



Training on



PPA General Conditions of Contract (Two Days)

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Training Outline:

A. General Provision

B. The Contract

C. Obligations of the Public Body

D. Obligations of the Contractor

E. Payments to the

The screenshot shows a document titled "Standard Bidding Document (SBD) For Procurement of Textbooks and Related Services For National Competitive Biddings (NCB)". At the top, there is a logo of the Federal Democratic Republic of Ethiopia. Below the title, there is a section titled "Notes to Parties Bidders" with a list of instructions. The form includes fields for "Subject of Procurement", "Procurement Reference Number", "Project Name", and "Date of Issue of Bidding Document". At the bottom, it is dated "Addis Ababa, September 2011".

Notes to Parties Bidders:

- 1. The information contained within the documents is in the form of (Bidders form) (Bidders form) Character Formatting that allows you to show or hide specified text. Microsoft Word includes features and the underlining it with a green line, and will not print unless the print option is flagged. The Bidders form document is to be added.
- 2. The above Bidders form is the correct, click Microsoft Word for the Microsoft Word (Bidders) it has with features and options that you can use to add comments, or
- 3. The above Bidders form click, Options on the Tools menu, click the View tab, and then select the Bidders form check box under Formatting marks.
- 4. The above Bidders form is a printed document, click the Print on the File menu. Under Print click, Options, and then under the Bidders form check box under Include with document.
- 5. The above Bidders form is a printed document, click Options on the Tools menu, click the Print tab, and then under the Bidders form check box under Include with document.

Standard Bidding Document (SBD)
For Procurement of Textbooks and Related Services
For National Competitive Biddings (NCB)

Subject of Procurement
Procurement Reference Number
Project Name
Date of Issue of Bidding Document

Addis Ababa, September 2011



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A. General Provision

A-1: Definition

- **A contract is an agreement between two or more parties which is enforceable in law. It may have different forms.**
- **Every provision in the contract could be interpreted as if they are law.**





A. General Provision

A-1: Definition...Cont'd

The following legal elements need to be in place before a contract can be considered legally binding and enforceable

- a) Offer and Acceptance**
- b) Intention to create legal relations**
- c) Consideration**
- d) Legal Capacity**
- e) Illegal and Void Contract**



A. General Provision

A-1: Definition...Cont'd

- **The appointment of the Contractor is to carry out the works promptly:**
 - ✓ In strict accordance with terms and conditions in the contract
 - ✓ In accordance with all applicable laws and regulations
 - ✓ In accordance with the policies, rules and procedures of the appropriate Authority
 - ✓ In accordance with the quality standards



A. General Provision

A-1: Definition...Cont'd

- **Contractors, as much as they have the obligation to carry out the works, they have the right to do the works under the contract.**
- **Any communication and/or instruction shall be as per the contract.**

3. Relationship Between the Parties

- 3.1 Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Public Body and the Contractor. The Contractor, subject to this Contract, has complete charge of Personnel and Sub-Contractors, if any, carrying out the Works and shall be fully responsible for the Works carried out by them or on their behalf hereunder. The Contractor shall not incur any liabilities on behalf of the Public Body or enter into any contract or obligation on behalf of the Public Body.



A. General Provision

A-2: Interpretation as per the Law

- **Common intention of parties**
- **Positive interpretation**
- **Interpreted through one another**
- **Ambiguous terms shall be given the meaning as is more likely**



A. General Provision

A-2: Interpretation as per the contract

- **Words**
(gender/singular/plural)
- **Entire Agreement**
- **Amendment**
- **Non-waiver**
- **Severability**

6.5 Nonwaiver

- (a) Subject to GCC Sub-Clause 6.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- (b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

6.6 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.



A. General Provision

A-2 Interpretation

- ✓ **All Contracts have as much exhaustive and detail terms and conditions as they can to cover all issues in express terms.**
- ✓ **Terms would be implied if not expressly stated in the contract.**
- ✓ **Agreed Terms and Conditions in the Contract cannot unilaterally be changed nor re-written by courts; unless it has an unlawful or immoral purpose in view.**



A. General Provision

A-2: Interpretation

- ✓ **No obligation can impliedly be imported that are inconsistent with the express terms of the contract**
- ✓ **Ethiopian Civil Code, Article 1738, any ambiguities in the contract document would be construed against the Drafter of the Document.**



A. General Provision

A-3: Breach of Contract

- ✓ **Breaching a contract means not complying, executing, or refusing to act or provide as per the contract.**
- ✓ **Neither party can impose on the other party any obligation not expressly and/or impliedly stated in the contract.**
- ✓ **Every party is required to discharge its part of the bargain.**

19. Breach of Contract

- 19.1 Either party commits a breach of contract where it fails to discharge any of its obligations under the specific contract.
- 19.2 Where a breach of contract occurs, the party injured by the breach shall be entitled to the following remedies:
 - (a) Compensation / Claim for liquidated damages as specified in GCC Clause 27; and/or
 - (b) Termination of the contract.
- 19.3 In any case where the Public Body is entitled to damages, it may deduct such Suspension damages from any sums due to the Contractor or call on the appropriate guarantee.



Quiz -1

- ***What are the legal elements that need to be fulfilled for a contract to be legally binding and enforceable?***
- ***Can Silence be accepted when forming a contract?***
- ***When is the court allowed to change the contents of the contract or cancel it?***
- ***How are ambiguous terms be interpreted?***



B. The Contract

B-1: Contract Documents

- **These documents are extracts of the Bidding Documents issued; and any amendments thereto.**
- **Procurement related documents will be taken out from the Bidding Documents; like ITB, BDS, Eval & Qual. Criteria, Bidding forms, etc.**

7. Contract Documents

- 7.1 The documents forming the Contract shall be interpreted in the following order of precedence in the event of any conflict between the documents comprising this Contract:
- (a) Agreement, including all appendices;
 - (b) Letter of Acceptance by the Public Body to the Contractor;
 - (c) The Special Conditions of Contract;
 - (d) The General Conditions of Contract;
 - (e) Bid Submission Sheet with Annexes;
 - (f) Technical Proposal with technical specifications;
 - (g) The design documentation (drawings);
 - (h) For Unit-price contracts: The Bill of Quantities and Price Schedule (after correction of arithmetical errors);
For Lump-sum contracts: The Breakdown of the Lump-sum Price (after correction of arithmetical errors);
 - (i) Any other document listed in the SCC as forming part of the Contract.



