

STANDARD TENDER DOCUMENTS

**Supply and Installation of
Plant and Equipment**

May 2007

This edition includes a number of amendments as summarised in the following table.

Amendment No.	Date	Nature of Amendments
1	7 May 1998	Volume Ii Instructions to Tenderers (Single Stage Tender), Eligibility and qualification- new sub-para. 3.6 added
“	“	Volume Ii Instructions to Tenderers (Single Stage Tender), Corrupt or fraudulent Practices - new para. 34 added
“	“	Volume Ii Instructions to Tenderers (Two Stage Tender), Eligibility and qualification- new sub-para. 3.6 added
“	“	Volume Ii Instructions to Tenderers (Two Stage Tender), Corrupt or fraudulent Practices - new para. 45 added
“	“	Volume Iii General Conditions of Contract, Contractor’s Responsibilities- new sub-clause 9.6 added
“	“	Volume Iii General Conditions of Contract, Termination- new sub-clause 42.2.1(c) added
2	17 February 1999	Volume Ii Instructions to Tenderers (Single Stage Tender), Tender currencies - sub-para. 12.1(a) modified
“	“	Volume Ii Instructions to Tenderers (Two Stage Tender), Tender currencies - sub-para. 23.1(a) modified
3	2 May 2007	Volume Ii Instructions to Tenderers (Single Stage Tender), - sub-para 3.6 Amended
“	“	Volume Ii Instructions to Tenderers (Single Stage Tender), - paragraph 34 Amended
“	“	Volume Ii Instructions to Tenderers (Two Stage Tender), - sub-para 3.6 Amended
“	“	Volume Ii Instructions to Tenderers (Two Stage Tender), - sub-para 45.1 Amended
“	“	Volume II.i General Conditions of Contract, - sub-clause 42.2.1 (c) Amended

Preface

These standard tender documents, entitled “Standard Tender Documents for the Supply and Installation of Plant and Equipment”, have been prepared for contracts financed by the European Bank for Reconstruction and Development (“the Bank”) involving the supply, installation and commissioning of specially engineered Plant and Equipment, such as turbines, generators, boilers, switchyards, pumping stations, telecommunications, process and treatment Plants etc. for power, water, sewerage, telecommunications and similar projects. Normally these documents should be used where (i) the value of the Plant and Equipment portion is in excess of 50 percent of the estimated contract value or (ii) the nature and complexity of the Plant and Equipment is such that the Facilities cannot safely be accepted by the Bank’s client without elaborate testing, precommissioning, commissioning and acceptance procedures being followed. Exceptions would be pipeline and power transmission line contracts where the nature of the works is such that the Bank’s Standard Tender Documents for Works would be more appropriate. If the Bank’s client has questions regarding which Standard Tender Documents should be used in a particular case, the Procurement and Technical Support Unit at the Bank’s Headquarters should be consulted.

These documents include both a single stage and a two stage tender procedure, to be chosen by the Bank’s client as appropriate to each circumstance. The choice shall depend on the complexity of the contract and the particular circumstances surrounding its procurement and implementation, and shall be subject to the Bank’s prior agreement.

These documents are derived from Standard Bidding Documents developed and in use by the World Bank.

The documents have been prepared as far as is practical as “standard documents” which can be used in their published form without the need for the client to amend or add text to the standard volumes. All information and data particular to each individual contract and required by tenderers in order to prepare responsive tenders must be completed by the client, prior to issuing the tender documents, in the Tender Data (Volume I.ii), the Special Conditions of Contract (Volume II.ii), the Technical Specifications and Drawings (Volume III) and in the Appendices to the Form of Contract Agreement (Volume II.iii). Unless specifically agreed with the Bank, the Special Conditions shall not materially alter the provisions of the General Conditions.

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STANDARD TENDER DOCUMENTS

Supply and Installation of Plant and Equipment

Volume I

The Tender (Single Stage)

VOLUME I
THE TENDER

Notes on Volume I - The Tender

This volume of the Standard Tender Documents provides the information necessary for tenderers to prepare responsive tenders, in accordance with the requirements of the Employer. It also provides information on tender submission, opening and evaluation, and on the award of contract.

Volume I.i - Instructions to Tenderers - contains provisions that are to be used unchanged. Volume I.ii - the Tender Data - consists of provisions that supplement, amend or specify in detail the information or requirements included in Volume I.i which are specific to each procurement.

Matters governing the performance of the Contractor, payments under the contract or matters affecting the risks, rights and obligations of the parties under the contract are not normally included in this volume, but instead under Volume II - the Contract.. If it is inevitable that the same subject matter is covered by the Employer in more than one clause, care must be exercised to avoid contradictions between such clauses.

Notes on the Invitation for Tenders

The Invitation for Tenders shall be:

- (a) published in at least one newspaper of general circulation in the Employer's country;*
- (b) published in the Bank's "Procurement Opportunities";*
- (c) sent to interested tenderers who, following the publication of the General Procurement Notice, have expressed interest in tendering for the installation of the Plant and Equipment for which the invitation is issued; and*
- (d) sent to local representatives of foreign countries with potential tenderers in the Employer's country*

The Employer should maintain a register of all potential tenderers which have purchased the tender documents and make it available for inspection with the tender documents.

The Invitation for Tenders provides information that enables potential tenderers to decide whether to participate. Apart from the essential items listed in the Standard Tender Documents, the Invitation to Tenders should also indicate any important tender evaluation criteria or qualification requirement (for example a requirement for a minimum level of experience in manufacturing and installing a similar type of Plant and Equipment to that for which the Invitation for Tenders is issued).

The Invitation for Tenders must be incorporated into the tender documents. The information contained in the Invitation for Tenders must reflect and be consistent with the other sections of the tender documents.

INVITATION FOR TENDERS

[*country*]

[*project title*]

INVITATION FOR TENDERS

[*goods, works or services to be procured*]

This Invitation for Tenders follows the General Procurement Notice for this project which was published in *Procurement Opportunities*, [*state issue and date*].

[*Name of Employer*] The Employer has [*applied for / received*] a loan from the European Bank for Reconstruction and Development (the Bank) towards the cost of [*specify project*].

The Employer now invites sealed tenders from [*suppliers / contractors*] for the following contracts to be funded from part of the proceeds of the loan:

- [*Include for each contract a concise description of the goods, works or services as applicable. State size and principal quantities. For works contracts provide locations, estimated duration, and advise if any contracts are to be effective concurrently.*]
- [*Indicate any particular postqualification requirements.*]

Tendering for contracts to be financed with the proceeds of a loan from the Bank is open to firms from all countries. The proceeds of the Bank's loan will not be used for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

Tender documents may be obtained from the address below upon payment of a non-refundable fee of [*state currency and value*] or equivalent in a convertible currency. [*Give instructions for payment by bank transfer or the like*]. Upon request, the documents will be promptly despatched by courier, but no liability can be accepted for loss or late delivery

All tenders must be accompanied by a Tender Security of [*state currency and a fixed sum, which should be between 2 and 5 percent of the estimated contract value*] or its equivalent in a convertible currency, and must be delivered to the address below on or before [*specify time and date of deadline for submission*], at which time they will be opened in the presence of the tenderers' representatives who wish to attend.

Prospective tenderers may obtain further information from, and inspect and acquire the tender documents at, the following office:

[*Contact name*]
[*Executing agency*]
[*Address*]
[*Tel:*]
[*Fax:*]

VOLUME I.i

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VOLUME I.i

INSTRUCTIONS TO TENDERERS

General

1. Scope

- 1.1 The Employer, as defined in the Tender Data, invites tenders for the supply and installation of the Facilities outlined in the Schedule of Requirements and the Technical Specifications in accordance with the procedures, conditions and contract terms prescribed in these tender documents.

2. Source of funds

- 2.1 The Employer intends using part of the proceeds of a loan from the European Bank for Reconstruction and Development (the Bank) for eligible payments under the contract for which this Invitation for Tenders is issued. Payment by the Bank will be made only at the request of the Employer and upon approval by the Bank, in accordance with the terms and conditions of the Loan Agreement, and will be subject in all respects to the terms and conditions of the Loan Agreement. The proceeds of the Bank's loan will not be used for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations..

3. Eligibility and qualification

- 3.1 Subject to paragraph 2.1 above, this Invitation for Tenders is open to tenderers from any country unless specified otherwise in the Tender Data.
- 3.2 To qualify for award of the Contract, the tenderer shall meet the qualifying criteria referred to in the Tender Data.
- 3.3 No affiliate of the Employer shall be eligible to tender or participate in a tender in any capacity whatsoever unless it can be demonstrated that there is not a significant degree of common ownership, influence or control between the Employer and the affiliate.
- 3.4 A firm, its affiliates or parent company which provides consulting services for a project cannot be a supplier of goods or works for such project, unless it can be demonstrated that there is not a significant degree of common ownership, influence or control between the firm providing consulting services and the firm tendering for the supply of goods or works.
- 3.5 A tenderer may submit or participate, in any capacity whatsoever, in only one tender for each contract. Submission or participation by a tenderer in more than one tender for a contract (other than alternatives which have been permitted or requested) will result in the rejection of all tenders for that contract in which the party is involved. However, the same subcontractor may be included in more than one tender.

- 3.6 A tenderer shall not be eligible to participate where it has been determined to have engaged in corrupt, fraudulent, coercive or collusive practices in accordance with sub-paragraph 34.1(c).¹

4. Cost of tendering

- 4.1 The tenderer shall bear all costs associated with the preparation and submission of its tender, and the Employer will in no case be responsible or liable for these costs.

5. Pre-tender meeting or site visit

- 5.1 The tenderer is advised to attend any pre-tender meeting or site visit scheduled in the Tender Data.

- 5.2 The tenderer is advised to visit and examine the site and surroundings where the Facilities are to be installed and obtain for itself on its own responsibility all information that may be necessary for preparing the tender and entering into a contract for supply and installation of the Facilities. The costs of visiting the site shall be at the tenderer's own expense.

- 5.3 The tenderer and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such inspection, but only upon the express condition that the tenderer, its personnel and agents will release and indemnify the Employer, its personnel and agents from and against all liability in respect thereof and neither the Employer, its personnel or agents will be responsible for death or personal injury, loss of or damage to property and any other loss, damage, costs and expenses incurred as a result of the inspection.

Tender Documents

6. Contents of tender documents

- 6.1 The tender documents comprise the documents listed below, other documentation or drawings specified in the Tender Data and addenda issued in accordance with paragraph 8.

	Invitation for Tenders
Vol. I.i	Instructions to Tenderers
.ii	Tender Data
.iii	Tender Form
.iv	Price Schedules
.v	Tender Security Form
Vol.II.i	General Conditions of Contract
.ii	Special Conditions of Contract (- Works Procedures)

¹ Amended 2 May 2007.

- .iii Contract Agreement Form
(- Appendices)
- .iv Performance Security Form
- .v Advance Payment Security Form

- Vol. III.i Schedule of Requirements
 - .ii Technical Specifications
 - .iii Drawings and Other Documentation

6.2 The tenderer is expected to examine all instructions, forms, terms, specifications and other information in the tender documents. Failure to furnish all information required by the tender documents or submission of a tender not substantially responsive to the tender documents in every respect will be at the tenderer's risk and may result in rejection of its tender.

7. Clarification of tender documents

7.1 A prospective tenderer requiring any clarification on any aspect of the tender documents may notify the Employer in writing or by fax (hereinafter, "fax" includes cable and telex) at the Employer's mailing address indicated in the Tender Data. All requests for clarification must be received by the Employer no later than twenty-eight (28) days prior to the deadline for the submission of tenders. The Employer will respond in writing to such requests for clarification of the tender documents which it receives. Copies of the Employer's response (including a description of the enquiry but without identifying its source) will be sent to all prospective tenderers that have received the tender documents.

8. Amendment of tender documents

8.1 At any time prior to the deadline for submission of tenders, the Employer may amend the tender documents by issuing addenda.

8.2 Any addendum thus issued shall be part of the tender documents and shall be communicated in writing or by fax to all prospective tenderers that have received the tender documents. Prospective tenderers shall immediately acknowledge receipt of any addendum by fax to the Employer and it will be assumed that the information contained therein will have been taken into account by the tenderer in its tender.

8.3 To give prospective tenderers reasonable time in which to take the amendment into account in preparing their tender, the Employer may, at its discretion, extend the deadline for the submission of tenders, as provided for in paragraph 17.2

Preparation of Tenders

9. Language of tender

- 9.1 The tender and all documents and correspondence relating to the tender shall be in the language of the tender specified in the Tender Data. Any printed literature furnished by the tenderer may be written in another language so long as such literature is accompanied by an accurate translation of its pertinent passages in the language of the tender, in which case, for purposes of interpretation of the tender, the translation shall govern.

10. Documents comprising the tender

- 10.1 A tender submitted in accordance with these Instructions to Tenderers shall comprise the following:

- (a) Tender Form (in the format indicated in Volume I.iii) duly completed in the manner and detail indicated therein and signed by the tenderer;
- (b) Attach. 1. Price Schedules (in the format indicated in Volume I.viii) duly completed by the tenderer in the manner and detail indicated therein and following the requirements of paragraphs 11 and 12;
- (c) Attach. 2. Power of Attorney duly authorised by a notary public, indicating that the person(s) signing the tender have the authority to sign the tender and thus that the tender is binding upon the tenderer;
- (d) Attach. 3. Tender Security, furnished in accordance with paragraph 14;
- (e) Attach. 4. Qualification of Tenderer - documentary evidence that the tenderer satisfies the minimum qualifying requirements referred to in paragraph 3.2 and is otherwise qualified to perform the contract if its tender is accepted. Details of the documentation required are specified in the Tender Data;
- (f) Attach. 5. Conformity of the Facilities - documentary evidence establishing that the facilities to be supplied by the tenderer in its tender or in any alternative tender (if permitted) conform to the tender documents. Details of the documents required are specified in the Tender Data;
- (g) Attach. 6. Subcontractors Proposed by the Tenderer - the tenderer shall include details of all major items of supply or services that it proposes to purchase or subcontract, giving details of the proposed subcontractors for each of these items. Tenderers are free to list more than one subcontractor against each item of the Facilities.

The tenderer shall have been duly authorised by the manufacturer or producer of all subcontracted Plant, Equipment or components to supply and/or install the relevant items in the Employer's country.

The tenderer shall be responsible for ensuring that any subcontractor proposed complies with the requirements of paragraph 3, and that any

Plant, Equipment or services to be provided by the contractor comply with the tender documents.

The Employer reserves the right to delete any proposed subcontractor from the list prior to the award of the contract and, after discussion between the Employer and the Contractor, the subcontractors approved for each item shall be identified in an attachment to the Contract Agreement.

- (h) Attach. 7. Deviations - pursuant to paragraph 11.2, any deviations to the tender document requirements shall be listed only in Attach. 7. The tenderer shall also furnish the additional price or saving associated with each such deviation. The attention of the tenderer is drawn to the provisions of paragraph 23.4 regarding the rejection of tenders that are not substantially responsive to the requirements of the tender documents. The Employer reserves the right to accept or reject any deviations.
- (i) Attach. 8. Alternative Tenders - if permitted pursuant to paragraph 10.3 below, tenderers may, in addition to a fully conforming tender, submit an alternative tender. In such cases, tenderers shall submit full details and justifications, etc. for any alternatives submitted, as indicated in paragraph 10.3.
- (j) Attach. 9. Other documentation and information which may be specified in the Tender Data.

10.2 In addition to paragraph 10.1 above, tenders submitted by a joint venture or consortium of two or more firms shall comply with the following requirements:

- (i) the tender shall include all the relevant information as described in paragraph 10.1(e) above for each member firm of the joint venture or consortium;
- (ii) the tender shall be signed so as to be legally binding on all member firms of the joint venture or consortium;
- (iii) one of the member firms of the joint venture or consortium, responsible for performing a key component of the contract, shall be nominated as being in charge; this authorisation shall be evidenced by submitting with the tender a power of attorney signed by legally authorised signatories of all member firms of the joint venture or consortium;
- (iv) the member firm of the joint venture or consortium in charge shall be authorised to incur liabilities and receive instructions for and on behalf of any and all member firms of the joint venture or consortium, and the entire execution of the contract, including payment, shall be done exclusively with the member firm in charge;
- (v) all member firms of the joint venture shall be liable jointly and severally for the execution of the contract in accordance with the contract terms;

- (vi) a copy of the agreement entered into by the member firms of the joint venture or consortium shall be submitted with the tender.

In order for a joint venture or consortium to qualify, each of its member firms or combination of member firms must meet the minimum criteria listed for an individual tenderer for the component of the contract they are designated to perform. Failure to comply with this requirement will result in rejection of the tender of the joint venture or consortium.

Pursuant to paragraph. 3.5, a firm can be a member in only one joint venture or consortium; tenders submitted by joint ventures or consortia including the same member firm will be rejected.

- 10.3 Unless specified otherwise in the Tender Data, tenderers are permitted to propose alternatives with their tender. Requirements for submission of alternatives and consideration of such alternatives by the Employer are prescribed in the Tender Data.

11. Tender prices

- 11.1 Unless specified otherwise in the Tender Data and/or the Technical Specifications, tenderers shall quote for the entire Facilities on a “single responsibility” basis such that the total tender price covers all obligations of the contractor pursuant to or to be reasonably inferred from the tender documents in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation and completion of the Facilities. This includes all responsibilities of the Contractor for testing, precommissioning and commissioning of the Facilities and, where so required by the tender documents, the obtaining of all permits, approvals and licences, etc., operation, maintenance and training services and such other items and services as may be specified in the tender documents, all in accordance with the requirements of the Conditions of Contract.
- 11.2 Tenderers are required to submit a tender fully compliant with the commercial, contractual and technical requirements specified in the tender documents and to quote the price covering all commercial, contractual and technical obligations outlined in the tender documents. If a tenderer wishes to offer a deviation to the tender document requirements, such deviation shall be listed in Attach. 7 of its tender. The tenderer shall also provide the additional price or saving associated with such deviation. The Employer reserves the right to accept or reject any deviations.
- 11.3 Tenderers shall give a breakdown of the prices in the manner and detail called for in the Price Schedules. Where no Price Schedules are included in the tender documents, tenderers shall present their prices in the following manner.

Separate numbered Schedules shall be used for each of the following elements. The total amount from each Schedule (1 to 4) shall be summarised in a Grand Summary (Schedule 5) giving the total tender price(s) to be entered in the Tender Form.

- Schedule No. 1 Plant and Equipment (including mandatory spare parts) supplied from abroad
- Schedule No. 2 Plant and Equipment (including mandatory spare parts) supplied from within the Employer's country
- Schedule No. 3 Local Transportation
- Schedule No. 4 Installation and Other Services
- Schedule No. 5 Grand Summary (Schedules Nos. 1 to 4)
- Schedule No. 6 Recommended Spare Parts

Plant and Equipment included in Schedules Nos. 1 and 2 above must exclude materials used for civil, building and other construction works. All such materials shall be included and priced under Schedule No. 4.

11.4 In the Schedules, tenderers shall provide the required details and a breakdown of their prices as follows:

- (a) Plant and Equipment to be supplied from abroad (Schedule No. 1) shall be quoted on a CIP border point basis or CIP named place and other Incoterms, as specified in the Tender Data, exclusive of any customs duties or other similar import taxes payable on the imported Plant and Equipment.
- (b) Plant and Equipment manufactured or fabricated within the Employer's country (Schedule No. 2) shall be quoted on an EXW basis and shall be inclusive of all costs as well as duties and sales and other taxes paid or payable on components and raw materials incorporated or to be incorporated in the Plant and Equipment.
- (c) Any customs duties or other similar import taxes paid or payable on directly imported components incorporated or to be incorporated in the Plant and Equipment manufactured or fabricated within the Employer's country (Schedule No. 2).
- (d) Local transportation, insurance and other local costs incidental to delivery of the Plant and Equipment to the site (Schedule No.3).
- (e) Installation and other services shall be quoted separately (Schedule No.4) and shall provide for all labour, contractor's Equipment, temporary works, materials, consumables and all matters and things of whatsoever nature, including operations and maintenance services, the provision of operations and maintenance manuals, training, etc., where identified in the tender documents as necessary for the proper execution of the installation and other services, including all taxes, duties, levies and charges payable in the Employer's country as of twenty-eight (28) days prior to the deadline for submission of tenders.

- (f) Recommended spare parts shall be quoted separately (Schedule 6) as specified in either subparagraph (a) or (b) above in accordance with the origin of the spare parts.

11.5 The terms EXW, CIP, etc., shall be governed by the rules prescribed in the current edition of *Incoterms*, published by the International Chamber of Commerce, Paris.

11.6 Unless specified otherwise in the Tender Data, prices quoted by the tenderer shall be fixed for the time period during which the contract is performed should it be awarded to the tenderer and shall not be subject to variation for any reason. A tender submitted with an adjustable price quotation which is not consistent with this paragraph shall be treated as non-responsive and rejected.

12. Tender currencies

12.1 Unless specified otherwise in the Tender Data, prices shall be quoted in the following currencies:

- (a) For Plant and Equipment covered under paragraph 11.4(a) to be supplied from abroad, the prices may be quoted in any convertible currency or currencies including euro or a combination of these².
- (b) For Plant and Equipment covered under paragraph 11.4(b) to be supplied from within the Employer's country, the prices shall be quoted in the currency of the Employer's country. However, the costs of directly imported components incorporated or to be incorporated in the Plant and Equipment may be quoted in foreign currency, in accordance with the provisions of paragraph 12.1(a).
- (c) Local transportation, insurance and other local costs incidental to delivery of the Plant and Equipment covered under paragraph 11.4(d) shall be quoted in either foreign and/or local currency, depending upon the currency in which the costs are to be incurred and in accordance with the provisions of paragraph 12.1(a) and (b).
- (d) Installation and other services covered under paragraph 11.4(e) shall be quoted in either foreign and/or local currency, depending upon the currency in which the costs are to be incurred and in accordance with the provisions of paragraphs 12.1(a) and (b).

13. Tender validity period

13.1 Tenders shall remain valid for the period specified in the Tender Data after the closing date for the receipt of tenders, pursuant to paragraph 17.1. A tender valid for a shorter period shall be rejected by the Employer as being non-responsive and rejected.

² Amended as part of Corrigendum No 2, dated 17 February 1999.

- 13.2 In exceptional circumstances, the Employer may solicit the tenderer's consent to an extension of the tender validity period. The request and responses thereto shall be made in writing or by fax. If a tenderer agrees to extend the period of validity, the Tender Security shall also be extended accordingly. A tenderer may refuse the request without forfeiting its Tender Security. A tenderer granting the request will not be required nor permitted to modify its tender, except as provided in paragraph 13.3.
- 13.3 Where the tender is for a fixed price contract (not subject to price adjustment), if the tender validity period is extended, the amounts payable in both local and foreign currencies to the tenderer selected for award shall be increased by applying the factors specified in the Tender Data to both the local and the foreign currency component of the payments, respectively, for the period of delay beyond the expiration of the initial tender validity up to the time of notification of award. Tender evaluation will be based on the tender prices without considering the above adjustment

14. Tender Security

- 14.1 The tenderer shall furnish, as part of its tender, a Tender Security in the amount stipulated in the Tender Data, in the currency of the tender, or in the equivalent amount in a freely convertible currency.
- 14.2 The Tender Security shall, at the tenderer's option, be in the form of a certified cheque, letter of credit or a bank guarantee from a reputable bank located in the Employer's country or abroad. The format of the bank guarantee shall be in accordance with the form of Tender Security included in the tender documents; other formats may be permitted, subject to the prior approval of the Employer. Tender Security shall remain valid for a period of twenty-eight (28) days following the last day of the original tender validity period, and following the last day of any extension of the tender validity period pursuant to paragraph 13.2.
- 14.3 Any tender not accompanied by an acceptable Tender Security shall be treated as non-responsive and rejected. The Tender Security of a joint venture or consortium must be in the name of all member firms of the joint venture or consortium submitting the tender.
- 14.4 The Tender Securities of unsuccessful tenderers will be returned as promptly as possible, but not later than twenty-eight (28) days after the last day of the tender validity period.
- 14.5 The Tender Security of the successful tenderer will be returned when the tenderer has signed the Contract Agreement, and has furnished the required Performance Security.
- 14.6 The Tender Security may be forfeited:
- (a) if the tenderer

- (i) withdraws its tender during the period of tender validity;
 - (ii) refuses to accept the corrections of computational errors in its tender price, pursuant to paragraph. 23.2; or
 - (iii) invalidates its tender pursuant to paragraph 21.2.
- (b) in the case of a successful tenderer, if the tenderer fails
- (i) to sign the contract in accordance with paragraph 31; or
 - (ii) to furnish Performance Security in accordance with paragraph 32.

15. Format and signing of tender

- 15.1 The tenderer shall prepare an original and the number of copies/sets of the tender specified in the Tender Data, clearly marking each one as “ORIGINAL TENDER”, “COPY NO. 1”, “COPY NO. 2”, etc., as appropriate. In the event of any discrepancy between the original and any copy, the original shall govern.
- 15.2 The original and all copies of the tender, each consisting of the documents listed in paragraph 10.1, shall be typed or written in indelible ink and shall be signed by the tenderer or person(s) duly authorised to act on behalf of the tenderer. The latter authorisation shall be evidenced by written power of attorney accompanying the tender and submitted pursuant to paragraph 10.1. All pages of the tender, except for unamended printed literature, shall be initialled by the person or persons signing the tender.
- 15.3 Any interlineation, erasures or overwriting shall only be valid if they are initialled by the person or persons signing the tender.

Submission of Tenders

16. Sealing and marking of tenders

- 16.1 The tenderer shall place the original and each copy of the tender in separate envelopes, duly marking the envelopes as “ORIGINAL TENDER” and “COPY NO. ___”. These envelopes shall then be sealed in an outer envelope.
- 16.2 The inner and outer envelopes shall be sealed and:
- (a) addressed to the Employer with the address set forth in the Tender Data; and
 - (b) bear the identification specified in the Tender Data.
- 16.3 The inner envelopes shall also indicate the name and address of the tenderer so that the tender can be returned unopened in case it is withdrawn or declared “late”.

16.4 If the outer envelope is not sealed and marked as required by paragraph 16.2 above, the Employer will assume no responsibility for the misplacement or premature opening of the tender. If the outer envelope discloses the tenderer's identity, the Employer will not guarantee the anonymity of the tender submission, but this disclosure will not constitute grounds for rejection of the tender.

17. Deadline for submission of tenders

17.1 Tenders must be received by the Employer at the address specified in paragraph 16.2(a), no later than the time and date stated in the Tender Data.

17.2 The Employer may extend this deadline for submission of tenders by amending the tender documents in accordance with paragraph 8, in which case all rights and obligations of the Employer and tenderers previously subject to the deadline will thereafter be subject to the deadline as extended.

18. Late tenders

18.1 Any tender received by the Employer after the tender submission deadline will be rejected and returned unopened to the tenderer.

19. Modification and withdrawal of tenders

19.1 The tenderer may modify or withdraw its tender after submission, provided that written notice of the modification or withdrawal is received by the Employer prior to the tender submission deadline.

19.2 Modifications of a tender shall be prepared, sealed, marked and dispatched as follows:

(a) The tenderer shall provide an original and the number of copies specified in paragraph 15.1 of any modifications to its tender, clearly identified as such, in two inner envelopes, duly marking the envelopes as "TENDER MODIFICATIONS - ORIGINAL" and "TENDER MODIFICATIONS - COPIES". The inner envelopes shall be sealed in an outer envelope, which shall be duly marked as "TENDER MODIFICATIONS".

(b) Other provisions concerning the numbers, marking and dispatch of tender modifications shall be in accordance with paragraph 16.

19.3 A tenderer wishing to withdraw its tender shall notify the Employer in writing prior to the tender submission deadline. A withdrawal notice may also be sent by fax, but it must be followed by a signed confirmation copy, postmarked not later than the tender submission deadline. The notice of withdrawal shall:

(a) be addressed to the Employer at the address specified in paragraph 16.2(a); and

(b) bear the contract name and the words "TENDER WITHDRAWAL NOTICE". Tender withdrawal notices received after the tender

submission deadline will be ignored, and the submitted tender will be deemed to be a validly submitted tender.

- 19.4 No tender may be modified or withdrawn in the interval between the deadline for submission of tenders and the expiration of the tender validity period specified in paragraph 13.1. Withdrawal of a tender during this interval may result in the tenderer's forfeiture of its Tender Security, pursuant to paragraph 14.6.

Tender Opening and Evaluation

20. Opening of tenders by Employer

- 20.1 The Employer will open all tenders in the presence of tenderers' representatives who choose to attend the opening at the time, on the date and at the location specified in the Tender Data. The tenderers' representatives who are present shall sign a register evidencing their attendance.
- 20.2 The tenderers' names, tender modifications or withdrawals, tender prices, discounts, alternative tender (if any), the presence or absence of required Tender Security and other such details as the Employer, at its discretion, may consider appropriate, will be announced at tender opening. No tender will be rejected at tender opening except for late tenders, which will be returned unopened to the tenderers, pursuant to paragraph 18.1.
- 20.3 Tender discounts or modifications furnished pursuant to paragraph 19 that are not opened, read out and recorded at tender opening will not be considered for tender evaluation. Withdrawn tenders will be returned unopened to the tenderers.
- 20.4 The Employer will prepare minutes of the tender opening, including the information disclosed to those present in accordance with paragraph 20.2.

21. Contacting the Employer

- 21.1 Subject to paragraph 22, no tenderer shall contact the Employer on any matter relating to its tender, from the time of tender opening of tenders to the time the contract is awarded.
- 21.2 Any effort by a tenderer to influence the Employer's tender evaluation or award decision, including the offering or giving of bribes, gifts or other inducement, may result in the invalidation of its tender and the forfeiture of its Tender Security, pursuant to paragraph 14.6.

22. Clarification of tenders

- 22.1 To assist in the examination, evaluation and comparison of tenders, the Employer may, at its discretion, ask a tenderer for a clarification of its tender.

Such clarification may be requested at any stage up to award of the contract. Requests for clarification and the responses thereto shall be in writing or by fax, and no change in the price or substance of the tender shall be sought, offered or permitted except as required to confirm the correction of computational errors discovered by the Employer in the examination of the tenders in accordance with paragraph 23.2.

23. Preliminary examination of tenders

23.1 The Employer will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required Tender Securities have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.

23.2 Computational errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, or between subtotals and the total price, the unit or subtotal price shall prevail and the total price shall be corrected. If there is a discrepancy between words and figures, the amount in words shall prevail. If the tenderer does not accept the correction of errors, its tender will be rejected and its Tender Security may be forfeited.

23.3 The Employer may waive any minor informality, non-conformity or irregularity in a tender that does not constitute a material deviation, and that does not prejudice or affect the relative ranking of any tenderer as a result of the detailed evaluation pursuant to paragraphs 25 and 26.

23.4 Prior to the detailed evaluation pursuant to paragraphs 25 and 26, the Employer will determine whether each tender is of acceptable quality, is complete and is substantially responsive to the tender documents. For purposes of this determination, a substantially responsive tender is one that conforms to all terms, conditions and specifications of the tender documents without material deviations, objections or reservations. A material deviation, objection or reservation is one (i) that affects in any substantial way the scope, quality or performance of the contract; (ii) that limits in any substantial way, inconsistent with the tender documents, the Employer's rights or the successful tenderer's obligations under the contract; or (iii) whose rectification would unfairly affect the competitive position of other tenderers who are presenting substantially responsive tenders.

23.5 In particular, deviations from, objections to or reservations about critical provisions, such as those concerning Tender Security, Governing Law, Taxes and Duties, Defect Liability, Functional Guarantees, Patent and Indemnity, Limitation of Liability, and related requirements as set forth in the Tender Data, will be treated as non-responsive. The Employer's determination of the responsiveness of a tender is to be based on the contents of the tender itself without recourse to extrinsic evidence.

23.6 If a tender is not substantially responsive, it will be rejected by the Employer and may not subsequently be made responsive by the tenderer by correction of the non-conforming deviation, objection or reservation.

24. Conversion to single currency

- 24.1 To facilitate evaluation and comparison of tenders, the Employer will convert all tender prices expressed in various currencies into a single common currency as specified in the Tender Data.

