15. Force Majeure

15.1 Neither the COMPANY nor the CONTRACTOR shall be responsible for any failure to fulfil any term or condition of the CONTRACT if and to the extent that fulfilment has been delayed or temporarily prevented by a force majeure occurrence, as hereunder defined, which has been notified in accordance with this Clause 15 and which is beyond the control and without the fault or negligence of the party affected and which, by the exercise of reasonable diligence, the said party is unable to provide against.

15.2 For the purposes of this CONTRACT only the following occurrences shall be force majeure.

(a) Riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power;

(b) Ionising radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radio-active, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

(c) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;

(d) Earthquake, flood, fire, explosion and/or other natural physical disaster, but excluding weather conditions as such, regardless of severity;

(e) Strikes at a national or regional level or industrial disputes at a national or regional level, or strikes or industrial disputes by labour not employed by the affected party its subcontractors or its suppliers and which affect a substantial or essential portion of the WORK;
(f) Maritime or aviation disasters;

(g) Changes to any general or local Statute, Ordinance, Decree, or other Law, or any regulation or bye-law of any local or other duly constituted authority or the introduction of any such Statute, Ordinance, Decree, Law, regulation or bye-law.

15.3 In the event of a force majeure occurrence, the party that is or may be delayed in performing the CONTRACT shall notify the other party without delay giving the full particulars thereof and shall use all reasonable endeavours to remedy the situation without delay.

15.4 If either party is delayed in performing the CONTRACT by a force majeure occurrence, the SCHEDULE OF KEY DATES but not the CONTRACT PRICE, except as otherwise expressly provided in the CONTRACT, shall be adjusted in accordance with Clause 14 and Clause 15.5.

15.5 Upon cessation of any force majeure occurrence the CONTRACTOR shall prepare a revised PROGRAMME to include for rescheduling of the WORK so as to minimise the effects of the delay and having made due allowance for any instruction to accelerate the WORK given in accordance with Clause 14, the COMPANY shall authorise a VARIATION to adjust the SCHEDULE OF KEY DATES in order to take into account any remaining effects of such delay.

15.6 Following notification of a force majeure occurrence in accordance with Clause 15.3, the COMPANY und the CONTRACTOR shall meet without delay with a view to agreeing a mutually acceptable course of action to minimise any effects of such occurrence.

16. Suspension

16.1 The COMPANY shall have the right, by notice to the CONTRACTOR, to suspend the WORK or any part thereof to the extent detailed in the notice, for any of the following reasons:

   (a) subject only to Clause 16.3, in the event of some default on the part of the CONTRACTOR; or

   (b) in the event that suspension is necessary for the proper execution or safety of the WORK, or persons; or

   (c) to suit the convenience of the COMPANY.

16.2 Upon receipt of any such notice, the CONTRACTOR shall, unless instructed otherwise:

   (a) discontinue the WORK or the part of the WORK detailed in the notice, on the date and to the extent specified; and

   (b) properly protect and secure the WORK as required by the COMPANY.

16.3 In the event of default on the part of the CONTRACTOR and before the issue by the COMPANY of a notice to suspend the WORK or any part thereof the COMPANY shall give notice of default to the CONTRACTOR giving details of such default. If the CONTRACTOR, upon receipt of such notice, does not commence and thereafter continuously proceed with action satisfactory to the COMPANY to remedy such default the COMPANY may issue a notice of suspension in accordance with the provisions of Clause 16.1.
16.4 Unless the suspension arises as a result of default on the part of the CONTRACTOR, the CONTRACT PRICE and SCHEDULE OF KEY DATES shall be adjusted in accordance with the relevant provisions of Section III - Remuneration or, in the absence of such provisions, in accordance with Clause 14.

16.5 If suspension results from default on the part of the CONTRACTOR, any additional costs reasonably incurred by the COMPANY as a direct result shall be recoverable by the COMPANY from the CONTRACTOR.

16.6 The COMPANY may, by further notice, instruct the CONTRACTOR to resume the WORK to the extent specified.

16.7 In the event of any suspension, the COMPANY and the CONTRACTOR shall meet at not more than seven (7) day intervals with a view to agreeing a mutually acceptable course of action during the suspension.

16.8 If the period of any suspension not arising as a result of default on the part of the CONTRACTOR exceeds the period stated in Appendix 1 to Section I - Form of Agreement the CONTRACTOR may serve a notice on the COMPANY requiring permission within fourteen (14) days from the receipt of such notice to proceed with the WORK or that part thereof subject to suspension. If within the said fourteen (14) days the COMPANY does not grant such permission the CONTRACTOR, by a further notice, may (but is not bound to) elect to treat the suspension as either:

(a) where it affects part only of the WORK, an omission of such part under Clause 14; or

(b) where it affects the whole of the WORK, termination in accordance with Clause 30.1(a)

25. Consequential Loss

For the purposes of this Clause 25 the expression "Consequential Loss" shall mean:

(i) consequential or indirect loss under English law; and

(ii) loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit (if any), in each case whether direct or indirect to the extent that these are not included in (i), and whether or not foreseeable at the EFFECTIVE DATE OF COMMENCEMENT OF THE CONTRACT.

Notwithstanding any provision to the contrary elsewhere in the CONTRACT and except to the extent of any agreed liquidated damages (including without limitation any predetermined termination fees) provided for in the CONTRACT, the COMPANY shall save, indemnify, defend and hold harmless the CONTRACTOR GROUP from the COMPANY GROUP'S own Consequential Loss and the CONTRACTOR shall save, indemnify, defend and hold harmless the COMPANY GROUP from the CONTRACTOR GROUP'S own Consequential Loss, arising from, relating to or in connection with the performance or non-performance of the CONTRACT.