B. The Contract

B-1: Contract Documents

- **The parts of the documents are expected to be mutually explanatory.**
- **Only authorized personnel from any parties to the contract can act or provide. (SC-7.3).**
- **No party can take any action or require to be provided other than specified in the contract. (SC-7.4)**



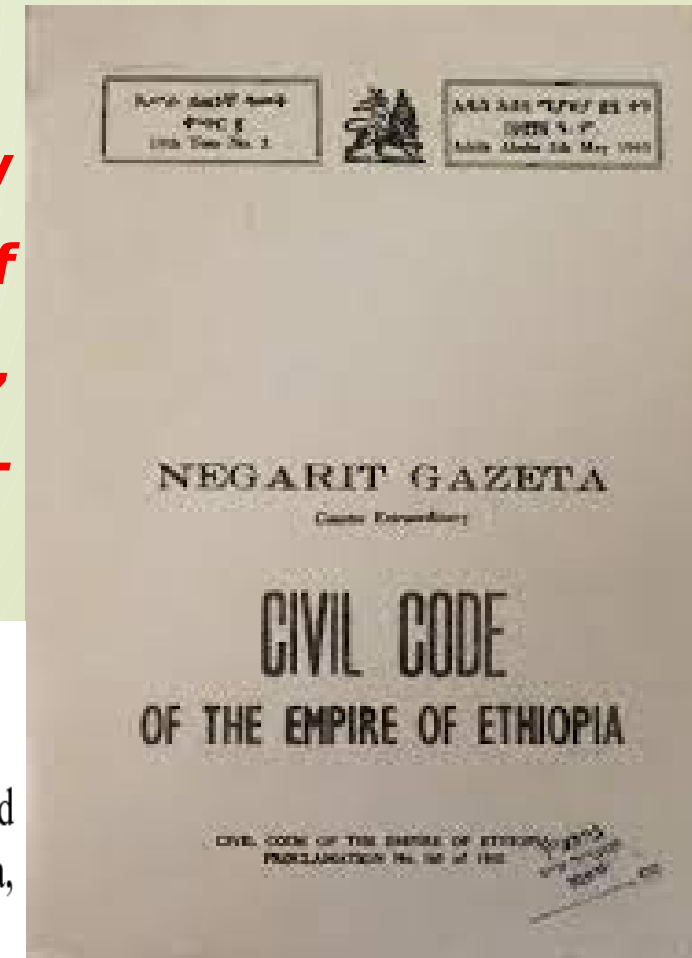
B. The Contract

B-2: Governing Law

- ***The governing law of the Contract is the law of the Federal Democratic Republic of Ethiopia (Civil Code, Labour Law, Tax Laws, Criminal Law, etc.); like as mentioned in Sub-Clause 8.1 of the PPA.***

8. Governing Law

- 8.1 The Contract, its meaning and interpretation, and relation between the Parties shall be governed by and interpreted in accordance with the laws of the Federal Democratic Republic of Ethiopia, unless otherwise stated in SCC.





B. The Contract

B-3: Notice and Written Communication

- **Any notice, request or consent required shall be in writing**
- **“In writing” means in written form with proof evidence.**
- **It shall also be interpreted to include any document which is recorded in manuscript or typescript.**
- **Shall be deemed to have been given when delivered in person to an authorized representative.**
- **Does that include e-mails, text messages, and the like?**



B. The Contract

B-4: Engineer and Engineer's Representative

- **The role of the Engineer is to supervise, inspect, test, examine and ensure the material employed and quality of workmanship is in adherence to the Contract Document.**
- **Engineer may delegate any of his responsibilities to his representative whose action would thereafter be deemed as the action of the Engineer.**
- **Unless authorized, Engineer cannot order works that result in extension of the intended completion date and additional cost to the Public Body.**



B. The Contract

B-4: Engineer and Engineer's Representative....Cont'd

- **Engineer shall Establish qualified and competent site and head office staffs**
- **Engineer shall Prepare and certify Contractor's payments**
- **He shall Issue a taking over and Defect Liability certificates after having the Public Body's consent**
- **He shall also routinely advise the Public Body on cost update, obstruction status, etc.**
- **He is required to implement quick decision-making process**



B. The Contract

B-4: Engineer and Engineer's Representative....Cont'd

- **Engineer shall not have authority to relieve the contractor from any of his obligations in the contract.**
- **Engineer or his representative shall determine EOT and compensation.**
- **He shall act as per his consultancy contract agreement, scope of works.**
- **To properly record all relevant data and documents; like Work Programme, RFIs, Test results, correspondences, weather, meeting minutes, videos, photographs, etc**



B. The Contract

B-5: Assignment and Sub-Contracting

- **Assignment is defined as a written agreement by which the Contractor transfers its contract or part thereof to a third party.**
- **Contractor shall not, without the prior written consent of the Public Body, assign the Contract or any part thereof, or any benefit or interest thereunder.**



B. The Contract

B-5: Assignment and Sub-Contracting

- **Assignees must satisfy the eligibility criteria applicable for the award of the Contract.**
- **A sub-contract shall be valid only if it is a written agreement by which the Contractor entrusts performance of a part of the Contract to a third party.**
- **Sub-Contractors must satisfy the eligibility criteria applicable to the award of the contract**
- **Shall have no contractual relations with the Sub-Contractors**



B. The Contract

B-5: Assignment and Sub-Contracting

- **The Contractor shall obtain the prior written approval and clearance of the Client for all Sub-Contractors; if they are not mentioned in the contract.**
- **During Sub-contracting, the Contractor shall be responsible for the acts, defaults and negligence of his Sub-Contractors and their agents or employees**



B. The Contract

B-6: Change/ Modifications

- **Modifications to any parts of the Works necessary for the proper completion and/or functioning of the works is called a Change within the Scope of the Contract.**