25. Technical evaluation

- 25.1 The Employer will carry out a detailed technical evaluation of the tenders not previously rejected as being substantially non-responsive in order to determine whether the technical aspects of such tenders are in accordance with the requirements set forth in the tender documents. In carrying out such technical evaluation, the Employer will examine and compare the technical aspects of the tenders based on the information supplied by the tenderers, taking into account the following factors:

- (a) overall completeness and compliance with the Technical Specifications and Drawings; deviations from the Technical Specifications as identified by the tenderer in its tender and those deviations not so identified; suitability of the Facilities offered in relation to the environmental and climatic conditions prevailing at the site; and quality, function and operation of any process control concept included in the tender. The tender that does not meet minimum acceptable standards of completeness, consistency and detail will be rejected as non-responsive;
- (b) achievement by the Facilities of specified performance criteria;
- (c) type, quantity and long-term availability of mandatory and recommended spare parts and maintenance services; and
- (d) any other relevant factors listed in the Tender Data.

- 25.2 Where alternative technical solutions have been permitted and offered by the tenderer, the Employer will make a similar evaluation of the alternatives. Where alternatives have not been permitted but have been offered, they shall be ignored.

26. Commercial evaluation

- 26.1 Comparisons between tenders shall be based on the EXW price of Plant and Equipment offered from within the Employer's country, such price to exclude customs duties and other import taxes paid or payable on directly imported components incorporated or to be incorporated in the Plant and Equipment, and the CIP (border point or named place of destination) price of Plant and Equipment offered from outside the Employer's country; plus the cost of local transportation, all installation and other services to be provided under the contract. The Employer's evaluation will also include the costs resulting from application of the evaluation factors pursuant to paragraph 26.2.

- 26.2 The Employer's evaluation of a tender will take into account, in addition to the tender prices indicated in the Price Schedules, additional evaluation factors as may be specified in the Tender Data.

26.3 Any adjustments in price which result from the application of the above evaluation factors shall be added, for purposes of comparative evaluation only, to arrive at the “Evaluated Tender Price”. Tender prices quoted by tenderers shall remain unaltered.

27. Postqualification

27.1 In the absence of prequalification, the Employer will determine to its satisfaction whether the tenderer selected as having submitted the lowest evaluated responsive tender meets the minimum qualifying criteria specified in paragraph 3.2 and is otherwise qualified to perform the contract satisfactorily.

27.2 The determination will take into account the tenderer’s financial, technical and production capabilities, in particular its contract work in process, future commitments and current litigations. These matters will be assessed based upon an examination of the documentary evidence of the tenderer’s qualifications submitted by the tenderer in its tender, as well as such other information as the Employer deems necessary and appropriate.

27.3 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the tenderer’s tender, in which event the Employer will proceed to the next lowest evaluated tender to make a similar determination of that tenderer’s capabilities to perform satisfactorily.

27.4 The capabilities of the vendors and subcontractors proposed in the tender to be used by the lowest evaluated tenderer will also be evaluated. Their participation should be confirmed with a letter of intent or similar documentary evidence. Should a vendor or subcontractor be determined to be unacceptable, the tender will not be rejected, but the tenderer will be required to substitute an acceptable vendor or subcontractor without any change to the tender price.

28. Employer’s right to accept any tender and to reject any or all tenders

28.1 The Employer reserves the right to accept or reject any tender, and to annul the tender process and reject all tenders at any time prior to award of contract, without thereby incurring any liability to any tenderer or any obligation to inform any tenderer or tenderers of the grounds for the Employer’s action.

Award of Contract

29. Award criteria

29.1 Subject to paragraph 28, the Employer will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and which has been determined as the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

29.2 The Employer reserves the right to accept any of the deviations submitted in accordance with paragraph 10.1(h) by the winning tenderer, at the price shown for the deviation in the tender.

30. Notification of award

- 30.1 Prior to the expiration of the tender validity period, the Employer will notify the successful tenderer in writing by registered letter or by fax, to be confirmed in writing by registered letter, that its tender has been accepted. The notification of award will constitute the formation of the contract.
- 30.2 As soon as the successful tenderer has furnished the Performance Security pursuant to paragraph 32, the Employer will promptly notify each unsuccessful tenderers and will discharge their Tender Securities, pursuant to paragraph 14.4.

31. Signing of Contract Agreement

- 31.1 At the same time as the Employer notifies the successful tenderer that its tender has been accepted, the Employer will send the tenderer the Contract Agreement provided in the tender documents, incorporating all terms and conditions agreed between the parties.
- 31.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful tenderer shall sign and date the Contract Agreement and return it to the Employer.

32. Performance Security

- 32.1 Within twenty-eight (28) days of receipt of the notification of award, the successful tenderer shall furnish the Performance Security in accordance with the Conditions of Contract, and in the form provided in Volume II.iii(b) of the tender documents or in another form acceptable to the Employer.
- 32.2 Failure of the successful tenderer to comply with the requirements of paragraphs
- 31 or 32.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security, in which event the Employer may make the award to the next lowest evaluated tenderer or invite new tenders.

33. Alternative dispute resolution procedure

- 33.1 The Employer proposes that the Adjudicator provided for in the Conditions of Contract shall be appointed in the manner stipulated in the Tender Data.

34. Corrupt, Fraudulent, Coercive or Collusive Practices³

34.1 The Bank requires that clients (including beneficiaries of Bank loans), as well as tenderers, suppliers, contractors, concessionaires and consultants under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Bank:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

(i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.

(ii) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

(iii) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

(iv) "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;

(b) will reject a proposal for award if it determines that a tenderer recommended for award has engaged in corrupt, fraudulent, coercive or collusive practices in competing for the contract in question;

(c) will declare a firm ineligible indefinitely or for a stated period of time, to be awarded a Bank-financed contract if it at any time determines that:

(i) the firm has engaged in corrupt, fraudulent coercive or collusive practices in competing for, or in executing, a Bank financed contract; or

(ii) the firm has been found by a judicial process or other official inquiry to have engaged in corrupt, fraudulent, coercive or collusive practices.

34.2 Furthermore, tenderers shall be aware of the provisions stated in Sub-Clauses 9.6 and 42.2.1 (c) of the General Conditions of Contract.

³ Amended 2 May 2007

para. 3.2: **Qualifying requirement** [specify minimum qualifying criteria]

Qualification requirements for tenderers, including members of joint ventures, subcontractors or vendors:

Minimum acceptable levels with regard to tenderers' experience in supplying and installing Facilities with comparable technical parameters, their manufacturing and installation capacity, their financial viability and other factors. These should be the same criteria used in the prequalification, if tenderers were prequalified.

para. 5.1: **Pre-tender meeting or site visit** [specify date and location of pre-tender meeting or site visit, if any]

para. 6.1: **Other documents comprising the tender documents** [specify all other documentation or drawings which are included in the tender document, if applicable]

para. 7.1: **Employer's mailing address** [specify address of Employer, contact name, telephone, telex and facsimile numbers]

para. 9.1: **Language of tender** [specify language of tender]

Tender documentation, including all published procurement notices, shall be prepared in one of the Bank's working languages, which shall be specified in the tender documents as the governing language. In the interest of open competition as well as economy and efficiency, the Bank may request that tender documentation also be provided in another working language of the Bank, in which case this would be the governing language. In addition, at the client's option, further sets of the tender documentation may be prepared in the local language.

para. 10.1(e): **Documentary evidence of tenderer's qualification** [specify documents to be submitted]

para.10.1(f): **Documentary evidence of conformity of Facilities** [specify documents to be submitted]

EXAMPLE:

The documentary evidence of the conformity of the facilities to the tender documents may be in the form of literature, drawings and data, and shall furnish:

- (i) a detailed description of the essential technical and performance characteristics of the Facilities;
- (ii) a list giving full particulars, including available sources, of all spare parts, special tools, etc., necessary for the proper and continuing functioning of the Facilities for a period of ___ years following Completion of the Facilities in accordance with the provisions of the contract; and

Specify spares required for operation and for the number of years following Completion.

- (iii) commentary on the Employer's Technical Specifications and adequate evidence demonstrating the substantial responsiveness of the Facilities to those specifications. Tenderers shall note that the standards for skill, materials and Equipment designated by the Employer in the tender documents are intended to be descriptive (establishing standards of quality and performance) only and not restrictive. A tenderer may substitute alternative standards, brand names and/or

catalogue numbers in its tender, provided that it demonstrates to the Employer's satisfaction that the substitutions are substantial, equivalent or superior to those designated in the Technical Specifications (Volume III).

para. 10.1(j): Other documentation [specify any other information and documentation to be submitted by the tenderers (if applicable)]

para. 10.3: Alternative tenders [specify whether or not alternative tenders are accepted]

Technical alternatives

EXAMPLE:

Tenderers wishing to offer technical alternatives to the requirements of the tender documents must first provide a price at which they are prepared to offer Facilities as specified in the tender documents, and shall further provide all information necessary for a complete evaluation of the alternatives by the Employer, including drawings, design calculations, Technical Specifications, breakdown of prices, proposed installation methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated tenderer conforming to the basic technical requirements shall be considered by the Employer.

EXAMPLE:

When tenderers are permitted in the tender to submit alternative technical solutions for specific parts of the Facilities, such parts shall be described in Volume III - Technical Specifications and Drawings. Technical alternatives that, in the Employer's judgement, comply with the performance and technical criteria specified for the Facilities, shall be considered by the Employer, on their own merits, pursuant to paragraph 25.2.

para. 11.6: Tender prices [specify whether the price shall be fixed, or the price shall be adjustable]

EXAMPLE:

Prices quoted by the tenderer shall be subject to adjustment during the performance of the contract to reflect changes in the cost of labour, material, transport and Contractor's Equipment, in accordance with the procedures specified in the Appendix to the Contract Agreement. A tender submitted with a fixed price quotation will not be rejected, but the price adjustment will be treated as zero. The price adjustment provision will not be taken into consideration in tender evaluation. Tenderers are required to indicate the source for labour and material indices in the said Appendix.

para. 12.1: Tender currencies [specify currencies if different from the Invitation to Tenderers]

Use the above if the tenderer is permitted to use foreign currencies for pricing and payment for Plant, Equipment and services from within the Employer's country.

EXAMPLE:

Paragraph 12.1(b) is not applicable and paragraph 12.1(a) applies to all Plant, Equipment and services.

para. 13.1: Period of tender validity [specify tender validity period]

The period should be sufficiently long to permit the completion of evaluation and comparison of tenders, the review of the recommended selection with the Bank (if so required) and the obtaining of all necessary approvals and notifications of award. Normally, the validity period should be one hundred and twenty (120) days. A realistic period should be specified in order to avoid the need for extensions.

para. 13.3: Extension of tender validity period [specify the adjustment factors to be used for fixed price contracts]

EXAMPLE:

The adjustment of the tender price in accordance with paragraph 15.3 shall be from the original expiry date of the tender validity, pro rata up to the date of award of the contract and shall be calculated on the basis of an annual increase for foreign costs of (____) percent and an annual increase for local costs of (____) percent.

The value of the foreign cost factor should be based on the expected annual increase in international prices. The value of the local cost factor, if denominated in the local currency, should be based on the projected inflation in the Employer's country for the period in question. If local costs are denominated in a hard currency then the expected annual increase in international prices should be used. Alternatively, the local cost component could be converted to a currency widely used in international trade on the date of notification of award and adjusted, using the same index as the foreign cost component.

para. 14.1: Tender Security [specify amount of Tender Security]

This amount should be the same as that quoted in the Invitation for Tenders. To avoid disclosure of tenderers' prices to the financial institution issuing the Tender Security, a fixed sum instead of a percentage of the tender price. The sum should range from the equivalent on one (1) percent of the estimated cost of the Facilities, for contracts with an estimated value of over US\$ 100 million, to three (3) percent of the estimated cost, for small contracts. Alternatively, if the Employer wishes to specify a percentage of the tender price, the percentage should be indicated as a "minimum of ____ percent" to enable tenderers to provide Tender Security in excess of the minimum and to thus conceal their prices.

para. 15.1: Number of copies of tender [specify number of copies of tender]

para. 16.2(a): Address of Employer [specify address of Employer]

para. 16.2(b): Tender identification [specify identification to be recorded on the tender envelopes]

EXAMPLE:

The tenderer shall enter the Employer's name and address, the tender identification and the words "DO NOT OPEN BEFORE..." [the date and time prescribed for the opening of tenders in paragraph 20.1].

para. 17.1: Deadline for submission of tenders [specify time and date of tender submission]

para. 20.1: Opening of tenders by Employer [specify time, date and place of tender opening]

The date shall be the same as for tender submission specified under paragraph 17.1 above, and the time should also be the same as specified under paragraph 17.1 or immediately thereafter.

para. 24.1: Conversion to common currency [specify currency source and date]

The Employer shall state the currency to which prices will be converted. Conversion shall be at the selling exchange rate published by the Central Bank or any commercial bank in the Employer's country. The Employer must enter the name of the bank, and the date for which the exchange rate shall be used. That date must be no earlier than twenty-eight (28) days prior to the deadline specified for the submission of tenders and no later than the expiry of the initial validity period specified in paragraph 13. It is customary to use the deadline specified for the submission of tenders.

EXAMPLE:

To facilitate evaluation and comparison, the Employer will convert all tender prices into [*specify currency*], at the selling exchange rate quoted by [*the Central Bank or any commercial bank in the Employer's country*], for similar transactions on [*insert a specific date not earlier than twenty-eight (28) days prior to tender opening and not later than the expiry of the initial tender validity period specified in paragraph 13*].

paras 25.1(d) Tender evaluation factors and 26.2:

[*specify evaluation criteria in addition to those set forth in subparagraphs 25.1(a) to (c) for the technical evaluation, and in addition to the tender price for the commercial evaluation of tenders*]

The following paragraphs are optional and should only be used if factors other than tender prices are to be considered in the evaluation. The examples illustrated here should only be used where appropriate and the others should be deleted. Additional factors may be necessary for certain very specific tenders. Evaluation factors should meet the following criteria:

- *The factor could have an impact on contract performance (including the rights and obligations of the Employer and the Contractor in respect of contract time, quality (including technical performance) and risk.*
- *The impact on performance resulting from factor variations can be reasonably quantified in a reliable, fair and objective manner.*

EXAMPLE:

The Employer's evaluation of a tender will take into account, in addition to the tender prices, the following costs and factors that will be added to each tenderer's price in the evaluation, using pricing information available to the Employer, in the manner and to the extent indicated below:

- (a) the cost of all quantifiable deviations and omissions from the contractual and commercial conditions and the Technical Specifications as identified by the tenderer in its tender, and other deviations and omissions not so identified;
- (b) compliance with the time schedule called for in Appendix 4 to the Contract Agreement and evidenced as needed in a milestone schedule provided in the tender;
- (c) the projected operating and maintenance costs during the life of the Facilities;
- (d) the guaranteed performance and productivity of the offered Facilities; and
- (e) the extra cost of work, services, facilities, etc. required to be provided by the Employer or third parties.

Pursuant to the above, the following evaluation methods will be followed:

EXAMPLE:

- (a) Contractual and commercial deviations:

The evaluation shall be based on the evaluated cost for fulfilling the contract in compliance with all commercial, contractual and technical requirements set forth in this tender document. In arriving at the evaluated cost, the price associated with non-material deviations proposed by the tenderer will be used, if applicable. If such a price is not given, the Employer will make its own assessment of the cost of such a deviation for the purpose of ensuring a fair comparison of tenders.

EXAMPLE:

- (b)(i) Time schedule [specify completion date for entire Facilities
or for parts or sections of the Facilities]
- (ii) Adjustment rate in the event of delay [specify]

Two (2) percent per month is a reasonable figure. Alternatively, the rate may be a fixed amount per month of delay related to the loss of benefits to the Employer. The percentage or amount of liquidated damages specified in the Special Conditions of Contract should be equal to or higher than the amount specified here.

EXAMPLE:

- (c) Operating and maintenance costs:

Life cycle cost:

Since the operating and maintenance costs of the Facilities being procured form a major part of the life cycle cost of the Facilities, these costs will be evaluated according to the principles set forth below, including the cost of spare parts for the initial period of operation stated below and based on prices furnished by each tenderer in the relevant Price Schedules, as well as on past experience with such Facilities. Such costs shall be added to the tender price for evaluation.

Factors for calculation of the life cycle:

- (i) number of years for life cycle, which should not exceed the usual period before a major overhaul of the Facilities;
- (ii) operating costs (e.g. fuel and/or other input, unit cost, annual and total operational requirements);
- (iii) maintenance costs, including the cost of spare parts for the initial period of operation, to be specified by the tenderer;
- (iv) rate, in percent, to be used to discount to present value all annual future costs calculated under (ii) and (iii) above for the period specified in (i) or reference to the methodology specified in the Technical Specifications or elsewhere in the tender documents;
- (v) the price of recommended spare parts quoted in Price Schedule No. 6 shall not be considered for evaluation.

EXAMPLE:

- (d) Performance and productivity of the Facilities:

The norm used should either be specified in the Technical Specifications or should be the value committed in the responsive tender with the best guaranteed performance or efficiency. An equivalent or higher adjustment factor shall be specified in the Special Conditions of Contract as liquidated damages under performance guarantee.

- (i) Tenderers shall state the guaranteed performance or efficiency in response to the Technical Specifications. So as to be considered responsive, Plant and Equipment offered shall have a minimum performance specified in the Technical Specifications to be considered responsive. Tenders offering Plant and Equipment with a performance of less than the specified minimum performance will be rejected.
- (ii) For the purposes of evaluation, for each percentage point in performance or efficiency below the norm specified in the Technical Specifications but above the minimum acceptable levels also specified there, an adjustment of [*specify amount*] will be added to the tender price.

EXAMPLE:

- (e) Works, services, facilities, etc. to be provided by the Employer:

Where tenders include for the undertaking of work or the provision of services or facilities by the Employer in excess of the provisions allowed for in the tender documents, the Employer shall assess the costs of such additional work, services and/or facilities during the duration of the contract.

para. 33: Appointment of Adjudicator [specify procedure for appointing the Adjudicator proposed by the Employer]

EXAMPLE:

The Employer proposes that [*name of adjudicator*] be appointed as Adjudicator under the contract, at an hourly fee of [*specify hourly fee*]. A résumé of the above person is attached to the Tender Data, as well as a description of the expenses that would be reimbursable. If a tenderer does not accept the Adjudicator proposed by the Employer, it should so state in its tender and make a counter proposal of an Adjudicator and an hourly fee. If, on the day the Contract Agreement is signed, the Employer and the Contractor have not agreed on the appointment of an Adjudicator, the Adjudicator shall be designated by [*specify the Appointing Authority*] and confirmed in the Special Conditions of Contract at the request of either party. The Adjudicator shall be deemed to be jointly appointed by the Employer and the Contractor

OR

EXAMPLE:

The Employer proposes that the Adjudicator shall be designated by [*specify the Appointing Authority*]. The Adjudicator so designated shall be deemed to be jointly appointed by the Employer and the Contractor.

The Appointing Authority should be an impartial international technical organisation recognised in the relevant industry.

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EXAMPLE:

TENDER FORM - SINGLE STAGE TENDER

Date:

Loan/Credit No.:

IFT No.:

Name of Contract:

To: (Name and Address of Employer)

Ladies and/or Gentlemen,

Having examined the tender documents, including Addenda Nos. (insert numbers), receipt of which is hereby acknowledged, we, the undersigned, offer to design, manufacture, test, deliver, install, precommission and commission the Facilities under the above-named Contract in full conformity with the said tender documents for the sum of:

.....
(amount of foreign currency in words)

..... (.....)
(amount in figures)

and

.....
(amount of local currency in words)

..... (.....)
(amount in figures)

or such other sums as may be determined in accordance with the terms and conditions of the Contract. The above amounts are in accordance with the price schedules attached herewith and are made part of this tender.

We undertake, if our tender is accepted, to commence the Facilities, and to achieve Completion within the times stated in the tender documents.

If our tender is accepted, we undertake to provide an advance payment security and a performance security in the form and amounts, and within the times specified in the tender documents.

We agree to abide by this tender for a period of _____ (number) days from the date set for submission of tenders as stipulated in the tender documents, and it shall remain binding upon us and may be accepted by you at any time prior to the expiration of that period.

Until a formal Contract Agreement is prepared and executed between us, this tender, together with your written acceptance thereof and your notification of award, shall constitute a binding contract between us.

We understand that you are not bound to accept the lowest, or any tender you may receive.

Dated this day of 19

.....
(signature)

In the capacity of

.....
(position)

Duly authorised to sign this tender for and on behalf of

.....
(name of tenderer)

VOLUME I.iv

EXAMPLE:

TENDER SECURITY FORM

Date:

Loan/Credit No.:

IFT No.:

Name of Contract:

To: (Name and Address of Employer)

WHEREAS (name of tenderer) (hereinafter called "the tenderer") has submitted its Tender dated (date of tender) for the performance of the above-named Contract (hereinafter called "the Tender")

KNOW ALL PERSONS by these present that WE (name of bank) of (address of bank) (hereinafter called "the Bank"), are bound unto (name of Employer) (hereinafter called "the Employer") in the sum of:

for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors and assigns by these present.

Signed on behalf of the said Bank this day of19

THE CONDITIONS of this obligation are:

- 1. If the tenderer withdraws its Tender during the period of tender validity specified by the tenderer in the Tender Form, or
- 2. If the tenderer, having been notified of the acceptance of its Tender by the Employer during the period of tender validity:
 - (a) fails or refuses to sign the Form of Contract Agreement when required, or
 - (b) fails or refuses to issue the performance security in accordance with the tender documents,

WE undertake to pay to the Employer up to the above amount upon receipt of its first written demand, without the Employer having to substantiate its demand, provided that in its demand the Employer will note that the amount claimed by it is due to it, owing to the occurrence of one or more of the two above-named CONDITIONS, and specifying the occurred condition or conditions.

This guarantee will remain in full force up to and including (*the date 30 days after the period of tender validity*), and any demand in respect thereof must reach the Bank not later than the above date.

For and on behalf of the Bank

.....
(signature)

.....
(signature)

.....
(title)

.....
(title)

VOLUME I.v

EXAMPLE:

MANUFACTURER'S AUTHORISATION FORM

(date)

TO: (Name of the Employer)

WHEREAS [name of the Manufacturer] who are established and reputable manufacturers of [name and/or description of the goods] having factories at [address of factory] do hereby authorise [name and address of Agent] to submit a tender, and subsequently negotiate and sign the Contract with you for the above goods manufactured by us.

We hereby extend our full guarantee and warranty as per Clause 23 of the General Conditions of Contract for the goods offered for supply by the above firm in response to this Invitation for Tenders.

.....
(signature for and on behalf of Manufacturer)

This letter of authority should be on the letterhead of the Manufacturer and should be signed by a person competent and having the power of attorney to bind the Manufacturer. It should be included by the tenderer in its tender.

VOLUME I.vi

EXAMPLE:

LETTER OF ACCEPTANCE

TO: (Name of successful tenderer) (date)
(Address of successful tenderer)

This is to notify you that your tender dated (enter date) for the execution of the (name of the contract as given in the Tender Data) for the Contract Price of (amount in numbers and words, and name of currency/currencies) or equivalent thereof, as corrected and modified in accordance with the Instructions to Tenderers, is hereby accepted by our Agency.

You are hereby required:

- (a) to submit the performance security (specify as provided in the tender documents)
(b) sign the attached Contract Agreement and return (specify as provided in the tender documents);and
(c) to commence performance of the said contract in accordance with the Contract Documents.

Authorised Signature.....
Name and Title of Signatory.....
Name of Agency.....

Attachment: Contract Document

This Letter of Acceptance should be on the letterhead of the Employer and should be signed by a person competent and having power of attorney to bind the Employer. If the Employer intends to accept any alternatives offered by the successful tenderer, this should be stated.

STANDARD TENDER DOCUMENTS

Supply and Installation of Plant and Equipment

Volume I

**The Tender
(Two Stage)**

VOLUME I

THE TENDER

Notes on Volume I - The Tender

This volume of the Standard Tender Documents provides the information necessary for tenderers to prepare responsive tenders, in accordance with the requirements of the Employer. It also provides information on tender submission, opening and evaluation, and on the award of contract.

Volume I.i - Instructions to Tenderers - contains provisions that are to be used unchanged. Volume I.ii - the Tender Data - consists of provisions that supplement, amend or specify in detail the information or requirements included in Volume I.i which are specific to each procurement.

Matters governing the performance of the Contractor, payments under the contract or matters affecting the risks, rights and obligations of the parties under the contract are not normally included in this volume, but instead under Volume II - the Contract.. If it is inevitable that the same subject matter is covered by the Employer in more than one clause, care must be exercised to avoid contradictions between such clauses.

Notes on the Invitation for Tenders

The Invitation for Tenders shall be:

- (a) published in at least one newspaper of general circulation in the Employer's country;*
- (b) published in the Bank's "Procurement Opportunities";*
- (c) sent to interested tenderers who, following the publication of the General Procurement Notice, have expressed interest in tendering for the installation of the Plant and Equipment for which the invitation is issued; and*
- (d) sent to local representatives of foreign countries with potential tenderers in the Employer's country*

The Employer should maintain a register of all potential tenderers which have purchased the tender documents and make it available for inspection with the tender documents.

The Invitation for Tenders provides information that enables potential tenderers to decide whether to participate. Apart from the essential items listed in the Standard Tender Documents, the Invitation to Tenders should also indicate any important tender evaluation criteria or qualification requirement (for example a requirement for a minimum level of experience in manufacturing and installing a similar type of Plant and Equipment to that for which the Invitation for Tenders is issued).

The Invitation for Tenders must be incorporated into the tender documents. The information contained in the Invitation for Tenders must reflect and be consistent with the other sections of the tender documents.

INVITATION FOR TENDERS

[*country*]
[*project title*]

INVITATION FOR TENDERS

[*goods, works or services to be procured*]

This Invitation for Tenders follows the General Procurement Notice for this project which was published in *Procurement Opportunities*, [*state issue and date*].

[*Name of Employer*] (the Employer), has [*applied for / received*] a loan from the European Bank for Reconstruction and Development (the Bank) towards the cost of [*specify project*].

The Employer now invites sealed tenders from [*suppliers / contractors*] for the following contracts to be funded from the proceeds of the loan:

- [*Include for each contract a concise description of the goods, works or services as applicable. State size and principal quantities. For works contracts provide locations, estimated duration, and advise if any contracts are to be effective concurrently.*]
- [*Indicate briefly any particular qualification requirements that tenderers must meet*]

Tendering for contracts to be financed with the proceeds of a loan from the Bank is open to firms from all countries. The proceeds of the Bank's loan will not be used for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

Tender documents may be obtained from the address below upon payment of a non-refundable fee of [*state currency and value*] or equivalent in a convertible currency. [*Give instructions for payment by bank transfer or the like*]. Upon request, the documents will be promptly despatched by courier, but no liability can be accepted for loss or late delivery.

A two stage tender procedure will be adopted and will proceed as follows:

- (a) the First Stage tender will consist of a technical proposal only, without any reference to prices, and a list of any deviations to the technical and commercial conditions set forth in the tender documents or any alternative technical solutions a tenderer wishes to offer, and a justification therefor, provided always that such deviations or alternative solutions do not change the basic objectives of the project. Following evaluation by the Employer of the First Stage tenders, the Employer will invite each tenderer who meets the qualification criteria and who has submitted a technically responsive tender to a clarification meeting. The proposals of all such tenderers will be reviewed at the meeting and all required amendments, additions, deletions and other adjustments will be noted and recorded in a Memorandum. Only qualified tenderers submitting a technically responsive and acceptable First Stage tender will be invited to submit a Second Stage tender.

- (b) the Second Stage tender will consist of an updated technical tender incorporating all changes required by the Employer as recorded in the Memorandum to the clarification meeting or as necessary to reflect any amendments to the tender documents issued subsequent to submission of the First Stage tender; and the commercial tender.

First Stage tenders must be delivered to the address below on or before [*specify time and date of deadline for submission*] at which time they will be opened in the presence of the tenderers' representatives who wish to attend.

All Second Stage tenders must be accompanied by a Tender Security of [*state currency and a fixed sum, which should be between 2 and 5 per cent of the estimated contract value*] or its equivalent in a convertible currency, and must be delivered to the address below on or before the time and date of the submission deadline specified in the Letter of Invitation to submit Second Stage tenders, at which time they will be opened in the presence of the tenderers' representatives who wish to attend.

Prospective tenderers may obtain further information from, and inspect and acquire the tender documents at, the following office:

[*Contact name*]
[*Executing agency*]
[*Address*]
[*Tel:*]
[*Fax:*]

VOLUME I.i

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VOLUME I.i
INSTRUCTIONS TO TENDERERS

General

1. Scope

- 1.1 The Employer, as defined in the Tender Data, invites tenders for the supply and installation of the Facilities outlined in the Schedule of Requirements and the Technical Specifications in accordance with the procedures, conditions and contract terms prescribed in these tender documents.

2. Source of funds

- 2.1 The Employer intends to use part of the proceeds of a loan from the European Bank for Reconstruction and Development (the Bank) for eligible payments under the contract for which this Invitation for Tenders is issued. Payment by the Bank will be made only at the request of the Employer and upon approval by the Bank, in accordance with the terms and conditions of the Loan Agreement, and will be subject in all respects to the terms and conditions of the Loan Agreement. The proceeds of the Bank's loan will not be used for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

3. Eligibility and qualification

- 3.1 Subject to paragraph 2.1 above, tenders are invited from tenderers from any country unless specified otherwise in the Tender Data.
- 3.2 To qualify for award of the contract, tenderers shall meet the qualifying criteria referred to in the Tender Data.
- 3.3 No affiliate of the Employer entity shall be eligible to tender or participate in a tender in any capacity whatsoever unless it can be demonstrated that there is not a significant degree of common ownership, influence or control between the Employer and the affiliate.
- 3.4 A firm, its affiliates or parent company which provides consulting services for a project cannot be a supplier of goods or works for such project, unless it can be demonstrated that there is not a significant degree of common ownership, influence or control between the firm supplying consulting services and the firm tendering for the supply of goods or works.
- 3.5 A tenderer may submit or participate in only one tender for each contract. Submission or participation by a tenderer in more than one tender for a contract (other than alternative tenders which have been permitted or requested) will result in the rejection of all tenders for that contract in which the party is involved. However, the same subcontractor may be included in more than one tender.

3.6 A tender shall not be eligible to participate where it has been determined to have engaged in corrupt, fraudulent, coercive or collusive practices in accordance with subparagraph 45.1(c).⁴

4. Cost of tendering

4.1 The tenderer shall bear all costs associated with the preparation and submission of its tender, and the Employer will in no case be responsible or liable for these costs.

5. Pre-tender meeting or site visit

5.1 The tenderer is advised to attend any pre-tender meeting or site visit scheduled in the Tender Data.

5.2 The tenderer is advised to visit and examine the site and surroundings where the Facilities are to be installed and to obtain for itself on its own responsibility all information as may be necessary for preparing the tender and entering into a contract for supply and installation of the Facilities. The costs of visiting the site shall be at the tenderer's own expense.

5.3 The tenderer and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such inspection, but only upon the express condition that the tenderer, its personnel and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and neither the Employer, its personnel or agents will be responsible for death or personal injury, loss of or damage to property and any other loss, damage, costs and expenses incurred as a result of the inspection.

Tender Documents

6. Contents of tender documents

6.1 The tender documents comprise the documents listed below, other documentation or drawings specified in the Tender Data and addenda issued in accordance with paragraph 8.

	Invitation for Tenders
Vol. I.i	Instructions to Tenderers
.ii	Tender Data
.iii	Tender Form
.iv	Price Schedules
.v	Tender Security Form
Vol.II.i	General Conditions of Contract
.ii	Special Conditions of Contract (- Works Procedures)
.iii	Contract Agreement Form (- Appendices)
.iv	Performance Security Form
.v	Advance Payment Security Form

⁴ Amended 2 May 2007

Vol.III.i	Schedule of Requirements
.ii	Technical Specifications
.iii	Drawings and Other Documentation

6.2 The tenderer is expected to examine all instructions, forms, terms, specifications and other information outlined in the tender documents. Failure to furnish all information required by the tender documents or submission of a tender not substantially responsive to the tender documents in every respect will be at the tenderer's risk and may result in rejection of its tender.

