

SECTION 2

GENERAL CONDITIONS OF CONTRACT

A. General

1. Definitions

1.1 Boldface type is used to identify defined terms.

The **Adjudicator** is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in Clauses 24 and 25 hereunder.

Bill of Quantities means the priced and completed Bill of Quantities forming part of the Tender.

Compensation Events are those defined in Clause 44 hereunder.

The **Completion Certificate** is the certificate issued by the Project Manager after the Defects Liability Period and upon correction of all defects by the Contractor.

The **Completion Date** is the date of taking-over the Works as certified by the Project Manager, in accordance with Sub-Clause 55.1.

The **Contract** is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in Clause 2.3 below.

The **Contractor** is a person or corporate body who's Tender to carry out the Works has been accepted by the Employer.

The **Contractor's Tender** is the completed Tender document submitted by the Contractor to the Employer.

The **Contract Price** is the price stated in the Letter of

Acceptance and thereafter as adjusted in accordance with the

provisions of the Contract.

Days are calendar days; months are calendar months.

Dayworks are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.

A **Defect** is any part of the Works not completed in accordance with the Contract.

The **Defects Liability Certificate** is the certificate issued by Project Manager upon correction of defects by the Contractor.

The **Defects Liability Period** is the period named in the Contract Data and calculated from the Taking-Over Date.

Drawings include calculations and other information provided or approved by the Project Manager for the execution of the Contract.

The **Employer** is the party who employs the Contractor to carry out the Works.

Equipment is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.

The **Initial Contract Price** is the Contract Price listed in the Employer's Letter of Acceptance.

The **Intended Completion Date** is the date on which it is intended that the Contractor shall substantially complete the Works. The Intended Completion Date is specified in the Contract Data. The Intended Completion Date may

be revised only by the Project Manager by issuing an extension of time or an acceleration order.

Materials are all supplies, including consumables, used by the Contractor for incorporation in the Works.

Plant is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.

The **Project Manager** is the person named in the Contract Data (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.

The **Site** is the area defined as such in the Contract Data.

Site Investigation Reports are those that were included in the Tender documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.

Specification means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.

The **Start Date** is given in the Contract Data. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.

A **Subcontractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.

The **Taking-Over Certificate** is a certificate issued by the

Project Manager when the works are substantially completed in accordance with Sub-Clause 55.1

Temporary Works are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.

A **Variation** is an instruction given by the Project Manager which varies the Works.

The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the Contract Data.

2. Interpretation

- 2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract.
- 2.2 If sectional completion is specified in the Contract Data, references in the Conditions of Contract to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 2.3 The documents forming the Contract shall be interpreted in the following order of priority: (1) Agreement,
 - (2) Letter of Acceptance,
 - (3) Contractor's Tender,
 - (4) Contract Data,
 - (5) Conditions of Contract,
 - (6) Specifications,
 - (7) Drawings,
 - (8) Bill of Quantities, and

- (9) any other document listed in the Contract Data as forming part of the Contract.

3. Language and Law

- 3.1 The Contract and the law governing the Contract shall be in English

4. Duties and Authority of the Project Manager

- 4.1 (a) The Project Manager shall carry out the duties specified in the Contract
- (a) The Project Manager may exercise the authority specified in or necessarily to be implied from the Contract
- (b) Except as expressly stated in the Contract, the Project Manager shall have no authority to relieve the Contractor of any of his obligations under the Contract

- 4.2 With reference to Sub-Clause 4.1 (b), the following provision shall also apply:

The Project Manager shall obtain the specific approval of the Employer before taking any of the following actions:

- (a) approving subcontracting of any part of the Works;
- (b) certifying additional cost;
- (c) determining an extension of time;
- (d) issuing a variation under, except if such variation would increase the Contract Price by less than the amount stated in the Appendix to Tender; or (e) fixing rates or prices.

- 4.3 Except where otherwise specifically stated, the Project Manager will decide contractual matters between the Employer and the Contractor in the role representing the Employer.

- 4.4 Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Project Manager, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibilities under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Project Manager, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Employer, with any such instruction of the Project Manager. The Project Manager shall determine an

addition to the Contract Price, in respect of such instruction, in consultation with the Employer and shall notify the Contractor accordingly, with a copy to the Employer

- 5. Delegation** 5.1 The Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.
- 6. Communications** 6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.
- 7. Subcontracting** 7.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.
- 8. Other Contractors** 8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as referred to in the Contract Data. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.
- 9. Personnel** 9.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the Contract Data, to carry out the functions stated in the Schedule or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule.

9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

- 10. Risks** 10.1 The Contractor being independent shall be responsible from the Start Date until the Defects Correction Certificate has been issued.
- 11. Site Investigation Reports** 11.1 The Contractor, in preparing the Tender, shall rely on any Site Investigation Reports referred to in the Contract Data, supplemented by any information available to the Tenderer.
- 12. Queries about the Contract Data** 12.1 The Project Manager will clarify queries on the Contract Data.
- 13. Contractor to Construct the Works** 13.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.
- 14. The Works to Be Completed by the Intended Completion Date** 14.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Programme submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.
- 15. Approval by the Project Manager** 15.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.
- 15.2 The Contractor shall be responsible for design of Temporary Works.
- 15.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.
- 15.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.
- 15.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.

16. Safety 16.1 The Contractor shall be responsible for the safety of all activities on the Site.

17. Discoveries 17.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.

18. Possession of Site 18.1 Insofar as the Contract may prescribe the Employer shall **the Site** give:

- (a) the extent of portions of the Site of which the Contractor is to be given possession from time to time
- (b) the order in which such portions shall be made available to the Contractor, and, subject to any requirement in the Contract as to the order in which the Works shall be executed, the Employer will, with the Project Manager's notice to commence the Works, give to the Contractor possession of
- (c) so much of the Site, and
- (d) such access as, in accordance with the Contract, is to be provided by the Employer as may be required to enable the Contractor to commence and proceed with the execution of the Works in accordance with the programme referred to in Clause 27, if any, and otherwise in accordance with such reasonable proposals as the Contractor ' shall, by notice to the Project Manager with a copy to the Employer, make. The Employer will, from time to time as the Works proceed, give to the Contractor possession of such further portions of the

Site as may be required to enable the Contractor to proceed with the execution of the Works with due dispatch in accordance with such programme or proposals, as the case may be.

19. Access to the Site 19.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

- 20. Instructions** 20.1 Pursuant to the Duties and Authority of the Project Manager as specified in Clause 4, the Contractor shall carry out all instructions of the Project Manager, which comply with the applicable laws where the Site is located.
- 21. Disputes** 21.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.
- 22. Procedure for Disputes** 22.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
- 22.2 The Adjudicator shall be paid by the hour at the rate specified in the Tender Data and Contract Data, together with reimbursable expenses of the types specified in the Contract Data, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.
- 22.3 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place shown in the Contract Data.
- 22.4 Having exhausted the adjudication and arbitration, either party reserves the right to seek redress from a court of competent jurisprudence if not satisfied with the decision of the arbitrator.
- 23. Replacement of Adjudicator** 23.1 Should the Adjudicator resign or die, or should the Employer and **of Adjudicator** the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority designated in the Contract Data at the request of either party, within 14 days of receipt of such request.

B. Time Control

24. Programme

24.1 Within the time stated in the Contract Data, the Contractor shall submit to the Project Manager for approval a Programme showing the general methods, arrangements, order, and timing for all the activities in the Works.

24.2 An update of the Programme shall be a Programme showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.

24.3 The Contractor shall submit to the Project Manager for approval an updated Programme at intervals no longer than the period stated in the Contract Data. If the Contractor does not submit an updated Programme within this period, the Project Manager may withhold the amount stated in the Contract Data from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Programme has been submitted.

24.4 The Project Manager's approval of the Programme shall not alter the Contractor's obligations. The Contractor may revise the Programme and submit it to the Project Manager again at any time. A revised Programme shall show the effect of Variations and Compensation Events.

25. Extension of

Completion Date **the Intended** if a Compensation Event occurs or a Variation is issued which **Completion** makes it impossible for Completion to be achieved by the

Date

Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.

25.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay

or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

26. Acceleration 26.1 When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager will obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date will be adjusted accordingly and confirmed by both the Employer and the Contractor.

26.2 If the Contractor's priced proposals for acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.

27. Delays 27.1 The Project Manager may instruct the Contractor to delay the **Ordered by the Project Manager** start or progress of any activity within the Works.

28. Management Meetings 28.1 The Project Manager shall arrange monthly management meetings. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.

28.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

29. Early Warning 29.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.

29.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

C. Quality Control

30. Identifying Defects 30.1 The Project Manager 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. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.

31. Tests 31.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.

32. Correction of Defects 32.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Taking-Over, and is defined in the Contract Data.

32.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.

33. Uncorrected Defects 33.1 If the Contractor has not corrected a Defect within the Defects Liability Period, the Project Manager will have the Defects corrected and the Contractor surcharged with the amount involved.

D. Cost Control

- 34. Bill of Quantities** 34.1 The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.
- 34.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.
- 35. Changes in the Quantities** 35.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change.
- 35.2 The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Employer.
- 35.3 If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.
- 36. Variations** 36.1 All Variations shall be included in updated Programmes produced by the Contractor.
- 37. Payments for Variations** 37.1 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.
- 37.2 If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in SubClause 38.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.

37.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.

37.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

37.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.

38. Cash Flow
provide

Forecasts the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined

in the Contract, converted as necessary using the Contract exchange rates.

38.1 When the Programme is updated, the Contractor shall

39. Payments
the

39.1 Without prejudice to Clause 5 v of the contract agreement,

Employer reserves the right to pay part of the total sum amounting to 60% of the quantum sum after collaborative site visit and inspection is done by the employer, the bankers and the contractor.

The employer therefore, without any doubt reserves the right to uphold this said payment when defects are detected after the collaborative site visit and inspection .Payment will therefore be done after these defects are remedied by the contractor.

40. Compensation

40.1 The following shall be Compensation Events: **Events**

- (a) The Employer does not give access to the Site as defined in Clause 21 by the Site Possession Date as stated in the Contract Data.

- (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
- (c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
- (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
- (e) The Project Manager unreasonably does not approve a subcontract to be let.
- (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to Tenderers (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
- (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- (i) The advance payment is delayed.
- (j) The effects on the Contractor of any of the Employer's Risks.
- (k) The Project Manager unreasonably delays issuing a Certificate of Completion.

- (l) Other Compensation Events described in the Contract or determined by the Project Manager shall apply.

40.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

40.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager will assume that the Contractor will react competently and promptly to the event.

40.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor's not having given early warning or not having 3. cooperated with the Project Manager.

40.5 The Employer shall hold the Project Manager Liabile for payment of compensation in the events of Clause 44.1 a, d, e and k supra.

41. Tax 41.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of Tenders for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of Clause 47.

42. Currencies 42.1 Where payments are made in currencies other than the Ghanaian Cedi, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Tender.

43. Retention 43.1 The Employer shall retain 5% of the Total contract sum as per clause 5 of the contract agreement.

43.2 On completion of the whole Works, the Contractor may substitute retention money with an "on demand" Bank guarantee.

44. Liquidated Damages 44.1 The Contractor shall pay liquidated damages¹ to the Employer at **Damages** the rate per day stated in the Contract Data for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the Contract Data. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

44.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in SubClause 43.1.

45. Securities 45.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a bank or surety acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.

46. Dayworks 46.1 If applicable, the Dayworks rates in the Contractor's Tender shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.

462 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.

46.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

47. Cost of Repairs 47.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

E. Finishing the Contract

48. Completion 48.1 The Contractor shall request the Project Manager to issue a certificate of Completion of the Works, and the Project Manager will do so upon deciding that the work is completed.

49. Taking Over 49.1 The Employer shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.

50. Final Account 50.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

51. Operating and Maintenance Manuals

51.1 If “as built” Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the Contract Data.

51.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the Contract Data, or they do not receive the Project Manager’s approval, the Project Manager shall withhold the amount stated in the Contract Data from payments due to the Contractor.