These modifications may include

- **Additions**
- **Omissions**
- **substitutions**
- **Change in quality, quantity, form, character, kind, positions dimension, level or line**
- **Change in specified sequence, method or timing**



B. The Contract

B-6: Change/ Modifications

- **Orders shall be issued in writing. Verbal orders shall immediately be confirmed by the Engineer or the Contractor itself.**
- **No order can invalidate the contract.**
- **No order required for quantity increase or increase.**
- **Change could be instructed by way of requesting the contractor to submit proposal; who shall then submit a proposal that contains the description of the change orders, time and cost implications of the proposed changes.**



B. The Contract

B-6: Change/ Modifications

- **Engineer to decide whether to proceed with the change after consultation with the Public Body and the Contractor.**

Price of the Change could be determined

- **Contract rate**: if similar character or executed under similar conditions.
- **Market Rate (negotiation)**: if not of similar character or not executed under similar conditions.
- **Engineer's Rate**: if the nature and amount of modifications rendered the contract rate unreasonable.



B. The Contract

B-6: Change/ Modifications

- If the total value of the works resulting from a change order exceeds 25% upon provisional acceptance, the Engineer shall determine any reduction from the contract price.

The total value of the works resulting from a change order shall not exceed 30% of the initial contract price.

- Will the change in quantity (increase/ decrease) not be considered as it does not entail **ORDERS?**



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Exercise - 1

A dredging company entered into a contract agreement with the Addis Ababa Water and Sewerage Authority for the dredging, supply & installation of a 3.5km long pipe line.

The contract requires the contractor to dispose the excavated material to a nearby river but without having any environmental impact.

However, while the construction has been going on, the



B. The Contract

B-8(1): Suspension of Works

Suspension is defined as a stoppage of work on any or all activities in all or part of the works for a certain duration.

Major Causes of Suspension

- Delay in Payment;**
- Design Revision;**
- Availability of Obstructions.**



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B. The Contract

B-8(1): Suspension of Works

Effects of Suspension

- Reduction of Rate of Progress**
- Stoppage of work**
- Termination of Contract**



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B. The Contract

B-8(1): Suspension of Works

- ✓ **The Contractor will suspend progress of works or any part thereof up on the order of the Engineer.**
- ✓ **The Contractor is entitled for an extension of time and any additional cost as a result of suspension of works unless the suspension is due to the fault of the contractor, by reason of climatic condition or necessary for the safety or proper execution of the**



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B. The Contract

B-8(1): Suspension of Works

✓ **Obligation to protect the works during the suspended period rests on the contractor.**

✓ **If suspension last for 120 days, according to Sub-Clause 20.5, then the contractor by giving notice may terminate**

20.5 If the period of suspension exceeds 120 days and the suspension is not due to the Contractor's default, the Contractor may, by notice to the Engineer, request permission to proceed within thirty (30) days or terminate the contract.



B. The Contract

B-8(1): Suspension of Works

- ✓ However, in PPA GCC, S.C 20.3 imposes a condition precedent for a notice to be served by the contractor within 30 days after receipt of the order; which otherwise no payment would be due.
- ✓ Besides, it shall be highlighted that in PPA GCC, Clause 20 it is not clear whether the contractor will be entitled for EOT if he suspended the work



B. The Contract

20.2 During the period of suspension, the Contractor shall take such protective measures as may be necessary to safeguard the works, plant, equipment and site against any deterioration, loss or damage. Additional expenses incurred in connection with such protective measures shall be added to the contract price, unless such suspension is:

- (a) otherwise provided for in the contract; or
- (b) necessary by reason of some default of the Contractor; or
- (c) necessary by reason of normal climatic conditions on site; or
- (d) necessary for the safety or the proper execution of the works or any part thereof insofar as such necessity does not arise from any act or default by the Engineer or the Public Body or from any of the exceptional risks referred to in GCC Clause 44.

20.3 The Contractor shall not be entitled to such additions to the contract price unless he notifies the Engineer, within 30 days after receipt of the order to suspend the works, of his intention to make a claim for them.



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B. The Contract

B-8(2): Termination

Termination by the Employer: if the contractor

- ✓ **Fails to carry out the works and remedy a failure in the performance**
- ✓ **becomes insolvent, involuntary bankruptcy, liquidation or dissolution**
- ✓ **Fails to comply with any final decision of the negotiation in dispute**



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B. The Contract

- ✓ **Guilty of grave professional misconduct justified by PB**
- ✓ **Has been declared to be in serious breach of contract under GOE budget.**
- ✓ **Engaged in corrupt and/or fraudulent practices**
- ✓ **Make organizational modifications that changes legal personality**



B. The Contract

The Public Body, in its sole discretion and for any other reason whatsoever, decides to terminate- but in this case it requires a sixty days prior notice.

- (o) The Public Body, in its sole discretion and for any reason whatsoever, decides to terminate the Contract.

Art. 3180. — Termination of contract.

The administrative authorities may terminate the contract, notwithstanding that the other party has committed no fault, where the contract has become useless to the public service or unsuitable for its requirements.



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B. The Contract

Termination by the Contractor: if the Employer

- ✓ fails to pay the contractor.
- ✓ Is in material breach of its obligation;
- ✓ Suspends the progress of works for more than 180days
- ✓ The contractor is unable to perform a material portion of the works as a result of Force Majeure for a period of not less than 60 days.
- ✓ Fails to comply with any decision reached as a result of



B. The Contract

- PPA Clause 23: Arrangement on Termination

23. Arrangements on Termination

- 23.1 The Public Body| and the Contractor agree that termination or expiry of the Contract shall not affect either Party's obligations which the Contract provides shall survive the expiration or termination of the Contract.
- 23.2 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Public Body if the Contract is terminated because of the Contractor's default.