7. Clarification of tender documents

7.1 A prospective tenderer requiring any clarification of the tender documents may notify the Employer in writing or by fax (hereinafter, "fax" includes cable and telex) at the Employer's mailing address indicated in the Tender Data. All requests for clarification must be received by the Employer no later than 28 days prior to the deadline for the submission of tenders. The Employer will respond in writing to all such requests for clarification. Copies of the Employer's response (including a description of the enquiry but without identifying its source) will be sent to all prospective tenderers that have received the tender documents.

8. Amendment of tender documents

8.1 At any time prior to the deadline for submission of tenders, the Employer may amend the tender documents by issuing addenda.

8.2 Any addendum shall be part of the tender documents and shall be communicated in writing or by fax to all prospective tenderers that have received the tender documents. Prospective tenderers shall immediately acknowledge receipt of any addendum by fax to the Employer, and it will be assumed that the information contained therein will have been taken into account by the tenderer in its tender.

8.3 To give prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Employer may, at its discretion, extend the deadline for the submission of tenders, as provided for in paragraph 13.2.

Preparation of First Stage Tenders

9. Language of tender

9.1 The tender and all documents and correspondence related to the tender shall be in the language of the tender as specified in the Tender Data. Any printed literature furnished by the tenderer may be written in another language so long as such literature is accompanied by an accurate translation of the pertinent passages in the language of the tender, in which case, for purposes of interpretation of the tender, the translation shall govern.

10. Documents comprising the tender

10.1 A First Stage tender submitted in accordance with these Instructions to Tenderers shall comprise the following:

- (a) The Tender Form - First Stage (in the format indicated in Volume I.iii), duly completed in the manner and detail indicated therein and signed by the tenderer.
- (b) Attach. 1. Power of Attorney duly authorised by a notary public, indicating that the person(s) signing the tender have the authority to sign the tender and that the tender is binding upon the tenderer.
- (c) Attach. 2. Qualification of Tenderer - in the absence of prequalification, documentary evidence that the tenderer satisfies the minimum qualifying requirements referred to in paragraph 3.2 and is otherwise qualified to perform the contract if its tender is accepted. Details of the documentation required are specified in the Tender Data.
- (d) Attach. 3. Conformity of the Facilities - documentary evidence establishing that the Facilities to be supplied by the tenderer in its tender or in any alternative tender (if permitted) conform to the tender documents. Details of the required documents are specified in the Tender Data.
- (e) Attach. 4. Subcontractors Proposed by the Tenderer - the tenderer shall include details of all major items of goods or services that it proposes to purchase or subcontract, giving details of the proposed subcontractors for each of these items. Tenderers are free to list more than one subcontractor for each item of the Facilities.

The tenderer shall have been duly authorised by the manufacturer or producer of all subcontracted Plant, Equipment or components to supply and/or install the relevant items in the Employer's country.

The tenderer shall be responsible for ensuring that any proposed subcontractor complies with the requirements of paragraph 3, and that any Plant, Equipment or services to be provided by the subcontractor comply with the tender documents.

The Employer reserves the right to reject any proposed subcontractor prior to or during the clarification meeting with the tenderer.

- (f) Attach. 5. Deviations - any deviations to the tender document requirements shall be listed only in Attach. 5. The Employer reserves the right to accept or reject any deviations.
- (g) Attach. 6. Alternative Tenders - if permitted pursuant to paragraph 10.3 below, tenderers may, in addition to a fully conforming tender, submit an alternative tender.
- (h) Attach. 7. Other documentation and information as may be specified in the Tender Data.

10.2 In addition to paragraph 10.1 above, tenders submitted by a joint venture or

consortium of two or more firms shall comply with the following requirements:

- (i) the tender shall include all the relevant information as described in paragraph 10.1(c) above for each member firm of the joint venture or consortium;
- (ii) the tender shall be signed so as to be legally binding on all member firms of the joint venture or consortium;
- (iii) one of the member firms of the joint venture or consortium, responsible for performing a key component of the contract, shall be nominated as being in charge; this authorisation shall be evidenced by submitting with the tender a power of attorney signed by legally authorised signatories of all the member firms of the joint venture or consortium;
- (iv) the member firm of the joint venture or consortium in charge shall be authorised to incur liabilities and receive instructions for and on behalf of any and all member firms of the joint venture or consortium, and the entire execution of the contract, including payment, shall be done exclusively with the member firm in charge;
- (v) all member firms of the joint venture or consortium shall be liable jointly and severally for the execution of the contract in accordance with the contract terms;
- (vi) a copy of the agreement entered into by the member firms of the joint venture or consortium shall be submitted with the tender.

In order for a joint venture or consortium to qualify, each of its member firms or combination of member firms must meet the minimum criteria listed for an individual tenderer for the component of the contract they are designated to perform. Failure to comply with this requirement will result in rejection of the tender of the joint venture or consortium.

Pursuant to paragraph 3.5, a firm can be a member firm in one joint venture or consortium only; tenders submitted by joint ventures or consortia including the same member firm will be rejected.

- 10.3 Unless specified otherwise in the Tender Data, tenderers are permitted to propose technical or other “alternatives” with their First Stage tenders to those included in the tender documents, provided they can document that the proposed alternatives are to the benefit of the Employer and that they fulfil the principal objectives of the contract.
- 10.4 Any alternative proposed by tenderers in their First Stage tender pursuant to paragraph 10.3 above will be the subject of discussion during a clarification meeting, pursuant to paragraph 19.
- 10.5 First Stage tenders are technical tenders and shall contain no prices or price schedules or other reference to rates and prices for completing the Facilities. First Stage tenders containing such price information will be rejected.

11. Format and signing of tender

- 11.1 The tenderer shall prepare an original and the number of copies/sets of the tender specified in the Tender Data, clearly marking each one as: “FIRST STAGE TENDER - ORIGINAL”, “FIRST STAGE TENDER - COPY NO. 1”, “FIRST STAGE TENDER - COPY NO. 2,” etc., as appropriate. In the event of any discrepancy between the original and any copy, the original shall govern.
- 11.2 The original and all copies of the tender, each comprising the documents specified in paragraph 10.1, shall be typed or written in indelible ink and shall be signed by the tenderer or person(s) duly authorised to sign legally binding documents on behalf of the tenderer. The latter authorisation shall be evidenced by written power of attorney accompanying the tender. All pages of the tender, except for unamended printed literature, shall be initialled by the person or persons signing the tender.
- 11.3 Any interlineations, erasures or overwriting shall be initialled by the person or persons signing the tender.

Submission of First Stage Tenders

12. Sealing and marking of First Stage tenders

- 12.1 The tenderer shall seal the original First Stage tender and each copy of the tender in separate envelopes, each containing the documents specified in paragraph 10, and shall mark the envelopes as “FIRST STAGE TENDER - ORIGINAL” and “FIRST STAGE - COPIES”, all duly marked as required in paragraph 11.1. The envelopes shall then be sealed in an outer envelope.
- 12.2 The inner and outer envelopes shall:
 - (a) be addressed to the Employer at the address set forth in the Tender Data; and
 - (b) bear the identification specified in the Tender Data.
- 12.3 The inner envelopes shall also bear the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”, pursuant to paragraph 14.
- 12.4 If the outer envelope is not sealed and marked as required by paragraphs 12.1, 12.2, and 12.3, the Employer will assume no responsibility for the misplacement or premature opening of the tender. If the outer envelope discloses the tenderer’s identity, the Employer will not guarantee the anonymity of the tender submission. but such disclosure will not constitute grounds for tender rejection.

13. Deadline for submission of First Stage tenders

- 13.1 First Stage tenders must be received by the Employer at the address specified in paragraph 12.2 no later than the time and date stated in the Tender Data.
- 13.2 The Employer may extend this tender submission deadline by amending the tender documents in accordance with paragraph 8.1, in which case all rights and obligations of Employer and tenderers previously subject to the deadline will thereafter be subject to the deadline as extended.

14. Late tenders

- 14.1 Any tender received by the Employer after the tender submission deadline may be rejected and returned unopened to the tenderer.

First Stage Tender Opening and Evaluation

15. Opening of First Stage tenders by Employer

- 15.1 The Employer will open all First Stage tenders in the presence of tenderers' representatives who choose to attend, immediately after the deadline for submission. The tenderers' representatives who are present shall sign a register evidencing their attendance.
- 15.2 The names of all tenderers who submitted First Stage tenders and the presence of any alternatives will be read out.
- 15.3 The Employer will prepare minutes of the tender opening, including the information disclosed to those present in accordance with paragraph 15.2.

16. Preliminary examination of First Stage tenders

- 16.1 The Employer will examine the tenders to determine whether they are complete, whether the documents have been properly signed, and whether the tenders are generally in order. Any tenders found to be non-responsive for any reason, or tenders not meeting the minimum levels of performance or other criteria specified in the tender documents will be rejected by the Employer and not included for further consideration. The Employer will also carry out a preliminary examination of any alternative tenders submitted by tenderers.

17. Evaluation of First Stage tender

- 17.1 The Employer will carry out a detailed evaluation of the tenders which satisfy the preliminary examination pursuant to paragraph 16 above, in order to determine whether the tender proposals are substantially responsive to the requirements set forth in the tender documents. In order to reach such a determination, the Employer will examine all aspects of the tenders, including any deviations from or modifications to the main tender, based on the information supplied by the tenderers, taking into account the factors specified in the Tender Data.
- 17.2 The Employer will also review complete technical alternatives, if any, offered by tenderers pursuant to paragraph 10.3 to determine whether such alternatives may constitute an acceptable basis for a Second Stage tender to be submitted on their own merits.

18. Qualification

- 18.1 In the absence of prequalification, the Employer will ascertain to its satisfaction whether tenderers determined as having submitted responsive First Stage tenders are qualified to perform the contract satisfactorily.
- 18.2 The Employer will take into account the tenderers' financial, technical and production capabilities, past performance and the minimum qualifying criteria referred to in paragraph 3.2. The determination of tenderers' qualifications will be based upon an examination of documentary evidence submitted by the tenderers, pursuant to paragraph 10.1(c), as well as such other information as the Employer deems necessary and appropriate.
- 18.3 Following an affirmative determination the Employer may invite the tenderer to a clarification meeting in accordance with paragraph 19. A negative determination will result in rejection of the tenderer's tender.

Clarification Meeting

19. Clarification of First Stage tenders and review of tenderers' proposed deviations and alternative solutions

- 19.1 The Employer may conduct clarification meetings with each or any tenderer to clarify any aspects of its First Stage tender that require explanation.

During these meetings, the Employer may also bring to the attention of the tenderer any amendments or changes to the First Stage tender, technical or otherwise, which the Employer may require. All such amendments or changes will be listed in an Annex to the Memorandum documenting the clarification meeting entitled "Changes Required Pursuant to First Stage Evaluation" and will be formally notified to the tenderer as part of the invitation to submit a Second Stage tender.

- 19.2 The Employer will also advise the tenderer of any exceptions or deviations in the First Stage tender that are unacceptable and that are to be withdrawn in the Second Stage tender, and of such exceptions or deviations that the Employer finds acceptable.
- 19.3 The Employer will also review any alternatives offered by the tenderer, if such alternatives are permitted, and will identify the degree (if any) to which such alternatives may be incorporated in the tenderer's Second Stage tender.

20. Invitation to submit Second Stage tenders

- 20.1 At the end of the First Stage evaluation and after holding clarification meetings, the Employer will:
 - (a) issue an amendment to the tender documents modifying *inter alia* and as needed, the evaluation criteria or other sections of the Instructions to Tenderers, the Special Conditions of Contract, and the Technical Specifications resulting from the First Stage evaluation and clarification meetings, with the objective of enhancing competition without compromising essential project objectives; and
 - (b) either

- (i) invite a tenderer to submit an updated technical and commercial Second Stage tender based on the modifications (if any) listed in the “Changes Required Pursuant to First Stage Evaluation” Annex to the Memorandum of the clarification meeting held with the tenderer; or
- (ii) invite a tenderer to submit an updated technical and commercial Second Stage tender based on an alternative proposed by the tenderer in its First Stage tender with the modifications (if any) listed in the “Changes Required Pursuant to First Stage Evaluation” Annex to the Memorandum of the clarification meeting held with the tenderer; or
- (iii) notify a tenderer that its tender has been rejected as substantially non-responsive, or that the tenderer does not meet the minimum qualification requirements set forth in the tender documents.

20.2 The deadline for submission of Second Stage tenders will be specified in the invitation to submit Second Stage tenders.

Preparation of Second Stage Tenders

21. Documents comprising the Second Stage tender

21.1 A Second Stage tender submitted in accordance with these Instructions to Tenderers shall comprise the following:

- (a) A Tender Form - Second Stage (in the format indicated in Vol. I.iii) duly completed in the manner and detail indicated therein and signed by the tenderer.
- (b) Attach. 1. Price Schedules (in the format indicated in Volume I.viii) duly completed by the tenderer in the manner and detail indicated therein and following the requirements of paragraphs 22 and 23.
- (c) Attach. 2. Power of Attorney duly authorised by a notary public, confirming that the person(s) signing the tender have the authority to sign the tender and that the tender is binding upon the tenderer.
- (d) Attach. 3. Tender Security, furnished in accordance with paragraph 25.
- (e) Attach. 4. A copy of the Memorandum of the clarification meeting held with the tenderer.
- (f) Attach. 5. The updated Technical Tender, consisting of updated Technical Specifications and Drawings and any other technical revisions required for the First Stage tender as recorded in the Memorandum of the clarification meeting;
- (g) Attach. 6. Qualification of Tenderer - any changes that may have occurred between the time of submitting the First and Second Stage tenders that have any material effect on the tenderer’s qualifications to perform the contract.

- (h) Attach. 7. Conformity of Facilities - documentary evidence establishing that any additional or varied Facilities to be supplied and installed by the tenderer, as set forth in the Memorandum of the clarification meeting, are technically acceptable.

The documentary evidence of the conformity of the Facilities to the requirements of the Memorandum of the clarification meeting may be in the form of literature, drawings and other data.

- (i) Attach. 8. Subcontractors Proposed by the Tenderer - if the tenderer proposes to engage any subcontractors in addition to those named in its First Stage tender, it shall give details of the name and nationality of the proposed subcontractor, including vendors, and the part of the Facilities it proposes to subcontract to or purchase from them. Tenderers are free to list more than one subcontractor against each item of the Facilities. Quoted rates and prices will be deemed to apply whichever subcontractor is appointed, and no adjustment of the rates and prices will be permitted.

The Employer reserves the right to reject any proposed subcontractor prior to award of contract. After discussion between the Employer and the Contractor, a list of the approved subcontractors for each item of work shall be attached to the Contract Agreement.

- (j) Attach. 9. Other documentation and information which may be specified in the Tender Data.

22. Tender prices

22.1 Unless otherwise specified in the Tender Data and/or the Technical Specifications, tenderers shall quote for the entire Facilities on a “single responsibility” basis such that the total tender price covers all obligations of the Contractor pursuant to or to be reasonably inferred from the tender documents in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation and completion of the Facilities. This includes all requirements under the Contractor’s responsibilities for the testing, precommissioning and commissioning of the Facilities, and where so required by the tender documents, the obtaining of all permits, approvals and licences etc., operation, maintenance and training services and such other items and services as may be specified in the tender documents, all in accordance with the requirements of the Conditions of Contract.

22.2 Tenderers shall provide a breakdown of the prices in the manner and detail called for in the Price Schedules. Where no Price Schedules are included in the tender documents, tenderers shall present their prices in the following manner:

Separate numbered Schedules shall be used for each of the following elements. The total amount from each Schedule (1 to 4) shall be summarised in a Grand Summary (Schedule 5) giving the total tender price(s) to be entered in the Tender Form.

Schedule No. 1	Plant and Equipment (including mandatory spare parts) supplied from abroad;
Schedule No. 2	Plant and Equipment (including mandatory spare parts) supplied from within the Employer's country;
Schedule No. 3	Local Transportation
Schedule No. 4	Installation and Other Services
Schedule No. 5	Grand Summary (Schedules Nos. 1 to 4)
Schedule No. 6	Recommended Spare Parts

Tenderers shall note that the Plant and Equipment included in Schedules Nos. 1 and 2 above exclude materials used for civil, building and other construction works. All such materials shall be included and priced under Schedule No. 4, Installation and Other Services.

22.3 In the Schedules, tenderers shall give the required details and a breakdown of their prices as follows:

- (a) Plant and Equipment to be supplied from abroad (Schedule No. 1) shall be quoted on a CIP border point basis or CIP named place and other Incoterms as specified in the Tender Data, exclusive of any customs duties or other similar import taxes payable on the imported Plant and Equipment.
- (b) Plant and Equipment manufactured or fabricated within the Employer's country (Schedule No. 2) shall be quoted on an EXW basis and shall be inclusive of all costs as well as duties and sales and other taxes paid or payable on components and raw materials incorporated or to be incorporated in the Plant and Equipment.
- (c) Any customs duties or other similar import taxes paid or payable on directly imported components incorporated or to be incorporated in the Plant and Equipment manufactured or fabricated within the Employer's country.
- (d) Local transportation, insurance and other local costs incidental to delivery of the Plant and Equipment to the Site (Schedule No.3).
- (e) Installation and other services shall be quoted separately (Schedule No. 4) and shall provide for all labour, contractor's Equipment, temporary works, materials, consumables and all matters and things of whatsoever nature, including operations and maintenance services, the provision of operations and maintenance manuals, training. etc. where identified in the tender documents as necessary for the proper execution of the installation and other services, including all taxes, duties, levies and charges payable in the Employer's country as of twenty-eight (28) days prior to the deadline for submission of tenders;

- (f) Recommended spare parts shall be quoted separately (Schedule No. 6) as specified in either subparagraph (a) or (b) above, in accordance with the origin of the spare parts.

22.4 The terms EXW, CIP, etc., shall be governed by the rules prescribed in the current edition of *Incoterms*, published by the International Chamber of Commerce, Paris.

22.5 Unless specified otherwise in the Tender Data, prices quoted by the tenderer shall be fixed for the time period during which the contract is performed should it be awarded to the tenderer and shall not be subject to variation for any reason. A tender submitted with an adjustable price quotation which is not consistent with this paragraph shall be treated as non-responsive and rejected.

23. Tender currencies

23.1 Unless specified otherwise in the Tender Data, prices shall be quoted in the following currencies:

- (a) For Plant and Equipment covered under subparagraph 22.3(a) to be supplied from abroad, the prices shall be quoted in any convertible currency or currencies including euro or a combination thereof.⁵
- (b) For Plant and Equipment covered under subparagraph 22.3(b) to be supplied from within the Employer's country, the prices shall be quoted in the currency of the Employer's country. However, the costs of directly imported components incorporated or to be incorporated in the Plant and Equipment may be quoted in foreign currency and in accordance with the provisions of subparagraph 23.1(a).
- (c) Local transportation, insurance and other local costs incidental to delivery of the Plant and Equipment covered under subparagraph 22.3(d) shall be quoted in either foreign and/or local currency, depending upon the currency in which the costs are to be incurred and in accordance with the provisions of subparagraphs 23.1(a) and (b).
- (d) Installation and other services covered under subparagraph 23.3(e) shall be quoted in either foreign and/or local currency, depending upon the currency in which the costs are to be incurred and in accordance with the provisions of subparagraphs 23.1(a) and (b).

24. Tender validity period

24.1 Second Stage tenders shall remain valid for the period specified in the Tender Data, after the closing date for the receipt of Second Stage tenders prescribed by the Employer, pursuant to paragraph 28.1. A tender valid for a shorter period shall be rejected by the Employer as non-responsive.

24.2 In exceptional circumstances, the Employer may solicit the tenderer's consent to an extension of the tender validity period. The request and responses thereto shall be made in writing or by fax. If a tenderer agrees to extend the period of validity, the

⁵ Amended as part of Corrigendum No. 2, dated 17 February 1999

Tender Security shall also be extended accordingly. A tenderer may refuse the request without forfeiting its Tender Security. A tenderer granting the request will not be required nor permitted to modify its tender, except as provided in paragraph 24.3.

- 24.3 Where the tender is for a fixed price contract (not subject to price adjustment), if the tender validity period is so extended, the amounts payable in both local and foreign currency to the tenderer selected for award shall be increased by applying the factors specified in the Tender Data to both the local and the foreign currency component of the payments, respectively, for the period of delay beyond the expiration of the initial tender validity up to the time of notification of award. Tender evaluation will be based on the tender prices without considering this adjustment.

25. Tender Security

- 25.1 The tenderer shall furnish as part of its tender, a Tender Security in the amount stipulated in the Tender Data, in the currency of the tender, or in the equivalent amount in a freely convertible currency.
- 25.2 The Tender Security shall, at the tenderer's option, be in the form of a certified cheque, letter of credit or a bank guarantee from a reputable bank located in the Employer's country or abroad. The format of the bank guarantee shall be consistent with the form of Tender Security included in the tender documents; other formats may be permitted, subject to prior approval by the Employer. Tender Security shall remain valid for a period of twenty-eight (28) days following the last day of the original tender validity period, and following the last day of any extension of the tender validity period pursuant to paragraph 24.2.
- 25.3 Any tender not accompanied by an acceptable Tender Security shall be treated as non-responsive and rejected. The Tender Security of a joint venture must be in the name of all the member firms in the joint venture or consortium submitting the tender.
- 25.4 The Tender Security of unsuccessful tenderers will be returned as promptly as possible but not later than twenty-eight (28) days after the last day of the tender validity period.
- 25.5 The Tender Security of successful tenderers will be returned when the tenderer has signed the Contract Agreement, and has furnished the required Performance Security.
- 25.6 The Tender Security may be forfeited:
- (a) if a tenderer
 - (i) withdraws its tender during the tender validity period;
 - (ii) refuses to accept the corrections of computational errors in its tender price pursuant to paragraph 34.2; or
 - (iii) invalidates its tender pursuant to paragraph 32.2;
 - (b) in the case of a successful tenderer, if the tenderer fails:
 - (i) to sign the contract in accordance with paragraph 42; or

- (ii) to furnish Performance Security in accordance with paragraph 43.

26. Format and signing of tender

- 26.1 The tenderer shall prepare an original and the number of copies/sets of the tender as specified in the Tender Data, clearly marking each one as “SECOND STAGE TENDER - ORIGINAL”, “SECOND STAGE TENDER - COPY NO.1”, “SECOND STAGE TENDER - COPY NO.2”, etc. as appropriate. In the event of any discrepancy between the original and any copy, the original shall govern.
- 26.2 The original and all copies of the tender, each consisting of the documents listed in paragraph 21.1, shall be typed or written in indelible ink and shall be signed by the tenderer or person(s) duly authorised to act on behalf of the tenderer. The latter authorisation shall be evidenced by written power of attorney accompanying the tender and submitted pursuant to subparagraph 21.1(c). All pages of the tender, except for unamended printed literature, shall be initialled by the person or persons signing the tender.
- 26.3 Any interlineation, erasures or overwriting only shall be valid if initialled by the person or persons signing the tender.

Submission of Second Stage Tenders

27. Sealing and marking of Second Stage tenders

- 27.1 The tenderers shall place the original and each copy of the tender in separate envelopes, duly marking the envelopes as “SECOND STAGE TENDER - ORIGINAL” and “SECOND STAGE TENDER - COPIES”. These envelopes shall be placed in an outer envelope.
- 27.2 The inner and outer envelopes shall be sealed and:
- (a) addressed to the Employer with the address given in the Tender Data; and
 - (b) bear the identification specified in the Tender Data .
- 27.3 The inner envelopes shall also bear the name and address of the tenderer so that the tender can be returned unopened in case it is declared “late”.
- 27.4 If the outer envelope is not sealed and marked as required by paragraph 27 above, the Employer will assume no responsibility for the tender’s misplacement or premature opening of the tender. If the outer envelope discloses the tenderer’s identity, the Employer will not guarantee the anonymity of the tender submission, but such disclosure will not constitute grounds for rejection of the tender.

28. Deadline for submission of tenders

- 28.1 Second Stage tenders must be received by the Employer at the address specified in

paragraph 27.2 no later than the time and date stated in the Letter of Invitation to submit a Second Stage tender.

28.2 The Employer may extend this tender submission deadline by amending the tender documents in accordance with paragraph 8, in which case all rights and obligations of the Employer and tenderers previously subject to the deadline will thereafter be subject to the deadline as extended.

29. Late tenders

29.1 Any tender received by the Employer after the tender submission deadline will be rejected and returned unopened to the tenderer.

30. Modification and withdrawal of tenders

30.1 The tenderer may modify or withdraw its Second Stage tender after submission, provided that written notice of the modification or withdrawal is received by the Employer prior to the tender submission deadline.

30.2 Modifications of a tender shall be prepared, sealed, marked and dispatched as follows:

(a) The tenderer shall provide an original and the number of copies specified in paragraph 26.1 of any modifications to its tender, clearly identified as such, in two inner envelopes, duly marking the envelopes as “SECOND STAGE TENDER MODIFICATIONS - ORIGINAL” and “SECOND STAGE TENDER MODIFICATIONS - COPIES”. The envelopes shall be sealed in an outer envelope, duly marking the envelope as “SECOND STAGE TENDER MODIFICATIONS”.

(b) Other provisions concerning the numbers, marking and dispatch of tender modifications shall be in accordance with paragraph 27.

30.3 A tenderer wishing to withdraw its tender shall notify the Employer in writing prior to the tender submission deadline. A withdrawal notice may also be sent by fax, but it must be followed by a signed confirmation copy, postmarked not later than the tender submission deadline. The notice of withdrawal shall:

(a) be addressed to the Employer at the address specified in subparagraph 27.2(a); and

(b) bear the contract name and the words “SECOND STAGE TENDER WITHDRAWAL NOTICE”. Tender withdrawal notices received after the tender submission deadline will be ignored, and the submitted tender will be deemed to be a validly submitted tender.

30.4 No Second Stage tender may be modified or withdrawn in the interval between the tender submission deadline and the expiration of the tender validity period specified in paragraph 24.1. Withdrawal of a Second Stage tender during this interval may result in the tenderer’s forfeiture of its Tender Security, pursuant to paragraph 25.6.

Second Stage Tender Opening and Evaluation

31. Opening of Second Stage tenders by Employer

- 31.1 The Employer will open the Second Stage tenders in the presence of the tenderers' representatives who choose to attend the opening, at the time, on the date and at the location specified in the Letter of Invitation to submit Second Stage tenders. The tenderers' representatives who are present shall sign a register evidencing their attendance.
- 31.2 Tenderers' names, tender modifications or withdrawals, tender prices, discounts, alternative tender prices (if any), the presence or absence of the required Tender Security, and other details as the Employer, at its discretion, may consider appropriate, will be announced at tender opening. No tender will be rejected at tender opening except for late tenders, which will be returned unopened to the tenderer, pursuant to paragraph 29.
- 31.3 Tender discounts or modifications furnished pursuant to paragraph 30 that are not opened, read out and recorded at tender opening will not be considered for tender evaluation. Withdrawn tenders will be returned unopened to the tenderers.
- 31.4 The Employer will prepare minutes of the tender opening, including the information disclosed to those present in accordance with paragraph 31.2.

32. Contacting the Employer

- 32.1 Subject to paragraph 33.1, no tenderer shall contact the Employer on any matter relating to its tender, from the time of Second Stage tender opening to the time the contract is awarded.
- 32.2 Any effort by a tenderer to influence the Employer's tender evaluation or award decisions, including the offering or giving of bribes, gifts or other inducement, may result in the invalidation of its tender and the forfeiture of its Tender Security, pursuant to paragraph 25.6.

33. Clarification of tenders

- 33.1 To assist in the examination, evaluation and comparison of tenders the Employer may, at its discretion, ask a tenderer for a clarification of its tender. Such clarification may be requested at any stage up to the award of the contract. Requests for clarification and responses thereto shall be in writing or by fax, and no change in the price or substance of the tender shall be sought, offered or permitted except as required to confirm the correction of computational errors determined by the Employer in the examination of the tenders in accordance with paragraph 34.2.

34. Preliminary examination of Second Stage tenders

- 34.1 The Employer will examine the Second Stage tenders to determine whether they are complete, whether any computational errors have been made, whether required Tender Securities have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.

- 34.2 Computational errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, or between subtotals and the total price, the unit or subtotal price shall prevail and the total price shall be corrected. If there is a discrepancy between words and figures, the amount in words shall prevail. If the tenderer does not accept the correction of errors, its tender will be rejected and its tender security may be forfeited.
- 34.3 The Employer may waive any minor informality, non-conformity or irregularity in a tender that does not constitute a material deviation, and that does not prejudice or affect the relative ranking of any tenderer as a result of the detailed evaluation pursuant to paragraphs 36 and 37.
- 34.4 Prior to the detailed evaluation pursuant to paragraphs 36 and 37 the Employer will determine whether each tender is of acceptable quality, is complete, is substantially responsive to the tender documents and has properly incorporated all the modifications listed in the “Changes Required Pursuant to First Stage Evaluation”. For purposes of this determination, a substantially responsive tender is one that conforms to all terms and conditions of the tender documents and the “Changes Required Pursuant to First Stage Evaluation” without material deviations, objections or reservations. A material deviation, objection, or reservation is one (i) that affects in any substantial way the scope, quality or performance of the contract; (ii) that limits in any substantial way, inconsistent with the tender documents, the Employer’s rights or the successful tenderer’s obligations under the contract; or (iii) whose rectification would unfairly affect the competitive position of other tenderers who are presenting substantially responsive tenders.
- 34.5 A Second Stage tender containing technical or commercial deviations or alternatives not submitted as part of the First Stage tender will be treated as non-responsive. The Employer’s determination of the responsiveness of a tender is to be based on the contents of the tender itself without recourse to extrinsic evidence.
- 34.6 If a Second Stage tender is not substantially responsive, it will be rejected by the Employer and may not subsequently be rendered responsive by the tenderer by correction or withdrawal of the non-conformity.

35. Conversion to single currency

- 35.1 To facilitate evaluation and comparison of tenders, the Employer will convert all tender prices expressed in various currencies into a single common currency as specified in the Tender Data.

36. Technical evaluation of Second Stage tender

- 36.1 The Employer will carry out a detailed technical evaluation of the Second Stage tenders not previously rejected as being substantially non-responsive in order to determine whether technical modifications to the base or alternative tenders required pursuant to the “Changes Required Pursuant to First Stage Evaluation”, referred to in paragraph 20.1, have been properly addressed and are substantially responsive to the requirements set forth in the tender documents.

37. Commercial evaluation of Second Stage tender

- 37.1 Comparison between tenders shall be based on the EXW price of Plant and Equipment to be supplied from within the Employer's country, such price to exclude customs duties and other import taxes paid or payable on directly imported components incorporated or to be incorporated in such Plant and Equipment, and the CIP (border point or named place of destination) price of Plant and Equipment to be supplied from outside the Employer's country; plus the cost of local transportation, installation and other services to be provided under the contract. The Employer's evaluation will also include the costs resulting from application of the evaluation factors pursuant to paragraph 37.2.
- 37.2 The Employer's evaluation of a tender will take into account, in addition to the tender prices indicated in the Price Schedules, additional factors specified in the Tender Data.
- 37.3 Any adjustments in price which result from application of the above evaluation factors shall be added, for the purposes of comparative evaluation only, to arrive at the "Evaluated Tender Price". Tender prices quoted by tenderers shall remain unaltered.

38. Changes in qualification status

- 38.1 Prior to proceeding with the award of contract to the tenderer determined as having submitted the lowest evaluated and responsive Second Stage tender, the Employer will determine to its satisfaction that the tenderer is still qualified to satisfactorily perform the contract. In particular, the Employer shall consider the tenderer's contract work in hand, future commitments, current litigations or other circumstances that have arisen or intervened since the submission of the First and Second Stage tenders that would change the tenderer's qualifications.
- 38.2 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the tenderer's tender, in which event the Employer will proceed to the next lowest evaluated tender to make a similar determination of that tenderer's capabilities to perform satisfactorily.
- 38.3 The capabilities of the vendors and subcontractors proposed to be used by the lowest evaluated tenderer will also be evaluated. Their participation should be confirmed by a letter of intent or similar documentary evidence.. Should a vendor or subcontractor be determined to be unacceptable, the tenderer will not be rejected, but will be required to substitute an acceptable vendor or subcontractor without any change to the tender price.

