



**Technical Specifications** means the Specifications of the Works included in the Contract Agreement and any modification or addition made or approved by the Construction Supervisor;

**Variation** is an instruction given by the Employer which varies the Contract Agreement.

Clause headings shall not be used in the interpretation of these Conditions.

Words in the singular also include the plural and vice versa when the context so requires.

Words indicating a gender include either gender.

#### **OBLIGATIONS OF THE EMPLOYER**

##### **5. Construction Supervisor**

(1) The Employer shall appoint a Construction Supervisor to act on its behalf to supervise the works and sign the Practical Completion ("Taking Over") Certificate, the Defects Liability Certificates, and any other partial completion certifications as provided for under the Contract Agreement. Any other powers delegated to the Construction Supervisor are listed in the SCC.

(2) The Employer shall pay to the Supplier sums due under the Contract.

#### **OBLIGATIONS OF THE CONTRACTOR**

##### **6. Scope of Works**

(1) The Contractor shall complete the Works at the locations specified in the Contract, and shall obtain a signed Practical Completion ("Taking Over" Certificate) from the Construction Supervisor.

##### **7. Subcontracting**

(1) The Contractor shall obtain the Employer's prior approval in writing of all subcontractors who are not specified in its Quotation with whom the Contractor wishes to engage under the Contract. Such approval shall not relieve the Contractor from any of its obligations, duties, responsibilities or liability under the Contract.

##### **8. Specifications and Standards**

(1) The Works provided under the Contract shall conform to the technical specifications (including the standards mentioned in the technical specifications). When no applicable standard is mentioned in the Technical Specifications or drawings, the standard shall be equivalent or superior to that given in the SCC.

(2) Where references are made in the Contract to codes or standards, the edition or the revised version of such codes and standards shall be those specified in the SCC.

(3) The Construction Supervisor shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities.

##### **9. Copyright**

(1) The intellectual property and copyright (IP) in all drawings, documents and other materials containing data and information furnished to the Employer by the Contractor shall remain vested in the Contractor or, if they are furnished to the Employer directly or through the Contractor by any third party, including, without limitation, Suppliers of materials, the copyright in such materials shall remain vested in such third party save insofar as the Contractor shall grant to the Employer a world-wide, non-exclusive,



irrevocable and royalty-free licence to use the IP to give effect to the provisions of this agreement.

#### **10. Defects Liability**

(1) The Construction Supervisor shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at the Date of Completion of the Works (i.e. the date of the Practical Completion ("Taking Over") Certificate). The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

(2) Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Construction Supervisor's notice. If the Contractor has not corrected a Defect within the time specified in the Construction Supervisor's notice, the Construction Supervisor will assess the cost of having the Defect corrected, and deduct such cost from the Retention Money.

(3) On completion of the Defects Liability Period and correction of all notified defects the Construction Supervisor shall issue a Defects Liability Certificate in the format as provided. Within 30 days of the signature of the Defects Liability Certificate the Performance Security shall be returned and the balance of the retention monies released.

#### **11. Insurance**

(1) The Contractor shall provide, in the joint names of the Employer and the Contractor, such insurances as are necessary to cover the liability of the Contractor and subcontractor(s) in respect of (a) personal injuries or deaths and damage to real or personal property arising out of or in the course of the carrying out of the Works; (b) all unfixed equipment, materials and goods intended for the Works, delivered to, or placed on or adjacent to the Works and intended for the Works, and for an amount not less than the full replacement cost of the works against all risks or physical loss or damage.

(2) Such insurances shall be in the type and amounts specified in the SCC and shall cover the period from the Start Date of the works as stated in the SCC to the end of the Defects Liability Period. The Contractor shall not cancel, cause to be cancelled, or alter the terms and conditions of any insurance policy covering this Contract without the express permission of the Employer.

### **ACCEPTANCE AND REJECTION**

#### **12. Performance of the Works**

(1) The Contractor shall complete the Works within the time period, and at the place(s) specified in the Schedule of Works and Quotation Schedule (or in the Technical Specifications, as applicable).

#### **13. Acceptance of the Works**

(1) Acceptance of the Works shall not be considered complete until receipt of the signed Practical Completion ("Taking Over") Certificate and any testing, as applicable, has taken place. To certify acceptance the Contractor shall provide to the Employer at the completion of the Works (or for each stage of construction if required) a Practical Completion ("Taking Over") Certificate signed and stamped by the Construction Supervisor in the format provided.

(2) Acceptance of the Works or payment shall not prejudice the right of the Employer to maintain an action for breach of condition or warranty should the Works prove to be of



Inferior quality or in any respect contrary to the requirements of the Contract Agreement.