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B. The Contract

B-9. Settlement of Disputes



B. The Contract

- **A Dispute is a heated contention, quarrel, difference of opinion (according to Oxford Dictionary).**
- **Disputes requires two sides with conflicting opinions; and in case of construction dispute, it is between the Employer and the Contractor.**



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B. The Contract

- **Clause 26 of the PPA General Conditions refers dispute be resolved in Court if not resolved amicably (which is a two stage; the later one is by**

26. Settlement of Disputes

- 26.1 During any dispute, including a dispute as to the validity of the Contract, it is mutually agreed that the Contractor shall continue its performance of the Contract (unless the Public Body requests in writing that the Contractor does not do so).
- 26.2 The Public Body and the Contractor shall make every effort to resolve amicably by direct informal negotiation any disagreement, controversy or dispute arising between them under or in connection with the Contract or interpretation thereof.
- 26.3 If a dispute arises between the Public Body and the Contractor in relation to any matter which cannot be resolved by the Engineer and the Contractor's Contract Manager either of them may refer such dispute to the procedure described in GCC Sub-Clause 26.4.
- 26.4 In the second instance each of the Public Body and the Contractor shall appoint more senior representatives than those referred to in Sub-Clause 26.3 to meet solely in order to resolve the matter in dispute. Such meeting(s) shall be minuted and shall be chaired by the Public Body (but the chairman shall not have a casting vote). Such meeting(s) shall be conducted in such manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question at the discretion of the chairman.
- 26.5 If the Parties fail to resolve such a dispute or difference amicably within twenty-eight (28) days from the commencement of such procedure, either party may require that the dispute be referred for resolution through the courts in accordance with Ethiopian Law.
- 26.6 Only those Public Bodies that are allowed by law to proceed to arbitration can do so.



B. The Contract

B-10. Liquidated Damages

- **Liquidated Damages - a genuine covenanted pre-estimate of loss.**
- **Claimed without proof of loss**
- **There is no bar to limit a genuine pre-estimate**

27. Liquidated Damages

- 27.1 Except as provided under GCC Clause 18, if the Contractor fails to carry out any or all of the Works within the period specified in the Contract, the Public Body may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages the following:
- (a) A penalty of 0.1% or 1/1000 of the value of undelivered Service for each day of delay until actual delivery or performance,
 - (b) The cumulative penalty to be paid by the Contractor shall not exceed 10% of the contract price.
- 27.2 If the delay in performing the contract affects its activities, the Public Body may terminate the contract by giving advance notice to the Contractor pursuant to GCC Clause 21 without any obligation to wait until the penalty reaches 10% of the value of the Contract.
- 27.3 If the Intended Completion Date is extended after liquidated damages have been paid, the Engineer shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate.



B. The Contract

B-10. Liquidated Damages

- **How is it calculated? - usually the maximum to be recovered between 1/3 rd & 2/3 of the Contract Period**
- **Penalties Vs. Liquidated Damage**
- **Can excessive liquidated damage amount be considered as penalty?**
- **When to challenge the Employer on the excessive**



C. Obligations of the Public Body

- **The Public body has several expressly stated and implied obligations under the contract; among which are, those that instigate a material breach of contract by the public body are:**
 - ✓ **Assistance and Supply of Documents (SC-30)**
 - ✓ **Access to the Site (SC-31)**
 - ✓ **Payment (SC- 32 and 33)**
 - ✓ **Others**



C. Obligations of the Public Body

C-1: Assistance and Supply of Documents (SC-30)

- ✓ **The Public Body shall provide copy of drawings, specification and other contract documents within 30 days of signing of the contract.**
- ✓ **Public Body may assist the contractor to obtain copies of relevant Laws applicable in the country; like tax laws, labour laws, etc..**
- ✓ **The Public Body may also assist the contractor when procuring visas, permits, etc... to his and his subcontractor's personnel.**



C. Obligations of the Public Body

C-2: Access to the Site (SC-31)

- **The Public body shall place the site and grant access thereto in accordance with the programme of works.**
- **Accessed land cannot be used for other purposes than it was claimed for.**
- **Delay by the public body to grant access by the date in the programme is a compensation event to the contractor.**
- **Contractor to restore claimed land, when required, to their original state on completion of the contract.**



C. Obligations of the Public Body

C-3: Payment (SC-32 &33)

- **The Public Body shall make payments in consideration of the works performed by the contractor.**
- **This is the fundamental obligation of the contractor as it also mentioned in the Contract Agreement Section of the Contract Document.**



C. Obligations of the Public Body

C-4: Others

- **To appoint a competent and qualified Engineer for the works contract administration. Re-appoint a new one if the former fails to discharge his duties and responsibilities.**
- **A general implied duty not to hinder the contractor's effort to complete the work**
- **Issue timely decisions on technical and contractual issues that requires its consent**



D.Obligations of the Contractor

D-1: General Obligations (SC-34)

- **Completing the works and remedy any defects therein.**
- **Responsible for the adequacy, stability and safety of the operations and methods of construction.**
- **Responsible for adhering to the applicable laws and regulations.**
- **Obtain consent before employing subcontractor or assign**
- **Shall comply with any administrative orders given by the Engineer**
- **Shall keep and treat all documents as private and confidential.**



D. Obligations of the Contractor

D-2: Control and Supervision of the Works (SC-37)

- **The contractor shall either supervise the works by himself or appoint a suitably qualified Contract Manager.**
- **Engineer may object the appointment of the Contract Manager stating the reasons. (Does not expressly show what reasons are acceptable).**
- **Engineer may withdraw his approval of the Contract Manager's appointment.**
- **The contractor shall provide sufficient complement of supervisory staff.**



D. Obligations of the Contractor

D-3: Personnel (SC-38)

- Sufficient in number; and shall make his own arrangement for engagement of staff and labour
- Rates of Wages and Conditions of labour as per the applicable law. Conditions include: health and safety, working hours, facilities, etc...
- Working hours excludes locally recognized days of rest; and it's not specifically mentioned in PPA especially in handling of works that are unavoidable for the safety and protection of people and the work that necessitates doing outside of the normal working hours.



D. Obligations of the Contractor

D-3: Personnel (SC-38)

- **There is a slight contradiction on the qualification of replacement of key staff between Sub-Clauses 38.3 and 38.4 as highlighted.**

38.3 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the SCC, to carry out the functions stated in the Schedule of Requirements or other personnel approved by the Engineer. The Engineer 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 of Requirements.

