractors, or any circumstance whatsoever outside the control of the Contractor, it shall be lawful for him to, and he shall, extend such time, without vitiating the contract or releasing the sureties. Provided that any circumstances which the Contractor alleges as ground for extension of the time for completion be forthwith notified by him in writing to the Engineer.

Extension of time for Completion.

37. Subject to any special provisions in the Contract and subject to any deductions which the Purchaser may be authorised to make under the Contract, the Contractor shall be entitled upon the certificates of the Engineer, which shall not be unreasonably withheld, to payments by the Purchaser of instalments in accordance with the following provisions:—

Payments to Contractor.

(1) As the works progress instalments of 80 per cent. of the contract value, as certified by the Engineer, of plant from time to time delivered or work executed on the site.

(2) The remaining 20 per cent. referred to herein as "retention money," in respect of each distinct section or part of a section of the works as follows:—

7/11
Fifteen (15%)
Ten per cent. at the expiration of one month after the plant shall have been taken over, or deemed to be taken over under Clause 31, by the Purchaser and the remaining ~~10~~ per cent. at the expiration of 12 months thereafter.
7/11 *Five (5%)*

Provided that no money shall be considered due to the Contractor unless the Engineer shall have certified the amount to be paid as such instalment or balance to the Contractor and provided, as regards the final payment, that the Contractor shall have delivered to the Engineer, at least one month previously, a full detailed account in duplicate of all claims the Contractor has on the Purchaser, and that the Engineer shall have certified the correctness of such claims. No certificate shall be taken as an admission of the due performance of the Contract, or any part thereof, or of the accuracy of any claim or demand made by the Contractor; nor shall any certificate of payment conclude or prejudice the power of the Engineer as to his approval of any part of the work or otherwise, nor in any way vary or prejudicially affect the Contract.

15 The Purchaser shall within one month of the issue of any certificate by the Engineer pay to the Contractor the amount so certified.

Right to withhold
Certificates.

38. The Engineer shall have power to withhold any certificate if the works or any part thereof are not being carried out to his satisfaction.

Inability to accept
delivery of Plant.

39. In the event of the Purchaser not being ready to take delivery of the plant when notified by the Contractor that he is ready to deliver it, the Purchaser shall if required by the Contractor pay all proper charges for storage, protection and insurance of such plant from the time when it would have been delivered until the time when he is ready to take delivery, and shall also if required, within two months of receipt of such notification, make payment of 80 per cent. of the contract price, less cost of delivery and erection, provided always that such notification shall not be given before the time at which the plant should have been delivered for the "works" to be completed by the contract date and provided also that the Engineer certifies that so far as can be ascertained the plant complies with the specification.

35 A further 10 per cent. shall be paid when the prescribed tests have been made by the Engineer, or within four months from the date of such notification that the plant is ready for delivery, whichever may be the earlier, and the remaining 10 per cent. shall be paid within twelve months thereafter provided always that no payments made under this clause shall relieve the Contractor from his liabilities under Clause 40.

If the plant remains stored at the works of the Contractor, and payment has been made thereon as aforesaid, it shall be marked by the Contractor in such manner as to identify it as being and it shall be and is the property of the Purchaser.

Pecuniary Compensation
for Strikes.

40. No pecuniary compensation will be allowed to the Contractor on account of delays due to strikes or any other cause beyond the control of the Purchaser.

41. For a period of 12 months from the date when the works shall have been taken over by the Purchaser on the certificate of the Engineer the Contractor shall be responsible for remedying when called upon to do so any defects or faults which may develop under the conditions provided for in the contract and under proper use and arising from faulty materials, design or workmanship and not otherwise. If it become necessary for the Contractor to replace or remove any defective portions of the plant under this clause the provisions thereof shall apply to the portions so renewed or replaced until the expiration of six months from the date of such replacement or renewal or until the end of the above mentioned period of 12 months whichever may be the later. If any defects be not remedied within a reasonable time the Purchaser may proceed to do the work at the risk and expense of the Contractor, but without prejudice to any other rights which the Purchaser may have against the Contractor in respect of such defects.

Guarantee and Maintenance.

In the event of any defects occurring or being discovered in or to the works within a period of twelve calendar months after the taking over thereof, the guarantee period shall continue beyond the period of twelve months until the cause thereof has been discovered, and until the defects have been made good to the satisfaction of the Engineer.

42. All provisional sums shall be expended only at the discretion of the Engineer, and if the work in question is not ordered in writing the included amount shall be deducted by the Engineer from the contract sum, as well as any profit added by the Contractor in respect of such provisional sum.

Provisional Sums.