30. Termination

30.1 The COMPANY shall have the right by giving notice to terminate all or any part of the WORK or the CONTRACT at such time or times as the COMPANY may consider necessary for any or all of the following reasons:
(a) to suit the convenience of the COMPANY; or

(b) subject only to Clause 30.2 in the event of any default on the part of the CONTRACTOR; or

(c) in the event of the CONTRACTOR becoming bankrupt or making a composition or arrangement with its creditors or a winding-up order of the CONTRACTOR being made or (except for the purposes of amalgamation or reconstruction) a resolution for its voluntary winding-up being passed or a provisional Liquidator, Receiver, Administrator or Manager of its business or undertaking being appointed or presenting a petition or having a petition presented applying for an administration order to be made pursuant to Section 9 Insolvency Act 1986, or possession being taken by or on behalf of the holders of any debenture secured by a Floating Charge of any property comprised in or subject to the Floating Charge, or any equivalent act or thing being done or suffered under any applicable law.

30.2 In the event of default on the part of the CONTRACTOR and before the issue by the COMPANY of an order of termination of all or any part of the WORK or the CONTRACT, the COMPANY shall give notice of default to the CONTRACTOR giving the details of such default. If the CONTRACTOR upon receipt of such notice does not commence and thereafter continuously proceed with action satisfactory to the COMPANY to remedy such default the COMPANY may issue a notice of termination in accordance with the provisions of Clause 30.1.

30.3 In the event of the COMPANY giving the CONTRACTOR notice of termination of all or any part of the WORK or the CONTRACT, such notice shall become effective on the date specified therein (or in the absence of any specified date at the date of receipt of the notice) whereupon the CONTRACTOR shall immediately:

(a) cease performance of the WORK or such part thereof as may be specified in the notice;

(b) allow the COMPANY or its nominee full right of access to the WORKSITE to remove and/or take over the WORK or the relevant part of the WORK so far completed together with all materials and equipment which are the property of the COMPANY;

(c) assign to the COMPANY, or its nominee, to the extent desired by the COMPANY all or the relevant parts of the rights, titles, liabilities and SUBCONTRACTS relating to the WORK which the CONTRACTOR may have acquired or entered into;

(d) except as required under Clause 30.3(b), remove all the equipment or materials, of the CONTRACTOR from the immediate area in which the WORK or the relevant part thereof is being performed unless otherwise instructed by the COMPANY.

Within thirty (30) days of the effective date of termination the CONTRACTOR shall deliver to the COMPANY all the relevant parts respectively of the TECHNICAL INFORMATION and originals, copies and reproductions of all drawings, specifications, requisitions, calculations, programme listings, erection plans, schedules, computer tapes, discs and other essential recording matter and all other data and documents prepared by the CONTRACTOR or any SUBCONTRACTOR.

Notwithstanding the above the CONTRACTOR may retain one copy of any such documents while admitting that the COMPANY has title to all such documents.

30.4 In the event of termination under Clause 30.1(a) the CONTRACTOR shall be entitled to payment as set out in
Section III - Remuneration for the part of the WORK performed in accordance with the CONTRACT together with such other payments and fees as may be set out in that Section or, in the absence of such provisions, such reasonable costs as agreed between the parties at the time of termination.

30.5 In the event of termination of part of the WORK in accordance with Clause 28.6 or Clause 30.1(b) the CONTRACTOR shall be entitled to payment only as set out in Section III - Remuneration for the part of the WORK performed in accordance with the CONTRACT. Any additional costs reasonably incurred by the COMPANY as a direct result of such termination shall be recoverable from the CONTRACTOR.

30.6 In the event of termination of all of the WORK or the CONTRACT in accordance with Clause 30.1(b) or Clause 30.1(c) the following conditions shall apply:

(a) the CONTRACTOR shall cease to be entitled to receive any money or monies on account of the CONTRACT until the expiration of the Defects Correction Period specified in Clause 29 (assuming that the COMPLETION DATE in respect of the whole of the WORK would have been the date specified in the SCHEDULE OF KEY DATES) and thereafter until the costs of COMPLETION and all other costs arising as a result of the CONTRACTOR'S default or other events giving rise to the termination have been finally ascertained;

(b) thereafter and subject to any deductions that may be made under the provisions of the CONTRACT the CONTRACTOR shall be entitled to payment only as set out in Section III - Remuneration for the part of the WORK completed in accordance with the CONTRACT up to the date of termination; and

(c) any additional costs reasonably incurred by the COMPANY as a direct result of the CONTRACTOR'S default or other events giving rise to termination shall be recoverable from the CONTRACTOR.

30.7 (a) In the event of termination of the CONTRACT the rights and obligations of the parties included in the following Sections and Clauses shall remain in full force and effect:

(i) Section I - Form of Agreement;

(ii) Section II a) - Conditions of Contract Clauses 4, 5, 8, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 30, 31, 32, 34, 36, 37 and 38;

(iii) Such additional Clauses and Special Conditions of Contract (if any) as are set out in Appendix 1 to Section I - Form of Agreement.

(b) In the event of termination of all or any part of the WORK the whole of the CONTRACT shall remain in full force and effect.

[...]

Referring Principles:

- IV.6.7 - Duty to renegotiate
- VI.1 - Termination of contract in case of fundamental non-performance
- VI.3 - Force majeure
- VII.3.2 - Calculation of damages