38.4 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Works to the Public Body. The Contractor shall ensure that the role of any Key Personnel is not vacant for any longer than [10] Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent of such role and is fully competent to carry out the tasks assigned to the role of the member of Key Personnel whom he or she has replaced.



D.Obligations of the Contractor

D-4: Insurance to be Taken out by the Contractor (SC-40)

Clause 40 of the PPA GCC require contractor to take out insurance:

- ✓ **For the entire works (Contract Amount)**
- ✓ **Additional 15% of the Works Contract Amount for any contingency**
- ✓ **Contractor's Equipment**
- ✓ **Third Party Liability**



D.Obligations of the Contractor

D-4: Insurance to be Taken out by the Contractor (SC-40)

- **Some of the Employer's Risks are not an obligation for insurance (like war, civil war, rebellion, revolution, insurrection, etc..)**
- **Employer must approve the insurer for all insurance; and also the terms of the policies.**
- **Works must be insured in the joint names of the Employer and Contractor.**
- **Engineer to check the insurance covers all Employer's interest and recommend for approval.**



D.Obligations of the Contractor

D-4: Insurance to be Taken out by the Contractor (SC-40)

- **Points to check when examining Insurance Policies**
 - ✓ **Amount of Cover: check if it covers all works, plant and materials and other things on site**
 - ✓ **Excesses/ Deductibles : require guarantee for high excesses.**
 - ✓ **Exceptions**
 - ✓ **Period of Insurance**



D.Obligations of the Contractor

D-4: Insurance to be Taken out by the Contractor (SC-40)

- ✓ **Termination of Policy**
- ✓ **Cross Liabilities: in the case of joint policies, check that one party claim for damages caused by another**
- ✓ **Motor Vehicles: all vehicles of the contractor and Engineer.**
- ✓ **Definition of site; should not exclude quarries**
- ✓ **Omnibus Policies : insurance for all works undertaken by him**



D. Obligations of the Contractor

D-5: Programme of Implementation of Tasks (SC-41)

- **Contracts require contractor to submit a detailed and accurate programme for acceptance.**
- **Programme is a yardstick against which to measure the effects of delay.**

41. Program of Implementation of Tasks

- 41.1 Completing the work program given as part of the Bid, the Contractor shall within the time stated in the SCC provide the Engineer with a program of implementation of the tasks, broken down by activity and by month and include the following information:
- (a) the order in which the Contractor proposes to carry out the works;
 - (b) the time limits within which submission and approval of the drawings are required;
 - (c) an organization chart containing the names, qualifications and curricula vitae of the staff responsible for the Site,
 - (d) a general description of the method including the sequence, by month and by nature which the Contractor proposes to carry out the works;
 - (e) a plan for the setting out and organization of the Site, and
 - (f) such further details and information as the Engineer may reasonably require.
- 41.2 The Engineer shall return these documents to the Contractor with his approval or any relevant remarks within ten days of receipt, except where the Engineer, within those ten days, notifies the Contractor of his wish for a meeting.
- 41.3 An update of the program shall be a program 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.



D.Obligations of the Contractor

D-5: Programme of Implementation of Tasks (SC-41)

- **As a minimum the Programme should include:**
 - ✓ **A clear intention of how the time and sequence of how the work is intended to progress.**
 - ✓ **A clear critical path to completion**
 - ✓ **The dates when the Employer's input is required, with links to the critical path**



D.Obligations of the Contractor

D-5: Programme of Implementation of Tasks (SC-41)

Mostly a Programme shall be produced in the following phases:

- i. Initial Programme**
- ii. Accepted Programme**
- iii. Updated Programme**



D.Obligations of the Contractor

D-5: Programme of Implementation of Tasks (SC-41)

- **Acceptance by the Engineer of any phase of the Contractor's programme:**
 - ✓ Does not make the programme a contract document or
 - ✓ Mandate that the works shall be constructed strictly in accordance with the programme.
- The contractor at all times remains responsible for the construction of the works in accordance with the terms and conditions in the contract.



D.Obligations of the Contractor

D-5: Programme of Implementation of Tasks (SC-41)

- **The Engineer may require the contractor to furnish a method statement and such other details and information to accept the Accepted Programme.**
- **The Contractor may be required to furnish data like the assumed number of adverse weather days per month along with the programme.**



D.Obligations of the Contractor

D-5: Programme of Implementation of Tasks (SC-41)

Things to consider when developing realistic work Programme

- ✓ analyzing definition of all activities laid out in the project scope management,
- ✓ identifying activity sequencing,
- ✓ estimating the number of work periods that will be needed to complete individual activities



D.Obligations of the Contractor

D-5: Programme of Implementation of Tasks (SC-41)

- ✓ analyzing activity durations and resource requirements and
- ✓ finally ensure the contractor's work schedule meets all the above requirements.
- ✓ helping to control changes to the project schedule



D.Obligations of the Contractor

D-5: Programme of Implementation of Tasks (SC-41)

Method Statement

- **Shall be submitted along side with the programme**
- **It should be fully cross-referenced to the activities in the programme**
- **Any revision to the method statement shall also be approved by the Engineer.**
- **Like programme, acceptance does not make it a contract document.**



D.Obligations of the Contractor

D-6: Sufficiency of Bid Prices (SC-43)

- **Deemed to have inspected and examined the site and satisfied himself before submitting his bid.**
- **Deemed to have satisfied himself as to the correctness and sufficiency of the tender.**
- **Carry out any item that he neither indicates rate nor a firm sum without additional charge**



E. Payments to the Contractor

- **Advance Payment (SC-60)**
- **Retention Monies (SC-61)**
- **Price Adjustments (SC-62)**
- **Valuation of Works (SC-63)**
- **Interim Payments (SC-64)**



E. Payments to the Contractor

- **Final Statement of Account (SC-65)**
- **Direct Payment to Sub-Contractor (SC-66) and Payment to Third Parties (SC-68)**
- **Delayed Payment (SC-67)**