39. Employer's right to accept any tender and to reject any or all tenders

- 39.1 The Employer reserves the right to accept or reject any First or Second Stage tender, and to annul the tender process and reject all tenders at any time prior to award of contract, without incurring any liability to any tenderer or tenderers or any obligation to inform any tenderer or tenderers of the grounds for the Employer's action.

40. Award criteria

40.1 Subject to paragraph 39, the Employer will award the contract to the successful tenderer whose Second Stage tender has been determined to be substantially responsive and has been determined as the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

41. Notification of award

41.1 Prior to the expiration of the Second Stage tender validity period, the Employer will notify the successful tenderer in writing by registered letter or by fax, to be confirmed in writing by registered letter, that its Second Stage tender has been accepted. The notification of award will constitute the formation of the contract.

41.2 As soon as the successful tenderer has furnished the Performance Security pursuant to paragraph 43, the Employer will promptly notify all unsuccessful tenderers and will discharge their Tender Securities, pursuant to paragraph 25.4.

42. Signing of Contract Agreement

42.1 At the same time as the Employer notifies the successful tenderer that its Second Stage tender has been accepted, the Employer will send the tenderer the Contract Agreement provided in the tender documents, incorporating all terms and conditions agreed between the parties.

42.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful tenderer shall sign and date the Contract Agreement and return it to the Employer.

43. Performance Security

43.1 Within twenty-eight (28) days of receipt of the notification of award, the successful tenderer shall furnish the Performance Security in accordance with the Conditions of Contract in the form provided in Volume II.iv of the tender documents or in another form acceptable to the Employer.

43.2 Failure of the successful tenderer to comply with the requirements of paragraphs. 42 or 43 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security, in which event the Employer may make the award to the next lowest evaluated tenderer or invite new tenders.

44. Alternative dispute resolution procedure

44.1 The Employer proposes that the Adjudicator provided for in the Conditions of Contract shall be appointed in the manner stipulated in the Tender Data.

45. Corrupt, Fraudulent, Coercive or Collusive Practices ⁶

45.1 The Bank requires that clients (including beneficiaries of Bank loans), as well as tenderers, suppliers, contractors, concessionaires and consultants under Bank-financed

contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Bank

(a) defines, for the purposes of this provision, the terms set forth below as follows:

(i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.

(ii) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

(iii) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

(iv) "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;

(b) will reject a proposal for award if it determines that a tenderer recommended for award has engaged in corrupt, fraudulent, coercive or collusive practices in competing for the contract in question;

(c) will declare a firm ineligible indefinitely or for a stated period of time, to be awarded a Bank-financed contract if it at any time determines that:

(i) the firm has engaged in corrupt, fraudulent, coercive or collusive practices in competing for, or in executing, a Bank-financed contract; or

(ii) the firm has been found by a judicial process or other official inquiry to engage in corrupt, fraudulent, coercive or collusive practices.

45.2 Furthermore, tenderers shall be aware of the provisions stated in Sub-Clauses 9.6 and 42.2.1 (c) of the General Conditions of Contract.

VOLUME I.ii

TENDER DATA

Volume I.ii is intended to assist the Employer in providing the specified information in relation to corresponding clauses in the Instructions to Tenderers included in Volume I.i, and must be prepared for each specified procurement.

The Employer should set forth in the Tender Data information and requirements specific to the circumstances of the Employer, the processing of the procurement, the applicable rules regarding tender price and currency, and the tender evaluation criteria that will apply to the tenders. In preparing Volume I.ii, the following aspects should be checked:

- (a) Information that elaborates and complements provisions of Volume I.i must be incorporated.*
- (b) Amendments and/or supplements, if any, to provisions of Volume I.i as required by the circumstances of the specific procurement must also be incorporated.*

The following tender-specific data for the Facilities to be procured amend and/or supplement the provisions in the Instructions to Tenderers. Whenever there is a conflict, the provisions herein shall prevail over those in the Instructions to Tenderers.

References to paragraphs in the following instructions for completing the Tender Data refer to such paragraphs in the Instructions to Tenderers.

Instructions to Tenderers -
para. ref.

para. 1.1: Name of Employer [specify the name of the Employer]

para. 3.1: Eligibility [specify any restrictions on eligibility consistent with the Bank's Procurement Policies and Rules (if applicable)]

The Bank permits firms and individuals from all countries to offer goods, works and services for Bank-financed projects regardless of whether the country is a member of the Bank. Any conditions for participation shall be limited to those that are essential to ensure the firm's capability to fulfil the contract in question. Employers will not exclude a firm from open competition for a contract for reasons unrelated to its capability to perform the contract in question unless, as a matter of law or official regulation, the Employer's country prohibits commercial relations with the firm's country.

Consistent with international law, the proceeds of the Bank's loans, equity investment or guarantees should not be used for payment to persons or entities or for any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. Persons or entities, or suppliers offering goods and services, covered by such prohibition should therefore not be eligible for the award of Bank-financed contracts.

para. 3.2: **Qualifying requirement** [specify minimum qualifying criteria]

Qualification requirements for tenderers, including members of joint ventures, subcontractors or vendors:

Minimum acceptable levels with regard to tenderers' experience in supplying and installing Facilities with comparable technical parameters, their manufacturing and installation capacity, their financial viability and other factors. These should be the same criteria used in the prequalification, if tenderers were prequalified.

para. 5.1: **Pre-tender meeting or site visit** [specify date and location of pre-tender meeting or site visit, if any]

para. 6.1: **Other documents comprising the tender documents** [specify all other documentation or drawings which are included in the tender documents, if applicable]

para. 7.1: **Employer's mailing address** [specify address of Employer; contact name, telephone, telex and facsimile numbers]

para. 9.1: **Language of the tender** [specify language of tender]

Tender documentation, including all published procurement notices, shall be prepared in one of the Bank's working languages, which shall be specified in the tender documents as the governing language. In the interest of open competition as well as economy and efficiency, the Bank may require that tender documentation also be provided in another working language of the Bank in which case this would be the governing language. In addition, at the client's option further sets of the tender documentation may be prepared in the local language.

FIRST STAGE TENDER

para. 10.1: **Documentary evidence to be submitted**

para. 10.1(c): **Qualification of tenderer** [specify documents to be submitted]

para. 10.1(d): **Conformity of Facilities** [specify documents to be submitted]

EXAMPLE:

The documentary evidence of the conformity of the facilities to the tender documents may be in the form of literature, drawings and other data, and shall contain:

- (i) a detailed description of the essential technical and performance characteristics of the Facilities;
- (ii) a list giving full particulars, including available sources, of all spare parts, special tools, etc., necessary for the proper and continuing functioning of the Facilities for a period of _____ years following Completion of the Facilities in accordance with the provisions of the contract; and

Specify spares required for operation during the number of years following Completion.

- (iii) commentary on the Employer's Technical Specifications and adequate evidence demonstrating the substantial responsiveness of the Facilities to those specifications. Tenderers shall note that the standards for skill, materials and Equipment designated by the Employer in the tender documents are intended to be descriptive (establishing standards of quality and performance) only and not restrictive. A tenderer may substitute alternative standards, brand names and/or catalogue numbers in its tender, provided that it demonstrates to the Employer's satisfaction that the substitutions are substantial, equivalent or superior to those designated in the Technical Specifications (Volume III).

para. 10.1(f): Deviations

EXAMPLE:

Tenderers shall provide separately details of deviations, objections or reservations, other than alternatives, from the requirements of the tender documents that they would like to be considered by the Employer during an eventual clarification meeting. The Employer will consider all such deviations. Those that it accepts will be incorporated into the Annex of the Memorandum referred to in paragraph 19.1. Those rejected must be formally withdrawn by that tenderer in its Second Stage tender, failing which the tender will be rejected.

para. 10.1(h): Other documentation

[specify any other documentation and information to be submitted by tenderers, if applicable]

para. 10.3: Technical alternatives

[specify whether or not alternative tenders are accepted]

EXAMPLE:

Tenderers may submit alternative tenders in addition to the requested tenders, provided that they include complete technical justifications and meet basic performance and technical criteria. Any alternative tenders that the Employer considers technically acceptable at the end of the First Stage evaluation will be treated as base tenders in the Second Stage evaluation.

para. 11.1: Number of copies of tender

[specify number of copies of tender]

para. 12.2(a): Address of Employer

[specify address of Employer]

para. 12.2(b): Tender identification

[specify identification to be recorded on the tender envelopes.]

EXAMPLE:

The tenderer shall record on the tender envelope the Employer's name and address, the tender identification and the words "DO NOT OPEN BEFORE..." *[the date and time prescribed for the opening of tenders in paragraph 15.1.]*

para. 13.1: Deadline for submission of First Stage tenders

[specify time and date of tender submission]

para. 17.1: Factors in evaluation of First Stage tenders

[specify evaluation criteria which will be used in the evaluation of First Stage tenders]

EXAMPLE:

The Employer's evaluation of a First Stage tender will take into account:

- (a) overall completeness and compliance with the Technical Specifications and Drawings; the technical merits of alternatives offered and deviations from the Technical Specifications; suitability of the Facilities offered in respect of the environmental and climactic conditions

prevailing at the site; quality, function and operation of any process control concept included in the tender:

- (b) achievement by the Facilities of specified performance criteria;
- (c) compliance with any time schedules specified in the tender documents and any alternative time schedules offered by tenderers, as evidenced by the milestone schedule provided in the tender;
- (d) type, quantity and long-term availability of mandatory and recommended spare parts and maintenance services;
- (e) any other relevant technical factors deemed necessary or prudent to be considered;
- (f) any deviations to the commercial and contractual provisions stipulated in the tender documents. A deviation taken to Governing Law, Taxes and Duties), Defect Liability), Functional Guarantee, Patent Indemnity or Limitation of Liability would be unacceptable and would have to be withdrawn;
- (g) alternative terms of payment to those specified in the tender documents;
- (h) the projected operating and maintenance requirements during the life of the facilities;
- (i) the performance and productivity of the facilities offered;
- (j) the extent of the need for training associated with different tenders; and
- (k) the extent of the work, services, facilities, etc. needed from the Employer or third parties in connection with each tender.

SECOND STAGE TENDER

para. 21.1(j): Other documentation *[specify other documentation and information which should be submitted by tenderers, if applicable]*

para. 22.1: Tender prices *[specify whether a lump sum or unit price contract]*

para. 22.5: Tender prices *[specify whether the price shall be fixed, or the price shall be adjustable]*

EXAMPLE:

Price adjustment. Prices quoted by the tenderer shall be subject to adjustment during the performance of the contract to reflect changes in the cost of labour, material, transport and Contractor's Equipment, in accordance with the procedures specified in the Appendix to the Contract Agreement. A tender submitted with a fixed price quotation will not be rejected, but the price adjustment will be treated as zero. The price adjustment provision will not be taken into consideration in tender evaluation. Tenderers are required to indicate the source of labour and material indices in the said Appendix.

para. 23.1: Tender currencies *[specify currencies if different from Invitation to Tender]*

If the tenderer is permitted to use foreign currencies for pricing and payment for Plant, Equipment and services from within the Employer's country, state the following: "Paragraph 23.1(b) is not applicable, and paragraph 23.1(a) applies to all Plant, Equipment and services."

para. 24.1: Tender validity period *[specify the tender validity period of the Second Stage tender. This shall also be mentioned in the*

Letter of Invitation to submit Second Stage tenders]

The period should be sufficient enough to permit the completion of evaluation and comparison of tenders, the review of the recommended selection with the Bank (if so required) and the obtaining of all necessary approvals and notifications of award. Normally, the validity period should be 120 days. A realistic period should be specified in order to avoid the need for extensions.

para. 24.3: Extension of tender validity period [specify the extension of the tender validity period of the Second Stage tender]

The following shall be used for fixed price contracts.

EXAMPLE:

The adjustment of the tender price in accordance with paragraph 26.3 shall be from the original expiry date of the tender validity, pro-rata up to the date of award of the contract and shall be calculated on the basis of an annual increase for foreign costs of (___) percent and an annual increase for local costs of (___) percent.

The value of the foreign cost factor should be based on the expected annual increase in international prices. The value of the local cost factor, if denominated in the local currency, should be based on the projected inflation in the Employer's country for the period in question. If local costs are denominated in a hard currency, then the expected annual increase in international prices should be used. Alternatively the local cost component could be converted to a currency widely used in international trade on the date of notification of award and adjusted using the same index as the foreign cost component.

para. 25.1: Tender Security [specify amount of Tender Security]

This amount should be the same as that quoted in the Invitation for Tenders. To avoid disclosure of tenderers' prices to the financial institution issuing the security, a fixed sum, instead of a percentage of the tender price, should be specified. The sum should range from the equivalent of 1 percent of the estimated cost of the Facilities, for contracts with an estimated value of over US\$ 100 million, to 3 percent of the estimated cost, for small contracts. Alternatively, if the Employer wishes to specify a percentage of the tender price, the percentage should be indicated as a "minimum of ___ percent", to enable tenderers to provide Tender Security in excess of the minimum and to thus conceal their prices.

para. 27.1: Number of copies of tender [specify number of copies of the tender]

para. 27.2(a): Address of Employer [specify address of Employer]

para. 27.2(b): Tender identification [specify identification to be recorded on the tender envelopes]

EXAMPLE:

The tenderer shall enter the Employer's name and address, the tender identification and the words "DO NOT OPEN BEFORE..." [the date and time prescribed for the opening of tenders]

para. 35.1: Conversion to common currency [specify currency, source and date]

The Employer shall state the currency to which prices will be converted. Conversion shall be at the selling exchange rate published by the Central Bank or any other commercial bank in the Employer's country. The Employer must enter the name of the bank, and the date for which the exchange rate shall be used. That date must be no earlier than twenty-eight (28) days prior to the deadline specified for the submission of tenders and no later than the expiry of the initial validity period specified in paragraph 24. It is customary to use the deadline specified for the submission of tenders.

EXAMPLE:

To facilitate evaluation and comparison, the Employer will convert all tender prices into [*specify currency*] at the selling exchange rate established by the [*the Central Bank or any other commercial bank in the Employer's country*] for similar transactions on [*insert a specific date not earlier than twenty-eight (28) days prior to tender opening and not later than the expiry of the initial tender validity period specified in paragraph 24*].

para. 37.2: Tender evaluation factors [specify evaluation criteria in addition to the tender price which will be used in the commercial evaluation of tenders]

The following paragraphs are optional and should only be used if factors other than tender prices are to be considered in the evaluation. The examples illustrated here should only be used where appropriate and the others should be deleted. Additional factors may be necessary for certain very specific tenders. Evaluation factors should meet the following criteria:

- *The factor could have an impact on contract performance (including the rights and obligations of the Employer and the Contractor in terms of contract time, quality (including technical performance) and risk.*
- *The impact on performance resulting from factor variations can be reasonably quantified in a reliable, fair and objective manner.*

EXAMPLE:

The Employer's evaluation of a tender will take into account, in addition to the tender prices, the following costs and factors that will be added to each tenderer's prices in the evaluation, using pricing information available to the Employer, in the manner and to the extent indicated below:

- (a) the cost of all quantifiable deviations and omissions from the contractual and commercial conditions and the Technical Specifications, as identified by the tenderer in its tender and other deviations and omissions not so identified;
- (b) compliance with the time schedules called for in Appendix 4 to the Contract Agreement and evidence as needed in a milestone schedule provided in the tender;
- (c) the projected operating and maintenance costs during the life of the Facilities;
- (d) the guaranteed performance and productivity of the Facilities offered, and
- (e) the extra cost of work, services, facilities, etc. required to be provided by the Employer or third parties.

Pursuant to the above, the following evaluation methods will be followed:

EXAMPLE:

- (a) Contractual and commercial deviations:

The evaluation shall be based on the evaluated cost for fulfilling the contract in compliance with all commercial, contractual and technical obligations under this tender document. In arriving at the evaluated cost, the price associated with non-material deviations proposed by the tenderer will be used, if applicable. If such a price is not given, the Employer will make its own assessment of the cost of such a deviation for the purpose of ensuring comparison of tenders.

EXAMPLE:

- (b) (i) Time schedule: [specify completion date for entire Facilities or for parts or sections of the Facilities]
- (ii) Adjustment rate in the event of delay: [specify]

Two (2) percent per month is a reasonable figure. Alternatively, the rate may be a fixed amount per month of delay related to the loss of benefits to the Employer. The percentage or amount of liquidated damages specified in the Conditions of Contract should be equal to or higher than the amount specified here.

EXAMPLE:

- (c) Operating and maintenance costs:

Life cycle cost:

Since the operating and maintenance costs of the Facilities being procured form a major part of the life cycle cost of the Facilities, these costs will be evaluated according to the principles set forth below, including the cost of spare parts for the initial period of operation stated below and based on prices furnished by each tenderer in the relevant Price Schedules, as well as based on past experience with such Facilities. Such costs shall be added to the tender price for evaluation.

Factors for calculation of the life cycle:

- (i) number of years for life cycle which should not normally exceed the usual period before a major overhaul of the Facilities;
- (ii) operating costs (e.g. fuel and/or other input, unit cost, annual and total operational requirements);
- (iii) maintenance costs, including the cost of spare parts for the initial period of operation, to be specified by the tenderer;
- (iv) rate, in percent, to be used to discount to present value all annual future costs calculated under (ii) and (iii) above for the period specified in (i) or reference to the methodology specified in the Technical Specifications or elsewhere in the tender documents;
- (v) The price of recommended spare parts quoted in Price Schedule No. 6 shall not be considered for evaluation.

EXAMPLE:

(d) Performance and productivity of the Facilities:

The norm used should either be specified in the Technical Specifications or should be the value committed in the responsive tender with the best guaranteed performance or efficiency. An equivalent or higher adjustment factor shall be specified in the Special Conditions of Contract as liquidated damages under performance guarantee.

- (i) Tenderers shall state the guaranteed performance or efficiency in response to the Technical Specifications. So as to be considered responsive, Plant and Equipment offered shall have a minimum performance specified in the Technical Specifications. Tenders offering Plant and Equipment with a performance of less than the specified minimum performance will be rejected.
- (ii) For the purposes of evaluation, for each percentage point in performance or efficiency below the norm specified in the Technical Specifications but above the minimum performance also specified there, an adjustment of [*specify amount*] will be added to the tender price.

EXAMPLE:

(e) Works, services, facilities, etc. to be provided by the Employer:

Where tenders include for the undertaking of work or the provision of services or facilities by the Employer in excess of the provisions allowed for in the tender documents, the Employer shall assess the costs of such additional work, services and/or facilities during the duration of the contract.

para. 44.1: Appointment of Adjudicator [specify procedure for appointment of Adjudicator, proposed by the Employer]

EXAMPLE:

The Employer proposes that [*name of adjudicator*] be appointed an Adjudicator under the Contract, at an hourly fee of [*specify hourly fee*]. A résumé of the above person is attached to the Tender Data, as well as a description of the expenses that would be reimbursable. If a tenderer does not accept the Adjudicator proposed by the Employer, it should so state in its tender and make a counter proposal of an Adjudicator and an hourly fee. If, on the day the Contract Agreement is signed, the Employer and the Contractor have not agreed on the appointment of an Adjudicator, the Adjudicator shall be designated by [*specify the Appointing Authority*] and confirmed in the Special Conditions of Contract at the request of either party. This Adjudicator shall be deemed to be jointly appointed by the Employer and the Contractor.

OR

EXAMPLE:

The Employer proposes that the Adjudicator shall be designated by [*specify the Appointing Authority*]. The Adjudicator so designated shall be deemed to be jointly appointed by the Employer and the Contractor.

The Appointing Authority should be an impartial international technical organisation recognised in the relevant industry

VOLUME I.iii

EXAMPLE:

TENDER FORM - TWO STAGE TENDER - FIRST STAGE TENDER

Date:

Name of Contract:

To: (Name and Address of Employer)

Having examined the tender documents, including Addenda Nos. (*insert numbers*), the receipt of which is hereby acknowledged, we, the undersigned, offer to design, manufacture, test, deliver, install and precommission the Facilities under the above-named Contract in full conformity with the said tender documents.

We further undertake, if invited to do so by you and at our own cost, to attend a clarification meeting at a place of your choice for the purposes of reviewing our First Stage Tender and duly noting all amendments and additions thereto, and omissions therefrom which you may require.

We further undertake, upon receiving your written instruction, to proceed with the preparation of our Second Stage Tender, to update our First Stage Tender in accordance with the requirements as will be contained in the Memorandum of the clarification meeting and to complete our commercial tender for the Facilities in accordance with our updated technical tender.

We agree to abide by this First Stage Tender, which consists of this letter and Attachments 1 through ____ hereto, for a period of (*number*) days from the date fixed for submission of tenders as stipulated in the tender documents, and it, together with the above written undertakings, shall remain binding upon us, provided that we are invited to attend a clarification meeting with you before the expiration of that period.

Dated this day of 19

.....
(*signature*)

In the capacity of
.....
(*position*)

Duly authorised to sign this Tender for and on behalf of
.....
(*name of tenderer*)

VOLUME I.iv

EXAMPLE:

TENDER FORM - TWO STAGE TENDER - SECOND STAGE TENDER

Date:

Name of Contract:

To: (Name and Address of Employer)

Having examined the tender documents, including Addenda Nos. (insert numbers), and your requirements incorporated in the Memorandum of the clarification meeting held between us on (insert date) , we, the undersigned, offer to design, manufacture, test, deliver, install, precommission and commission the Facilities under the above-named Contract in full conformity with the said tender documents and the said Memorandum for the sum of:

.....
(amount of foreign currency in words)

..... (.....)
(amount in figures)

and

.....
(amount of local currency in words)

..... (.....)
(amount in figures)

or such other sums as may be determined in accordance with the terms and conditions of the Contract. The above amounts are in accordance with the price schedules attached herewith and are made part of this tender.

We undertake, if our tender is accepted, to commence the Facilities, and to achieve Completion within the times stated in the tender documents.

If our tender is accepted, we undertake to provide an advance payment security and a Performance Security in the form and amounts, and within the times specified in the tender documents.

We agree to abide by this tender for a period of (number) days from the date set for submission of the Second Stage Tenders as stipulated in the letter of invitation to submit a Second Stage Tender, and it shall remain binding upon us and may be accepted by you at any time prior to the expiration of that period.

Until a formal Contract Agreement is prepared and executed between us, this tender, together with your written acceptance thereof and your notification of award, shall constitute a binding contract between us.

We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this day of 19

.....
(signature)

In the capacity of

.....
(position)

Duly authorised to sign this tender for and on behalf of

.....
(name of tenderer)

VOLUME I.v

EXAMPLE:

TENDER SECURITY FORM

Date:

Name of Contract:

To: (Name and Address of Employer)

WHEREAS (name of tenderer) (hereinafter called "the tenderer") has submitted its Tender dated (date of tender) for the performance of the above-named Contract (hereinafter called "the Tender")

KNOW ALL PERSONS by these present that WE (name of bank) of (address of bank) (hereinafter called "the Bank"), are bound unto (name of Employer) (hereinafter called "the Employer") in the sum of:

.....

for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors and assigns by these present.

Signed on behalf of the said Bank this day of 19

THE CONDITIONS of this obligation are:

- 1. If the tenderer withdraws its Tender during the period of tender validity specified by the tenderer in the Tender Form, or
- 2. If the tenderer, having been notified of the acceptance of its Tender by the Employer during the period of tender validity:
 - (a) fails or refuses to sign the Form of Contract Agreement when required, or
 - (b) fails or refuses to issue the Performance Security in accordance with the tender documents,

WE undertake to pay to the Employer up to the above amount upon receipt of its first written demand, without the Employer having to substantiate its demand, provided that in its demand the Employer will note that the amount claimed by it is due to it, owing to the occurrence of one or more of the above-named CONDITIONS, and specifying the occurred condition or conditions.

This guarantee will remain in full force up to and including *(the date twenty-eight (28) days after the period of tender validity)*, and any demand in respect thereof must reach the Bank not later than the above date.

For and on behalf of the Bank

.....
(signature)

.....
(signature)

.....
(title)

.....
(title)

VOLUME I.vi

EXAMPLE:

MANUFACTURER'S AUTHORISATION FORM

[date]

TO: [Name of the Employer]

WHEREAS [name of the Manufacturer] who are established and reputable manufacturers of [name and/or description of the goods] having factories at [address of factory] do hereby authorise [name and address of Agent] to submit a tender, and subsequently negotiate and sign the Contract with you for the above goods manufactured by us.

We hereby extend our full guarantee and warranty as per Clause 23 of the General Conditions of Contract for the goods offered for supply by the above firm in response to this Invitation for Tenders.

.....
[signature for and on behalf of Manufacturer]

This letter of authority should be on the letterhead of the Manufacturer and should be signed by a person competent and having the power of attorney to bind the Manufacturer. It should be included by the tenderer in its tender.

VOLUME I.vii

EXAMPLE:

LETTER OF ACCEPTANCE

[Date]

TO: [Name of successful tenderer]
[Address of successful tenderer]

This is to notify you that your tender dated [*enter date*] for the execution of the [*name of the contract as given in the Tender Data*] for the Contract Price of [*amount in numbers and words, and name of currency/currencies*], or equivalent thereof, as corrected and modified in accordance with the Instructions to Tenderers, is hereby accepted by our Agency.

You are hereby required:

- (a) to submit the Performance Security [*specify as provided in the tender documents*]
- (b) sign the attached Contract Agreement and return [*specify as provided in the tender documents*]; and
- (c) to commence performance of the said contract in accordance with the Contract Documents.

Authorised Signature.....

Name and Title of Signatory.....

Name of Agency.....

Attachment: Contract Document

This letter of acceptance should be on the letterhead of the Employer and should be signed by a person competent and having power of attorney to bind the Employer. If the Employer intends to accept any alternatives offered by the successful tenderer, this should be stated.

STANDARD TENDER DOCUMENTS

Supply and Installation of Plant and Equipment

Volume I.viii

Price Schedules

(Applicable for both Single
and Two-Stage Tenders)

VOLUME I.viii

PRICE SCHEDULES

In order to receive consistent and responsive tenders, it is recommended that Employers include a PREAMBLE to the price schedules indicating exactly what is required of tenderers when completing and pricing their tenders.

The following Preamble is given as an example only. Employers are responsible for ensuring that the Preamble included in the tender documents is complete and appropriate for the contract in question.

EXAMPLE:

PREAMBLE

General

1. The price schedules are divided into separate schedules as follows:

Schedule No. 1	Plant and Equipment (including Mandatory Spare Parts) Supplied from Abroad
Schedule No. 2	Plant and Equipment (including Mandatory Spare Parts) Supplied from within the Employer's Country
Schedule No. 3	Local Transportation
Schedule No. 4	Installation Services
Schedule No. 5	Grand Summary
Schedule No. 6	Recommended Spare Parts

Add any other schedules as appropriate.

2. The Schedules do not generally give a full description of the Plant and Equipment to be supplied and the services to be performed under each item. Tenderers shall be deemed to have read the Technical Specifications and other volumes of the tender documents and to have reviewed the Drawings to ascertain the full scope of the requirements included in each item prior to filling in the rates and prices. The entered rates and prices shall be deemed to include for the full scope as aforesaid, including overheads and profit.
3. If tenderers are unclear or uncertain as to the scope of any item, they shall seek clarification in accordance with the Instructions to Tenderers in the tender documents prior to submitting their tender.

Pricing

4. Prices shall be entered in indelible ink, and any alterations necessary due to errors etc. shall be initialled by the tenderer.

As specified in the Tender Data, prices shall be fixed and firm for the duration of the Contract, or prices shall be subject to adjustment in accordance with Appendix 2 (Price Adjustment) to the Contract Agreement.

5. Tender prices shall be quoted in the manner indicated and in the currencies specified in the Instructions to Tenderers in the tender documents.

For each item, tenderers shall complete each appropriate column in the respective Schedules, giving the price breakdown as indicated in the Schedules.

Prices given in the Schedules for each item shall be for the scope covered by that item as detailed in the Technical Specifications, Drawings or elsewhere in the tender documents.

6. Where there are discrepancies between the total of the amounts in the column for the price breakdown and the amount in the column for the total price, the former shall prevail and the latter will be corrected accordingly.

Where there are discrepancies between the total of the amounts of Schedules 1 to 4 and the amount given in Schedule 5 (Grand Summary), the former shall prevail and the latter will be corrected accordingly.

Where there are discrepancies between amounts stated in figures and amounts stated in words, the amounts stated in words shall prevail.

7. Payments will be made to the Contractor in the currency or currencies indicated under each respective item.
8. Items left blank will be deemed to have been included in prices for other items. The total for each schedule and the total of the Grand Summary shall be deemed to be the total price for executing the Facilities and sections thereof in complete accordance with the Contract, whether or not each individual item has been priced.
9. When requested by the Employer for the purposes of making payments or part payments, calculating variations or evaluating claims, or for such other purposes as the Employer may reasonably require, the Contractor shall provide the Employer with a breakdown of any composite or lump sum items included in the Schedules.

IFT Number

Schedule No. 1

PAGE 1 OF 6

SCHEDULE OF RATES AND PRICES

SCHEDULE NO.1 - PLANT AND EQUIPMENT, INCLUDING MANDATORY SPARE PARTS
SUPPLIED FROM ABROAD

Name of tenderer _____

Page __ of __

Tender identification no. _____

Item	Description	Quantity	Unit price CIP (border)	Unit price (other INCOTERMS)	Total price per item (1 x 2)
		1	2	3	4
Total amount					

Signature of tenderer _____

Note:

1. In case of discrepancy between unit price and total, prices will be adjusted in accordance with Paragraph 33.3 of the Instructions to Tenderers.
2. Prices and currencies to be in accordance with Paragraphs 23 and 24 respectively of the Instructions to Tenderers.
3. Currencies are to be clearly specified in accordance with the Instructions to Tenderers..

IFT Number

Schedule No. 2
PAGE 2 OF 6

SCHEDULE OF RATES AND PRICES

SCHEDULE No.2 - PLANT AND EQUIPMENT SUPPLIED FROM WITHIN THE
EMPLOYER'S COUNTRY

Name of tenderer _____

Page ___ of ___

Tender identification no. _____

Item	Description	Quantity	Unit Price EXW		Import duties and taxes on directly imported components	Total price per item	
			Foreign *	Local *		Foreign *	Local *
			1 x 2			1 x 2	1 x 3
		1	2	3	4	5	6
Total amount							

Signature of tenderer _____

Note:

- In case of discrepancy between unit price and total, prices will be adjusted in accordance with Paragraph 33.3 of the Instructions to Tenderers.
- Prices and currencies to be in accordance with Paragraphs 23 and 24 respectively of the Instructions to Tenderers.
- Currencies are to be clearly specified in accordance with the Instructions to Tenderers.

IFT Number

Schedule No. 3
PAGE 3 OF 6

SCHEDULE OF RATES AND PRICES

SCHEDULE No.3 - LOCAL TRANSPORTATION

Name of tenderer _____

Page __ of __

Tender identification no. _____

Item	Description	Qty.	UNIT PRICE*	TOTAL
				PRICE
			1	1 x 2
			2	3
	TOTAL (TO GRAND SUMMARY)			

Signature of tenderer _____

*Specify currencies in accordance with the Instructions to Tenderers.

IFT Number

Schedule No.5

PAGE 5 OF 6

SCHEDULE OF RATES AND PRICES

SCHEDULE No. 5 - GRAND SUMMARY

Name of tenderer _____

Page ___ of ___

Tender identification no. _____

Item	Description	TOTAL PRICE	
		Foreign Currency Portion*	Local Currency Portion*
	TOTAL SCHEDULE No.1 Plant and Equipment, including mandatory spare parts, supplied from abroad		
	TOTAL SCHEDULE No.2 Plant and Equipment, including mandatory spare parts, supplied from within the Employer's country		
	TOTAL SCHEDULE No.3 Local Transportation		
	TOTAL SCHEDULE No.4 Installation and other Services		
	GRAND TOTAL (TO TENDER FORM)		

Signature of tenderer _____

*Specify currencies in accordance with the Instructions to Tenderers.

IFT Number

Schedule No.6

SCHEDULE OF RATES AND PRICES

SCHEDULE No.6 - RECOMMENDED SPARE PARTS

Name of tenderer _____

Page ___ of ___

Tender identification no. _____

Item	Description	Qty.	UNIT PRICE*		TOTAL PRICE (1 x 2 x 3)
			From abroad (CIP)	From within Employer's country (EXW)	
		1	2	3	4
				Total amount	

Signature of tenderer _____

* Specify currencies in accordance with the Instructions to Tenderers.

STANDARD TENDER DOCUMENTS

Supply and Installation of Plant and Equipment

Volume II The Contract

The Contract used in this document is the Standard Contract from the World Bank's Standard Bidding Documents - Supply and Installation of Plant and Equipment, 1995.

Standard Conditions of Contract which can be used for international Supply and Installation contracts are:

- ENAA (Japan) - Model Form, International Contract for Process Plant Construction
- ABA 78 (Sweden) - General Conditions (international) for the Supply of Plant
- Joint IMechE/IEE (UK) - Model Form of General Conditions of Contract. Home or Overseas Contracts with Erection.
- Institute of Chemical Engineers (UK) - Model Form of Conditions of Contract for Process Plants.
- FIDIC (Yellow Book) - Conditions of Contract for Electrical and Mechanical Works.
- Conditions of Contract, World Bank Standard Bidding Documents, Supply and Installation of Plant and Equipment

VOLUME II.i

GENERAL CONDITIONS OF CONTRACT

NOTES ON THE GENERAL CONDITIONS OF CONTRACT

The General Conditions of Contract, read in conjunction with the Special Conditions of Contract and other documents listed therein, should be a complete document expressing all the rights and obligations of the parties.

The General Conditions of Contract herein shall not be altered. Any changes and complementary information that may be needed shall be introduced only through the Special Conditions of Contract in Volume II.ii.

While these tender documents have been prepared with great care, taking into account international procurement and contracting experience, the Bank does not assume any responsibility that the contract forms contained in these Standard Tender Documents are suitable, adequate and complete in respect of any particular contract. Parties wishing to use these contract forms are advised to seek their own legal counsel.

VOLUME II.i

GENERAL CONDITIONS OF CONTRACT

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VOLUME II.i

GENERAL CONDITIONS OF CONTRACT

PART I

CONTRACT AND INTERPRETATION

1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

- “Contract” means the Contract Agreement entered into between the Employer and the Contractor, together with the Contract Documents referred to therein; they shall constitute the Contract, and the term “the Contract” shall in all such documents be construed accordingly.
- Contract documents” means the documents listed in Article 1.1 (Contract Documents) of the contract agreement (including any amendments thereto).
- “GC” means the General Conditions hereof.
- “SCC” means the Special Conditions of Contract.
- “Days” mean calendar days of the Gregorian calendar.
- “Month” means calendar month of the Gregorian Calendar.
- “Employer” means the person named as such in the SCC and includes the legal successors or permitted assigns of the Employer.
- “Project Manager” means the person appointed by the Employer in the manner provided in GC 17.1 (Project Manager) hereof and named as such in the SCC to perform the duties delegated by the Employer.
- “Contractor” means the person(s) named as such in the SCC and includes the legal successors or permitted assigns of the Contractor.
- “Contractor’s representative” means any person nominated by the Contractor and named as such in the SCC and approved by the Employer in the manner provided in GC 17.2.1 (Contractor’s Representative and Construction Manager) hereof to perform the duties delegated by the Contractor.
- “Subcontractor,” including vendors, means any person to whom execution of any part of the Facilities, including preparation of any design or supply of any Plant and Equipment. is subcontracted directly or indirectly by the Contractor, and includes its legal successors or permitted assigns.

- “Adjudicator” means the person or persons named as such in the SCC appointed by agreement between the Employer and the Contractor to make a decision on or to settle any dispute or difference between the Employer and the Contractor referred to him or her by the parties pursuant to GC 6.2 (reference to Adjudicator) hereof.
- “The Bank” means the financial institution named in the SCC.
- “Contract Price” means the sum specified in Article 2 (Contract Price) of the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom as may be made pursuant to the Contract.
- “Facilities” means the Plant and Equipment to be supplied and installed, as well as all the installation services to be carried out by the Contractor under the Contract.
- “Plant and Equipment” means permanent Plant, Equipment, machinery, apparatus, articles and things of all kinds to be provided and incorporated in the Facilities by the Contractor under the Contract (including the spare parts to be supplied by the Contractor under GC 7.3 hereof), but does not include Contractor's Equipment.
- “Installation Services” means all those services ancillary to the supply of the Plant and Equipment for the Facilities to be provided by the Contractor under the Contract, e.g. transportation and provision of marine or other similar insurance, inspection, expediting, site preparation works (including the provision and use of Contractor's Equipment and the supply of all construction materials required), installation, testing, precommissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training, etc.
- “Contractor's Equipment” means all Plant, Facilities, Equipment, machinery, tools, apparatus, appliances or things of every kind required in or for installation, Completion and maintenance of Facilities and which are to be provided by the Contractor, but does not include Plant and Equipment, or other things intended to form or forming part of Facilities.
- “Site” means the land and other places upon which the Facilities are to be installed, and such other land or places as may be specified in the Contract as forming part of the Site.
- “Effective Date” means the date of fulfilment of all conditions stated in Article 3 of the Contract Agreement, for the purpose of determining the Time for Completion.
- “Time for Completion” means the time within which Completion of the Facilities as a whole (or of a part of the Facilities where a separate Time for Completion of such part has been prescribed) is to be attained in accordance with the specifications in the SCC and the relevant provisions of the Contract.
- “Completion” means that the Facilities (or a specific part thereof where specific parts are specified in the SCC) have been completed operationally and structurally and put in a tight and clean condition, and that all work in respect of Precommissioning of the Facilities or such specific part thereof has been completed;

in other words, that the Facilities or specific part thereof are ready for Commissioning as provided in GC 24 (Completion) hereof.

- “Precommissioning” means the testing, checking and other requirements specified in the Technical Specifications which are to be carried out by the Contractor in preparation for Commissioning as provided in GC 24 (Completion) hereof.
- “Commissioning” means operation of the Facilities or any part thereof by the Contractor following Completion, which operation is to be carried out by the Contractor as provided in GC 25.1.1 (Commissioning) hereof, for the purpose of carrying out Guarantee Test(s).
- “Guarantee Test(s)” means the test(s) specified in the Technical Specifications to be carried out to ascertain whether the Facilities or a specified part thereof is able to attain the Functional Guarantees specified in the Technical Specifications in accordance with the provisions of GC 25.2.1 (Guarantee Test) hereof.
- “Operational Acceptance” means the acceptance by the Employer of the Facilities (or any part of the Facilities where the Contract provides for acceptance of the Facilities in parts), which certifies the Contractor’s fulfilment of the Contract in respect of Functional Guarantees of the Facilities (or the relevant part thereof) in accordance with the provisions of GC 28 (Functional Guarantees) hereof and shall include deemed acceptance in accordance with GC 25 (Commissioning and Operational Acceptance) hereof.
- “Defect Liability Period” means the period of validity of the warranties given by the Contractor commencing at Completion of the Facilities or a part thereof, during which the Contractor is responsible for defects with respect to the Facilities (or the relevant part thereof) as provided in GC 27 (Defect Liability) hereof.

2. Contract Documents

2.1 Subject to Article 1.2 (Order of Precedence) of the Contract Agreement, all documents forming part of the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole.

3. Interpretation

3.1 Language

3.1.1 Unless the Contractor is a national of the Employer’s country and the Employer and the Contractor agree to use the local language, all Contract Documents, all correspondence and communications to be given, and all other documentation to be prepared and supplied under the Contract shall be written in English, and the Contract shall be construed and interpreted in accordance with that language.

3.1.2 If any of the Contract Documents, correspondence or communications are prepared in any language other than the governing language under GC 3.1.1 above, the English translation of such documents, correspondence or communications shall prevail in matters of interpretation.

3.2 Singular and Plural

3.2.1 The singular shall include the plural and the plural the singular, except where the context otherwise requires.

3.3 Headings

3.3.1 The headings and marginal notes in the General Conditions of Contract are included for ease of reference, and shall neither constitute a part of the Contract nor affect its interpretation.

3.4 Persons

3.4.1 Words importing persons or parties shall include firms, corporations and government entities.

3.5 Incoterms

3.5.1 Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by "Incoterms."

3.5.2 "Incoterms" means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1ier, 75008 Paris, France.

3.6 Entire Agreement

3.6.1 Subject to GC 16.4 hereof, the Contract constitutes the entire agreement between the Employer and Contractor with respect to the subject matter of Contract and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.

3.7 Amendment

3.7.1 No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorised representative of each party hereto.

3.8 Independent Contractor

3.8.1 The Contractor shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the parties hereto.

3.8.2 Subject to the provisions of the Contract, the Contractor shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Subcontractors engaged by the Contractor in connection with the performance of the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of the Employer, and nothing contained in the Contract or in any subcontract awarded by the Contractor shall be construed to create any

contractual relationship between any such employees, representatives or Subcontractors and the Employer.

3.9 Joint Venture

3.9.1 If the Contractor is a joint venture of two or more persons, all such firms shall be jointly and severally bound to the Employer for the fulfilment of the provisions of the Contract and shall designate one of such persons to act as a leader with authority to bind the joint venture. The composition or the constitution of the joint venture shall not be altered without the prior consent of the Employer.

3.10 Non-Waiver

3.10.1 Subject to GC 3.10.2 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, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

3.10.2 Any waiver of a party's rights, powers or remedies under the Contract must be in writing, must be dated and signed by an authorised representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

3.11 Severability

3.11.1 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.

3.12 Country of Origin

3.12.1 "Origin" means the place where the materials, Equipment and other supplies for the Facilities are mined, grown, produced or manufactured, and from which the services are provided.

4. Notices

4.1 Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing, and shall be sent by personal delivery, airmail post, special courier, cable, telegraph, telex, facsimile or Electronic Data InterChange (EDI) to the address of the relevant party set out in the SCC, with the following provisions.

4.2 Any notice sent by cable, telegraph, telex, facsimile or EDI shall be confirmed within two (2) days after dispatch by notice sent by airmail post or special courier, except as otherwise specified in the Contract.

4.3 Any notice sent by airmail post or special courier shall be deemed (in the absence of evidence of earlier receipt) to have been delivered ten (10) days after dispatch. In proving the fact of dispatch, it shall be sufficient to show that the envelope

containing such notice was properly addressed, stamped and conveyed to the postal authorities or courier service for transmission by airmail or special courier.

- 4.4 Any notice delivered personally or sent by cable, telegraph, telex, facsimile or EDI shall be deemed to have been delivered on date of its dispatch .
- 4.5 Either party may Change its postal, cable, telex, facsimile or EDI address or addressee for receipt of such notices by ten (10) days' notice to the other party in writing.
- 4.6 Notices shall be deemed to include any approvals, consents, instructions, orders and certificates to be given under the Contract.

5. Governing Law

- 5.1 The Contract shall be governed by and interpreted in accordance with laws of the country or state specified in the SCC.

6. Settlement of Disputes

6.1 Adjudicator

- 6.1.1 If any dispute of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing any question regarding its existence, validity or termination, or the execution of the Facilities, whether during the progress of the Facilities or after their Completion and whether before or after the termination, abandonment or breach of the Contract, the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation, then the dispute shall be referred to in writing by either party to the Adjudicator, with a copy of the other party.
- 6.1.2 The Adjudicator shall give its decision in writing to both parties within twenty-eight (28) days of being referred to a dispute. If neither party notifies the other of its disagreement with the Adjudicator's decision within twenty-eight (28) days of the decision, that decision shall be final and binding. If, within twenty-eight (28) days of the decision, either party notifies the other of its disagreement, the dispute shall be referred by either party to arbitration within twenty-eight (28) days.
- 6.1.3 The Adjudicator shall be paid an hourly fee at the rate specified in the SCC plus reasonable expenditures incurred in the execution of its duties as Adjudicator, and these costs shall be divided equally between the employer and the contractor.
- 6.1.4 Should the adjudicator resign or die, or should be Employer and the Contractor agree that the Adjudicator is not fulfilling its function in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Employer and the Contractor. Failing agreement between the two within twenty-eight (28) days, the new Adjudicator shall be designated by the Appointing Authority specified in the SCC at the request of either party and thereupon shall be jointly appointed by the Employer and the Contractor.

6.2 Arbitration

- 6.2.1 If the Adjudicator does not give its decision within twenty-eight (28) days of a referred dispute, or if either the Employer or the Contractor notifies the other in accordance with Sub-Clause GC 6.1 that it disagrees with the Adjudicator's decision, then either the Employer or the Contractor may give written notice, within twenty-eight (28) days, to the other party of its intention to refer the dispute to arbitration.
- 6.2.2 Any dispute submitted by a party to arbitration shall be heard by a sole arbitrator, or by an arbitration panel composed of three arbitrators, in accordance with the provisions set forth below.
- 6.2.3 The Employer and the Contractor shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the parties do not succeed in appointing a third arbitrator within twenty-eight (28) days after the latter of the two arbitrators named by the parties has been appointed, the third arbitrator shall, at the request of either party, be appointed by the Appointing Authority designated in the SCC.
- 6.2.4 If one party fails to appoint its arbitrator within twenty-eight (28) days after the other party has appointed its arbitrator, the party which has named an arbitrator may request the Appointing Authority to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.
- 6.2.5 If for any reason an arbitrator is unable to perform its function, a substitute shall be appointed in the same manner as the original arbitrator.
- 6.2.6 Arbitration proceedings shall be conducted (i) in accordance with the rules of procedure designated in the SCC, (ii) in the place designated in the SCC, and (iii) in the language in which this Contract has been executed.
- 6.2.7 The decision of the sole arbitrator, or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction. The parties thereby waive any objections to or claims of immunity from such enforcement.
- 6.3 Notwithstanding any reference to the Adjudicator or arbitration herein,
- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
 - (b) the Employer shall pay the Contractor any monies due the Contractor.

PART II

SUBJECT MATTER OF CONTRACT

7. Scope of Facilities

- 7.1 Unless otherwise expressly limited in the Technical Specifications, the Contractor's obligations cover the provision of all Plant and Equipment and the performance of all Installation Services required for the design, the manufacture (including procurement, quality assurance, construction, installation, associated civil works, precommissioning and delivery) of the Plant and Equipment and the installation, Completion and commissioning of the Facilities in accordance with the plans, procedures, specifications, drawings, codes and any other documents as specified in the Technical Specifications. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labour, materials, Equipment, spare parts (as specified in GC 7.3 below) and accessories; Contractor's Equipment; construction utilities and supplies; temporary materials, structures and Facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site); and storage, except for those supplies, works and services which will be provided or performed by the Employer, as set forth in Appendix 6 (Scope of Works and Supply by the Employer) to the Contract agreement.
- 7.2 The Contractor shall, unless specifically excluded in the Contract, perform all such work and/or supply all such items and materials not specifically mentioned in the Contract but which can be reasonably inferred from the Contract as being required for attaining Completion of the Facilities as if such work and/or items and materials were expressly mentioned in the Contract.
- 7.3 In addition to the supply of Mandatory Spare Parts included in the Contract, the Contractor agrees to supply spare parts required for the operation and maintenance of the Facilities for the period specified in the SCC, However, the identity, specifications and quantities of such spare parts and the terms and conditions relating to the supply thereof are to be agreed between the Employer and the Contractor and the price of such spare parts shall be that given in Price Schedule No. 6 which shall be added to the Contract Price. The price of such spare parts shall include the purchase price therefore and other costs and expenses (including the Contractor's fees) relating to the supply of the same.

8. Time for Commencement and Completion

- 8.1 The Contractor shall commence work on the Facilities within the period specified in the special conditions of contract, SCC and without prejudice to GC 26.2 hereof, the Contractor shall thereafter proceed with the Facilities in accordance with the time schedule specified in Appendix 4 (Time Schedule) to the Contract agreement.
- 8.2 The Contractor shall attain Completion of the Facilities (or of a part where a separate Time for Completion of such part is specified in the Contract) within the time stated in the SCC or within such extended time to which the Contractor shall be entitled under GC 40 (Extension of Time for Completion) hereof.

9. Contractor's Responsibilities

- 9.1 The Contractor shall design, manufacture (including associated purchases and/or subcontracting), install and complete the Facilities with due care and diligence in accordance with the Contract.

- 9.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Facilities (including any data as to boring tests) provided by the Employer, and on the basis of information that it could have obtained from a visual inspection of the site (if access thereto was available), and other data readily available to it relating to the Facilities as at the date twenty-eight (28) days prior to tender submission. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Facilities.
- 9.3 The Contractor shall acquire all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located, which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals and/or licenses which are not the responsibility of the Employer under GC 10.3 hereof and which are necessary for the performance of the Contract.
- 9.4 The Contractor shall comply with all laws in force in the country where the Facilities are installed and the Installation Services are carried out. The laws will include all national, provincial, municipal or other laws that affect the performance of the Contract and bind upon the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to GC 10.1 hereof.
- 9.5 Any Plant, Material and Services that will be incorporated in or be required for the Facilities and other supplies shall have their origin as specified under GC 1 (Country of Origin).
- 9.6 The Contractor shall permit the Bank to inspect the Contractor's accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the Bank, if so required by the Bank⁷.

10. Employer's Responsibilities

- 10.1 The Employer shall ensure the accuracy of all information and/or data to be supplied by the Employer as described in Appendix 6 (Scope of Works and Supply by the Employer) to the Contract, except when otherwise expressly stated in the Contract.
- 10.2 The Employer shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract,

⁷ Added as part of Corrigendum No.1, dated 7 May 1998

including all requisite rights of way, as specified in Appendix 6 (Scope of works and supply by the Employer) to the Contract agreement. The Employer shall give full possession of and accord all rights of access thereto on or before the date(s) specified in Appendix 6.

- 10.3 The Employer shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the site is located. Such authorities or undertakings require the Employer to obtain them in the Employer's name, are necessary for the execution of the Contract (they include those required for the performance by both the Contractor and the Employer of their respective obligations under the Contract), and are specified in Appendix 6 (Scope of works and supply by the Employer) to the Contract agreement.
- 10.4 If requested by the Contractor, the Employer shall use its best endeavours to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Contract from all local, state or national government authorities or public service undertakings which such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.
- 10.5 Unless otherwise specified in the Contract or agreed upon by the Employer and the Contractor, the Employer shall provide sufficient properly qualified operating and maintenance personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and Facilities; and shall perform all work and services of whatsoever nature, including those required by the Contractor to properly carry out Precommissioning, Commissioning and Guarantee Tests, all in accordance with the provisions of Appendix 6 (Scope of works and supply by the Employer) to the Contract Agreement at or before the time specified in the program furnished by the Contractor under GC (Program of performance) hereof and in the manner thereupon specified or as otherwise agreed upon by the Employer and the Contractor.
- 10.6 The Employer shall be responsible for the continued operation of the Facilities after Completion, in accordance with GC 24.8, and shall be responsible for facilitating the Guarantee Test(s) for the Facilities, in accordance with GC 25.2
- 10.7 All costs and expenses involved in the performance of the obligations under this GC 10 shall be the responsibility of the Employer, save those to be incurred by the Contractor with respect to the performance of Guarantee Tests, in accordance with GC. 25.2.

PART III

PAYMENT

11. Contract Price

- 11.1 The Contract Price shall be as specified in Article 2 (Contract Price) of the Contract

Agreement.

- 11.2 Unless indicated otherwise in the SCC, the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the Facilities or as otherwise provided in the Contract.
- 11.3 Subject to GCs 9.2, 10.1 and 35 (Unforeseen Conditions) hereof, the Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

12. Terms of Payment

- 12.1 The Contract Price shall be paid as specified in Appendix 1 (Terms of Payment) to the Contract agreement. The procedures to be followed in making application for and processing payments shall be those outlined in the same Appendix 1.
- 12.2 No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the Facilities or any part(s) thereof.
- 12.3 In the event that the Employer fails to make any payment by its respective due date or within the period set forth in the Contract, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate(s) shown in Appendix 1 (Terms of payment) to the Contract Agreement for the period of delay until payment has been made in full, whether before or after judgement or arbitrage award.
- 12.4 The currency or currencies in which payments are made to the Contractor under this Contract shall be specified in Appendix 1 (Terms of Payment) to the Contract agreement, subject to the general principle that payments will be made in the currency or currencies in which the Contract Price has been stated in the Contractor's tender.

13. Securities

13.1 Issuance of Securities

- 13.1.1 The Contractor shall provide the securities specified below in favour of the Employer at the times, and in the amount, manner and form specified below.

13.2 Advance Payment Security

- 13.2.1 The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security in an amount equal to the advance payment calculated in accordance with Appendix I (Terms of Payment) to the Contract Agreement, and in the same currency or currencies, with a validity of up to ninety (90) days beyond the date of Completion of the Facilities in accordance with GC 24.
- 13.2.2 The security shall be in the form provided in the tender documents or in another form acceptable to the Employer. The amount of the security shall be reduced in proportion to the value of the Facilities executed by and paid to the Contractor from time to time, and shall automatically become null and void when the full amount of

the advance payment has been recovered by the Employer. The security shall be returned to the Contractor immediately after its expiration.

13.3 Performance Security

13.3.1 The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security for the due performance of the Contract in the amount specified in the SCC.

13.3.2 The security shall be denominated in the currency or currencies of the Contract, or in a freely convertible currency acceptable to the Employer, and shall be in the form provided in the tender documents or in another form acceptable to the Employer.

13.3.3 The Security shall automatically become null and void, or shall be reduced pro rata to the Contract Price of a part of the Facilities for which a separate Time for Completion is provided, eighteen (18) months after Completion of the Facilities or twelve (12) months after Operational Acceptance of the Facilities, whichever occurs first; provided, however, that if the Defects Liability Period has been extended on any part of the Facilities pursuant to Sub-Clause GC 27.8 hereof, the Contractor shall issue an additional security in an amount proportionate to the Contract Price of that part. The security shall be returned to the Contractor immediately after its expiration.

13.4.1 Claims under Security

13.4.1 If the Employer considers itself entitled to any claim under any security, it shall so notify the Contractor by registered airmail post, specifying the default of the Contractor upon which it bases its claim, and it shall require the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of receipt of such notice, then the Employer shall be entitled to call the Security.

14. Taxes and Duties

14.1 Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all taxes, duties, levies and charges assessed on the Contractor, its Subcontractors or their employees by all municipal, state or national government authorities in connection with the Facilities in and outside of the country where the Site is located.

14.2 Notwithstanding GC 14.1 above, the Employer shall bear and promptly pay all customs and import duties imposed on the Plant and Equipment specified in Schedule No.1 of the Price Schedules and to be incorporated into the Facilities by the law of the country where the Site is located.

14.3 If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in the country where the Site is located, the Employer shall use its best endeavours to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.

14.4 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price) of the Contract agreement is based on the taxes, duties,

levies and charges prevailing at the date twenty-eight (28) days prior to the date of tender submission in the country where the Site is located (hereinafter called "Tax" in this GC 14.4). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any Change in interpretation or application of any tax occurs in the course of the performance of the Contract, which was or will be assessed on the Contractor, Subcontractors or their employees in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such Change by addition to the Contract Price or deduction therefrom, as the case may be, in accordance with GC 36 (Change in Laws and Regulations) hereof.

PART IV

INTELLECTUAL PROPERTY

15. Copyright

15.1 The copyright in all drawings, documents and other materials containing data and information furnished to the Employer by the Contractor herein shall remain vested in the Contractor or, if they are furnished to the Employer directly or through the Contractor by any third party including suppliers of materials, the copyright in such materials shall remain vested in such third party.

16. Confidential Information

16.1 The Employer and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract. whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its works under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this GC 16.

16.2 The Employer shall not use such documents, data and other information received from the Contractor for any purpose other than the operation and maintenance of the Facilities. Similarly, the Contractor shall not use such documents, data and other information received from the Employer for any purpose other than the design, procurement of Plant and Equipment, construction or such other work and services as are required for the performance of the Contract.

16.3 The obligation of a party under GCs 16.1 and 16.2 above, however, shall not apply to that information which:

(a) now or hereafter enters the public domain through no fault of that party; or

- (b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto; or
 - (c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- 16.4 The above provisions of this GC 16 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Facilities or any part thereof.
- 16.5 The provisions of this GC 16 shall survive termination for whatever reason of the Contract.

PART V

WORK EXECUTION

17. Representatives

17.1 Project Manager

- 17.1 If the Project Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, the Employer shall appoint and notify the Contractor in writing of the name of the Project Manager. The Employer may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give a notice of the name of such other person to the Contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the Facilities. Such appointment shall only take effect upon receipt of such notice by the Contractor. The Project Manager shall represent and act for the Employer at all times during the currency of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided.

All notices, instructions, information and other communications given by the Contractor to the Employer under the Contract shall be given to the Project Manager, except as herein otherwise provided.

17.2 Contractor's Representative & Construction Manager

- 17.2.1 If the Contractor's Representative is not named in the Contract, then within fourteen (14) days of the Effective Date, the Contractor shall appoint the Contractor's Representative and shall request the Employer in writing to approve the person so appointed. If the Employer makes no objection to the appointment within fourteen (14) days, the Contractor's Representative shall be deemed to have been approved. If the Employer objects to the appointment within fourteen (14) days giving the reason therefore, then the Contractor shall appoint a replacement within fourteen (14) days

of such objection, and the foregoing provisions of this GC 17.2.1 shall apply thereto.

- 17.2.2 The Contractor's Representative shall represent and act for the Contractor at all times during the currency of the Contract and shall give to the Project Manager all the Contractor's notices, instructions, information and all other communications under the Contract.

All notices, instructions, information and all other communications given by the Employer or the Project Manager to the Contractor under the Contract shall be given to the Contractor's Representative or, in its absence, its deputy, except as herein otherwise provided.

The Contractor shall not revoke the appointment of the Contractor's Representative without the Employer's prior written consent, which shall not be unreasonably withheld. If the Employer consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in GC 17.2.1 above.

- 17.2.3 The Contractor's Representative may, subject to the approval of the Employer (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor's Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Employer and the Project Manager.

Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GC 17.2.3 shall be deemed to be an act or exercise by the Contractor's Representative.

- 17.2.4 From the commencement of installation of the Facilities at the Site until Completion, the Contractor's Representative shall appoint a suitable person as the construction manager (hereinafter referred to as "the Construction Manager"). The Construction Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract. Whenever the Construction Manager is absent from the Site, a suitable person shall be appointed to act as his or her deputy.

- 17.2.5 The Employer may by notice to the Contractor object to any representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of the Employer, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under GC 22.3 hereof. The Employer shall provide evidence of the same, whereupon the Contractor shall remove such person from the Facilities.

- 17.2.6 If any representative or person employed by the Contractor is removed in accordance with GC 17.2.5 above, the Contractor shall where required promptly appoint a replacement.

18. Work Program

18.1 Contractor's Organisation

18.1.1 The Contractor shall supply to the Employer and the Project Manager a chart showing the proposed organisation to be established by the Contractor for carrying out work on the Facilities. The chart shall include the identities of the key personnel together with the curricula vitae of such key personnel to be employed within twenty-one (21) days of the Effective Date. The Contractor shall promptly inform the Employer and the Project Manager in writing of any revision or alteration of such organisation chart.

18.2 Program of Performance

18.2.1 Within twenty-eight (28) days after the date of signing the Contract Agreement, the Contractor shall prepare and submit to the Project Manager a detailed programme of performance of the Contract, made in the form specified in the SCC and showing the sequence in which it proposes to design, manufacture, transport, assemble, install and pre-commission the Facilities, as well as the date by which the Contractor reasonably requires that the Employer shall have fulfilled its obligations under the Contract so as to enable the Contractor to execute the Contract in accordance with the programme and to achieve Completion, Commissioning and Acceptance of the Facilities in accordance with the Contract. The programme so submitted by the Contractor shall accord with the Time Schedule included in Appendix 4 (Time Schedule) to the Contract agreement and any other dates and periods specified in the Contract. The Contractor shall update and revise the programme as and when appropriate or when required by the Project Manager, but without modification in the Times for Completion given in the SCC and any extension granted in accordance with GC 40, and shall submit all such revisions to the Project Manager.

18.3 Progress Report

18.3.1 The Contractor shall monitor progress of all the activities specified in the programme referred to in GC 18.2 (Program of Performance) above, and supply a progress report to the Project Manager every month.

18.3.2 The progress report shall be in a form acceptable to the Project Manager and shall indicate: (a) percentage Completion achieved compared with the planned percentage Completion for each activity; and (b) where any activity is behind the programme, giving comments and likely consequences and stating the corrective action being taken.

18.4 Progress of Performance

18.4.1 If at any time the Contractor's actual progress falls behind the programme referred to in GC 18.2 (Programme of Performance) above, or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Employer or the Project Manager, prepare and submit to the Project Manager a revised programme, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Facilities within the Time for Completion under GC 8.2 (Time for Completion) hereof, any extension thereof entitled under GC 40.1 hereof, or any extended period as may otherwise be agreed upon between the Employer and the Contractor.

18.5 Work Procedures

18.5.1 The Contract shall be executed in accordance with the Contract documents and the procedures given in Section VII (Forms and procedures) of the Contract Documents.

The Contractor may execute the Contract in accordance with its own standard project execution plans and procedures to the extent that they do not conflict with the provisions contained in the Contract.

19. Subcontracting

19.1 Appendix 5 (List of Subcontractors) to the Contract Agreement specifies major items of supply or services and a list of approved Subcontractors against each item, including vendors. Insofar as no Subcontractors are listed against any such item, the Contractor shall prepare a list of Subcontractors for such item for inclusion in such list. The Contractor may from time to time propose any addition to or deletion from any such list. The Contractor shall submit any such list or any modification thereto to the Employer for its approval in sufficient time so as not to impede the progress of work on the Facilities. Such approval by the Employer for any of the Subcontractors shall not relieve the Contractor from any of its obligations, duties or responsibilities under the Contract.

19.2 The Contractor shall select and employ its Subcontractors for such major items from those listed in the lists referred to in GC Sub-Clause 19.1.

19.3 For items or parts of the Facilities not specified in Appendix 5 (List of Subcontractors) to the Contract agreement, the Contractor may employ such Subcontractors as it may select, at its discretion.

20. Design and Engineering

20.1 Specifications and Drawings

20.1.1 The Contractor shall execute the basic and detailed design and the engineering work in compliance with the provisions of the Contract, or where not so specified, in accordance with good engineering practice.

The Contractor shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Employer.

20.1.2 The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designated by or on behalf of the Employer, by giving a notice of such disclaimer to the Project Manager.

20.2 Codes and Standards

20.2 Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of tender submission shall apply unless otherwise specified. During Contract execution, any Changes in such codes and standards shall be applied after approval by the Employer and shall be treated in accordance with GC 39.

20.3 Approval/Review of Technical Documents by Project Manager

20.3.1 The Contractor shall prepare (or cause its Subcontractors to prepare) and furnish to the Project Manager the documents listed in Appendix 7 to the Contract Agreement for its approval or review as specified and as in accordance with the requirements of GC 18.2 (Program of Performance).

Any part of the Facilities covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval thereof.

The following GCs 20.3.2 to 20.3.7 (inclusive) shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.

20.3.2 Within fourteen (14) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GC 20.3.1 above, the Project Manager shall either return one copy thereof to the Contractor with its approval endorsed thereon or shall notify the Contractor in writing of its disapproval thereof and the reasons therefor and the modifications which the Project Manager proposes.

If the Project Manager fails to take such action within the said fourteen (14) days, then the said document shall be deemed to have been approved by the Project Manager.

20.3.3 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with some specified provision of the Contract or that it is contrary to good engineering practice.

20.3.4 If the Project Manager disapproves the document, the Contractor shall modify the document and re-submit it for the Project Manager's approval in accordance with GC 20.3.2 above. If the Project Manager approves the document subject to modification(s), the Contractor shall make the required modification(s), whereupon the document shall be deemed to have been approved.

20.3.5 If any dispute or difference occurs between the Employer and the Contractor in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) thereto which cannot be settled between the parties within a reasonable period, then such dispute or difference may be referred to an Adjudicator for determination in accordance with GC 6.2 (Reference to Adjudicator) hereof. If such dispute or difference is referred to an Adjudicator, the Project Manager shall give instructions as to whether and, if so, how performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the Adjudicator

upholds the Contractor's view on the dispute and if the Employer has not given notice under GC 6.2.1 hereof, then the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Adjudicator shall decide, and the Time for Completion shall be extended accordingly.

20.3.6 The Project Manager's approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager.

20.3.7 The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Project Manager an amended document and obtained the Project Manager's approval thereof, pursuant to the provisions of this GC 20.3

If the Project Manager requests any Change in any already approved document and/or in any document based thereon, the provisions of GC 39 (Change in the Facilities) hereof shall apply to such request.

21. Procurement

21.1 Plant and Equipment

21.1.1 Subject to GC 14.2 hereof, the Contractor shall manufacture or procure and transport all the Plant and Equipment in an expeditious and orderly manner to the site.

21.2 Employer-supplied Plant, Equipment and materials

21.2.1 If Appendix 6 (Scope of Works and Supply by the Employer) to the Contract Agreement provides that the Employer shall furnish any specific items of machinery, Equipment or materials to the Contractor, the following provisions shall apply:

21.2.2 The Employer shall, at its own risk and expense, transport each item to the place on or near the site as agreed upon by the parties and make such item available to the Contractor at the time specified in the programme furnished by the Contractor, pursuant to GC 18.2 (Programme of Performance) hereof unless otherwise mutually agreed.

21.2.3 Upon receipt of such item, the Contractor shall inspect the same visually and notify the Project Manager of any detected shortage, defect or default. The Employer shall immediately remedy any shortage, defect or default, or the Contractor shall, if practicable and possible, at the request of the Employer, remedy such shortage, defect or default at the Employer's cost and expense. After inspection, such item shall fall under the care, custody and control of the Contractor.

21.2.4 The provision of this GC 21.2.3 shall apply to any item supplied to remedy any such shortage or default or to substitute for any defective item, or shall apply to defective items which have been repaired.

21.2.5 The foregoing responsibilities of the Contractor and its obligations of care, custody and control shall not relieve the Employer of liability for any undetected shortage,

defect or default, nor place the Contractor under any liability for any such shortage, defect or default whether under GC 27 (Defect Liability) hereof or any other provision of Contract.

21.3 Transportation

21.3.1 The Contractor shall at its own risk and expense transport all the Plant and Equipment and the Contractor's Equipment to the Site by the mode of transport which the Contractor judges most suitable under all the circumstances.

21.3.2 Unless otherwise provided in the Contract, the Contractor shall be entitled to select any safe mode of transport operated by any person to carry the Plant and Equipment and the Contractor's Equipment.

21.3.3 Upon dispatch of each shipment of the Plant and Equipment and the Contractor's Equipment, the Contractor shall notify the Employer by telex, cable, facsimile or Electronic Data InterChange (EDI) of the description of the Plant and Equipment and of the Contractor's Equipment, the point and means of dispatch, and the estimated time and point of arrival in the country where the Site is located, if applicable, and at the Site. The Contractor shall furnish the Employer with relevant shipping documents to be agreed upon between the parties.

21.3.4 The Contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the Plant and Equipment and the Contractor's Equipment to the Site. The Employer shall use its best endeavours in a timely and expeditious manner to assist the Contractor in obtaining such approvals, if requested by the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any claim for damage to roads, bridges or any other traffic Facilities that may be caused by the transport of the Plant and Equipment and the Contractor's Equipment to the site.

21.4 Customs Clearance

21.4.1 The Contractor shall, at its own expense, handle all imported Plant and Equipment and Contractor's Equipment at the point(s) of import and shall handle any formalities for customs clearance, subject to the Employer's obligations under GC 14.2 hereof, provided that if applicable laws or regulations require any application or act to be made by or in the name of the Employer, the Employer shall take all necessary steps to comply with such laws or regulations. In the event of delays in customs clearance that are not the fault of the Contractor, the Contractor shall be entitled to an extension in the Time for Completion, pursuant to Clause GC 40.

22. Installation

22.1 Setting Out/Supervision/Labour

Bench Mark

22.1.1 The Contractor shall be responsible for the true and proper setting-out of the Facilities in relation to bench marks, reference marks and lines provided to it in writing by or on behalf of the Employer.

If, at any time during the progress of installation of the Facilities, any error shall appear in the position, level or alignment of the Facilities, the Contractor shall forthwith notify the Project Manager of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect data provided in writing by or on behalf of the Employer, the expense of rectifying the same shall be borne by the Employer.

Supervision

22.1.2 The Contractor shall give or provide all necessary superintendance during the installation of the Facilities, and the Construction Manager or its deputy shall be constantly on the Site to provide full-time superintendance of the installation. The Contractor shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to give adequate supervision to the work at hand.

Labour

22.1.3 The Contractor shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged to use local labour that has the necessary skills.

22.1.3 Unless otherwise provided in the Contract, the Contractor shall be responsible for the recruitment, transportation, accommodation and catering of all labour, local or expatriate, required for the execution of the Contract and for all payments in connection therewith.

22.1.3 The Contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labour and personnel to be employed on the site into the country where the Site is located.

22.1.3 The Contractor shall at its own expense provide the means of repatriation to all of its and its Subcontractor's personnel employed on the Contract at the Site to their various home countries. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the Contractor defaults in providing such means of transportation and temporary maintenance, the Employer may provide the same to such personnel and recover the cost of doing so from the Contractor.

22.1.3 The Contractor shall at all times during the progress of the Contract use its best endeavours to prevent any unlawful, riotous or disorderly conduct or behaviour by or amongst its employees and the labour of its Subcontractors.

22.1.3 The Contractor shall, in all dealings with its labour and the labour of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognised festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of labour.

22.2 Contractor's Equipment

- 22.2.1 All Contractor's Equipment brought by the Contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Contractor shall not remove the same from the Site without the Project Manager's consent that such Contractor's Equipment is no longer required for the execution of the Contract.
- 22.2.2 Unless otherwise specified in the Contract, upon Completion of the Facilities, the Contractor shall remove from the Site all Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.
- 22.2.3 The Employer will, if requested, use its best endeavours to assist the Contractor in obtaining any local, state or national government permission required by the Contractor for the export of the Contractor's Equipment imported by the Contractor for use in the execution of the Contract that is no longer required for the execution of the Contract.

22.3 Regulations and Safety

- 22.3.1 The Employer and the Contractor shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Contractor shall prepare and submit to the Employer, with a copy to the Project Manager, proposed Site regulations for the Employer's approval, which approval shall not be unreasonably withheld.

Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Facilities, gate control, sanitation, medical care, and fire prevention.

22.4 Opportunities for Other Contractors

- 22.4.1 The Contractor shall, upon written request from the Employer or the Project Manager, give all reasonable opportunities for carrying out the work to any other contractors employed by the Employer on or near the Site.
- 22.4.2 If the Contractor, upon written request from the Employer or the Project Manager, makes available to other contractors any roads or ways the maintenance for which the Contractor is responsible, permits the use by such other contractors of the Contractor's Equipment, or provides any other service of whatsoever nature for such other contractors, the Employer shall fully compensate the Contractor for any loss or damage caused or occasioned by such other contractors in respect of any such use or service and shall pay to the Contractor reasonable remuneration for the use of such Equipment or the provision of such services.
- 22.4.3 The Contractor shall also arrange to perform its work so as to minimise, to the extent possible, interference with the work of other contractors. The Project Manager shall determine the resolution of any difference or conflict that may arise between the Contractor and other contractors and the workers of the Employer in regard to their work.
- 22.4.4 The Contractor shall notify the Project Manager promptly of any defects in the other contractors' work that could affect the Contractor's work. The Project Manager shall determine the corrective measures, if any, required to rectify the situation after

inspection of the Facilities. Decisions made by the Project Manager shall be binding on the Contractor.

22.5 Emergency Work

22.5.1 If, by reason of an emergency arising in connection with and during the execution of the Contract, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Facilities, the Contractor shall immediately carry out such work.

If the Contractor is unable or unwilling to do such work immediately, the Employer may do or cause to be done such work as the Employer may determine is necessary in order to prevent damage to the Facilities. In such event the Employer shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work done and the reasons therefore. If the work done or caused to be done by the Employer is work which the Contractor was liable to do at its own expense under the Contract, the reasonable costs incurred by the Employer in connection therewith shall be paid by the Contractor to the Employer. Otherwise, the cost of such remedial work shall be borne by the Employer.

22.6 Site Clearance

Site Clearance in Course of Performance

22.6.1 In the course of carrying out the Contract, the Contractor shall keep the Site reasonably free from all unnecessary obstruction, store or remove any surplus materials, clear away any wreckage, rubbish or temporary works from the Site, and remove any Contractor's Equipment no longer required for execution of the Contract.

Clearance of Site after Completion

22.6.2 After Completion of all parts of the Facilities, the Contractor shall clear away and remove all wreckage, rubbish and debris of any kind from the Site, and shall leave the site and Facilities in a clean and safe condition.

22.7 Watching and Lighting

22.7.1 The Contractor shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection of the Facilities, or for the safety of the owners and occupiers of adjacent property and for the safety of the public.

22.8 Work at Night and on Holidays

22.8.1 Unless otherwise provided in the Contract, no work shall be carried out during the night and on public holidays of the country where the Site is located without prior written consent of the Employer, except where work is necessary or required to ensure safety of the Facilities or for the protection of life, or to prevent loss or damage to property, when the Contractor shall immediately advise the Project Manager, provided that provisions of this GC 22.8.1 shall not apply to any work which is customarily carried out by rotary or double-shifts.

22.8.2 Notwithstanding GC 22.8.1 or GC 22.1.3 above, if and when the Contractor considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the Employer's consent thereto, the Employer shall not unreasonably withhold such consent.

23. Test and Inspection

23.1 The Contractor shall at its own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the Plant and Equipment and any part of the Facilities as are specified in the Contract.

23.2 The Employer and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Employer shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all travelling and board and lodging expenses.

23.3 Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Employer and the Project Manager (or their designated representatives) to attend the test and/or inspection.

23.4 The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection.

If the Employer or Project Manager (or their designated representatives) fails to attend the test and/or inspection, or if it is agreed between the parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.

23.5 The Project Manager may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of work on the Facilities and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.

23.6 If any Plant and Equipment or any part of the Facilities fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Plant and Equipment or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under GC 23.3 above.

23.7 If any dispute or difference of opinion shall arise between the parties in connection with or arising out of the test and/or inspection of the Plant and Equipment or part of the Facilities that cannot be settled between the parties within a reasonable period of time, it may be referred to an Adjudicator for determination in accordance with GC 6.1 (Reference to Adjudicator) hereof.

- 23.8 The Contractor shall afford the Employer and the Project Manager, at the Employer's expense, access at any reasonable time to any place where the Plant and Equipment are being manufactured or the Facilities are being installed, in order to inspect the progress and the manner of manufacture or installation, provided that the Project Manager shall give the Contractor reasonable prior notice.
- 23.9 The Contractor agrees that neither the execution of a test and/or inspection of Plant and Equipment or any part of the Facilities, nor the attendance by the Employer or the Project Manager, nor the issue of any test certificate pursuant to GC 23.4 above, shall release the Contractor from any other responsibilities under the Contract.
- 23.10 No part of the Facilities or foundations shall be covered up on the Site without carrying out any test and/or inspection required under the Contract. The Contractor shall give a reasonable notice to the Project Manager whenever any such part of the Facilities or foundations are ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract.
- 23.11 The Contractor shall uncover any part of the Facilities or foundations, or shall make openings in or through the same as the Project Manager may from time to time require at the site, and shall reinstate and make good such part or parts.

If any part of the Facilities or foundations have been covered up at the Site after compliance with the requirement of GC 23.10 above and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Employer, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Contract.

24. Completion

- 24.1 As soon as the Facilities or any part thereof have, in the opinion of the Contractor, been completed mechanically and structurally and put in a tight and clean condition as specified in the Technical Specifications, excluding minor items not materially affecting the operation or safety of the Facilities, the Contractor shall so notify the Employer in writing.
- 24.2 Within seven (7) days of receipt of the notice from the Contractor under GC 24.1 above, the Employer shall supply the operating and maintenance personnel specified in Appendix 6 (Scope of Works and Supply by the Employer) to the Contract Agreement for pre-commissioning of the Facilities or any part thereof.
- Pursuant to Appendix 6 (Scope of Works and Supply by the Employer) to the Contract Agreement, the Employer shall also provide, within the said seven (7) day period, the raw materials, utilities, lubricants, chemicals, catalysts, Facilities, services and other matters required for pre-commissioning of the Facilities or any part thereof.
- 24.3 As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the Employer and the raw materials, utilities, lubricants,

chemicals, catalysts, Facilities, services and other matters have been provided by the Employer in accordance with GC 24.2 above, the Contractor shall commence pre-commissioning of the Facilities or the relevant part thereof in preparation for Commissioning.

- 24.4 As soon as all works in respect of pre-commissioning are completed and, in the opinion of the Contractor, the Facilities or any part thereof are ready for Commissioning, the Contractor shall so notify the Project Manager in writing.
- 24.5 The Project Manager shall, within fourteen (14) days of receipt of the Contractor's notice under GC 24.4 above, either issue a Completion Certificate in the form specified in Section VII of the Contract (Forms and Procedures) stating that the Facilities or that part thereof have reached Completion as at the date of the Contractor's notice under GC 24.4 above, or notify the Contractor in writing of any defects and/or deficiencies.

If the Project Manager notifies the Contractor of any defects and/or deficiencies, the Contractor shall then correct such defects and/or deficiencies and shall repeat the procedure described in GC 24.4 above.

If the Project Manager is satisfied that the Facilities or that part thereof have reached Completion, the Project Manager shall, within seven (7) days of receipt of the Contractor's repeated notice, issue a Completion Certificate stating that the Facilities or that part thereof have reached Completion as at the date of the Contractor's repeated notice.

If the Project Manager is not so satisfied, then it shall notify the Contractor in writing of any defects and/or deficiencies within seven (7) days of receipt of the Contractor's repeated notice, and the above procedure shall be repeated.

- 24.6 If the Project Manager fails to issue the Completion Certificate and fails to inform the Contractor of any defects and/or deficiencies within fourteen (14) days of receipt of the Contractor's notice under GC 24.4 above or within seven (7) days of receipt of the Contractor's repeated notice under GC 24.5 above, or if the Employer makes use of the Facilities or part thereof, then the Facilities or that part thereof shall be deemed to have reached Completion as at the date of the Contractor's notice or repeated notice, or the Employer's use of the Facilities, as the case may be.
- 24.7 As soon as possible after Completion, the Contractor shall complete all outstanding minor items so that the Facilities are fully in accordance with the requirements of the Contract, failing which the Employer will undertake such Completion and deduct the costs thereof from any monies owing to the Contractor.
- 24.8 Upon Completion, the Employer shall be responsible for the care and custody of the Facilities or the relevant part thereof, together with the risk of loss or damage thereto, and shall thereafter take over the Facilities or the relevant part thereof.

25. Commissioning and Operational Acceptance

25.1 Commissioning

25.1.1 Commissioning of the Facilities or any part thereof shall be commenced by the Contractor immediately after issue of the Completion Certificate by the Project Manager, pursuant to GC 24.5 hereof, or immediately after issue of the deemed Completion, under GC 24.6 hereof.

The Employer shall supply the operating and maintenance personnel and all raw materials, utilities, lubricants, chemicals, catalysts, Facilities, services and other matters required for Commissioning.

25.1.2 In accordance with the requirements of the Contract, the Contractor's advisory personnel shall attend Commissioning and advise and assist the Employer.

25.2 Guarantee Test

25.2.1 The Guarantee Test (and repeats thereof) shall be conducted by the Contractor during Commissioning of the Facilities or the relevant part thereof to ascertain whether the Facilities or that part can attain the Functional Guarantees specified in the technical specifications. The Contractor's and Project Manager's advisory personnel shall attend the Guarantee Test, and shall advise and assist the Employer. The Employer shall promptly provide to the Contractor such information as the Contractor may reasonably require in relation to the conduct and results of the Guarantee Test (and any repeats thereof).

25.2.2 If for reasons not attributable to the Contractor, the Guarantee Test of the Facilities or the relevant part thereof cannot be successfully completed within the period from the date of Completion specified in the SCC or any other period agreed upon by the Employer and the Contractor, the Contractor shall be deemed to have fulfilled its obligations with respect to the Functional Guarantees, and GCs 28.2 and 28.3 hereof shall not apply.

25.3 Operational Acceptance

25.3.1 Subject to GC 25.4 (Partial Acceptance) below, Operational Acceptance shall occur in respect of the Facilities or any part thereof when:

- (a) the Guarantee Test has been successfully completed and the Functional Guarantees are met: or
- (b) the Guarantee Test has not been successfully completed or has not been carried out for reasons not attributable to the Contractor within the period from the date of Completion specified in the SCC or any other agreed upon period as specified in GC 25.2.2 above; or
- (c) the Contractor has paid the liquidated damages specified in GC 28.3 hereof; and

any minor items mentioned in GC 24.7 hereof relevant to the Facilities or that part thereof have been completed.

25.3.2 At any time after any of the events set out in GC 25.3.1 above have occurred, the Contractor may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate in the form provided in the tender documents or

in another form acceptable to the Employer in respect of the Facilities or the part thereof specified in such notice as at the date of such notice.

25.3.3 The Project Manager shall, after consultation with the Employer, and within seven (7) days of receipt of the Contractor's notice, issue an Operational Acceptance Certificate.

25.3.4 If within seven (7) days of receipt of the Contractor's notice, the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Contractor in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the Facilities or the relevant part thereof shall be deemed to have been accepted as at the date of the Contractor's said notice.

25.4 Partial Acceptance

25.4.1 If the Contract specifies that Completion and Commissioning shall be carried out in respect of parts of the Facilities, the provisions relating to Completion and Commissioning including the Guarantee Test shall apply to each such part of the Facilities individually, and the Operational Acceptance Certificate shall be issued accordingly for each such part of the Facilities.

25.4.2 If a part of the Facilities comprises Facilities such as buildings, for which no Commissioning or Guarantee Test is required, then the Project Manager shall issue the Operational Acceptance Certificate for such facility when it attains Completion, provided that the Contractor shall thereafter complete any outstanding minor items which are listed in the Operational Acceptance Certificate.

PART VI

GUARANTEES AND LIABILITIES

26. Completion Time Guarantee

26.1 The Contractor guarantees that it shall attain Completion of the Facilities (or a part for which a separate Time for Completion is specified in the SCC within the Time for Completion specified in the SCC pursuant to GC 8.2, or within such extended time to which the Contractor shall be entitled under GC 40 (Extension of Time for Completion) hereof.

26.2 If the Contractor fails to attain Completion of the Facilities or any part thereof within the Time for Completion or any extension thereof under GC 40 (Extension of Time for Completion) hereof, the Contractor shall pay to the Employer liquidated damages in the amount specified in the SCC as a percentage rate of the Contract Price. The aggregate amount of such liquidated damages shall in no event exceed the amount specified as "Maximum" in the SCC.

Such payment shall completely satisfy the Contractor's obligation to attain

Completion of the Facilities or the relevant part thereof within the Time for Completion or any extension thereof under GC 40 (Extension of Time for Completion) hereof. The Contractor shall have no further liability whatsoever to the Employer in respect thereof.

However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the Facilities or from any other obligations and liabilities of the Contractor under the Contract.

Save for liquidated damages payable under this GC 26.2, the failure by the Contractor to attain any milestone or other act, matter or thing by any date specified in Appendix 4 (Time Schedule) to the Contract agreement and/or other programme of work prepared pursuant to GC 18 (Program of Performance) hereof shall not render the Contractor liable for any loss or damage thereby suffered by the Employer.

- 26.3 If the Contractor attains Completion of the Facilities or any part thereof before the Time for Completion or any extension thereof under GC 40 (Extension of Time for Completion) hereof, the Employer shall pay to the Contractor a bonus in the amount specified in the SCC. The aggregate amount of such bonus shall in no event exceed the amount specified as "Maximum" in the SCC.

27. Defect Liability

- 27.1 The Contractor warrants that the Facilities or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Plant and Equipment supplied and of the work executed.
- 27.2 The Defect Liability Period shall be eighteen (18) months from the date of Completion of the Facilities (or any part thereof) or twelve (12) months from the date of Operational Acceptance of the Facilities (or any part thereof), whichever first occurs, unless specified otherwise in the SCC.

If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Plant and Equipment supplied or of the work executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Employer regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good (as the Contractor shall, at its discretion, determine) such defect as well as any damage to the Facilities caused by such defect. The Contractor shall not be responsible for the repair, replacement or making good of any defect or of any damage to the Facilities arising out of or resulting from any of the following causes:

- (a) improper operation or maintenance of the Facilities by the Employer;
 - (b) operation of the Facilities outside specifications provided in the Contract;
- or
- (c) normal wear and tear.

- 27.3 The Contractor's obligations under this GC 27 shall not apply to:

- (a) any materials which are supplied by the Employer under GC 21.2 (Employer-supplied Plant, Equipment and Materials) hereof, are normally consumed in operation, or which have a normal life shorter than the Defect Liability Period stated herein.
 - (b) any designs, specifications or other data designed, supplied or specified by or on behalf of the Employer, or any matters for which the Contractor has disclaimed responsibility herein; or
 - (c) any other materials supplied or any other work executed by or on behalf of the Employer, except for the work executed by the Employer under GC 27.7 below.
- 27.4 The Employer shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Employer shall afford all reasonable opportunity for the Contractor to inspect any such defect.
- 27.5 The Employer shall afford the Contractor all necessary access to the Facilities and the Site to enable the Contractor to perform its obligations under this GC 27.
- The Contractor may, with the consent of the Employer, remove from the Site any Plant and Equipment or any part of the Facilities which are defective if the nature of the defect, and/or any damage to the Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the site.
- 27.6 If the repair, replacement or making good is of such a character that it may affect the efficiency of the Facilities or any part thereof, the Employer may give to the Contractor a notice requiring that tests of the defective part of the Facilities shall be made by the Contractor immediately upon Completion of such remedial work, whereupon the Contractor shall carry out such tests.
- If such part fails the tests, the Contractor shall carry out further repair, replacement or making good (as the case may be) until that part of the Facilities passes such tests. The tests shall be agreed upon by the Employer and the Contractor.
- 27.7 If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Facilities caused by such defect within a reasonable time (which shall in no event be considered to be less than fifteen [15] days), the Employer may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Employer in connection therewith shall be paid to the Employer by the Contractor or may be deducted by the Employer from any monies due the Contractor or claimed under the Performance Security.
- 27.8 If the Facilities or any part thereof cannot be used by reason of such defect and/or making good such defect, the Defect Liability Period of the Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the Employer because of any of the aforesaid reasons.

27.9 Except as provided in this GC 27 and GC 33 (Loss or Damage to Property/Accident or Injury to Workers/Indemnification) hereof, the Contractor shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Facilities or any part thereof, the Plant and Equipment, design or engineering or work executed which appear after Completion of the Facilities or any part thereof, except where such defects are the result of the gross negligence, fraud, criminal or wilful action of the Contractor.

28. Functional Guarantees

28.1 The Contractor guarantees that during the Guarantee Test, the Facilities and all parts thereof shall attain the Functional Guarantees specified in the Contract subject to and upon the conditions therein specified.

28.2 If, for reasons attributable to the Contractor, the guaranteed level of the Functional Guarantees specified in the Contract are not met either in whole or in part, the Contractor shall at its cost and expense make such Changes, modifications and/or additions to the Plant or any part thereof as may be necessary to meet at least the guaranteed level of such Guarantees. The Contractor shall notify the Employer upon Completion of the necessary Changes, modifications and/or additions, and shall request the Employer to repeat the Guarantee Test until the guaranteed level of the Guarantees has been met.

28.3 If, for reasons attributable to the Contractor, the Functional Guarantees specified in the Contract are not attained either in whole or in part, the Contractor shall, at the Employer's option, either

- (a) make such Changes, modifications and/or additions to the Facilities or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the Employer to repeat the Guarantee Test; or
- (b) pay liquidated damages to the Employer in respect of the failure to meet the Functional Guarantees in accordance with the provisions in the SCC or elsewhere in the Contract.

28.4 The payment of liquidated damages under GC 28.3 above up to the limitation of liability specified in the SCC shall completely satisfy the Contractor's guarantees under GC 28.1 above and any other corresponding or equivalent provision set out in the Contract, and the Contractor shall have no further liability whatsoever to the Employer in respect thereof. Upon the payment of such liquidated damages by the Contractor, the Project Manager shall issue the Operational Acceptance Certificate for the Facilities or any part thereof in respect of which the liquidated damages have been so paid.

29. Patent Indemnity

29.1 The Contractor shall, subject to the Employer's compliance with GC 29.2 below, indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Employer may suffer as a result of any infringement or

alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of: (a) the installation of the Facilities by the Contractor or the use of the Facilities in the country where the site is located; and (b) the sale of the products produced by the Facilities in any country.

Such indemnity shall not cover any use of the Facilities or any part thereof other than for the purpose indicated by, or reasonably to be inferred from, the Contract, any infringement resulting from the use of the Facilities or any part thereof, or any products produced thereby in association or combination with any other Equipment, Plant or materials not supplied by the Contractor, pursuant to the Contract Agreement.

- 29.2 If any proceedings are brought or any claim is made against the Employer arising out of the matters referred to in GC 29.1 above, the Employer shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within twenty-eight (28) days of receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission which may be prejudicial to the defence of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

- 29.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Employer.

30. Limitation of Liability

30.1 Except in cases of criminal negligence or wilful misconduct,

- (a) the Contractor shall not be liable to the Employer, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer; and
- (b) the aggregate liability of the Contractor to the Employer under the Contract shall not exceed the Contract Price, provided that this limitation shall not

apply to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.

PART VII

RISK DISTRIBUTION

31. Transfer of Ownership

- 31.1 Ownership of the Plant and Equipment (including spare parts) to be imported into the country where the Site is located shall be transferred to the Employer upon loading on to the mode of transport to be used to convey the Plant and Equipment from the country of origin to that country.
- 31.2 Ownership of the Plant and Equipment (including spare parts) procured in the country where the Site is located shall be transferred to the Employer when the Plant and Equipment are brought on to the Site.
- 31.3 Ownership of the Contractor's Equipment used by the Contractor and its Subcontractors in connection with the Contract shall remain with the Contractor or its Sub-contractors .
- 31.4 Ownership of any Plant and Equipment in excess of the requirements for the Facilities shall revert to the Contractor upon Completion of the Facilities or at such earlier time when the Employer and the Contractor agree that the Plant and Equipment in question are no longer required for the Facilities.
- 31.5 Notwithstanding the transfer of ownership of the Plant and Equipment, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor pursuant to GC 32 (Care of Facilities) hereof until Completion of the Facilities or the part thereof in which such Plant and Equipment are incorporated.

32. Care of Facilities

- 32.1 The Contractor shall be responsible for the care and custody of the Facilities or any part thereof until the date of Completion of the Facilities pursuant to GC 24 (Completion) hereof or, where the Contract provides for Completion of the Facilities in parts, until the date of Completion of the relevant part, and shall make good at its own cost any loss or damage that may occur to the Facilities or the relevant part thereof from any cause whatsoever during such period. The Contractor shall also be responsible for any loss or damage to the Facilities caused by the Contractor or its Subcontractors in the course of any work carried out, pursuant to GC 27 (Defect Liability) hereof. Notwithstanding the foregoing, the Contractor shall not be liable for any loss ,or damage to the Facilities or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GC 32.2 below and GC 38.1 hereof.

32.2 If any loss or damage occurs to the Facilities or any part thereof or to the Contractor's temporary facilities by reason of:

- (a) (insofar as they relate to the country where the Site is located) nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under GC 34 (Insurance) hereof; or
- (b) any use or occupation by the Employer or any third party (other than a Subcontractor) authorised by the Employer of any part of the Facilities; or
- (c) any use of or reliance upon any design, data or specification provided or designated by or on behalf of the Employer, or any such matter for which the Contractor has disclaimed responsibility herein,

the Employer shall pay to the Contractor all sums payable in respect of the Facilities executed, notwithstanding that the same be lost, destroyed or damaged, and will pay to the Contractor the replacement value of all temporary facilities and all parts thereof lost, destroyed or damaged. If the Employer requests the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Contractor shall make good the same at the cost of the Employer in accordance with GC 39 (Change in the Facilities) hereof. If the Employer does not request the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Employer shall either request a Change in accordance with GC 39 (Change in the Facilities) hereof, excluding the performance of that part of the Facilities thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Facilities, the Employer shall terminate the Contract pursuant to GC 42.1 (Termination for Employer's Convenience) hereof, except that the Contractor shall have no entitlement to profit under paragraph (e) of GC 42.1.3 hereof in respect of any unexecuted Facilities as at the date of termination.

32.3 The Contractor shall be liable for any loss of or damage to any Contractor's Equipment, or any other property of the Contractor used or intended to be used for purposes of the Facilities, except (i) as mentioned in GC 32.2 above (with respect to the Contractor's temporary Facilities), and (ii) where such loss or damage arises by reason of any of the matters specified in GC 32.2(b) and (c) above and in GC 38.1 hereof.

32.4 With respect to any loss or damage caused to the Facilities or any part thereof or to the Contractor's Equipment by reason of any of the matters specified in GC 38.1 hereof, the provisions of GC 38.3 hereof shall apply.

33. Loss of or Damage to Property/Accident or Injury to Workers/Indemnification

33.1 Subject to GC 33.3 below, the Contractor shall indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of

the death or injury of any person or loss of or damage to any property (other than the Facilities whether accepted or not), arising in connection with the supply and installation of the Facilities and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Employer, its contractors, employees, officers or agents.

- 33.2 If any proceedings are brought or any claim is made against the Employer that might subject the Contractor to liability under GC 33.1 above, the Employer shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within twenty-eight (28) days of receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission which may be prejudicial to the defence of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

- 33.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from any liability for loss of or damage to property of the Employer, other than the Facilities not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under GC 34 (Insurances), provided that such fire, explosion or other perils were not caused by any act or failure of the Contractor.
- 33.4 The party entitled to the benefit of an indemnity under this GC 33 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

34. Insurance

- 34.1 To the extent specified in Appendix 3 (Insurance Requirements) to the Contract agreement, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said Appendix. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, such approval not to be unreasonably withheld.

(a) **Cargo Insurance During Transport**

covering loss or damage occurring, while in transit from the supplier's or manufacturer's works or stores until arrival at the Site, to the Plant and Equipment (including spare parts therefore) and to the Contractor's Equipment, to be provided by the Contractor or its Subcontractors.

(b) Installation All Risks Insurance

covering physical loss or damage to the Facilities at the Site, occurring prior to Completion of the Facilities, with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the Defect Liability Period while the Contractor is on the Site for the purpose of performing its obligations during the Defect Liability Period.

(c) Third Party Liability Insurance

covering bodily injury or death suffered by third parties (including the Employer's personnel) and loss of or damage to property occurring in connection with the supply and installation of the Facilities.

(d) Automobile Liability Insurance

covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the execution of the Contract.

(e) Workers' Compensation

in accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.

(f) Employer's Liability

in accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.

(g) Other Insurances

Such other insurances as may be specifically agreed upon by the parties hereto as listed in the said Appendix 3.

34.2 The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GC 34.1 above, except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GC 34.1 above except for the Cargo Insurance During Transport, Workers' Compensation and Employer's Liability Insurances. All insurer's rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.

34.3 The Contractor shall, in accordance with the provisions of Appendix 3 (Insurance Requirements) to the Contract Agreement, deliver to the Employer certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect. The certificates shall provide that not less than twenty-one (21) days' notice shall be given to the Employer by insurers prior to cancellation or material modification of a policy.

- 34.4 The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.
- 34.5 The Employer shall at its expense take out and maintain in effect during the performance of the Contract those insurances specified in Appendix 3 (Insurance Requirements) to the Contract Agreement, in the sums and with the deductibles and other conditions specified in the said Appendix. The Contractor and the Contractor's Subcontractors shall be named as co-insured under all such policies. All insurers' rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies. The Employer shall deliver to the Contractor satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than twenty-one (21) days' notice shall be given to the Contractor by all insurers prior to any cancellation or material modification of the policies. If so requested by the Contractor, the Employer shall provide copies of the policies taken out by the Employer under this GC 34.5.
- 34.6 If the Contractor fails to take out and/or maintain in effect the insurances referred to in GC 34.1 above, the Employer may take out and maintain in effect any such insurances and may from time to time deduct from any amount due to the Contractor under the Contract any premium which the Employer shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor.
- If the Employer fails to take out and/or maintain in effect the insurances referred to in GC 34.5, above, the Contractor may take out and maintain in effect any such insurances and may from time to time deduct from any amount due to the Employer under the Contract any premium which the Contractor shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Employer. If the Contractor fails to or is unable to take out and maintain in effect any such insurances, the Contractor shall nevertheless have no liability or responsibility towards the Employer, and the Contractor shall have full recourse against the Employer for any and all liabilities of the Employer herein.
- 34.7 Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GC 34, and all monies payable by any insurers shall be paid to the Contractor. The Employer shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Employer's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Employer. With respect to insurance claims in which the Contractor's interest is involved, the Employer shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.

35. Unforeseen Conditions

- 35.1 If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions (other than climatic conditions) or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract Agreement by an experienced contractor on the basis of reasonable examination of the data

relating to the Facilities (including any data as to boring tests) provided by the Employer, and on the basis of information that it could have obtained from a visual inspection of the Site (if access thereto was available) or other data readily available to it relating to the Facilities, and if the Contractor determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing additional work or using additional Plant and Equipment or Contractor's Equipment, notify the Project Manager in writing of:

- (a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen; and
- (b) the additional work and/or Plant and Equipment and/or Contractor's Equipment required, including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions; and
- (c) the extent of the anticipated delay; and
- (d) the additional cost and expense which the Contractor is likely to incur.

On receiving any notice from the Contractor under this GC 35.1, the Project Manager shall promptly consult with the Employer and Contractor and decide upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Project Manager shall instruct the Contractor, with a copy to the Employer, of the actions to be taken.

35.2 Any reasonable additional cost and expense incurred by the Contractor in following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in GC 35.1 above shall be paid by the Employer to the Contractor as an addition to the Contract Price.

35.3 If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GC 35.1 above, the Time for Completion shall be extended in accordance with GC 40 (Extension of Time for Completion) hereof.

36. Change in Laws and Regulations

36.1 If, after the date twenty-eight (28) days prior to the date of tender submission, in the country where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or Changed (which shall be deemed to include any Change in interpretation or application by the competent authorities) that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract.

Notwithstanding the foregoing, such additional or reduced costs shall not be

separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the SCC.

37. Force Majeure

- 37.1 “Force Majeure” shall mean any event beyond the reasonable control of the Employer or of the Contractor, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected, and shall include, without limitation, the following:
- (a) war, hostilities or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy, civil war;
 - (b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, terrorist acts;
 - (c) confiscation, nationalisation, mobilisation, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority;
 - (d) strike, sabotage, lock-out, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, plague;
 - (e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves, or other natural or physical disaster;
 - (f) shortage of labour, materials or utilities where caused by circumstances that are themselves Force Majeure.
- 37.2 If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.
- 37.3 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party’s performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GC 40 (Extension of Time for Completion) hereof.
- 37.4 The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfil its or their obligations under the Contract, but without prejudice to either party’s right to terminate the Contract under GC 37.6 below and GC 38.5 hereof.
- 37.5 No delay or non-performance by either party hereto caused by the occurrence of any event of Force Majeure shall:

- (a) constitute a default or breach of the Contract; or
- (b) (subject to GCs 32.2, 38.3 and 38.4 hereof) give rise to any claim for damages or additional cost or expense occasioned thereby,

if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure.

- 37.6 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other, but without prejudice to either party's right to terminate the Contract under GC 38.5 hereof.
- 37.7 In the event of termination pursuant to GC 37.6 above, the rights and obligations of the Employer and the Contractor shall be as specified in GCs 42.1.2 and 42.1.3 hereof, except that the Contractor shall have no entitlement to profit under paragraph (e) of the said GC 42.1.3 in respect of any unexecuted Facilities as at the date of termination.
- 37.8 Notwithstanding GC 37.5 above, Force Majeure shall not apply to any obligation of the Employer to make payments to the Contractor herein.

38. War Risks

- 38.1 "War Risks" shall mean any event specified in paragraphs (a) and (b) of GC 37.1 hereof and any explosion or impact of any mine, bomb, shell, grenade or other projectile, missile, munitions or explosive of war, occurring or existing in or near the country (or countries) where the Site is located.
- 38.2 Notwithstanding anything contained in the Contract, the Contractor shall have no liability whatsoever for or with respect to:
- (a) destruction of or damage to Facilities, Plant and Equipment, or any part thereof;
 - (b) destruction of or damage to property of the Employer or any third party; or
 - (c) injury or loss of life,

if such destruction, damage, injury or loss of life is caused by any War Risks, and the Employer shall indemnify and hold the Contractor harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges or expenses arising in consequence of or in connection with the same.

- 38.3 If the Facilities or any Plant and Equipment or Contractor's Equipment or any other property of the Contractor used or intended to be used for the purposes of the Facilities shall sustain destruction or damage by reason of any War Risks, the Employer shall pay the Contractor for:

- (a) any part of the Facilities or the Plant and Equipment so destroyed or damaged (to the extent not already paid for by the Employer); and
- (b) replacing or making good any Contractor's Equipment or other property of the Contractor so destroyed or damaged;

so far as may be required by the Employer, and as may be necessary for completion of the Facilities.

- (c) replacing or making good any such destruction or damage to the Facilities or the Plant and Equipment or any part thereof.

If the Employer does not require the Contractor to replace or make good any such destruction or damage to the Facilities, the Employer shall either request a Change in accordance with GC 39 (Change in the Facilities) hereof, excluding the performance of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Facilities, shall terminate the Contract pursuant to GC 42.1.1 (Termination for Employer's Convenience) hereof.

- 38.4 Notwithstanding anything contained in the Contract, the Employer shall pay the Contractor for any increased costs or incidentals to the execution of the Contract which are in any way attributable to, consequent on, resulting from, or in any way connected with, any War Risks, provided that the Contractor shall as soon as practicable notify the Employer in writing of any such increased cost.
- 38.5 If during the performance of the Contract any War Risks shall occur which financially or otherwise materially affect the execution of the Contract by the Contractor, the Contractor shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its Subcontractors' personnel engaged in the work on the Facilities, provided, however, that if the execution of the work on the Facilities becomes impossible or is substantially prevented for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of any War Risks, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other.
- 38.6 In the event of termination pursuant to GC 38.3 or GC 38.5 above, the rights and obligations of the Employer and the Contractor shall be specified in GCs 42.1.2 and 42.1.3 hereof, except that the Contractor shall have no entitlement to profit under paragraph (e) of the said GC 42.1.3 in respect of any unexecuted Facilities as at the date of termination.

PART VIII

CHANGE IN CONTRACT ELEMENTS

39. Change in the Facilities

39.1 Introducing a Change

- 39.1.1 Subject to GCs 39.2.5 and 39.2.7 below, the Employer shall have the right to propose, and subsequently require, that the Project Manager order the Contractor from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the Facilities (hereinafter called “Change”), provided that such Change falls within the general scope of the Facilities and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Facilities and the technical compatibility of the Change envisaged with the nature of the Facilities as specified in the Contract.
- 39.1.2 The Contractor may from time to time during its performance of the Contract propose to the Employer (with a copy to the Project Manager) any Change which the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Facilities. The Employer may at its discretion approve or reject any Change proposed by the Contractor, provided that the Employer shall approve any Change proposed by the Contractor to ensure the safety of the Facilities.
- 39.1.3 Notwithstanding GCs 39.1.1 and 39.1.2 above, no change made necessary because of any default of the Contractor in the performance of its obligations under the Contract shall be deemed to be a Change, and such Change shall not result in any adjustment of the Contract Price or the Time for Completion Manager.
- 39.1.4 The procedure on how to proceed with and execute Changes is specified in GC 39.2 and 39.3 below, and further details and sample forms are provided in Section VII (Sample Forms and Procedures - Change Order Procedures).

39.2 Changes Originating from Employer

- 39.2.1 If the Employer proposes a Change pursuant to GC 39.1.1 above, it shall send to the Contractor a “Request for Change Proposal” requiring the Contractor to prepare and furnish to the Project Manager as soon as reasonably practicable a “Change Proposal,” which shall include the following:
- (i) brief description of the Change
 - (ii) effect on the Time for Completion Manager
 - (iii) estimated cost of the Change
 - (iv) effect on Functional Guarantees, if any, and
 - (v) effect on any other provisions of the Contract.
- 39.2.2 Prior to preparing and submitting the “Change Proposal,” the Contractor shall submit to the Project Manager an “Estimate for Change Proposal,” which shall be an estimate of the cost of preparing and submitting the Change Proposal.

Upon receipt of the Contractor’s estimate for Change Proposal, the Employer shall either:

- (a) accept the Contractor’s estimate with instructions to the Contractor to proceed with the preparation of the Change Proposal, or
- (b) advise the Contractor of any part of its Estimate for Change Proposal that is unacceptable with a request for the Contractor to review its estimate, or

(c) advise the Contractor that the Employer does not intend to proceed with the Change.

39.2.3 Upon receipt of the Employer's instruction to proceed under GC 39.2.2(a) above, the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GC 39.2.1.

39.2.4 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inequitable, the parties thereto shall agree on specific rates for the valuation of the Change.

39.2.5 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Contractor under this GC 39 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract Agreement by more than fifteen (15) percent, the Contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the Employer accepts the Contractor's objection, the Employer shall withdraw the proposed Change and shall notify the Contractor in writing thereof.

The Contractor's failure to so object shall neither affect its right to object to any subsequent requested Changes or Change orders herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Contractor represents.

39.2.6 Upon receipt of the Change Proposal, the Employer and the Contractor shall mutually agree upon all matters therein contained. Within fourteen (14) days of such agreement, the Employer shall, if it intends to proceed with the Change, issue the Contractor with a Change Order.

If the Employer is unable to reach a decision within fourteen (14) days, it shall notify the Contractor with details of when the Contractor can expect a decision.

If the Employer decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Contractor accordingly. Under such circumstances, the Contractor shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Contractor in its Estimate for Change Proposal submitted in accordance with GC 39.2.2 hereof.

39.2.7 If the Employer and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion Manager, or any other matters identified in the Change Proposal, the Employer may nevertheless instruct the Contractor to proceed with the Change by issue of a "Pending Agreement Change Order."

Upon receipt of a Pending Agreement Change Order, the Contractor shall immediately proceed with effecting the Changes covered by such Order. The parties

shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.

If the parties cannot reach agreement within sixty (60) days from the date of issue of the Pending Agreement Change Order, then the matter may be referred to an Adjudicator in accordance with the provisions of GC 6.2.

39.3 **Changes Originating from Contractor**

39.3.1 If the Contractor proposes a Change pursuant to GC 39.1.2, the Contractor shall submit to the Project Manager a written "Application for Change Proposal," giving reasons for the proposed Change and including the information specified in GC 39.2.1.

Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GCs 39.2.6 and 39.2.7. However, should the Employer choose not to proceed, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal.

40. **Extension of Time for Completion**

40.1 The Time(s) for Completion specified in the SCC shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

- (a) any Change in the Facilities as provided in GC 39 (Change in the Facilities) hereof; or
- (b) any occurrence of Force Majeure as provided in GC 37 (Force Majeure) hereof, unforeseen conditions as provided in GC 35 (Unforeseen Conditions) hereof, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GC 32.2 hereof; or
- (c) any suspension order given by the Employer under GC 41(Suspension) hereof or reduction in the rate of progress pursuant to GC 41.2 hereof; or
- (d) any Changes in laws and regulations as provided in GC 36 (Changes in Laws and Regulations) hereof; or
- (e) any default or breach of the Contract by the Employer, specifically including failure to supply the items listed in Appendix 6 (Scope of Works and Supply by the Employer) in the Contract Agreement, or any activity, act or omission of any other contractors employed by the Employer; or
- (f) any other matter specifically mentioned in the Contract;

by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.

40.2 Except where otherwise specifically provided elsewhere in the Contract, the Contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance

justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Employer and the Contractor shall agree upon the period of such extension. In the event that the Contractor does not accept the Employer's estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter to an Adjudicator, pursuant to GC 6.2 (Reference to Adjudicator) hereof.

40.3 The Contractor shall at all times use its reasonable efforts to minimise any delay in the performance of its obligations under the Contract.

41. Suspension

41.1 The Employer may request the Project Manager, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefore. The Contractor shall thereupon suspend performance of such obligation (except those obligations necessary for the care or preservation of the Facilities) until ordered in writing to resume such performance by the Project Manager.

If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Employer shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GC 39 (Change in the Facilities) hereof, excluding the performance of the suspended obligations from the Contract.

If the Employer fails to do so within such period, the Contractor may, by a further notice to the Project Manager, elect to treat the suspension, where it affects a part only of the Facilities, as a deletion of such part in accordance with GC 39 (Change in the Facilities) hereof or, where it affects the whole of the Facilities, as termination of the Contract under GC 42.1 (Termination for Employer's Convenience) hereof.

41.2 If

- (a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to Appendix 1 (Terms of Payment) of the Contract Agreement, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GC 12.3 hereof, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within fourteen (14) days of receipt of the Contractor's notice; or

- (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas in accordance with GC 10.2, or failure to obtain any governmental permit necessary for the execution and/or Completion of the Facilities;

then the Contractor may by fourteen (14) days' notice to the Employer suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.

- 41.3 If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this GC 41, then the Time for Completion Manager shall be extended in accordance with GC 40.1 hereof, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Employer to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract.
- 41.4 During the period of suspension, the Contractor shall not remove from the Site any Plant and Equipment, any part of the Facilities or any Contractor's Equipment, without the prior written consent of the Employer.

42. Termination

42.1 Termination for Employer's Convenience

42.1.1 The Employer may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this GC 42.1.

42.1.2 Upon receipt of the notice of termination under GC 42.1.1 above, the Contractor shall either immediately or upon the date specified in the notice of termination:

- (a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition; and
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d)(ii) below; and
- (c) remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Subcontractors' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition; and
- (d) subject to the payment specified in GC 42.1.3 below:
 - (i) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination; and

- (ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant and Equipment as at the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and
- (iii) deliver to the Employer all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Facilities.

42.1.3 In the event of termination of the Contract under GC 42.1.1 above, the Employer shall pay to the Contractor the following amounts:

- (a) the Contract Price, properly attributable to the parts of the Facilities executed by the Contractor as at the date of termination; and
- (b) the costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment from the Site and in the repatriation of the Contractor's and its Subcontractors' personnel; and
- (c) any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges; and
- (d) costs incurred by the Contractor in protecting the Facilities and leaving the Site in a clean and safe condition pursuant to paragraph (a) of GC 42.1.2 above; and
- (e) the reasonable amount of profit for the parts of the Facilities not executed by the Contractor as at the date of termination; and
- (f) the cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with third parties in connection with the Contract and that are not covered by paragraphs (a) through (d) above.

42.2 Termination for Contractor's Default

42.2.1 The Employer, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefore to the Contractor, referring to this GC 42.2:

- (a) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt; or
- (b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GC 43 (Assignment) hereof.

- (c) If the Contractor, in the judgment of the Employer has engaged in corrupt, fraudulent, coercive or collusive practices in competing for or in executing the Contract. For the purpose of this Clause⁸:
- (i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.
 - (ii) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
 - (iii) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.
 - (iv) "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.

42.2.2 If the Contractor:

- (a) has abandoned or repudiated the Contract; or
- (b) has without valid reason failed to commence work on the Facilities promptly or has suspended (other than pursuant to GC 41.2 hereof) the progress of Contract performance for more than twenty-eight (28) days of receiving a written instruction from the Employer to proceed; or
- (c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause; or
- (d) refuses or is unable to provide sufficient materials, services or labour to execute and complete the Facilities in the manner specified in the programme furnished under GC 18 (Program of Performance) hereof at rates of progress that give reasonable assurance to the Employer that the Contractor can attain Completion of the Facilities by the Time for Completion as extended;

then the Employer may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination to the Contractor which refers to this GC.42.2.

42.2.3 Upon receipt of the notice of termination under GC 42.2.1 or GC 42.2.2 above, the Contractor shall either immediately or upon such date as is specified in the notice of termination:

⁸ Amended 2 May 2007

- (a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition; and
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) below; and
- (c) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination; and
- (d) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Works and to the Plant and Equipment as at the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and
- (e) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Facilities.

42.2.4 The Employer may enter upon the Site, expel the Contractor, and complete the Facilities itself or by employing any third party. The Employer may, to the exclusion of any right of the Contractor over the same, take over and use with the payment of a fair rental rate to the Contractor, with all maintenance costs to the account of the Employer and with an indemnification by the Employer for all liability including damage or injury to persons arising out of the Employer's use of such Equipment, any Contractor's Equipment owned by the Contractor and on the Site in connection with the Facilities for such reasonable period as the Employer considers expedient for the supply and installation of the Facilities.

Upon Completion of the Facilities or at such earlier date as the Employer thinks appropriate, the Employer shall give a notice to the Contractor that such Contractor's Equipment will be returned to the Contractor at or near the Site and shall return such Contractor's Equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.

42.2.5 Subject to GC 42.2.6 below, the Contractor shall be entitled to be paid the Contract Price attributable to the Facilities executed as at the date of termination, the value of any unused or partially used Plant and Equipment on the Site, and the costs, if any, incurred in protecting the Facilities and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of GC 42.2.3 above. Any sums due to the Employer from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.

42.2.6 If the Employer completes the Facilities, the cost of completing the Facilities by the Employer shall be determined.

If the sum which the Contractor is entitled to be paid pursuant to GC 42.2.5 above, plus the reasonable costs incurred by the Employer in completing the Facilities, exceeds the Contract Price, the Contractor shall be liable for such excess.

If such excess is greater than the sums due to the Contractor under GC 42.2.5 above, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due to the Contractor under the said GC 42.2.5, the Employer shall pay the balance to the Contractor.

The Employer and the Contractor shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

42.3 Termination by Contractor

42.3.1 If:

- (a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to Appendix 1 (Terms of Payment) of the Contract Agreement, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GC 12.3 hereof, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice; or
- (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or Completion of the Facilities;

then the Contractor may give a notice to the Employer thereof, and if the Employer has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to the Employer within twenty-eight (28) days of the said notice, the Contractor may by a further notice to the Employer referring to this GC 42.3.1, forthwith terminate the Contract.

42.3.2 The Contractor may terminate the Contract forthwith by giving a notice to the Employer to that effect, referring to this GC 42.3.2, if the Employer becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Employer takes or suffers any other analogous action in consequence of debt.

42.3.3 If the Contract is terminated under GC 42.3.1 or GC 42.3.2 above, then the Contractor shall immediately:

- (a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition; and
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d)(ii) below; and
- (c) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractor's personnel from the Site; and
- (d) subject to the payment specified in GC 42.3.4 below:
 - (i) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination; and
 - (ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant and Equipment as at the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and
 - (iii) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Facilities.

42.3.4 If the Contract is terminated under GC42.3.1 or GC 42.3.2 above, the Employer shall pay to the Contractor all payments specified in GC 42.1.3 above, and reasonable compensation for all loss or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.

42.3.5 Termination by the Contractor pursuant to GC 42.3 is without prejudice to any other rights or remedies of the Contractor which may be exercised in lieu of or in addition to rights conferred by GC 42.3.1.

42.4 In this GC 42, the expression "Facilities executed" shall include all work executed, Installation services provided, and all Plant and Equipment acquired (or subject to a legally binding obligation to purchase) by the Contractor and used or intended to be used for the purpose of the Facilities, up to and including the date of termination.

42.5 In this GC 42, in calculating any monies due from the Employer to the Contractor, account shall be taken of any sum previously paid by the Employer to the Contractor under the Contract, including any advance payment paid pursuant to Appendix 3 (Terms of payment) to the Contract Agreement.

43. Assignment

43.1 Neither the Employer nor the Contractor shall, without the express prior written consent of the other (which consent shall not be unreasonably withheld), assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder, except that the Contractor shall be entitled to assign

either absolutely or by way of charge any monies due and payable to it or which may become due and payable to it under the Contract.

VOLUME II.ii

SPECIAL CONDITIONS OF CONTRACT

NOTES ON THE SPECIAL CONDITIONS OF CONTRACT

Similar to the Tender Data in Volume I.ii, the clauses in this Volume II.ii are intended to help the Employer provide contract-specific information in relation to corresponding clauses in the General Conditions of Contract.

The provisions of Volume II.ii complement the General Conditions of Contract included in Volume II.i, specifying contractual requirements linked to the special circumstances of the Employer, the Employer's country, the sector, and the Facilities installed. In preparing Volume II.ii, the following aspects should be checked:

- (a) Information that complements provisions of Volume II.i must be incorporated.*
- (b) Amendments and/or supplements to provisions of Volume II.i, as necessitated by the circumstances of the specific contract, must also be incorporated.*

VOLUME II.ii

SPECIAL CONDITIONS OF CONTRACT

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VOLUME II.ii

SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GC). Whenever there is a conflict, the provisions herein shall prevail over those in the GC. The corresponding clause number of the GC is indicated in parentheses.

Instructions for completing the Special Conditions of Contract are provided, as needed, in the notes in italics mentioned for the relevant Special Conditions. Where sample provisions are furnished, they are only illustrative of the provisions that the Employer should draft specifically for each procurement.

(Clause 1) Definitions

The Employer is: [name, address, and telephone, cable and fax numbers]

The Project Manager is: [name, address, and telephone, cable and fax numbers]

The Contractor is: [name, address, and telephone, cable and fax numbers]

The Contractor's Representative is: [name, address, and telephone, cable and fax numbers]

The Adjudicator is: [name, address, and telephone, cable and fax numbers]

The Bank is: [name of financial institution financing the contract]

Time for Completion:

SAMPLE PROVISION

Time for completion for all Facilities:

The time shall be specified in days, weeks or months, as appropriate, and shall be written in words and figures.

OR

Time for completion for parts of the Facilities:

Description Time for Completion

Each part of the Facilities subject to a specific Time for Completion shall be listed and briefly described with its respective Time for Completion specified in days, weeks or months, as appropriate, and shall be written in words and figures

(Clause 4) Notices

GC 4.1 Employer's address for notice purposes: [address, telephone, cable and fax numbers]

Contractor's address for notice purposes: [address, telephone, cable and fax numbers]

(Clause 5) Governing Law

SAMPLE PROVISION

GC 5.1 The Contract shall be interpreted in accordance with the laws of the Employer's country.

(Clause 6) Settlement of Disputes

GC 6.1.3 Adjudicator's hourly fee [*Specify fee in convertible currency*]

GC 6.1.4 Appointing Authority for Adjudicator:

The Appointing Authority should be an impartial international organisation recognised in the relevant industry.

GC 6.2.3 Appointing Authority for the third Arbitrator:

The Appointing Authority should be an impartial international technical organisation recognised in the relevant industry.

GC 6.2.6(i) Rules of procedure for arbitration proceedings:

International commercial arbitration may have practical advantages over other dispute settlement methods. The Bank shall not be named as arbitrator, nor should it be asked to name an arbitrator. The Employer may wish to consider the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC), the UNCITRAL Arbitration Rules of 1976, or the UNCITRAL Conciliation Rules of 1980. Another acceptable approach would be to provide (a) for international conciliation or arbitration (under ICC, UNCITRAL, or other rules) in the case of a dispute with a foreign contractor; and (b) for adjudication/arbitration in accordance with the law of the Employer's country in the case of a dispute with a contractor who is a national in the Employer's country. Employers are strongly advised to consult their lawyers for the purpose of drafting an amending provision.

GC 6.2.6(ii) The place of arbitration shall be: [*specify location*]

(Clause 7) Scope of Facilities [Spare Parts]

GC 7.3 The Contractor agrees to supply spare parts for a period of [*number*] years:

A reasonable period should be specified, in years.

SAMPLE CLAUSE

GC 7.4 The Contractor shall carry sufficient inventories to ensure an ex-stock supply of consumable spares for the Plant and Equipment. Other spare parts and components shall be supplied as promptly as possible, but at the most within six (6) months of placing the order and opening the letter of credit. In addition, in the event of termination of the production of spare parts, advance notification will be made to the Employer of the pending termination, with sufficient time to permit the Employer to procure the needed requirement. Following such termination, the Contractor will permit to the extent possible and at no cost to the Employer the blueprints, drawings and specifications of the spare parts, if requested.

(Clause 8) Time for Commencement and Completion

SAMPLE CLAUSE

GC 8.1 The Contractor shall commence work on the Facilities from the effective date for determining Time for Completion as specified in the Contract Agreement.

GC 8.2 The Completion of the Facilities shall be attained within *[weeks or months]*.

Parts and times for respective Completions shall be specified where applicable.

(Clause 11) Contract Price

SAMPLE PROVISION

GC 11.2 The Contract Price shall be adjusted in accordance with the provisions of Appendix 2 (Price Adjustment) to the Contract Agreement.

To be inserted only if Contract Price is subject to adjustment.

(Clause 13) Securities

GC 13.3.1 The amount of Performance Security, as a percentage of the Contract Price, shall be:

The amount should not exceed ten (10) percent.

GC 13.3.4 After the defect liability period, the Performance Security shall be reduced to two (2) percent of the Contract Price, or part thereof, to cover the Contractor's warranty obligations in accordance with the provisions in the SCC, pursuant to GC 27.

The above provision should be used when the Facilities have warranty obligations beyond the Defect Liability Period, pursuant to the provisions in the SCC under GC 12.

(Clause 18) Work Programme

GC 18.2 The form of the programme of performance of the Contract shall be:

Programme of performance shall usually be in the form of the critical path method (CPM), the PERT network, or other internationally used programmes.

(Clause 25) Commissioning and Operational Acceptance

GC 25.2.2 The Guarantee Test of the Facilities shall be successfully completed within *[days or weeks, written in words and figures]* from the date of Completion.

Parts and separate times for the respective guarantee tests shall be specified where applicable.

(Clause 26) Completion Time Guarantee

GC 26.2 Applicable rate for liquidated damages:

Maximum deduction for liquidated damages:

The applicable rate should not exceed one-half (0.5) percent per week, and the maximum should not exceed ten (10) percent of the Contract Price.

SAMPLE CLAUSE

The above rate and maximum apply to the price of the part of the Facilities, as quoted in the Price Schedule, for that part for which the Contractor fails to achieve Completion within the particular Time for Completion.

The above provision may be used where separate Times for Completion have been prescribed for parts of the Facilities.

GC 26.3 Applicable [amount or rate] for the bonus for early Completion;

Maximum bonus:

Where bonus is applicable, insert appropriate amount or rate as a percentage of the Contract Price, or part thereof, in words and figures, per week of early Completion of the Facilities or part thereof, in accordance with the Time for Completion specified in the SCC, with a corresponding reference in GC 1. The amount of the bonus and the minimum should be related to the benefit the Employer will gain in operating the Facilities, or part thereof, earlier than anticipated.

GC 26.3 No bonus will be given for earlier Completion of the Facilities or part thereof.

(Clause 27) Defect Liability

The Employer should not extend the Defect Liability Period beyond the period prescribed in GC 27.2, except where it is commercial practice for the type of Facilities, and in which case the relevant period shall be specified in the SCC under GC 27.2. Alternatively, the Employer may consider a Warranty Period beyond the Defect Liability Period, and the related provisions should also be included with regard to the related security in the SCC under GC 13.

(Clause 28) Functional Guarantees

GC 28.3(b) The liquidated damages in respect of the failure to meet the functional guarantees are:

Insert appropriate percentages or amounts, in words and figures, in relation to each specified Functional Guarantee to be achieved by the Facilities or part thereof. There should normally be no maximum other than the aggregate liability under the Contract, which should not exceed the Contract Price, pursuant to GC 30.1.

GC 28.4 The maximum amount of liquidated damages is:

A reasonable maximum amount, as a percentage of the Contract Price, or relevant part thereof, would be twenty (20) to thirty (30) percent. However, the Employer may, as an alternative, specify that there will be no maximum other than the aggregate liability under the Contract, which shall not exceed the Contract Price, pursuant to GC 30.1.

THIS CONTRACT AGREEMENT is made theday of, 19...

BETWEEN

(1), a corporation incorporated under the laws of and having its principal place of business at (hereinafter called "the Employer")

and

(2), a corporation incorporated under the laws of and having its principal place of business at(hereinafter called "the Contractor")

WHEREAS the Employer desires to engage the Contractor to design, manufacture, test, deliver, install, complete and commission certain Facilities, viz.

.....("the Facilities") and the Contractor has agreed to such engagement upon and subject to the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:

Article 1. Contract Documents

Contract Documents (Reference GC2) **1.1** The following documents shall constitute the Contract between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract:

- (1) This Contract Agreement and the Appendices hereto
- (2) Special Conditions of Contract
- (3) General Conditions of Contract
- (4) Technical Specifications and Drawings
- (5) The Tender and Price Schedules submitted by the Contractor
- (6) Procedures (as listed)
- (7) *Any other documents shall be added here*

Order of Precedence (Reference GC2) **1.2** In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above.

Definitions (Reference GC1) **1.3** Capitalised words and phrases used herein shall have the same meanings as are ascribed to them in the General Conditions of Contract.

Article 2. Contract Price and Terms of Payment

Contract Price **2.1** The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. (Reference GC11). The Contract Price shall be the aggregate of:

.....
.....
(amount of foreign currency in words)

.....
(amount in figures)

and

.....
.....
(amount of local currency in words)

.....
(amount in figures)

or such other sums as may be determined in accordance with the terms and conditions of the Contract.

Terms of Payment **2.2** The terms and procedures of payment according to which the Employer will reimburse the Contractor are given in Appendix 1 (Terms and Procedures of Payment) hereto.
(Reference GC12)

Article 3. Effective Date for Determining Time for Completion

Effective Date **3.1** The time of Completion of the Facilities shall be determined from the date when all of the (Reference GC1) following conditions have been fulfilled:

- (1) this Contract Agreement has been duly executed for and on behalf of the Employer and the Contractor;
- (2) the Contractor has submitted to the Employer the Performance Security and the advance payment guarantee;
- (3) the Employer has paid the Contractor the advance payment; and
- (4) *Any other conditions shall be added here.*

Each party shall use its best efforts to fulfil the above conditions for which it is responsible as soon as practicable.

3.2 If the conditions listed under 3.1 are not fulfilled within two (2) months from the date of this Contract agreement because of reasons not attributable to the Contractor, the parties shall discuss and agree on an equitable adjustment to the Contract Price and the Time for Completion and/or other relevant conditions of the Contract.

Article 4. Appendices

The Appendices listed in the attached List of Appendices shall be deemed to form an integral part of this Contract Agreement.

Reference in the Contract to any Appendix shall mean the Appendices attached hereto, and the Contract shall be read and construed accordingly.

IN WITNESS WHEREOF the Employer and the Contractor have caused this Agreement to be duly executed by their duly authorised representatives the day and year first above written.

Signed by for and

Signed by for and

on behalf of the Employer

on behalf of the Contractor

.....
Signature

.....
Signature

.....
Title

.....
Title

in the presence of

in the presence of

.....

.....

CONTRACT AGREEMENT

dated the day of 19....

BETWEEN

.....
("the Employer")

and

.....
("the Contractor")

APPENDICES

- Appendix 1 Terms and Procedures of Payment
- Appendix 2 Price Adjustment
- Appendix 3 Insurance Requirements
- Appendix 4 Time Schedule
- Appendix 5 List of Subcontractors
- Appendix 6 Scope of Works and Supply by the Employer

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Appendix 1. Terms and Procedures of Payment

The following terms and procedures of payment are given as a guideline suitable for supply and installation contracts. In the event that the Employer wishes to introduce different terms of payment to the following, it shall first obtain the written approval of the Bank for the terms it intends to use. If additional price schedules are introduced, suitable terms of payment in respect of such additional schedules must be added.

In accordance with the provisions of GC 12 (Terms of Payment), the Employer shall pay the Contractor in the following manner and at the following times, based on the price breakdown given in Volume I (Price Schedules). Payments will be made in the currencies quoted by the tenderer unless otherwise agreed between the parties. Applications for payment in respect of part deliveries may be made by the Contractor as work proceeds.

TERMS OF PAYMENT

Schedule No. 1 Plant and Equipment supplied from abroad

In respect of Plant and Equipment supplied from abroad, the following payments shall be made:

Ten (10) percent of the total CIF or CIP amount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favour of the Employer. The advance payment security may be reduced in proportion to the value of the Plant and Equipment shipped FOB or delivered to the Site, as evidenced by shipping and delivery documents.

Eighty (80) percent of the total FOB or FCA amount upon Incoterm "FOB" or "FCA," within forty-five (45) days after receipt of invoice and shipping documents. In the event that shipping is delayed upon the written instruction of the Employer for more than twenty-eight (28) days beyond the date shown in the programme of performance provided in accordance with GC 18.2, the Contractor may make application for this part of the payment against warehouse receipts, provided always that the Plant and Equipment are ready for shipment on the date shown in the said programme.

Eighty (80) percent of the total CIF or CIP amount upon Incoterm "CIF" or "CIP", upon delivery to Site within forty-five (45) days after receipt of invoice, less eighty (80) percent of the FOB amount already paid or authorised for payment.

Five (5) percent of the total CIF or CIP amount upon issue of the Completion certificate, within forty-five (45) days after receipt of invoice.

Five (5) percent of the total CIF or CIP amount upon issue of the operational acceptance certificate, within forty-five (45) days after receipt of invoice.

Schedule No. 2 Plant and Equipment Supplied from within the Employer's Country

In respect of Plant and Equipment supplied from within the Employer's country, the following payments shall be made:

Ten (10) percent of the total EXW amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favour of the Employer. The advance payment security may be reduced in proportion to the value of the Plant and Equipment delivered to the Site, as evidenced by shipping and delivery documents.

Eighty (80) percent of the total EXW amount upon Incoterm "Ex-Works," upon delivery to the Site within forty-five (45) days after receipt of invoice.

Five (5) percent of the total EXW amount upon issue of the Completion certificate, within forty-five (45) days after receipt of invoice.

Five (5) percent of the total EXW amount upon issue of the operational acceptance certificate, within forty-five (45) days after receipt of invoice.

Schedule No. 3 Local Transportation

In respect of local transportation for both the foreign currency (where applicable) and the local currency portions, the following payments shall be made:

Ten (10) percent of the total local transportation amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favour of the Employer. The advance payment security may be reduced in proportion to the value of the Plant and Equipment delivered to the Site, as evidenced by shipping and delivery documents.

Ninety (90) percent of the total local transportation amount upon delivery to the Site within forty-five (45) days after receipt of invoice.

Schedule No. 4 Installation Services

In respect of installation services for both the foreign and local currency portions, the following payments shall be made:

Ten (10) percent of the total installation services amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favour of the Employer. The advance payment security may be reduced in proportion to the value of work performed by the Contractor as evidenced by the invoices for installation services.

Eighty (80) percent of the measured value of work performed by the Contractor, as identified in the said programme of performance, during the preceding month, as evidenced by the Employer's authorisation of the Contractor's application, will be made monthly within forty-five (45) days after receipt of invoice.

Five (5) percent of the total value of installation services performed by the Contractor as evidenced by the Employer's authorisation of the Contractor's monthly applications, upon issue of the Completion certificate, within forty-five (45) days after receipt of invoice.

Five (5) percent of the total value of installation services performed by the Contractor as evidenced by the Employer's authorisation of the Contractor's monthly applications, upon issue of the operational acceptance certificate, within forty-five (45) days after receipt of invoice.

In the event that the Employer fails to make any payment on its respective due date, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate of *(insert a figure that may be different for the foreign and local currency portions and a figure that reflects the cost of money in the respective currencies)* percent per month for period of delay until payment has been made in full.

PAYMENT PROCEDURES

The procedures to be followed in applying for certification and making payments shall be as follows:

Appropriate procedures, normally through letters of credit, are to be inserted (including forms and certificates annexed as appropriate) by the Employer in the tender documents.

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Appendix 2. Price Adjustment

Where the Contract period (excluding the defects liability period) exceeds eighteen (18) months, it is normal procedure that prices payable to the Contractor shall be subject to adjustment during the performance of the Contract to reflect Changes occurring in the cost of labour and material components.

In such cases the following provision shall be included in the tender documents in the SCC and under this Appendix 2. The Employer shall indicate the values of the coefficients 'a', 'b' and 'c' to be used.

Where Contracts are of a shorter duration than 12 months or in cases where there is to be no price adjustment, the following provisions shall not be included. Instead, it shall be indicated under this Appendix 2 that the prices are to remain firm and fixed for the duration of the Contract.

Price Adjustment Formula

Prices payable to the Contractor in accordance with the Contract shall be subject to adjustment during performance of the Contract to reflect Changes in the cost of labour and material components in accordance with the following formula:

$$P1 = Po \times \left(a + b \frac{L1}{Lo} + c \frac{M1}{Mo} \right) - Po$$

in which:

- P1 = adjustment amount payable to the Contractor
- Po = Contract Price (base price)
- a = fixed element representing profit and overhead
(a = %)
- b = estimated percentage of labour component in Contract Price
(b = %)
- c = estimated percentage of Plant and Equipment component in Contract Price
(c = %)
- Lo, L1 = labour indices applicable to the appropriate industry in the country of origin on the base date and the date for adjustment, respectively
- Mo, M1 = material indices for the major raw materials in the country of origin on the base date and the date for adjustment, respectively

Conditions applicable to Price Adjustment

The tenderer shall indicate the source of labour and materials indices and the base date indices in its tender.

Item	Source of Indices Used	Base Date Indices
_____	_____	_____

The base date shall be the date 30 days prior to the tender closing date.

The date of adjustment shall be the mid-point of the period of manufacture of component or Plant.

The following conditions shall apply:

- (a) Price adjustment will be applied only if the resulting increase or decrease is more than ten (10) % of the Contract Price.
- (b) No price increase will be allowed beyond the original delivery date unless covered by an extension of time awarded by the Employer under the terms of the Contract. No price increase will be allowed for periods of delay for which the Contractor is responsible. The Employer will, however, be entitled to any price decrease occurring during such periods of delay.
- (c) The total adjustment (plus or minus) shall be subject to a ceiling amount of% of the Contract Price.
- (d) If the currency in which the Contract Price, P_0 is expressed, is different from the currency of the country of origin of the labour and/or materials indices, a correction factor will be applied to avoid incorrect adjustments of the Contract Price. The correction factor shall correspond to the ratio of exchange rates between the two currencies on the base date and the date for adjustment as defined above.
- (e) No price adjustment shall be payable on the portion of the Contract Price paid to the Contractor as an advance payment.

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Appendix 3. Insurance Requirements

Details to be completed by the Employer prior to issuing the tender documents. In the event that the Employer provides any insurances under the Contract, appropriate details must also be given.

Insurances to be taken out by the Contractor

In accordance with the provisions of GC 34, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, such approval not to be unreasonably withheld.

- (a) **Cargo Insurance** covering loss or damage occurring, while in transit from the supplier’s or manufacturer’s works or stores until arrival at the Site, to the Facilities (including spare parts therefore) and to the construction Equipment to be provided by the Contractor or its Subcontractors.

Amount	Deductible limits	Parties insured	From	To
_____	_____	_____	_____	_____

- (b) **Installation All Risks Insurance** covering physical loss or damage to the Facilities at the Site, occurring prior to Completion of the Facilities, with an extended maintenance coverage for the Contractor’s liability in respect of any loss or damage occurring during the defect liability period while the Contractor is on the Site for the purpose of performing its obligations during the defect liability period.

Amount	Deductible limits	Parties insured	From	To
_____	_____	_____	_____	_____

- (c) **Third Party Liability Insurance** covering bodily injury or death suffered by third parties (including the Employer’s personnel) and loss of or damage to property (including the Employer’s property and any parts of the Facilities which have been accepted by the Employer) occurring in connection with the supply and installation of the Facilities.

Amount	Deductible limits	Parties insured	From	To
_____	_____	_____	_____	_____

- (d) **Automobile Liability Insurance** covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the supply and installation of the Facilities. Comprehensive insurance in accordance with statutory requirements.

- (e) **Workers’ Compensation** in accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

- (f) **Employer’s Liability** in accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

- (g) **Other Insurances.** The Contractor is also required to take out and maintain at its own cost the

following insurances:

Details:

Amount	Deductible limits	Parties insured	From	To
_____	_____	_____	_____	_____

Details:

Amount	Deductible limits	Parties insured	From	To
_____	_____	_____	_____	_____

The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GC 34.1 above, except for the Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to GC 34.1 above, except for the Marine Cargo, Workers' Compensation and Employer's Liability Insurances. All insurer's rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.

Insurances to be taken out by the Employer

If the Employer is proposing to take out any or all of the above insurances, or any other insurances in respect of the Facilities, either in its own name or in the joint names of itself and the Contractor, it shall give details below prior to issuing the tender documents. Under the terms of the Contract, the Contractor and the Contractor's Subcontractors shall be named as co-insureds under all such policies.

The Employer shall at its expense take out and maintain in effect during the performance of the Contract the following insurances:

Details:

Amount	Deductible limits	Parties insured	From	To
_____	_____	_____	_____	_____

Details:

Amount	Deductible limits	Parties insured	From	To
_____	_____	_____	_____	_____

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Appendix 4. Time Schedule

The Employer should normally provide a time schedule to be followed by the Contractor during the performance of the Contract. This schedule should be provided with the tender documents under this Appendix 4. It is important that all Completion times indicated are in accordance with the information regarding time(s) for Completion given in the Tender Data.

Except under exceptional circumstances, the time schedule should indicate periods of time (e.g. weeks or months) and not specify calendar dates. All periods should be shown from the effective date of the Contract.

Should it become necessary to amend the time schedule to reflect any agreements made with the selected tenderer prior to award of Contract, the amended time schedule shall replace the original time schedule prior to signature of the Contract Agreement.

If the tender documents contain no time schedule, the tenderer shall be required to submit with its tender a detailed programme, normally in the form of a bar chart, showing how and the order in which it intends to perform the Contract and showing the key events requiring action or decision by the Employer. In preparing this programme, the tenderer shall adhere to the time(s) for Completion given in the Tender Data or give its reasons for not adhering thereto. The time schedule submitted by the selected tenderer and amended as necessary prior to award of Contract shall be included as Appendix 4 to the Contract Agreement before its signature.

If tenderers, pursuant to the provisions of the Instructions to Tenderers, are to be permitted to offer an alternative tender based on a different time schedule, details of this and any resulting reduction in price from their conforming tender based on the time schedule included in the tender documents shall be submitted as an attachment to their tender.

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Appendix 5. List of Subcontractors

Part 1 Nominated Subcontractors

In the event that the Employer wishes to nominate any particular subcontractor for the undertaking of any part or parts of the Facilities, such subcontractor shall be identified and named by the Employer in the following schedule prior to the issue of the tender documents.

Full details shall be given of the part of the Facilities to be executed, and the names and addresses of the subcontractors to whom the part of the Facilities will be subcontracted by the Contractor. Where more than one name is given for any part of the Facilities, the tenderer shall be free to select any of the named subcontractors for that part.

The Employer shall be responsible for ensuring that any nominated subcontractor comply with the requirements of the provisions regarding country of origin in the General Conditions of Contract, but the Contractor shall be responsible for ensuring that any supply, work or installation services to be provided by the nominated subcontractor comply with the similar requirements regarding country of origin.

Item of Facilities

Nominated Subcontractor

Part 2 Approved Subcontractors

Prior to award of Contract the following details shall be completed indicating those subcontractors, proposed by the tenderer by attachment to its tender, that are approved by the Employer for engagement by the Contractor during the performance of the Contract.

The following subcontractors are approved for carrying out the item of the Facilities indicated. Where more than one subcontractor is listed, the Contractor is free to choose between them, but it must notify the Employer of its choice in good time prior to appointing any selected subcontractor. In accordance with GC 19.1, the Contractor is free to submit proposals for subcontractors for additional items from time to time. No subcontracts shall be placed with any such subcontractors for additional items until they have been approved in writing by the Employer and their names have been added to this list of approved subcontractors.

Item of Facilities

Approved Subcontractors

Nationality

Appendix 6. Scope of Works and Supply by the Employer

Prior to issuing the tender documents, the Employer shall indicate in this Appendix 6 details of all personnel and Facilities it will provide for use by the Contractor and indicate, where applicable, the charges that it will make in respect of their use.

The Employer shall also identify any part(s) of the Facilities it intends to carry out itself (or by other contractors), and any Plant, Equipment or materials which it proposes to purchase itself and supply to the Contractor for incorporation in the Facilities, indicating where applicable, the charges which it will make in respect thereof.

The following personnel, Facilities, works and supplies will be provided/supplied by the Employer, and the provisions of GC 10, 21 and 24 shall apply as appropriate.

All personnel, Facilities, works and supplies will be provided by the Employer in good time so as not to delay the performance of the Contractor in accordance with the approved time schedule and programme of performance pursuant to GC 18.2.

Unless otherwise indicated, all personnel, Facilities, works and supplies will be provided free of charge to the Contractor.

Personnel _____ Charge to Contractor (if any) _____

Facilities _____ Charge to Contractor (if any) _____

Works _____ Charge to Contractor (if any) _____

Supplies _____ Charge to Contractor (if any) _____

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Appendix 7. List of Documents for Approval or Review

Pursuant to GC 20.3.1, the Contractor shall prepare, or cause its Subcontractor to prepare, and present to the Project Manager in accordance with the requirements of GC 18.2 (programme of performance), the following documents for:

A. Approval

1.

2.

3.

B. Review

1.

2.

3.

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Performance Security Form

To:

Date

Loan/Credit No.

Contract No.

(Name and address of the Employer)

Dear Ladies and/or Gentlemen,

We refer to the Contract Agreement (“the Contract”) signed on between you and (“the Contractor”) concerning design, execution and Completion of *(brief description of the Facilities)*.

By this letter we, the undersigned,, a Bank (or company) organised under the laws of and having its registered/principal office at do hereby jointly and severally with the Contractor irrevocably guarantee payment to you up to the sum of equivalent to percent (.... %) of the Contract Price until the date of the operational acceptance certificate and thereafter up to a sum of equivalent to percent (.... %) of the Contract Price until twelve (12) months after the date of operational acceptance.

Where it is agreed between you and the Contractor that the Facilities are to be accepted in parts and thus where there are separate operational acceptance certificates for each part, this Letter of Guarantee shall be apportioned to the value of each such part and reduce upon the date of operational acceptance of each part and expire twelve (12) months after the date of operational acceptance of each part.

We undertake to make payment under this Letter of Guarantee upon receipt by us of your first written demand signed by your duly authorised officer declaring the Contractor to be in default under the Contract and without cavil or argument any sum or sums within the above-named limits, without your need to prove or show grounds or reasons for your demand and without the right of the Contractor to dispute or question such demand.

Our liability under this Letter of Guarantee shall be to pay to you whichever is the lesser of the sum so requested or the amount then guaranteed hereunder in respect of any demand duly made hereunder prior to expiry of this Letter of Guarantee, without being entitled to inquire whether or not this payment is lawfully demanded.

This Letter of Guarantee shall be valid from the date of issue until twelve (12) months after the date of operational acceptance of the Facilities or, where the Facilities are to be accepted in parts, twelve (12) months after the date of operational acceptance of the last part or (date), whichever comes first.

Except for the documents herein specified, no other documents or other action shall be required, notwithstanding any applicable law or regulation.

If the defect liability period is extended with respect to any part of the Facilities in accordance with the Contract, the validity of this Letter of Guarantee shall be extended with respect to percent (.... %) of the Contract Price of that part until expiry of such extended defect liability period.

Our liability under this Letter of Guarantee shall become null and void immediately upon its expiry, whether it is returned or not, and no claim may be made hereunder after such expiry or after the aggregate of the sums paid by us to you shall equal the sums guaranteed hereunder, whichever is the earlier.

All notices to be given hereunder shall be given by registered (airmail) post to the addressee at the address herein set out or as otherwise advised by and between the parties hereto.

We hereby agree that any part of the Contract may be amended, renewed, extended, modified, compromised, released or discharged by mutual agreement between you and the Contractor, and this security may be exchanged or surrendered without in any way impairing or affecting our liabilities hereunder, without notice to us and without the necessity for any additional endorsement, consent or guarantee by us, provided, however, that the sum guaranteed shall not be increased or decreased.

No action, event or condition which by any applicable law should operate to discharge us from liability hereunder shall have any effect and we hereby waive any right we may have to apply such law so that in all respects our liability hereunder shall be irrevocable and, except as stated herein, unconditional in all respects.

Yours truly,

(name of the bank)

.....
(authorised signature)

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Bank Guarantee Form for Advance Payment

To:

Date

Loan/Credit No.

(Name and address of the Employer)

Contract No.

Dear Ladies and/or Gentlemen,

We refer to the Contract agreement (“the Contract”) signed on between you and (“the Contractor”) concerning design, execution and Completion of (brief description of the Facilities).

Whereas, in accordance with the terms of the said Contract, the Employer has agreed to pay or cause to be paid to the Contractor an advance payment in the amount of (..... %) percent of the total Contract Price due to the Contractor, namely a payment of:

.....
(Amount of foreign currency in words)

..... (.....)
(Amount in figures)

and

.....
(Amount of local currency in words)

..... (.....)
(Amount in figures)

By this letter we, the undersigned,, a Bank (or company) organised under the laws of and having its registered/principal office at do hereby jointly and severally with the Contractor irrevocably guarantee repayment of the said amounts upon the first demand of the Employer without cavil or argument in the event that the Contractor fails to commence or fulfil its obligations under the terms of the said Contract and in the event of such failure, refuses to repay all or part (as the case may be) of the said advance payment to the Employer.

Provided always that the Bank’s obligation shall be limited to an amount equal to the outstanding balance of the advance payment, taking into account such amounts which have been repaid by the Contractor from time to time in accordance with the terms of payment of the said Contract as evidenced by appropriate payment certificates.

This Guarantee shall remain in full force from the date upon which the said advance payment is received by the Contractor until the date upon which the Contractor has fully repaid the amount so advanced to the Employer in accordance with the terms of the Contract. At the time at which the outstanding amount is NIL, this Guarantee shall become null and void, whether the original is returned to us or not.

Any claims to be made under this Guarantee must be received by the Bank during its period of validity.

Yours truly,

(name of the bank)

.....
(authorised signature)

VOLUME II.vi

Form of Completion Certificate

To:

Date

Loan/Credit No.

Contract No.

(Name and address of the Contractor)

Dear Ladies and/or Gentlemen,

Pursuant to GC 24 (Completion) of the General Conditions of the Contract entered into between yourselves and the Employer dated relating to the,we hereby notify you that the following part(s) of the Facilities was (were) complete on the date specified below, and that, in accordance with the terms of the Contract, the Employer hereby take over the said part(s) of the Facilities, together with the responsibility for care and custody and the risk of loss thereof on the date mentioned below.

- 1. Description of the Facilities or part thereof:
- 2. Date of Completion:

However, you are required to complete the outstanding items listed in the attachment hereto as soon as practicable.

This letter does not relieve you of your obligation to complete the execution of the Facilities in accordance with the Contract nor of your obligations during the defects liability period.

Truly yours,

.....
(title)
(Project Manager)

VOLUME II.vii

Form of Operational Acceptance Certificate

To:

Date

Loan/Credit No.

Contract No.

(Name and address of the Contractor)

Dear Ladies and/or Gentlemen,

Pursuant to GC 25.3 (Operational Acceptance) of the General Conditions of the Contract entered into between yourselves and the Employer dated relating to the, we hereby notify you that the functional guarantees of the following part(s) of the Facilities was (were) satisfactorily attained on the date specified below.

1. Description of the Facilities or part thereof:

.....

2. Date of operational acceptance:

This letter does not relieve you of your obligation to complete the execution of the Facilities in accordance with the Contract nor of your obligations during the defects liability period.

Truly yours,

(title)
(Project Manager)

VOLUME II.viii

Change Order Procedure

Contract No.

Contents

1. GENERAL
2. CHANGE ORDER LOG
3. REFERENCES FOR CHANGES

ANNEXES

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| ANNEX 2 | Estimate for Change Proposal |
| ANNEX 3 | Acceptance of Estimate |
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VOLUME II.viii

Change Order Procedure

1. General

This volume provides samples of procedures and forms for implementing Changes in the Facilities during the performance of the Contract in accordance with GC 39 (Change in Facilities) of the General Conditions of Contract.

2. Change Order Log

The Contractor shall keep an up-to-date Change order log to show the current status of requests for Change and Changes authorised or pending, as Annex 8. Entries of the Changes in the Change order log shall be made to ensure that the log is up-to-date. The Contractor shall attach a copy of the current Change order log in the monthly progress report to be submitted to the Employer.

3. References for Changes

- (1) Request for Change as referred to in paras. 3.1(1) and 3.2(2) above shall be serially numbered CR-X-nnn.
- (2) Estimate for Change Proposal as referred to in paragraph 3.1(2) above shall be serially numbered CN-X-nnn.
- (3) Acceptance of estimate as referred to in paragraph 3.1(3) above shall be serially numbered CA-X-nnn.
- (4) Change proposal as referred to in paras. 3.1(4) and 3.2(3) above shall be serially numbered CP-X-nnn.
- (5) Change order as referred to in paras. 3.1(6) and 3.2(4) above shall be serially numbered CO-X-nnn.

Note:

- (a) Requests for Change issued from the Employer's Home Office and the Site representatives of the Employer shall have the following respective references:

Home Office	CR-H-nnn
Site	CR-S-nnn

- (b) The above number "nnn" is the same for: request for Change, estimate for Change Proposal, acceptance of estimate, Change Proposal and Change order.

Annex 1. Request For Change Proposal

.....

(Employer's Letterhead)

.....

To: (Contractor's Name and Address) Date:

.....
.....

Attention: (Name and Title)
.....
.....

Dear Ladies and/or Gentlemen:

(Contract Name) (Contract No.)
.....
.....

With reference to the captioned Contract, you are requested to prepare and submit a Change Proposal for the Change noted below in accordance with the following instructions within days of the date of this letter (or on or before [date]).

- 1. Title of Change:
- 2. Change Request No.: (Rev.)
- 3. Originator of Change: Employer
Contractor (by Application for Change Proposal No.*)

*Refer to Annex 7.

4. Brief description of Change:
.....
.....
.....

5. Facilities and/or item no. of Equipment related to the requested Change:
.....
.....
.....

6. Reference drawings and/or technical documents for the request of Change:

<u>Drawing No./Document No.</u>	<u>Description</u>
---------------------------------	--------------------

.....
.....
.....

7. Detailed conditions or special requirements on the requested Change:

.....
.....

8. General Terms and Conditions:

- (1) Please submit your estimate to us showing what effect the requested Change will have on the Contract Price.
- (2) Your estimate shall include your claim for the additional time, if any, for Completion of the requested Change.
- (3) If you have any opinion negative to the adoption of the requested Change in connection with conformance to the other provisions of the Contract or the safety of the Plant or Facilities, please inform us of your opinion in your proposal of revised provisions.
- (4) Any increase or decrease in the work of the Contractor relating to the services of its personnel shall be calculated.
- (5) You shall not proceed with the execution of the work for the requested Change until we have accepted and confirmed the amount and nature in writing.

.....
(Employer's name)

(Signature)

.....
(Name of signatory)

.....
(Title of signatory)

Annex 2. Estimate For Change Proposal

.....

(Contractor's Letterhead)

.....

To: (Employer's Name and Address) Date:

.....
.....
.....

Attention: (Name and Title)
.....
.....

Dear Ladies and/or Gentlemen:

(Contract Name) (Contract No.)
.....
.....

With reference to your request for Change Proposal, we are pleased to notify you of the approximate cost of preparing the below referenced Change Proposal in accordance with GC 39.4 of the General Conditions of Contract. We acknowledge that your agreement to the cost of preparing the Change Proposal in accordance with GC 39.9 is required before estimating the cost for Change work.

1. Title of Change:

2. Change Request No.: (Rev.)

3. Brief description of Change:
.....
.....
.....

4. Scheduled impact of Change:
.....
.....
.....

5. Cost for preparation of Change Proposal*:

(1)	Engineering	(Amount)
(a)	Engineer hrs x rate/hr =	.....
(b)	Draughtsperson hrs x rate/hr =	.....
	Sub-total hrs	.....
	Total Engineering Cost	.....
(2)	Other Cost	.....
	Total Cost (1) + (2)	.....

.....
(Contractor's name)

(Signature)

.....
(Name of signatory)

.....
(Title of signatory)

* Costs shall be in the currencies of the Contract.

Annex 3. Acceptance of Estimate

.....

(Employer's Letterhead)

.....

To: (Contractor's Name and Address) Date:

.....
.....
.....

Attention: (Name and Title)
.....
.....

Dear Ladies and/or Gentlemen:

(Contract Name) (Contract No.)
.....
.....

We hereby accept your estimate for Change Proposal and agree that you should proceed with the preparation of the Change Proposal.

- 1. Title of Change:
- 2. Change request no.: (Rev.)
- 3. Estimate for Change Proposal no.: (Rev.)
- 4. Acceptance of estimate no.: (Rev.)
- 5. Brief description of Change:
.....
.....

6. Other terms and conditions. In the event that we decide not to order the Change accepted, you shall be entitled to compensation for the cost of preparation of Change Proposal described in your estimate for Change Proposal mentioned in paragraph 3 above in accordance with GC 39.9 of the General Conditions of Contract.

.....
(Employer's name)
(Signature)

.....
.....
(Name and title of signatory)

Annex 4. Change Proposal

.....
(Contractor's Letterhead)
.....

To: (Employer's Name and Address) Date:
.....
.....

Attention: (Name and Title)
.....
.....

Dear Ladies and/or Gentlemen:

(Contract Name) (Contract No.)
.....
.....

In response to your request for Change Proposal no., we hereby submit our proposal as follows:

- 1. Title of Change:
- 2. Change request no.: (Rev.)
- 3. Originator of Change: Employer/Contractor
- 4. Brief description of Change:
.....
.....
- 5. Reasons for Change:
.....
.....
- 6. Facilities and/or item no. of Equipment related to the requested Change:
.....
.....
- 7. Reference drawings and/or technical documents for the requested Change:

<u>Drawing No./Document No.</u>	<u>Description</u>
.....
.....
.....

8. Estimate of increase or decrease to the Contract Price resulting from Change Proposal*:

	(Amount)
(1) Direct material
(2) Major construction Equipment
(3) Direct field labour (Total hrs)
(4) Subcontracts
(5) Indirect material & labour

(6)	Site supervision	.....
(7)	Head office technical staff salaries	.....
	Process engineer	..... hrs @ rate/hr -
	Project engineer	..... hrs @ rate/hr -
	Equipment engineer	..... hrs @ rate/hr -
	Procurement	..... hrs @ rate/hr -
	Draftsperson	..... hrs @ rate/hr -
	Total	..... hrs
(8)	Extraordinary costs (computer, travel, etc.)	.....
(9)	Fee for general administration, % of items	.....
(10)	Taxes and customs duties	.....
	Total lump sum cost of Change Proposal [sum of items (1) to (10)]	.....
	Cost to prepare estimate for Change Proposal [amount payable if Change is not accepted]	.....

9. Additional Time for Completion required due to Change Proposal:
10. Effect on the functional guarantees.
11. Effect on the other terms and conditions of the Contract.
12. Validity of this proposal: within days after receipt of this proposal by the Employer.
13. Other terms and conditions of this Change Proposal:
 - (1) You are requested to notify us of your acceptance, comments or rejection of this detailed Change Proposal within days from your receipt of this proposal.
 - (2) The amount of any increase and/or decrease shall be taken into account in the adjustment of the Contract Price.
 - (3) ****Contractor's cost for preparation of this Change Proposal:**

Note: This cost shall be reimbursed by the Employer in case of Employer's withdrawal or rejection of this Change Proposal without default of the Contractor in accordance with GC 39.9 of the General Conditions of Contract.

.....
(Contractor's name)

(Signature)

* Costs shall be in the currencies of the Contract. (Name of signatory)

** Specify where necessary.

.....
(Title of signatory)

Annex 5. Change Order

.....

(Employer's Letterhead)

To: (Contractor's Name and Address) Date:

.....
.....
.....

Attention: (Name and Title)

.....
.....

Dear Ladies and/or Gentlemen:

(Contract Name) (Contract No.)
.....
.....

We approve the Change order for the work specified in the Change Proposal (No.) and agree to adjust the Contract Price, Time for Completion and/or other conditions of the Contract in accordance with GC 39.6 of the General Conditions of Contract.

1. Title of Change:

2. Change request no.: (Rev.)

3. Change order no.: (Rev.)

4. Originator of Change: Employer
Contractor

5. Authorised price:
Foreign currency portion plus
Local currency portion

Ref. no.:

Date:

6. Adjustment of Time for Completion

None
Increase days
Decrease days

7. Other effects, if any

.....
.....
.....

Authorised by: Date
(Employer)

Accepted by: Date
(Contractor)

Annex 6. Pending Agreement Change Order

.....
(Employer's Letterhead)

.....
To: (Contractor's Name and Address) Date:

.....
Attention: (Name and Title)

.....
.....

Dear Ladies and/or Gentlemen:

(Contract Name) (Contract No.)
.....
.....

We instruct you to carry out the work in the Change order detailed below in accordance with GC 39.8 of the General Conditions of Contract.

1. Title of Change:
2. Employer's request for Change Proposal no.: (Rev.) dated
3. Contractor's Change Proposal no.: (Rev.) dated
4. Brief description of Change:
.....
.....
5. Facilities and/or item no. of Equipment related to the requested Change:
.....
.....
6. Reference drawings and/or technical documents for the requested Change:

<u>Drawing No./Document No.</u>	<u>Description</u>
.....
.....
.....

7. Adjustment of Time for Completion:

8. Other Change in the Contract terms:

9. Other terms and conditions:

.....
(Employer's name)

(Signature)

.....
(Name of signatory)

.....
(Title of signatory)

Annex 7. Application for Change Proposal

.....
(Contractor's Letterhead)

.....
To: (Employer's Name and Address) Date:

.....
.....
Attention: (Name and Title)
.....
.....

Dear Ladies and/or Gentlemen:

(Contract Name) (Contract No.)
.....
.....

We hereby propose that the below mentioned work be treated as a Change in the Facilities.

1. Title of Change:
2. Application for Change Proposal no.: (Rev.) dated
3. Brief description of Change:
.....
.....
4. Reasons for Change:
.....
.....
5. Order of Magnitude Estimation (in the currencies of the Contract):
.....
.....
6. Scheduled impact of Change:
.....
.....
7. Effect on functional guarantees, if any:
.....
.....
8. Appendix:

.....
.....

.....
(Contractor's name)

(Signature)

.....
(Name of signatory)

.....
(Title of signatory)

STANDARD TENDER DOCUMENT

Supply and Installation of Plant and Equipment

Volume III

The Requirements

VOLUME III

TECHNICAL SPECIFICATIONS

The text of the Technical Specifications shall be inserted into the tender documents by the Employer, as applicable to each Contract.

Reference to brand names, catalogue numbers or other details that limit any materials or items to a specific manufacturer should be avoided as far as possible. Where unavoidable, such item description should always be followed by the words “or at least the equivalent”.

Where standard specifications or codes of practice are referred to, a statement should follow that other national or international standards that ensure substantial equivalence will also be acceptable. Unless specifically indicated to the contrary, the latest available edition of any named standards and codes will be deemed to apply.

Technical Specifications shall normally be fully descriptive and give the full requirements in respect of, but not limited to, the following:

- (a) standard of materials and workmanship required;*
- (b) details of all factory tests required (type and number);*
- (c) details of all work required to achieve completion;*
- (d) details of all precommissioning and commissioning activities to be performed by the contractor;*
- (e) details of all functional guarantees required and liquidated damages to be applied in the event that such guarantees are not met.*

Attention is also drawn to the Appendices to Volume II.iii (Form of Contract Agreement) of the Standard Tender Documents, where the Employer must give details of:

- Appendix 1 Terms of Payment*
- Appendix 2 Price Adjustment*
- Appendix 3 Insurance Requirements*
- Appendix 4 Time Schedule*
- Appendix 5 List of Subcontractors*
- Appendix 6 Scope of Works and Supply by the Employer*

Where the tenderers are to provide part or all of the Technical Specifications, technical schedules, or other technical information, it shall be clearly identified as to the nature and extent of the required details and the manner in which they are to be presented by the tenderers in their tenders.

VOLUME III
DRAWINGS

It is essential that, attached to the Technical Specifications, there shall be a list of drawings showing all drawings supplied by the Employer and issued with and forming part of the tender documents.