43. The Contractor shall pay out of his first advance of money certified by the Engineer the charges for the preparation of the Bill of Quantities and other charges stated at the end of the said Bill.

Cost of Quantities.

44. The cost of completing and stamping the Contract and Instrument of Guarantee shall be borne equally by the Purchaser and the Contractor.

Expenses of Contract.

45. The Contractor shall save and indemnify the Purchaser against all claims, costs or expenses in connection with any patented copyrighted or protected article supplied by the Contractor or his sub-contractors and used on or in connection with the "works," and any payments or Royalties payable in one sum or by instalments shall be included in the contract price and paid by the Contractor to whomsoever they may be due.

Patent Rights.

In the event of any claim being made on the Purchaser in connection with such patented or protected articles he shall immediately notify the Contractor who shall at his own expense conduct any negotiations or litigation in connection with such claim.

The Contractor shall be entitled to the assistance of the Purchaser in connection with such negotiations or litigation provided that the Contractor shall from time to time give to the Purchaser such security as he may reasonably require for the due payment of all costs, damages or expenses incurred by the Purchaser in respect of such claim.

In case of Bankruptcy,
Insolvency or Death of
Contractor.

46. If at any time during the continuance of the Contract the Contractor shall be declared bankrupt, or petition any court having jurisdiction in bankruptcy, for the liquidation of his affairs by arrangement or composition, or for otherwise arranging or compounding with his creditors, it shall be lawful for the Purchaser to take possession of all plant, implements and materials upon the works belonging to the Contractor, and to employ any other Contractor, Builder, workman or other person by measure and value, day work or otherwise, to proceed with the said works and to complete the same, and on the expiration of the said notice, or on such bankruptcy or petition, or arrangement as the case may be, the Contract shall, at the option of the Purchaser, become void as to the Contractor, but without prejudice to any right of action which the Contractor may be subject unto for any neglect in not proceeding with the works in accordance with this Specification, and any money due to the Contractor for work executed, shall be retained by the Purchaser until the whole of the works are completed, and the Purchaser may deduct from the sum due to the Contractor the additional costs which the Engineer may certify to have been incurred in consequence of the default of the Contractor to execute the work, or if such additional costs exceed the sum due to the Contractor, the Purchaser may recover the difference by action at law or otherwise.

Engineer's Decisions.

47. In respect of all matters which are by these Conditions left to the decision of the Engineer, including the granting or withholding of certificates, such decisions shall be reasonable, and they shall be subject to the right of arbitration reserved by these Conditions save and except decisions in respect of the quality of material and workmanship and the mode of carrying out the works, in which cases only the matter of cost or claim by the Contractor for a modification of his efficiency guarantees and his liabilities in respect thereof may be referred to arbitration.

Arbitration.

48. Subject to Clause 47 either party may at any time give notice in writing to the other of the existence of any question, dispute or difference between the Purchaser or the Engineer and the Contractor upon or in relation to or in connection with the contract when the same shall be referred to the arbitration of a person to be mutually agreed upon or failing agreement to some person appointed by the Chairman of the Association of Consulting Engineers (Incorporated).

Such arbitrator shall be an Engineer, experienced and professionally engaged in work of the kind under review, and the following shall be governing conditions of the arbitration:—

(a) Save as provided in (d) the function of the Arbitrator shall be limited to one hearing within a reasonable time after the completion of the work.

(b) There shall be referred to the Arbitrator only such matters concerning which notice in writing shall have been given by either party to the Contract to the other within one month of the Engineer's decision on the matter to which objection is taken.

(c) Except as provided in (d) matters to be decided by the Arbitrator shall be confined to the sums to be paid to or by the Contractor and the cost of the hearing.

(d) If any question shall arise at any time during the continuance of the Contract, as to the insufficiency or impracticability of the design of any work, or the performance of any plant or the excessive cost of the method of carrying out any work, and in regard to these matters only, and the Contractor is dissatisfied with the decision of the Engineer thereon, the question may be referred to the Arbitrator forthwith.

This submission shall be deemed to be a submission to Arbitration within the meaning of the Arbitration Act, 1889, or any statutory modification thereof, and such award of the Arbitrator shall be final and binding on the parties. Upon every or any such reference, the costs of and incidental to the reference and award, respectively, shall be in the discretion of the Arbitrator, who may determine the amount thereof, or direct the same to be taxed as between solicitor and client, or as between party and party, and shall direct by whom and to whom, and in what manner the same shall be paid and borne.

Work under the Contract shall, if reasonably possible, continue during the Arbitration proceedings, and no payments due or payable by the Purchaser shall be withheld on account of such proceedings.