#### **14. Rejection of the Works**

(1) The Employer may reject any Works which are not in accordance with the Contract. The Employer shall, upon rejection of any Works, notify the Contractor and may direct that the rejected Works be rectified at the Contractor's risk and expense within such reasonable time as the Employer may direct. Should the Contractor fail to rectify the rejected Works within the time directed the Employer may have the rejected Works completed at the Contractor's risk and expense.

#### **VARIATION ORDERS**

##### **15. Employers and Contractors Rights**

(1) The Employer may issue a Variation Order making changes to the Works, timing and/or cost of the Contract and submit it, with a brief justification for the variation, to the Contractor. If accepted, the Employer shall issue the Variation Order to the Contractor.

(2) The Contractor may submit a written proposal to the Employer requesting a variation in the Works. The proposal shall include a reasonable estimate of the time and/or cost of the variation, as well as a brief justification for the variation. If the Employer agrees to the proposal it shall prepare and issue the Variation Order to the Contractor.

(3) Variation in or modification of the terms of the Contract shall be made by written amendment signed by both parties.

#### **TERMS OF PAYMENT**

##### **16. Contract Cost**

(1) Unit Costs charged by the Contractor for the Works provided under the Contract shall not vary from those stated in the Contract.

(2) The total payments to be made against the Contract shall not exceed the Contract Cost stated in the Contract, except for changes made to the Contract as provided for in Clause 15.

##### **17. Advance Payment**

(1) If specified in the SCC, the Employer will make an advance payment to the Contractor against submission by the Contractor of an unconditional Advance Payment Bank Guarantee in the format specified by the Employer.

(2) The advance payment shall be repaid by deducting amounts from payments otherwise due to the Contractor. The total advance payment shall be recovered during the period of the Contract.

##### **18. Interim Payments**

(1) Interim payments Payment(s) to the Contractor shall be made, at the intervals or for the periods as specified in the SCC. Interim payment shall be made in the currency of the Contract and will be the estimated value of the permanent works executed, as approved by the Employer, up to the end of the period for which payment is being made less any deductions for retention money and repayment of advance.

(2) Request(s) for payment(s) shall be made to the Employer in writing, accompanied by invoices describing, as appropriate, the Works completed, always provided that other obligations stipulated in the Contract have been met.



(3) Payments shall be made by the Employer within 30 days after acceptance of the Invoice and other required documentation.

#### **19. Retention**

(1) A Payment Retention of the amount stated in the SCC shall be deducted from the payments due to the Contractor with respect to each interim payment up to a limit stated in the SCC. 50% of the total retention will be released on issue of the Practical Completion ("Taking Over" Certificate) and the balance shall be released at the end of the Defects Liability Period and issue of the Defects Liability Certificate.

#### **20. Final Payment**

(1) Within 30 days of the completion of the Defects Liability Period, the Contractor shall submit a Final Payment Statement to the Construction Supervision Engineer, in the form approved by the Construction Supervision Engineer, showing:

- (a) The value of all the work done in accordance with the Contract;
- (b) Any further sums which the Contractor considers to be due to him under the Contract;
- (c) Less the total of all interim payments received under the Contract.

(2) In the event that the Contractor fails or neglects to submit a Final Payment Statement, the Construction Supervisor may nevertheless issue a Final Payment Certificate provided he has sufficient information to calculate the value of such Certificate.

(3) The Employer shall within 30 days from the date of the Final Payment Certificate pay to the Contractor the amount due to the Contractor.

(4) If on the Final Payment Certificate a payment is due to the Employer, then the Contractor shall within 30 days from the date of the Final Payment Certificate pay the Employer that amount due.

#### **21. Taxes and Duties**

(1) Taxes and Duties as applicable are as stated in the SCC.

#### **PERFORMANCE SECURITY**

##### **22. Requirement for Performance Security**

(1) Details of any Performance Security required are as stated in the SCC and it shall be furnished by the Contractor in the format provided.

#### **LIQUIDATED DAMAGES**

##### **23. Provisions for Liquidated Damages**

(1) Liquidated damages if applicable are as stated in the SCC.

#### **SAFETY HEALTH AND WELFARE**

##### **24. Requirements for Safety Health and Welfare**

(1) The Contractor shall be responsible for all activities on the Site and shall comply with all relevant provisions of the laws in the Republic of Vanuatu.

#### **TERMINATION AND SUSPENSION**

##### **25. Termination for Default**

(1) The Employer may, without prejudice to any other remedy for breach of Contract and by written notice of default sent to the Contractor, terminate the Contract in whole or in part if the Contractor: