

Article 1

The General Clauses and Conditions appended to this leaflet apply to purchases of moveable objects, including rolling stock, to be concluded between the railways and the suppliers or contractors at both national and international level. They apply equally to grouped purchases, i.e. to orders placed by or on behalf of a group of railways wishing to acquire the same products. The ordering railway or body is called "the purchaser".

In the case of international purchases or grouped purchases, the railway of the country where the stock is built, and which carries out the supervision of the construction and the acceptance of the stock on behalf of the purchaser is hereafter called "the authorised railway".

Article 2

These General Clauses and Conditions shall apply insofar as no derogation exists by express stipulation.

Article 3

Invitations to tender, orders and contractual documents concerning supplies and rolling stock contracts must include the above mentioned General Clauses and Conditions or make reference thereto.

APPENDIX 1

GENERAL CLAUSES AND CONDITIONS
APPLICABLE TO SUPPLIES CONTRACTS

FOREWORD

These General Clauses and Conditions form an Appendix to Leaflet 983 and are applicable to supplies contracts, except those contracts covered by Appendix II.

Article 1

GENERAL

1.1. - Any tender shall imply the complete acceptance of these conditions. Clauses and conditions, of any kind whatsoever, stipulated by the supplier, shall only apply insofar as they have been accepted in writing by the purchaser.

1.2. - The contract shall be considered to be established from the time when agreement is reached between the parties. This shall be regarded as taking place with effect from the time the order is posted, the post-mark being taken as evidence. The supplier must acknowledge receipt of the order within the period and in the manner prescribed by the purchaser.

APPENDIX 1 (Cont'd)

1.3. - Verbal agreements shall only be valid provided they have been confirmed in writing by each of the parties.

Article 2

TENDERS

2.1. - Unless otherwise stipulated in the Invitation to tender, the tenderer shall be bound by his tender for a period of 90 calendar days, to run from the closure date fixed by the purchaser for the submission of tenders. During this period, the tenderer may not amend the prices and conditions of his tender, for any reason whatsoever.

2.2. - The fact of having submitted a tender shall in no way be regarded as constituting any right of payment to the tenderer. The purchaser shall reserve the right not to order all the items included in the tender, or to apportion the contract to the best of his interests, taking particular account of the prices and delivery periods. The purchaser shall not be obliged to give reasons for his choice to suppliers whose tenders are not accepted.

Article 3

PROHIBITION OF ASSIGNING OR SUB-CONTRACTING (1)

The supplier shall neither assign or sub-contract the whole or

(1) - A sub-contract is an agreement whereby the supplier assigns to a third party the execution of part of the supply constituting the object of the contract.

APPENDIX 1 (Cont'd)

part of the contract, nor transfer it to any third party without the express and written authority of the purchaser. In all cases, the supplier shall remain responsible to the purchaser for the obligations arising from the contract.

Article 4

SUB-ORDERS (1)

Except as otherwise specified in the invitation to tender, the supplier may procure the materials or parts necessary for executing the contract from the suppliers of his choice.

Article 5

PRICES

5.1. - The contract shall specify the prices and the conditions applicable thereto in a precise and definite manner.

5.2. - Prices shall be fixed, excluding taxes, ex works, loaded on wagons or in containers, as the case may be.

5.3. - Should it prove impossible to tender fixed prices, the prices

(1) - A sub-order is an order placed with a third party by the supplier, with a view to procuring materials, parts or equipment, which he requires for executing the supply covered by the contract.

APPENDIX I (Cont'd)

offered must correspond to the latest published indices at the date of the tender; the tender must show the price variation formula to be applied indicating the exact meaning of all the terms of this formula and the basic indices used.

Article 6

PACKING

6.1. - The packing conditions must be stated in the contract.

6.2. - Unless specifically agreed otherwise, the packing materials shall become the property of the purchaser without any special payment.

Article 7

SURETY

The supplier may be required to lodge a bond or to provide a guarantee of performance; in this event, the procedure shall be laid down in the contract.

APPENDIX I (Cont'd)

Article 8

QUALITY CONTROL

8.1. - The purchaser shall have the right to inspect, or have inspected, the raw materials, other materials, products used in manufacture, manufacturing processes and articles ready for delivery, on the supplier's premises and on those of the subcontractors and their suppliers.

8.2. - Should the purchaser intend to exercise (or arrange to exercise through the authorised railway) his right of inspection, the invitation to tender shall state the nature and conditions of these inspections. In this case, the articles to be delivered may only be despatched with the agreement of the purchaser or the authorised railway.

8.3. - The supplier shall be bound to provide free of charge the staff, machines, equipment, power and any documents necessary for the inspection. He may not claim any compensation for the raw materials, other materials, products used in manufacture, and articles ready for delivery, which are rendered unusable or have suffered damage due to inspection.

8.4. - The staff expenses incurred by the purchaser for the purpose of carrying out the inspection shall remain his responsibility.

8.5. - The supplier may not invoke any inspections carried out to disclaim his responsibility or to be relieved of any of his contractual obligations.

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APPENDIX 1 (Cont'd)

Article 9

TRANSPORT - CUSTOMS

The supplier shall be responsible for forwarding the supplies and he shall be required to use, if possible, the services of the railway, both for this purpose and for any customs procedures.

Article 10

DELIVERY PERIODS

10.1. - When quality control is stipulated, the time necessary for this inspection shall be included in the delivery period.

10.2. - If delays occur or are anticipated in manufacturing, or in delivering the supplies, the supplier must immediately advise the purchaser in writing.

10.3. - When the contract provides for penalties, these may be applied in the event of delay in delivery, without prior notification and without prejudice to the rights of the purchaser to any compensation.

In the case of grouped purchases, the penalties shall be at an agreed rate of 0.5% of the value of the supplies of which delivery is delayed, per full week of delay.

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APPENDIX 1 (Cont'd)

10.4. - Nevertheless, where the supplier, due to a case of force majeure or to the fault of the purchaser, is unable to fulfil his obligations, the delivery periods laid down in the contract shall be extended at his request; the supplier shall be responsible for reporting cases of force majeure or fault of the purchaser within fifteen calendar days from the date of occurrence and, in any case, in sufficient time for the circumstances to be verified and the effect on the contract assessed.

Such an extension must be covered by an exchange of letters or by an addendum to the contract.

Article 11

TERMINATION

11.1. - Without prejudice to the right to require the completion of the contract, the purchaser shall have the option, without formal notice and without recourse to legal authority or payment of compensation, to terminate the contract, either wholly or in part, in the following cases :

- a) - when the supplies do not satisfy the conditions stipulated or current practices, and reveal very serious defects in quality;
- b) - when any fraud is committed by the supplier, especially regarding the quality or the quantity of the articles;
- c) - when delivery is not made on the date agreed subject to the conditions contained in 10.4;

R

APPENDIX 1 (Cont'd)

d) - when bankruptcy or liquidation renders the supplier unable to continue to execute the contract.

11.2. - Termination shall not deprive the purchaser of the possibility of claiming compensation corresponding to the damage suffered.

Article 12

LIABILITY - TRANSFER OF OWNERSHIP

12.1. - The supplier shall remain responsible for the loss of or damage to the supplies up to the time of their acceptance, which is dependent upon the result of the inspection, testing and acceptance procedures.

12.2. - As a result of their acceptance, the supplies shall become the property of the purchaser.

12.3. - In the case of rejection of the supplies by the purchaser, the latter must so advise the supplier, in writing, stating the reasons for his rejection, as soon as possible, and not later than 45 calendar days from the date of delivery of the supplies. All expenses resulting from a justified rejection shall be borne by the supplier.

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APPENDIX 1 (Cont'd)

Article 13

GUARANTEE

13.1. - The supplier shall guarantee the quality of the articles delivered for a period fixed in relation to the nature of such articles. Unless otherwise stipulated in the invitation to tender, this period shall be of one year, with effect from:

- either the date marked on the supplies during manufacture or machining, when the technical specifications prescribe such marking;
- or failing that, from the date of acceptance.

13.2. - Supplies which, during the guarantee period, show defects undetected at the time of acceptance, making them unsuitable for their intended purpose or which are likely to reduce their service life, shall be rejected. The supplies thus rejected shall be replaced free of charge or the purchaser reimbursed according to his wishes.

13.3. - When the defects observed can be rectified, or when they do not make the supplies unsuitable for their intended purpose, or when they are unlikely to reduce their service life, the purchaser may, as he wishes, demand that the supplies be made good within a period to be fixed by him, or impose a price reduction in relation to the seriousness of the defect established.

APPENDIX 1 (Cont'd)

Article 14

METHODS OF PAYMENT

14.1. - Payment shall be effected under the purchaser's usual conditions after acceptance of the supplies and receipt of the invoice. In the absence of other agreements, payment shall be effected net at 90 calendar days.

14.2. - Any advance delivery, not requested by the purchaser, may only be paid for in accordance with the timescale laid down and under the same conditions.

Article 15

INDUSTRIAL PROPERTY AND PATENTS

15.1. - Payments of royalties relating to the use by the supplier of industrial property rights and patents owned by third parties for the execution of the contract shall be the exclusive responsibility of the said supplier, who shall be entirely responsible for dealing with all agreements and licences with the holders of the rights.

15.2. - The supplier shall indemnify the purchaser against any claim or legal action directed against the latter by reason of the use made, in the execution of the contract, of industrial ownership rights and patents belonging to third parties. In addition, he must indemnify the purchaser against any legal action resulting from the possession and use of articles covered by the above rights, especially in the event of seizure or impossibility of use due to infringement.

APPENDIX 1 (Cont'd)

15.3. - With regard to industrial property rights and patents held by the supplier, either directly or under licence, and which are regularly exercised by him in the execution of the contract, it is expressly stipulated that the placing of the contract shall confer on the purchaser the right to use and to repair or have repaired the articles purchased, to the best of his interests, by whomsoever he thinks fit, as well as the right to procure, as he thinks best, the parts needed for such repair. In this connection, the supplier shall be responsible to the purchaser under the same obligations as those stated in 15.1 and 15.2.

Article 16

**LIQUIDATION - JUDICIAL RECEIVERSHIP -
BANKRUPTCY**

In the event of liquidation, judicial receivership or bankruptcy, any conservation or security measures which appear necessary may be taken as of right by the purchaser. Expenses thus incurred shall remain the responsibility of the supplier.

Article 17

LAW APPLICABLE - DISPUTES

Unless otherwise stipulated in the contract, the law applicable shall be that of the country in which the registered office of the purchaser is situated and, in the event of dispute, the competent jurisdiction shall be exclusively that covering the registered office of the purchaser.

APPENDIX 2

GENERAL CLAUSES AND CONDITIONS
APPLICABLE TO CONTRACTS FOR THE CONSTRUCTION
OF ROLLING STOCK

FOREWORD

These General Clauses and Conditions form an appendix to Leaflet 983 and are applicable to contracts for the construction of railway rolling stock.

The concept of "rolling stock", designated by the abbreviation "stock" in the conditions set out hereunder, also covers sub-assemblies and spare parts for railway rolling stock when their supply is covered by the contract or when a separate order for supply refers to this appendix.

Article 1

GENERAL

1.1. - Any tender shall imply the complete acceptance of these conditions. Clauses and conditions, of any kind whatsoever, stipulated by the contractor, shall only apply insofar as they have been accepted in writing by the purchaser.

APPENDIX 2 (Cont'd)

1.2. - The contract shall be considered to be established from the time when agreement in writing is reached between the parties. Except where otherwise agreed between the parties, this shall be regarded as taking place with effect from the time of receipt by the contractor of a document which must set out the contents of the agreement.

The contractor must acknowledge receipt of the order within the period and in the manner prescribed by the purchaser.

1.3. - Verbal agreements shall only be valid provided they have been confirmed in writing by each of the parties.

Article 2

INVITATION TO TENDER

2.1. - As a general rule, the purchaser must provide the contractor with the necessary information to enable him to assess the nature and extent of the requirements in such a way that he is in a position to determine the price he is able to offer.

2.2. - The invitation to tender shall define the nature of the stock to be built and shall specify, where applicable, the documents (drawings, diagrams, calculations, parts lists) which the contractor must prepare at his own expense, together with the samples, types of supplies, models, gauges and templates deposited with the contractor. It shall also specify the conditions of approval of the above documents. The invitation to tender shall also indicate all the technical specifications, standard conditions and other general technical documents, UIC leaflets and any other instructions and provisions governing the contract in accordance with Article 4 hereunder.

APPENDIX 2 (Cont'd)

Article 3

TENDERS

3.1. - The tender must comply with all the conditions in the invitation to tender. Should the tenderer feel it necessary, in addition, to propose different conditions, he must specify the corresponding increases or decreases in price.

3.2. - The tenderer shall be bound by his tender during the period fixed in the invitation to tender; this period shall be as short as possible. During this period, the tenderer may not amend the prices and conditions of his tender, except in respect of alterations requested by the purchaser with regard to the composition of the invitation to tender or the order or its conditions.

3.3. - The fact of having submitted a tender shall, in no way, be regarded as constituting any right of payment to the tenderer. The purchaser shall not be obliged to give reasons for his choice to contractors whose tenders are not accepted.

3.4. - All the documents furnished by the tenderer shall be regarded as confidential. Industrial property rights and know-how shall remain the property of the tenderer subject to the application of the provisions of 12.2. In the case of a tender being rejected, all the documents relating thereto shall be promptly returned to the tenderer if he so requests.

APPENDIX 2 (Cont'd)

Article 4

DOCUMENTS APPLICABLE TO TENDERS

AND CONTRACTS FOR THE CONSTRUCTION OF THE STOCK

4.1. - The following documents shall govern contracts for the construction of the stock:

- a) the contract itself and its appendices (drawings, technical documents, specific to the stock covered by the contract, and other like documents);
- b) Leaflet 983 of the International Union of Railways (UIC) and this Appendix;
- c) the technical specifications, standard conditions and other general technical documents listed in the contract;
- d) the UIC leaflets listed in the contract.

In the event of contradiction arising, the various documents shall be applicable in the order listed above.

4.2. - Documentation and information shall be supplied for the sole purpose of enabling a reply to be given to the invitation to tender and for the execution of the contract. The contractor must therefore neither divulge them to third parties, nor use them without having obtained the prior authorisation of the purchaser, except as necessary for the submission of the tender.

APPENDIX 2 (Cont'd)

4.3. - For any questions not covered by the abovementioned documents, the customary regulations of the authorised railway shall apply. However, for any important questions, especially those affecting safety or having a financial repercussion, the decision shall be taken by the purchaser, who must notify the contractor in writing accordingly. When this decision is liable to affect the prices and periods agreed upon, the provisions of 17.3 shall apply.

4.4. - The contractor shall be responsible for obtaining the documents required for executing the contract which are not attached to the same. The purchaser shall assist the contractor in this task.

Article 5

ALLOCATION OF THE ORDER

The purchaser reserves the right:

- to allocate each of the batches or items separately, if this contingency is expressly mentioned in the invitation to tender;
- to decline tenders received for all or any of the batches or items covered by the invitation to tender.

APPENDIX 2 (Cont'd)

Article 6

REPRESENTATION

6.1. - The purchaser may require the authorised railway to supervise the execution of the contract. The respective responsibilities of the purchaser and of the authorised railway shall be specified in the contract, subject to the provisions of 4.3.

6.2. - The contractor must notify the purchaser and the authorised railway of any person appointed to act as his representative.

Article 7

PROHIBITION OF ASSIGNING OR SUB-CONTRACTING (1)

The contractor shall neither assign or sub-contract the whole or part of the contract, nor transfer it to any third party in the case of a merger without the express and written authority of the purchaser. In all cases, he shall remain responsible to the purchaser for the obligations arising from the contract.

(1) - A sub-contract is an agreement whereby the contractor assigns to a third party the execution of a certain number or all the units of the stock to be manufactured under the contract.

APPENDIX 2 (Cont'd)

Article 8

SUB-ORDERS (1)

8.1. - Except as otherwise specified in the invitation to tender, the contractor may procure the materials, parts or sub-assemblies required for executing the contract from the suppliers of his choice.

8.2. - Approval of suppliers, where necessary, and the supervision and inspection of the sub-orders, shall be governed by the customary regulations of the purchaser, to whom the contractor shall refer, where applicable, to obtain any necessary rulings in this connection.

Article 9

PRICES

9.1. - The contract shall specify the prices and the conditions applicable thereto in a definite manner.

9.2. - All prices, preferably fixed, shall be tendered on an "ex-works" basis. Where applicable, they shall include customs dues relating to sub-supplies. For sub-assemblies or spare parts to be delivered separately, the prices shall be understood to be for goods loaded on wagons or in containers.

(1) - A sub-order is an order placed with a third party by the contractor with a view to procuring materials, parts or sub-assemblies which he requires for the execution of the contract.

APPENDIX 2 (Cont'd)

8.3. - Should it prove impossible to tender fixed prices, the prices may be subject to revision. In this case, the tendered prices shall correspond to the costs ruling at the date of the tender. The tender and the contract must then state the price variation formulae to be applied indicating the exact meaning of all the terms of these formulae, together with the initial values of their basic indices. They shall also specify the dates or reference periods of these indices, relating them to the contractual delivery dates. In the event of a delay for which the purchaser is responsible or which occurs by reason of force majeure (1), the indices shall be related to the revised contractual delivery dates established by mutual agreement.

8.4. - Unless otherwise stipulated in the invitation to tender, the prices must be shown in the currency of the country of the tenderer. If necessary, clauses dealing with exchange rates shall be agreed.

8.5. - The invitation to tender and the ensuing contract shall specify which of the two parties - the purchaser or the contractor - shall bear the cost of taxes to which the contractor is subject in the country of the purchaser.

Article 10

PACKING

10.1. - The packing conditions must be stated in the invitation to tender and the contract.

(1) - If the parties so agree, these cases and the conditions of their verification can be indicated in the contract.

APPENDIX 2 (Cont'd)

10.2. - Unless specifically agreed otherwise, the packing materials shall become the property of the purchaser without any special payment.

Article 11

SURETY

The contractor may be required to lodge a bond or to provide a guarantee of performance; in this event, the procedure shall be laid down in the invitation to tender and the contract.

Article 12

INDUSTRIAL PROPERTY RIGHTS (PATENTS,

COPYRIGHT, PATTERNS, DESIGNS

AND MODELS PROTECTED BY REGISTERED DESIGN, TRADE MARKS)

- KNOW-HOW -

12.1. - The contractor shall be entirely responsible for obtaining licences in respect of industrial property rights and know-how belonging to third parties which he shall need to use in executing the contract. The royalties due under these licences shall be met by the contractor who shall bear such sums himself. When the purchaser supplies drawings in connection with the invitation to tender he shall attach the list of industrial property rights protecting the devices described in these drawings.

APPENDIX 2 (Cont'd)

12.2. - The letting of the contract gives the purchaser the right to repair the stock purchased or, at his option, to have it repaired as well as the right to obtain, as required, the necessary parts for such repair and insofar as may be necessary to use for this purpose the industrial property rights used by the contractor in the execution of the contract notwithstanding whether the rights belong to the contractor or whether he obtained a licence to use them.

The contract may provide for repairs or the supply of spare parts to be undertaken by the contractor. In the event that the contractor does not carry out such repair or does not provide such supply, he shall be released from all guarantee obligations in respect of the repaired stock to the extent that the defects which may occur are due to the repair carried out or to the parts supplied.

The contractor may at his option stipulate special provisions in the contract for the purpose of protecting his industrial property rights.

12.3. - The contractor shall indemnify the purchaser from and against any claim or action brought against the purchaser by third parties by reason of the use made of industrial property rights in the execution of the contract or in the repair of the stock purchased. The contractor shall reimburse the purchaser all sums which the purchaser may be required to pay to the said third parties and indemnify the purchaser from and against losses directly incurred in particular by reason of seizure of the stock or by reason of the purchaser being unable to use it due to infringement of industrial property rights, provided that this indemnity shall not apply in the case of industrial property rights made available to the contractor by the purchaser.

12.4. - If the purchaser wishes to obtain from the contractor a licence to use the industrial property rights or a licence to use studies, drawings not protected by copyright or know-how relating to stock or type covered by the invitation to tender, he shall so indicate in the invitation to tender. In such event the conditions of use shall be laid down in the contract or in a separate Agreement.

APPENDIX 2 (Cont'd)

12.5. - The provisions of this Article shall not apply to parts or sub-assemblies supplied by the purchaser.

Article 13

QUALITY CONTROL

13.1. - The purchaser shall have the right to inspect or have inspected the raw materials, other materials, products used in manufacture, manufacturing processes and articles and vehicles ready for delivery, on the premises of the contractor, sub-contractors and suppliers. However, the official responsible for this inspection must observe, in the workshops of the contractor, all the safety regulations in force, and may, where applicable, be accompanied by an employee of the factory in his tour of inspection.

It shall be understood that this official may in no case take advantage of his privileged position to disclose the manufacturing processes which he would thus be in a position to observe.

13.2. - The inspections to be carried out shall, in principle, be mentioned in the invitation to tender and in the contract; they must be carried out in such a way to avoid interfering with the normal running of the manufacturing programme. Should this process be affected by such inspections, the provisions of Article 19 shall apply.

13.3. - The contractor shall be bound to provide free of charge the staff, machines, equipment, power and any documents necessary for the inspection. He may not claim any compensation for the raw materials, other materials, products used in manufacture, and vehicles or articles ready for delivery, which are rendered unusable or have suffered damage by reason of an inspection comprising methods agreed with the contractor.

APPENDIX 2 (Cont'd)

13.4. - The staff expenses incurred by the purchaser or the authorised railway for the purpose of carrying out the inspection shall remain the responsibility of the purchaser.

13.5. - The contractor may not invoke any inspections carried out to disclaim his responsibility or to be relieved from any of his contractual obligations.

13.6. - Unless otherwise stipulated in the contract, the procedures for supervising the construction or the factory inspection shall, in principle, be carried out on behalf of the purchaser by the authorised railway which, insofar as 13.1 to 13.5 do not state otherwise, shall act according to the same regulations and under the same conditions as for a contract placed by itself.

Article 14

MATERIALS, PARTS AND SUB-ASSEMBLIES

PURCHASED BY THE CONTRACTOR FROM SUPPLIERS

APPOINTED BY THE PURCHASER

Materials, parts and sub-assemblies which the purchaser requires the contractor to obtain from certain suppliers shall be listed in a schedule attached to the invitation to tender which must not be divulged to the suppliers in question. In cases where the purchaser has already fixed conditions with certain suppliers, these conditions shall be indicated in the invitation to tender and the contractor must include them in the contracts which he places with the suppliers. Notwithstanding the foregoing, the contractor shall remain responsible for the proper execution of the entire contract for supplies unless he establishes that

APPENDIX 2 (Cont'd)

the defects found are due to the use of materials, parts or sub-assemblies which he has been instructed to use even though he has proposed one or more valid alternatives.

Article 15

MATERIALS, PARTS AND SUB-ASSEMBLIES

TO BE SUPPLIED BY THE PURCHASER

15.1. - When the purchaser reserves the right to supply the contractor with certain materials, parts and sub-assemblies, a list of these together with the conditions and places of delivery, shall be given in the invitation to tender.

15.2. - These materials, parts and sub-assemblies must be held by the purchaser at the disposal of the contractor and delivered to him on request, in accordance with a timetable laid down in the contract. They must be used in the order in which they are delivered insofar as the manufacturing process permits.

15.3. - Such materials, parts and sub-assemblies supplied in this way shall remain the property of the purchaser, and are entrusted to the care of the contractor as a bailee.

Article 16

MATERIALS, PARTS AND SUB-ASSEMBLIES

BELONGING TO THE PURCHASER HELD BY THE CONTRACTOR

16.1. - The contractor shall be responsible, as bailee, by taking the same degree of care as for his own property, for loss or deterioration, from any cause whatsoever, of the materials, parts and sub-assemblies

APPENDIX 2 (Cont'd)

belonging to the purchaser, which the contractor may need to retain for the purpose of executing the contract, irrespective of whether they have been handed over for this purpose by the purchaser provided they have been delivered in perfect condition, or whether they have been purchased by the contractor on behalf of the purchaser, or whether they have been subject to a transfer of ownership to the benefit of the purchaser following an instalment payment, or for any other reason. These conditions shall apply in particular in the case of fire or theft, but not in the case of force majeure.

16.2. - Parts and sub-assemblies belonging to the purchaser must be marked or kept apart, so that they can be identified without question and the right of ownership of the purchaser is apparent. The same shall apply for materials insofar as the manufacturing process permits.

16.3. - The conditions of 16.1 and 16.2 shall apply to samples, patterns, models, gauges and templates handed over to the contractor by the purchaser. They must only be used in the execution of the contract.

16.4. - In the event that the contract is terminated, the contractor, if the purchaser so requests, shall be bound to return the materials, parts and sub-assemblies belonging to the purchaser, which, at the time of termination, have not been used.

If these materials are being processed, or if these parts and sub-assemblies have already been incorporated in an assembly in the course of manufacture, the conditions for their return shall be settled in accordance with the procedure laid down in Article 29.

APPENDIX 2 (Cont'd)

Article 17

**MODIFICATIONS TO THE ORIGINAL SPECIFICATION
OF THE STOCK**

17.1. - The contractor may propose any modifications to the purchaser which appear to him likely to reduce the price of the stock, to improve its construction or to facilitate its assembly and maintenance, but may only carry such modifications into effect after receipt of the written approval of the purchaser.

17.2. - For stock not delivered, the purchaser shall reserve the right to require any modifications which appear to him worthwhile.

17.3. - In the cases mentioned in 17.1 and 17.2, an agreement must be reached between the parties, with regard to the methods of performing modifications and to any consequences of the same on the delivery and guarantee periods and on the agreed prices, before any modification work is carried out.

Article 18

"FIRST PRODUCTION" VEHICLES, PROTOTYPES

The purchaser may request in the invitation to tender that "first production" vehicles be subjected to a special examination on his

APPENDIX 2 (Cont'd)

behalf, on which the continuation of the manufacture will depend; the conditions for building and examining these vehicles together with the conditions for conforming to the delivery periods for the series shall be specified in the contract.

In the case of new stock, the construction of prototypes may also be stipulated in a similar manner.

Article 19

DELIVERY PERIODS

19.1. - The contract shall fix the periods and rates of delivery. The delivery period shall include the time needed for the various quality inspections laid down in 13.2 and 18.

19.2. - If delays occur or are anticipated, in manufacturing the supplies or in delivering the stock, the contractor shall so advise the purchaser immediately in writing.

19.3. - When the contractor, due to a case of force majeure or to the action of the purchaser, is unable to fulfil his obligations, the delivery periods laid down in the contract shall be extended by a reasonable period if so requested. In the event of other occurrences which are not imputable to the contractor, the delivery periods shall be extended at the request of the contractor provided that the contractor shows proof that he has taken all possible measures to avoid or limit the consequences of such occurrences. These conditions shall only be applicable insofar as the cause of the delays has occurred before expiry of the contractual delivery periods. The contractor shall be responsible for reporting this cause, if possible within 15 calendar days from the date of occurrence and in sufficient time for the circum-

APPENDIX 2 (Cont'd)

stances to be verified and the effects on the contract assessed. Such an extension must be covered by an exchange of letters or by an addendum to the contract.

19.4. - The contractor may not invoke delays arising in the execution of a sub-contract or a sub-order to justify a delay in delivery of the stock. However, the conditions of 19.3 shall apply, by analogy, to sub-contracts and sub-orders.

Article 20

DELIVERY

20.1. - The dates, places and methods of inspection and delivery of the stock shall be expressly stated in the contract. The purchaser shall not be bound to carry out the inspection procedure nor to accept delivery of the stock before the corresponding contractual dates.

20.2. - Inspection of the stock shall be carried out in accordance with the regulations applicable in the country of the contractor, unless stipulated to the contrary in the contract. The inspection procedure may include a test run which, normally, shall take place on the lines of the railway of the country of the contractor.

20.3. - Acceptance, which is the final recognition by the purchaser of the conformity of the stock with the provisions of the contract, shall be effected in accordance with the regulations of the purchaser; if need be, these shall be laid down in the contract. In the case of rejection of the stock for non-conformity with the technical specifications laid down in the contract, the purchaser must so advise the con-

APPENDIX 2 (Cont'd)

tractor in writing as soon as possible, stating to the contractor the reasons for rejection and requesting of the contractor proposals for remedying the defects noted. In such cases, all direct expenses appertaining to the remedial work shall be borne by the contractor without prejudice to any penalties for delay in delivery. Further, the invoiced price of the affected stock shall be that appropriate to the contractual delivery date established prior to notification of the rejection.

20.4. - The contractor shall remain responsible for the loss of the stock or for any damage occurring to it until the time of its acceptance. (1)

20.5. - The stock shall be considered as delivered from the time of its acceptance and shall thus become the property of the purchaser, unless otherwise stated in special conditions laid down in the contract.

20.6. - The acceptance costs shall be allocated in a similar manner to that laid down in 13.3 and 13.4. The cost of the test runs mentioned in 20.2 shall be borne by the purchaser.

Article 21

GUARANTEE

21.1. - Notwithstanding any approval of drawings by the purchaser, the inspection procedure in the factory and the acceptance, the contractor

(1) It shall be understood that any responsibility which the purchaser may have as carrier or custodian is in no way excluded.

