

## **Cable Bay – Phase III Contract Terms & Conditions**

### **Suggested further amendments**

- 1) Delete Article 5 – i.e. refer all disputes to the court.
- 2) Execution – is execution as a deed recognized in St. Kitts? If so is there any advantage?
- 3) Clause 1.1 - Definition of Agreement – delete “*and the Contract Particulars.*”; add “*, the Contract Particulars and the Special Conditions.*”
- 4) Clause 1.2 – Definition of Conditions – delete “*including the Schedules hereto.*”; add “*including the Schedules and the Special Conditions hereto.*”

Items 3) & 4) to be hand written in to the printed text of the contract, the remainder to be included in a separate document entitled “Special Conditions” to be signed and annexed to the printed contract form.

- 5) Clause 1.1 – Definition of Practical Completion

Delete “*see clause 2.27*”

Substitute “*a state in which the Works are complete in all respects and free from apparent defects save for any minor items of incomplete work or minor defects the existence, completion or rectification of which in the opinion of the Employer's Agent would not prevent or interfere with the use (or the fitting out for use) of the Works; provided that where it is expressly stated in any provisions of the Employer's Requirements that the testing, commissioning, regulation or adjustment of any mechanical or electrical services is to be completed before Practical Completion, the Works shall not be considered to be practically completed until the same is done as the Employer's Requirements require*”

- 6) Clause 2.14.2 – add to the end of clause 2.14.2 “*provided that the discrepancy arises as a result of a Change issued in accordance with clause 3.9, but otherwise the discrepancy shall be dealt with at no cost to the Employer*”
- 7) Clause 2.8 shall be renumbered to become Clause 2.8.1
- 8) Add an additional clause numbered 2.8.2 add “*Within seven days after the execution of this contract, the Contractor shall provide to the Employer's Agent (unless he has already done so) two copies of a suitable programme for the execution of the Works. Within 14 days after it becomes apparent that the progress of the Works is being delayed by any circumstance, or that a change of programme is necessary to avoid or minimise the delay, the Contractor shall supply the Employer's Agent with two copies of a suitably revised programme*”

- 9) Clause 3.13.3 delete the final sentence; add ***“To the extent that such instructions are reasonable, whatever the result of the opening up, no addition shall be made to the Contract Sum; clause 2.26.2.2 shall not apply to any instructions issued under this clause.”***
- 10) As an additional clause numbered add 3.20 ***“Save as required under or pursuant to any other provisional of this contract, the Contractor shall not use or permit to be used in the Works any materials other than those that accord with the guidelines contained in the edition of ‘Good Practice in Selection of Construction Materials’ (Ove Arup & Partners) current at the date of this Contract. ”***
- 11) Clause 2.36 – to the end of the clause add ***“Provided that the Employer shall not be required to issue any Notice of Completion of Making Good any earlier than the expiry of the Rectification Period.”***
- 12) Clause 2.35 shall be renumbered as clause 2.35.1
- 13) As an additional clause numbered 2.35.2 add ***“In cases of urgency the Employer's instructions under clause 16.2 or 16.3 may require any matter to be made good within such period of time specified in the instruction as the circumstances shall require.”***
- 14) As an additional clause numbered 2.35.3 add ***“Clause 2.35.1 shall apply mutatis mutandis to any defects, shrinkages or other faults and to any items of incomplete work remaining at Practical Completion.”***
- 15) Clause 4.14.1.2 delete “; and ” and to the end of the clause add ***“and provided the Contractor has produced to the Employer satisfactory evidence that the terms of any relevant sub-contract and/or supply contract are such as would cause or permit the passing of property in such materials or goods to the Employer as provided for in clause 2.21; and”***
- 16) Clause 4.16.2 POSSIBLY delete and substitute ***“The Employer shall be under no fiduciary obligation with regard to Retention and shall be under no obligation to set aside in a separate account any amount representing the Retention”***
- 17) Clause 1.9.1.1 delete the wording add ***“{not used}”***
- 18) Clause 1.10 delete ***“Save as stated in clause 1.9 no”***; substitute ***“No”***

## **Suggested Additional Clauses**

### **A1 Performance bond**

- 1) *Forthwith upon the execution of this contract the Contractor shall furnish to the Employer a performance bond in an amount equal to 10 per cent of the Contract Sum and in terms of the draft contained in the Employer's Requirements (or such other terms as the Employer shall have approved) executed and delivered by a bank or insurance company previously approved by the Employer.*
- 2) *Unless a performance bond is provided in terms of clause A1.1 then (without derogation from clauses 4.16 and 4.17) the Employer shall be entitled to retain out of monies becoming due to the Contractor a sum equal to 10 per cent of the Contract Sum. Any amount so retained shall become due for release to the Contractor only when such performance bond is provided, or, if none is provided, on the date on which a bond in terms of the draft contained in the Employer's Requirements would have lapsed.*

### **A2 Site conditions**

- 1) *The Employer gives no warranty or representation as to the condition of the site or any adjoining property or any services in or under the site or as to the accuracy or sufficiency of any soils or survey data or other data contained in any document made available to the Contractor by the Employer, or as to any recommendations or conclusions made or reached in any such document.*

### **A3 Planting and seeding**

- 1) *The Employer shall not withhold a certificate of Practical Completion only by reason that any planting or seeding or turfing remains to be carried out, if the same is prevented by reason of the season of the year.*
- 2) *Clause A3.1 shall not apply to any planting or seeding or turfing which is required by any planning consent (or any reserved matter attaching to any planning consent) to be completed before the Works or any part of the Works may be occupied or used.*
- 3) *The Contractor shall complete any planting or seeding or turfing left outstanding at practical completion as soon in the next following planting season as is practicable.*
- 4) *If after practical completion any grass or plants or shrubs or trees fail to flourish or die within the 12-month period after planting or turfing or by the end of the Defects Liability Period (whichever is later) the Contractor shall replace the*

*same as soon as is practicable having regard to the weather and the season of the year.*

#### **A4 Approvals**

- 1) No inspection, testing, approval or review nor any omission to inspect, test, approve or review on the part of the Employer shall diminish any duty or liability hereunder of the Contractor.*
- 2) Whenever in these Special Conditions there is a reference to any approval by the Employer, such approval shall not be withheld or delayed without reasonable cause.*

#### **A5 Set-off**

- 1) Nothing contained in this contract shall oust or limit any right of the Employer under any statute or rule of law or of equity in the nature of set-off or abatement of price.*

#### **A6 Interpretation**

- 1) In the case of any inconsistency between these Special Conditions and any other term of this contract the Special Conditions shall prevail. In the case of any inconsistency between the Conditions and any other term of this contract (except these Special Conditions) the Conditions shall prevail.*
- 2) In this contract:*
  - a. any term importing gender shall include any gender;*
  - b. any term importing the singular includes the plural and vice versa.*
  - c. clause headings and clause titles do not form part of this contract and shall not affect its interpretation.*