52. Termination

52.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

52.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:

- (a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Programme and the stoppage has not been authorized by the Project Manager;
- (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;
- (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 days of the date of the Project Manager’s certificate;
- (e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
- (f) the Contractor does not maintain a Security, which is required; and

- (g) The Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the Contract Data.

52.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under Sub-Clause 58.2 above, the Project Manager shall decide whether the breach is fundamental or not.

52.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.

52.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

53. Payment upon Termination

53.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the Contract Data. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.

53.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.

54. Property 54.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor's default.

55. Release from any Performance 55.1 If the Contract is frustrated by the outbreak of war or by other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.





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CONSTRUCTION OF CLEAN GHANA SANITATION

FACILITY CONTRACTORS DOCUMENTS:

The Agreement

General Conditions of Contract

Letter of Acceptance

Award Letter

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CONTRACTOR:

CLEANDY REAL ESTATE LIMITED

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SECTION 1

CONTRACT AGREEMENT

THIS AGREEMENT is made the . . day of , 201..BETWEEN GHANA FIRST COMPANY LIMITED a company registered under the laws of Ghana with its registered office situate at HINO St I-Adjiriganor, adjacent to Accra College of Medicine, Accra in the Greater Accra region of Ghana acting per its Chief Executive Officer MR. FRANK AKULEY of P.O. Box KD 735, Accra in the Greater Accra Region of the Republic of Ghana (hereinafter called "THE EMPLOYER") of the one part and CLEANDY REAL ESTATE LIMITED a company registered under the laws of Ghana with its registered office situate at HINO.....

the Ashanti Region of Ghana at acting per its Managing Director MR. DWAMENA AKENTEN ANDREW (Hereinafter called 'the CONTRACTOR") of the other part. .

Whereas:- Ghana First Company Limited desires the construction and completion of 20

Seater toilet facility with 2 drilled bore holes and 2 overhead water storage tanks.

Whereas:- Ghana First Company Limited requires the professional services of a Contractor to construct and complete the said project and

Whereas:- Cleandy Real Estate Limited has represented to Ghana First Company Limited that it has the competence, skill and expertise to construct and complete the project herein and

Whereas:- Ghana First Company Ltd desires the work should be executed by Cleandy Real Estate Limited (Contractor) and has accepted a bid by the Contractor for the execution and completion of the work and the remedying of any defects therein,

Now Therefore:- The parties herein have agreed to execute a performance contract to embody the terms of their relationship as a Contractor and its project Employer.

1. In this agreement words and expressions shall have the same meaning as are respectively assigned to them in the General conditions of the Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this agreement.
 - (1) The Agreement,
 - (2) The General Conditions of Contract,
 - (3) The Letter of Acceptance,
 - (4) The Award Letter
 - (5) Contractor's Company Profile
 - (6) Drawings,
 - (7) Bill of Quantities,
 - (8) Security Forms
 - (9) Any other document listed in the General Conditions of the Contract as forming part of the Contract.

3. THE CONTRACTOR HEREBY COVENANTS WITH THE EMPLOYER as follows:

1. That the Contractor commits to being responsible for checking that the quantities quoted in the bill of quantities are correct as shown in the drawings for the satisfactory completion of the project.
- ii. That the Contractor commits to construct and complete One (1) unit of the toilet facility on 1) Nsuta sanitary sites at Techiman in the Techiman Municipal Assembly in the Brong Ahafo Region of Ghana or at any place as the exigency of a particular situation may require.
111. That the Contractor commits to perform the work as defined in the bill of quantities of the contract and for the avoidance of doubt the work as defined in the bill of quantities for 1 (one) unit of the facility includes:
 - a. Construction of structure of the 20 seater sanitary facility as per the design, drawings and specifications provided by the Employer.
 - b Drilling of two (2) boreholes as the main source of water supply to each facility.

- c. Provision of back up water supply to the Ghana Water and Sewage System.
- d Provision of two (2) overhead water storage tanks.
- e. Performing all external works as agreed upon between the contractors and the client.
- f. Provision of extractors.
- g. Demolition and dislodging of existing toilet or broken d0Mm toilet prior to construction at a reasonable cost in the event of such instance.
- h. That the Contractor commits to respect the deadline set for the completion of the project.

IV. The Contractor shall give written notice to the Engineer for the purpose of inspection and measurement, whenever sections of:

- a. Excavations are completed.
- b. The Contractor shall notify the Project Manager when the excavations are ready to receive the permanent work and no concrete or hardcore or other permanent work shall be laid until the Project Manager is satisfied that a proper foundation has been obtained. Bottoms of excavations to received concrete foundations shall be levelled and well rammed to the satisfaction of the Supervising Office.
- c. concrete beds are laid,
- d. No back-filling shall be carried out until the foundations have been approved by the Project Manager. Only the specified excavated material as specified in Structural Engmeer's Drawing shall be used and deposited in layers not exceeding 225mm thick. Each layer shall be rammed and watered and well compacted. No back-filling shall be camed out until the foundations and footings have been approved by the Project Manager.
- e. drams are completed,

No further work shall be executed until each stage of the work has been inspected.

- v. The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given In the Schedule of Other Contractors. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.

4.THE EMPLOYER HEREBY COVENANTS WITH THE CONTRACTOR as follows:

- vi. That the Employer commits to the provision of land for the construction One (1) unit of the toilet -1) Nsuta sanitary sites at Techiman in the Techiman Municipal Assembly in the Brong Ahafo Region of Ghana or at any place as the exigency of a particular situation may require.
- i. That the Employer commits to ensuring that the contractor has an unfettered access to the land.
- ii. That the Employer commits to paying the contract sums of GHC503,935.08 (Five Hundred and Three Thousand and Nine Hundred and Thirty Five Ghana Cedis Eight pesewas) due to the contractor in accordance with Clause 5 sub v of the terms and conditions of this contract.
- iii. The Employer further covenants to pay the Contractor consideration for additional works arising out of this contract so long as same did not arise out of the contractor's negligence or lack of skills or Incompetence all arising out of want or insufficient due diligence. The payment envisaged under this clause and any other clause shall be made upon a recommendation by the project manager for approval by the Chief Executive Officer.
- iv. This include but not limited to when Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Award Letter from the information issued to Tenderers from information available publicly and from a visual inspection of the Site
- v. That payments to be made as envisaged under clause 4.v shall also be subject to the limitation in clause 4.iv

3. NOW THEREFORE BOTH PARTIES HEREBY FURTHER COVENANT as follows:

- i. That the description of work to be undertaken by the Contractor shall be as in Clause 3 iii supra
- ii. That the time limit for the completion of the project in clause 3 ii supra shall be 90 days from the date of handing over of the proposed site to the Contractor.
- iii. That the constituent documents for the contract shall be as m Clause 2 supra
- iv. That the Contractor agrees that the Contract is a Tum Key Project and that the Contractor shall be paid only upon full completion and hand over of the entire project

v. That the Employer shall pay the Contractor the agreed Contract sum of GHCS03,935.08 (Five Hundred and Three Thousand and Nine Hundred and Thirty Five Ghana Cedis Eight pesewas) plus cost of additional works arising out of the contract and duly approved by the Employer's Project Manager as follows

- a. The total sum shall be paid to the contractor 3 months after completion of works and certificate of completion upon recommendation by project manager and approval by the Chief Executive Officer.
 - b. That the sum due the Contractor shall be the Net Contract sum after the withholding of 5% retention of the total sum for defect liability.
 - c. That the period of defect liability shall be a period of 6 (six) months after the handing over of the completed facility and for the avoidance of doubt the amount so retained shall be paid back to the Contractor three calendar months after payment of the Net contract sum after all defect liability is cleared.
- vi. That the site for the project shall be provided to the Contractor by the Employer within fourteen (14) days after signing of the contract.

- vii. That the Technical Team of the Employer shall make visits to the site to inspect work being done according to the rules and regulations of the construction industry.
- viii. That it must be clearly understood that the whole of the conditions are intended to be strictly enforced and that extra work will be allowed when discussed and an agreement for that purpose IS reached by the parties.
- ix. That the work progress meetings shall be held every two weeks and shall be attended by all parties or their representatives to this contract. This is without prejudice to any meeting that any of the parties will request for In the interest of the project.
- x. That this contract shall' come into force on the date of execution by the parties herein.
- xi. That in the event of the Contractor abandoning the project for any period of 28 continuous days without prior notice to the Employer, the contract shall stand abrogated and the cost of the abandonment including any delay occasioned to the project thereby shall be surcharged the Contractor.
- xii. Further to clause 5 sub xi, on the occurrence of either the said abandonment and or delay arising from the Contractor leaving some skeletal workers not being its full capacity of workers required for the project within the said 28 days period, the contract shall not only stand abrogated but any investment made by the Contractor within this period shall be forfeited.
- xiii. In the event of the project stalling arising out of liability of the Employer and where the contract is thereby abrogated in the results, the Contractor shall be paid a quantum meruit of the work so far undertaken up to the date of the occurrence of this event.
- xiv. That in the event of the occurrence of the matters in clauses of abandonment, the Employer shall without recourse to the Contractor be at liberty to engage another Contractor and place same on the site to continue and complete the project from whatever stage it got to.
- xv. That the period of Force Majeure that renders the site inaccessible shall not be considered as abandonment. For the avoidance of doubt, Force Majeure shall include but not limited to earthquakes, fire, floods, civil or political strife, riots and government actions.

- xvi. That the parties shall not resort to a court of law in the first instance in the event of any dispute and misunderstanding which may arise in connection with this agreement..
- xvii. That the parties shall endeavor to settle any dispute and misunderstanding in connection with this agreement amicably and where same fails or it is impossible the parties shall refer the dispute to an arbitrator appointed by each parties and the two arbitrators shall appoint an umpire who shall be a Legal Practitioner of high repute and of good standing.
- xviii. That where amicable settlement fails the parties each may be at liberty to have the dispute adjudicated by a court of competent jurisdiction in Ghana.
- xix. That any notice, consent or agreement required to be given under this agreement shall be in writing and sent by registered mail or email to the registered office or to such further address, tellers or email numbers as either party hereto may from time to time notify the other or by hand to the said addresses.
- xx. That all Drawings, Bill of Quantities and any documents herein put together for the purpose of this contract shall remain the property of Ghana First Company Ltd and shall be deemed CONFIDENTIAL INFORMATION.
- xxi. That the Contractor shall keep such confidential and shall not disclose the above to anybody whatsoever.
- xxii. That the Contractor shall ensure that its employees and agents keep confidential, all confidential information which it or they may acquire in relation to the project.
- xxiii. Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer subject to Article 257 (6) of the 1992 Constitution which states that "Every mineral in its natural state in, under or upon any land in Ghana, Rivers, Streams, Water courses throughout Ghana, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of the Republic of Ghana and shall be vested in the president on behalf of, and in trust for the people of Ghana".
- xxiv. . The Contractor shall notify the Project Manager of such discoverles and carry out the Project Manager's instructions for dealing with them.

xxv. The Contract shall be governed by the laws of Ghana, and the language of the Contract shall be English

WITNESSETH the hands of the parties hereto the day and %f{St ab

Signed by GHANA FIRST COMPANY LIMITED

The EMPLOYER herein acting per its Chief Executive Officer

MR. FRANK AKULEY

In the Presence of

54. Witness

Name: EMMANUEL ASANTE

P.O. Box KD 725
KANDA - ACCRA
[Signature]
31 Oct 2018

Address:

Signature:

Signed by MR. DWAMENA AKENTEN
ANDREW

The Contractor herein acting per its Managing

year first above written.
GHANA FIRST COMPANY LTD,
G. O. L
P. O. BOX KD 735
EMPLOYER ACCRA
31-10-2018

[Signature]
CONTRACTOR
CLUB AND REAL ESTATES LTD.

Director

In the Presence of

0

55. **Witness**

(JL6mCdf

Name:

Address: Box T104 - OIB - Info - 1kg

Signature: 

56. **P. O. BOX T 104**

LD TÅFO - KUMÅSI