APPENDIX 2 (Cont'd)

shall guarantee, for a period fixed in the contract, that the stock meets all the requirements of the said contract and is not subject to faults likely to reduce its value or to impair its suitability to perform its normal function. This guarantee shall apply to materials, parts and sub-assemblies mentioned in Article 15 only to the extent that the defects are apparent or easily detectable and shall apply to materials, parts and sub-assemblies mentioned in Article 14 only within the limitations stated in that Article.

However, the contractor shall be responsible for the faulty fitting and use of the aforementioned materials, parts and sub-assemblies.

Use of the stock or maintenance of the same which is not in accordance with the recommendations of the contractor shall nullify any claim under the guarantee if the contractor can establish that the defects found result from such use or such maintenance. The purchaser shall be obliged to supply to the contractor, at his first demand, all documents and information relating to the conditions of use and maintenance of the said stock.

21.2. - The contractor shall not be responsible under this guarantee if it is established that the defects found result from him adhering to standards, diagrams, drawings, sketches and the like imposed upon him when he has proposed one or more alternative valid solutions.

21.3. - The starting point of the guarantee period shall be fixed in the contract irrespective of any dates marked on the materials, parts and sub-assemblies used in the construction of the stock. However, for spare parts and sub-assemblies delivered separately, this period shall run from the date of acceptance or from that marked on the supplies during manufacture or machining, when the technical specifications prescribe such marking.

APPENDIX 2 (Cont'd)

21.4. - This guarantee shall not exclude any special guarantees, applicable to certain sub-assemblies or parts, which may be contained in the technical specifications, contractual conditions or in the UIC leaflets mentioned in the contract.

21.5. - During the guarantee period, the contractor shall be required to restore or have restored to perfect condition, within a suitable period fixed by the purchaser after consultation with the contractor, any stock covered by the contract which has suffered damage imputable to the contractor as mentioned in 21.1. Dismantling, re-assembly and transport necessitated in making good this stock shall be at the expense of the contractor.

21.6. - When damage which appears imputable to the contractor is revealed, the purchaser shall so inform the contractor in writing and shall invite him, within a suitable period, to proceed jointly with the purchaser in the examination of the causes of the damage, before any dismantling takes place, and in determining liability. If the contractor does not reply within this period, he shall be considered liable for the damage.

21.7. - The contractor must state whether he wishes the repair work for which he is liable, to be undertaken by him or the purchaser; in the latter case, the work shall be invoiced to the contractor. If, when the work is the responsibility of the contractor, the stock cannot be repaired by him within the period mentioned in 21.5, the purchaser shall take the necessary steps for such repair to be carried out and the contractor shall be obliged to reimburse him for the costs thus incurred.

21.8. - If during the period of the guarantee the same defects or similar defects appear repetitively, characteristic of a systematic flaw, the purchaser can require the contractor to replace the suspect materials, parts or sub-assemblies or to make good the suspect work on all the vehicles covered by the contract including any for which the guarantee has expired.

APPENDIX 2 (Cont'd)

21.9. - In the above cases of application of the guarantee for the stock in question, a new guarantee period of a duration equal to that initially provided shall commence to operate for the materials, parts or sub-assemblies in question. In the event that a vehicle remains out of service for any cause arising from the guarantee, the overall guarantee period shall be extended by the period out of service.

21.10. - In the event that defects cannot be eliminated within the terms of 21.5 and result in a reduction in the value or suitability of the stock, the purchaser can require an appropriate reduction of the price.

Article 22

REJECTS

Materials, parts and sub-assemblies rejected during the guarantee period shall be dealt with in accordance with the regulations of the purchaser.

Article 23

TRANSPORT

The contractor shall be responsible for forwarding all materials, parts and sub-assemblies necessary for the construction of the stock (with the exception of materials, parts or sub-assemblies delivered by the purchaser); he shall be required to use, if possible, the services of the railway, both for these forwarding purposes and for any customs procedures.

APPENDIX 2 (Cont'd)

Article 24

PAYMENTS

24.1. - The division of payments by instalments and the method of effecting such payments shall be stated in the invitation to tender and specified definitely in the contract.

24.2. - Any payment on account shall be subject to either:

- a) - the provision by the contractor, in conjunction with an establishment approved by the purchaser, of a joint and several guarantee or of an equivalent surety, guaranteeing refund of the payments on account if the stock is not delivered, or
- b) - the transfer of ownership to the purchaser of the supplies or stock to which such payment on account relates.

as may be agreed between the purchaser and the contractor.

Release from the guarantee or surety provided for in a) shall be in accordance with the conditions fixed in the contract.

24.3. - If the contract provides for retention money payable on expiry of the guarantee period, this sum may be paid in advance against lodging of one of the sureties mentioned in 24.2 a). This surety shall be released as soon as the contractor has fulfilled his obligations under the guarantee.

24.4. - The question of any guarantee of payment by the purchaser may be dealt with during negotiation of the contract. Further, the contractor may, for financing purposes, assign the whole or part of his rights to

APPENDIX 2 (Cont'd)

payments. In such case, the contractor must comply with the general conditions under which the purchaser subordinates the payment of the sums due to third parties in order to ensure that the payments made by the purchaser will be in full and final satisfaction of his obligations and will not give rise to any objection by the contractor. The purchaser must inform the contractor of these conditions at his request.