E. Payments to the Contractor

E-1: Advance Payment

- **Advance payment will be effected if so provided in the Special Conditions of Contract; and upon the request of the contractor.**
- **Its purpose is to assist the contractor during mobilization, purchase of materials, equipment, plant, machines and tools necessary for the execution of the contract.**
- **The maximum advance payment to be given is 30%.**



E. Payments to the Contractor

E-1: Advance Payment

- **Advance payment will not be effected if:**
 - ✓ **Contract is yet to be concluded**
 - ✓ **Performance security is not delivered; and**
 - ✓ **Advance Payment Security with the right amount and currency is not submitted. This security shall be valid until the advance payment is re-paid in full; and will be returned then after.**



E. Payments to the Contractor

E-1: Advance Payment

- **The PPA Conditions does not specify if the advance payment is “Interest-free loan” or not.**
- **The conditions do not state about the way (or how) the advance payment is to be recovered.**
- **PPA requires contractors to present copies of invoices or other documents as proof of evidence for proper utilization of advance payment; along with the consequences of not complying.**



E. Payments to the Contractor

E-1: Advance Payment

- **Is Sub-Clause 58.6 the relevant clause referred? Does the Public Body terminate the contract if the Advance Payment Security is not renewed?**

60.6 Should the advance payment security cease to be valid and the Contractor fail to re-validate it, either a deduction equal to the amount of the advance payment may be made by the Public Body from future payments due to the Contractor under the contract, or the Public Body may apply the provisions of GCC Clause 58.6.

58.6 During the performance of the contract, if the natural or legal person providing the Performance Security is not able to abide by his commitments, the Performance Security shall cease to be valid. The Public Body shall give formal notice to the Contractor to provide a new Performance Security on the same terms as the previous one. Should the Contractor fail to provide a new Performance Security the Public Body may terminate the Contract.



E. Payments to the Contractor

Retention Monies

- It is a sum to be retained from interim payments by way of guarantee for rectification works during the DLP.
- The total sum to be retained shall not exceed 10% of the Contract Price
- It can be substituted by a retention guarantee of equal amount and currency.
- The retained sum or the guarantee will be released within 45 days of issuing of the signed final statement of account.



E. Payments to the Contractor

Retention Monies

- Unlike other conditions of contract, the PPA conditions does not give the provisions to release half of the retention money after Taking over of the project takes place; and the remaining half after the issue of Defect Liability Certificate.



E. Payments to the Contractor

E-3: Price Adjustment

- Price adjustment will start to apply after 12 months from the contract effective date for contract periods of 18 months or more; in PPA.
- Price/index will be used to adjust the contract price. These adjustments is based on the ratio of Current date to the Base date of selected adjustable materials/ labour/equipment.
- Base date in PPA, it is mostly the bid closing date; which is still not the actual figure.



E. Payments to the Contractor

E-3: Price Adjustment

- **Adjustment after time for completion is based on two scenarios in both FIDIC and PPA.**

i. During culpable delay

- ✓ **PPA indicated the value at the date of completion or the current price whichever is favourable to the Employer be used will be applied**



E. Payments to the Contractor

E-3: Price Adjustment

ii. During Employer's Risk/ Neutral Event delay

✓ **It is indicated that the current value will be used.**

62.6 In the event the completion of contract exceeds the original scheduled period:

- (a) In case of default on the part of the Contractor causing delay in original scheduled completion, the rate of Price Adjustment will be frozen at the original scheduled date of completion; however Price Adjustment will be applicable till actual completion. While computing Price Adjustment beyond the scheduled completion period, in the event the rate is reduced, then that reduced rate will be applied.
- (b) The Price Adjustment will be payable in full for the extended period if the Contractor has been granted an extension of time for no fault on the part of the Contractor, duly approved by the Public Body.



E. Payments to the Contractor

E-3: Price Adjustment

However, the conditions in PPA did not address the following:

- **Adjustment of weightings if rendered unreasonable, unbalanced or inapplicable as a result of variation**
- **Use of provisional index for certification of interim payment certificates**
- **Conversion of currency of index to currency of payment by selling rate from central Bank of the country when they are different.**



E. Payments to the Contractor

E-3: Price Adjustment

- **This price adjustment formula determine the amount to be added or subtracted.**
- **“NV” stands for non-adjustable portion of the contract price.**
- **Is it specified in the Contractor’s Bid or the Client’s “Tender Document”?**

Sub-Clause 62.12 of PPA

62.12 To determine the adjustment on each item any such price variation shall be calculated in accordance with the following formula by applying the combination of above said criteria:

$$PA = \left[NV + A \frac{(MLI - BLI)}{BLI} + B \frac{(MMI - BMI)}{BMI} + C \frac{(MEI - BEI)}{BEI} + D \frac{(MFI - BFI)}{BFI} \right] (BC) Q$$

Where:

PA = The amount of the Price adjustment to be paid to, or recovered from, the Contractor, in currency specified in SCC;

NV= The fraction which represents Non Variable element of the Contract Price that is free of contract price adjustment, as specified in the Contractor's Bid;



E. Payments to the Contractor

E-4: Valuation of Works

- **The method of measurement shall be done in accordance with the actual measurement made by the Engineer using the unit rates for the items of work.**
- **Valuation, in PPA Conditions, are classified as two**
 - ✓ **For Unit Price (Ad-measurement) Contract; and**
 - ✓ **For Lump Sum Contract**



E. Payments to the Contractor

E-4: Valuation of Works

i. For Unit Price (Ad-measurement) Contract

- **Amount to be determined based on the Unit Rate multiplied by the actual quantity executed.**
- **The quantities in the Bill of Quantity is estimated only and shall not be seen as actual or correct.**
- **The Engineer shall determine the actual quantity using method of measurement specified in the contract.**



E. Payments to the Contractor

E-4: Valuation of Works

ii. For Lump Sum Contract

- **Valuation will be done on the basis of breakdown of the overall contract price; or**
- **On the basis of a breakdown expressed as percentage of the contract price corresponding to completed stages**
- **It is an All-in price, and shall be valued in full irrespective of quantities of work actually executed.**