Article 25

PENALTIES FOR LATE DELIVERY

25.1. - If the invitation to tender and the contract provide for penalties for exceeding the contractual delivery periods (1), the conditions for the assessment and application of the penalties and the method of settlement shall be specified in these documents.

25.2. - Any penalties shall apply only to that portion of the delivery which is subject to delay.

Article 26

TERMINATION

26.1. - The purchaser shall have the option of terminating the contract, wholly or in part, without payment of compensation, in the event that:

a) - the contractor is unable to execute the contract in accordance with

(1) - These periods are those fixed in the contract, extended, where applicable, as indicated in 19.3 and 19.4.

APPENDIX 2 (Cont'd)

the established terms and conditions by reason of bankruptcy, judicial receivership, suspension of payment or liquidation; or

b) - the contractor is guilty of fraud against the purchaser especially in respect of the quality or quantity of stock to be delivered.

26.2. - The purchaser may also terminate the contract, wholly or in part, without payment of compensation, in the event that notwithstanding the allowance of a reasonable period of time:

a) - the contractor has been unable to remedy faults as provided in Article 21; or

b) - the contractor has not complied with the essential provisions of the contract.

26.3. - The contractor may terminate the contract wholly or in part, without payment of compensation, in the event that notwithstanding an appropriate period of time the purchaser fails to meet essential conditions of the contract.

26.4. - Termination shall be notified by registered letter.

26.5. - The option of terminating the contract for any reason other than those stated in 26.1, 26.2 and 26.3 shall be determined in accordance with the law applicable, stated in the contract in accordance with Article 30 hereunder.

26.6. - Termination of the contract shall entitle the party which is not responsible for the fault or cause giving rise to the termination to obtain compensation for any loss, expense or damage suffered.

APPENDIX 2 (Cont'd)

Article 27

LIQUIDATION - JUDICIAL RECEIVERSHIP -

BANKRUPTCY

27.1. - In the event of liquidation, judicial receivership or bankruptcy, any conservation or security measures which appear necessary may be taken as of right by the other party.

27.2. - If the contractor is allowed to benefit from judicial receivership and authorised to carry on his business, he shall be responsible for execution of the contract, unless the purchaser agrees to its termination.

Article 28

LIABILITY IN THE CASE OF ACCIDENTS AND DAMAGE

28.1. - The contractor shall be held responsible for the consequences of accidents to persons and damage arising in the course of the inspection and supervision operations stated in Article 13 above if such accidents and damage are due to defects in the stock itself and are imputable to the contractor.

APPENDIX 2 (Cont'd)

28.2. - If the contract provides for test runs over the lines of a railway or the forwarding of the stock at the contractor's risk and, on such occasion, an accident or any other event involving damage occurs, the contractor, unless he has been negligent, shall be released from the consequences of accidents to persons or material damage arising during such runs. Damage suffered by the stock covered by the contract, insofar as such damage is imputable to the contractor, shall remain the responsibility of the contractor.

28.3. - The contractor shall be released, under the conditions laid down in 28.2 from the consequences of accidents to persons or damage occurring during the guarantee period.

Article 29

CONCILIATION

Should any difficulty arise in the application of the contractual conditions, the purchaser and the contractor shall jointly examine the same with a view to reaching an amicable settlement before instituting any legal proceedings with the competent jurisdiction as provided for in Article 30.

Article 30

LAW APPLICABLE - COMPETENT JURISDICTION

The law applicable and the competent jurisdiction shall be stated in the contract.

APPENDIX 2 (Cont'd)

Only the French, German or English texts of these General
Clauses and Conditions shall be regarded as authentic.

APPLICATION

All Railways belonging to the Union.

RECORD REFERENCES

Headings under which the question has been dealt with :

- Standardisation of the General Clauses and Conditions applicable to Railway Supplies Contracts.

(Working Party for Supplies : Stockholm, June 1963; Paris, October 1963).

- Standardisation of the General Clauses and Conditions applicable to Railway Supplies Contracts. Stage reached with the joint studies with representatives of the 8th Committee.

(Working Party for Supplies : Vienna, May 1964; Paris, October 1964).

- Standardisation of the General Clauses and Conditions applicable to Supplies Contracts.

(Working Party for Supplies : Luxemburg, April 1965).

- Development of the problem of the standardisation of the General Clauses and Conditions applicable to Railway Supplies Contracts.

(Working Party for Supplies : Paris, October 1965).

- Problems arising from the publication of the leaflet relating to the Standard General Clauses and Conditions applicable to Railway Supplies Contracts.

(Working Party for Supplies : Helsinki, June 1966).

- Standardisation of the General Clauses and Conditions applicable to Railway Supplies Contracts.

(Working Party for Supplies, Paris, October 1967).

- Report on the activity of the Working Party for Supplies.

(Board of Management : Paris, December 1963; December 1964; December 1965; December 1966; December 1967).

- *Question 10/8/7* : Standardisation of the General Clauses and Conditions applicable to tractive stock and rolling stock purchase contracts.

(Supplies Committee : Stockholm, June 1976).