E. Payments to the Contractor

E-4: Valuation of Works

- **Engineer to give reasonable notice for contractor to attend, if measurement is required.**
- **Contractor must assist the Engineer in making measurement and supply any particulars requested by the Engineer**
- **Engineer to prepare records of measurement**
- **Contractor to accept and sign if he agrees, if not, to give notice to the Engineer**



E. Payments to the Contractor

E-4: Valuation of Works

- **Engineer to review and either confirm or vary the measurements.**
- **If contractor does not attend and/or respond to the records of measurement, the Engineers measurement will be deemed accurate.**



E. Payments to the Contractor

E-5: Interim Payment Certificate

- **No IPC could be certified if no Performance Security is submitted.**
- **It may also include cost for plant and material brought to the site that are yet to be incorporated in to the permanent works**

- 64.1 Unless otherwise specified in the SCC, the Contractor shall submit monthly statement for interim payment to the Engineer at the end of each period referred to in GCC Clause 64.7 in a form approved by the Engineer. The monthly statement shall include the following items, as applicable:
- (a) The estimated contract value of the permanent works implemented up to the end of the period in question;
 - (b) An amount reflecting any price adjustment pursuant to GCC Clause 62;
 - (c) An amount to be withheld as retention sum under GCC Clause 61;
 - (d) Any credit and/or debit for the period in question in respect of plant and materials on Site intended for, but not yet incorporated in, the permanent works in the amount and under the conditions set out in GCC Clause 64.2;
 - (e) An amount to be deducted on account of the advance payment repayment under the provisions of GCC Clause 60; and
 - (f) Any other sum to which the Contractor may be entitled under the Contract.



E. Payments to the Contractor

E-5: Interim Payment Certificate (IPC)

- Engineer can make corrections/ modifications on contractor's submission of IPC.
- PPA does not mention about Minimum Amount of IPC.
- PPA requires 90 days for certification and payment of interim payment certificates out of which 30 days is to be spent with the Engineer.
- Engineer's view shall prevail if difference of opinion exists as to the value



E. Payments to the Contractor

E-6: Final Statement of Account

- **There is only one “Final Statement of Account”**
- **This final Statement of account is prepared in draft form by the contractor and submitted to the Engineer within 90 days of the issue of Final Acceptance Certificate**

65. Final Statement of Account

- 65.1 Unless otherwise agreed in the SCC, the Contractor shall not later than 90 days after the issue of the Final Acceptance Certificate referred to in GCC Clause 89, submit to the Engineer a draft final statement of account with supporting documents showing in detail the value of the work done in accordance with the Contract, together with all further sums which the Contractor considers to be due to him under the Contract in order to enable the Engineer to prepare the final statement of account.



E. Payments to the Contractor

E-6: Final Statement of Account

- **The Engineer, within 60 days, prepare a Final Statement Account to be signed by both the Public Body and the Contractor.**
- **This Final Statement of Account shall not include amounts in dispute.**
- **The signed Final Statement is considered as a written discharge of the Public Body, which will be effective only after the amount therein is paid and Performance Security returned.**



E. Payments to the Contractor

E-7: Direct Payment to Subcontractor

- **Engineer could pay directly to Sub-Contractor if:**
 - ✓ **The subcontractor requests the Engineer to that effect; and**
 - ✓ **The Engineer gives a notice to the contractor why the payment is refused; and**
 - ✓ **The Contractor failed to pay or give sufficient reasons within the period of Notice.**



E. Payments to the Contractor

E-7: Direct Payment to Subcontractor

- **If the Contractor gives sufficient reasons, the Employer will pay only the undisputed amount. The remaining to be paid after negotiation or court.**
- **Direct Payment to the sub-contractor shall not exceed the value of the executed work as per the main contract rate.**



E. Payments to the Contractor

E-8: Delayed Payment

- Contractor is entitled late payment interest if payments are delayed beyond the period of payment stated in the contract.
- The GCC specifies the late payment interest as **three and half percent more than the rediscount rate** applied by the National Bank of Ethiopia.

Contractor may terminate or not perform the contract if delayed payment is more than 120days beyond the expiry of the period of payment.

- Interest is applicable for a period between expiry of the period of payment and the date on which the public body's account is debited.



F. Performance of the Contract

F-1: Commencement of Works (SC-71)

- **Engineer to issue order for commencement**
- **Commencement date could also be fixed by the Public Body**

- **Start Date**
 - 71. Commencement of Works**
 - 71.1** The Public Body shall fix the Start Date on which execution of the Works is to commence in the SCC or by administrative order issued by the Engineer.
 - 71.2** The Start Date for commencing execution of the Works shall be not later than 120 days following notification of award of contract unless agreed otherwise by the parties.
- **No**
- **s from**



F. Performance of the Contract

F-2: Period of Execution of Works (SC-72)

- **This period starts from the commencement date fixed by the Public Body or as ordered by the Engineer and ends after the period of performance indicated in the Special Conditions of Contract or as extended by the Public Body.**
- **Contractor is required to programme its implementation of the entire works within this period; liable for liquidated damages otherwise.**



F. Performance of the Contract

F-3: Extension of Intended Completion Date (SC-73)

- **What does “Exceptional weather conditions in the FDRE” mean? What if the materials/plant/equipment are brought to site from abroad?.**

73. Extension of Intended Completion Date

- 73.1 The Contractor may request an extension of the Intended Completion Date if he is or will be delayed in completing the contract by any of the following causes:
- (a) Exceptional weather conditions in the Federal Democratic Republic of Ethiopia;
 - (b) Artificial obstructions or physical conditions which could not reasonably have been foreseen by an experienced Contractor;
 - (c) Compensation Event occurs or a change order for modification is issued which makes it impossible for completion to be achieved by the Intended Completion Date;
 - (d) Administrative orders affecting the date of completion other than those arising from the Contractor's default;
 - (e) Failure of the Public Body to fulfill his obligations under the Contract;
 - (f) Any suspension of the works which is not due to the Contractor's default;
 - (g) Force majeure;
 - (h) Any other causes referred to in these GCC which are not due to the Contractor's default.



F. Performance of the Contract

F-3: Extension of Intended Completion Date (SC-73)

- **Contractor to give a notice within 15days after he is aware or should have become aware of the delaying event.**
- **Within 21days, unless agreed otherwise, shall submit detailed particulars**
- **Engineer shall respond within 21 days whether to grant an extension of time or inform that the contractor is not entitled.**
- **If the contractor failed to give a notice within 15 days, then the delay by this failure shall not be considered in assessing the new completion date.**



F. Performance of the Contract

F-3: Extension of Intended Completion Date (SC-73)

- **For an extension of time to be granted, a three part chain of causation shall happen.**
 - 1. Employer's Risk/ neutral delaying event must occur**
 - 2. This delaying effect must affect an activity under progress**
 - 3. That affected activity must be on the critical path of the baseline programme.**



F. Performance of the Contract

F-4: Compensation Events for Allowing Time Extension (SC-74)

- **If any of the compensation event affects the time for completion, then the intended completion date will be extended**

74. Compensation Events for Allowing Time Extension

74.1 The following shall be Compensation Events allowing for time extension:

- The Public Body does not give access to a part of the Site by the Site Possession Date stated in the Contractor's approved work program;
- The Public Body modifies the Schedule of other Contractors in a way that affects the work of the Contractor under the Contract;
- The Engineer orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time;
- The Engineer instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects;
- The Engineer unreasonably does not approve a subcontract to be let;
- The Engineer gives an instruction for dealing with an unforeseen condition, caused by the Public Body, or additional work required for safety or other reasons.
- Other Contractors, public authorities, utilities, or the Public Body do not work within the dates and other constraints stated in the Contract, and they cause delay;
- The advance payment is delayed;
- The Engineer unreasonably delays issuing Interim Payment Certificates;
- Other Compensation Events described in the SCC or determined by the Public Body and force majeure.



F. Performance of the Contract

F-4: Compensation Events for Allowing Time Extension (SC-74)

- **If the contractor fails to give early warning on the compensation event within the prescribed time, then he will not be entitled to compensation to the extent that the public body's interest are adversely affected.**



F. Performance of the Contract

F-5: Acceleration (SC-75)

- **This acceleration is for the Employer who wants early completion of the project.**
- **Engineer will ask the contractor with price proposal to meet the new intended completion date; and once agreed on the proposal the intended completion date will be adjusted.**
- **The contract price will also be adjusted and the action will be treated as a modification.**



F. Performance of the Contract

F-6: Early Warning (SC-77)

- **Contractor to warn the Engineer at the earliest opportunity when circumstances that could affect the time and cost of the contract occurs.**
- **Engineer may seek for estimates of the likely impact which shall be prepared and provided by the Contractor as soon as possible.**
- **Contractor has the obligation to cooperate the Engineer in making and considering proposals that could reduce or avoid the extent of the impacts.**



F. Performance of the Contract

F-7: Delays in Implementation of Tasks (SC-78)

- **Contractor to warn the Engineer at the earliest opportunity when circumstances that could affect the time and cost of the contract occurs.**
- **Engineer may seek for estimates of the likely impact which shall be prepared and provided by the Contractor as soon as possible.**
- **Contractor has the obligation to cooperate the Engineer in making and considering proposals that could reduce or avoid the extent of the impacts.**



F. Performance of the Contract

F-8: Delays in Implementation of Task (SC-78)

- **If the contractor fails to complete the works because of events that he is entirely responsible for, then:**
 - ✓ **Completion Time will not be extended**
 - ✓ **Liquidated Damages will be applied upto a maximum of 10% of the Contract Price.**
 - ✓ **Any proportion of the daily calculated Liquidated Damages be applied for any partially accepted works.**



F. Performance of the Contract

F-8: Delays in Implementation of Task (SC-78)

- ✓ If maximum Liquidated Damages is deducted, the Public Body may, after giving a notice:
- Seize the performance Security
 - Terminate the Contract
 - Enter into a contract with a third part for the balance of the works; all at the expense of the Contractor.



F. Performance of the Contract

F-9: Quality Control (SC80-82)

- **Source of materials and/or goods from eligible countries**
- **Goods and materials brought to site shall conform to the specification**
- **Materials and/or goods could still be rejected after acceptance if found defective after further investigation.**
- **Before the materials and goods are rejected, contractor shall be given the opportunity to repair and make it good.**



F. Performance of the Contract

F-9: Quality Control (SC80-82)

- **During inspection, the contractor shall:**
 - ✓ **Provide assistance, test sample, parts, machines, etc.. that are required**
 - ✓ **Agree with Engineer the time and place for conducting tests**
 - ✓ **Provide access for the Engineer at all reasonable times**



F. Performance of the Contract

E-10: Ownership of Plant, and Materials

- **Questions the practicality of seizing contractor's equipment. Needs to be checked its consistency with the relevant laws.**

83. Ownership of Plant and Materials

- 83.1 All equipment, temporary works, plant and materials provided by the Contractor shall, when brought on the Site, be deemed to be exclusively intended for the execution of the works and the Contractor shall not remove the same or any part thereof, except for the purpose of moving it from one part of the site to another, without the consent of the Engineer. Such consent shall, however, not be required for vehicles engaged in transporting any staff, labor, equipment, temporary works,
- 83.4 Any agreement for the hire by the Contractor of equipment, temporary works, plant and materials brought onto the Site, shall contain a provision that on request in writing made by the Public Body within 7 days after the date on which the termination under GCC Clause 21 becomes effective, and on the Public Body undertaking to pay all hire charges in respect thereof from such date, the owner thereof will hire such equipment, temporary works, plant or materials to the Public Body on the same terms as they were hired by the Contractor, except that the Public Body shall be entitled to permit the use thereof by any other Contractor employed by him for completing the works under the provisions of GCC Clause 21.5.



G.Acceptance and Defect Liability

- **Tests on Completion (SC-85)**
- **Partial and Provisional Acceptance (SC-86 and 87)**
- **Defect Liability (SC-88)**
- **Final Acceptance (SC-89)**



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Thank You

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