

THE ARAB REPUBLIC OF EGYPT
MINISTRY OF WATER RESOURCES AND IRRIGATION
MECHANICAL AND ELECTRICAL DEPARTMENT

REHABILITATION OF IRRIGATION & DRAINAGE
PUMPING STATIONS PROJECT
FINANCED BY
OPEC FUND FOR INTERNATIONAL DEVELOPMENT
(OPEC)

SUPPLY AND ERECTION OF MECHANICAL WEED
SCREEN CLEANINGMACHINES AND WEED
SCREEN
FOR SOME OF THE MED PUMPING STATIONS

VOLUME I
COMMERCIAL CONDITIONS

Cairo, 2025

Price for all Bidding Document: - LE Closing Date: - / /
Bidding Documents : Vol. I, Vol.II

The Arab Republic of Egypt
The New Administrative Capital – Government district
Ministry of Water Resources and Irrigation
Mechanical and Electrical Department (MED)
Central Directorate for Electromechanical Studies
Second floor

Acronyms

BDS	Bid Data Sheet
CIF	Cost, Insurance and Freight
CIP	Carriage and Insurance Paid to <i>(place)</i>
CPM	Critical Path Method
DAB	Dispute Adjudication Board
EDI	Electronic Data Interchange
ENAA	Engineering Advancement Association of Japan
EPC-Contract	Engineer, Procurement, Construct - Contract
EXW	Ex factory, ex works or ex warehouse
FCA	Free Carrier
FIDIC	Fédération Internationale des Ingénieurs Conseils (International Federation of Consulting Engineers)
FOB	Free on Board
GCC	General Conditions of Contract
ICC	International Chamber of Commerce
IFB	Invitation for Bids
ITB	Instructions to Bidders
MED	Mechanical and Electrical Department within MWRI
MWRI	Ministry of Water Resources and Irrigation of A.R.E.
OPEC	The OPEC Fund For International Development
SBD	Standard Bidding Document
SCC	Special Conditions of Contract
SFP	Sample Forms and Procedures
TS	Technical Specifications and Drawings
UNCITRAL	United Nations Commission on International Trade Law

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Chapter I Invitation for Bids (IFB)

THE ARAB REPUBLIC OF EGYPT
The New Administrative Capital – Government District
Ministry Of Water Resources and Irrigation
Mechanical and Electrical Department (Med)
Central Directorate for Electromechanical Studies

Second floor

INVITATION FOR international competitive FINANCED BY

OPEC

LOAN NO. 13027P

The Arab Republic of Egypt acting through the Ministry of Water Resources and Irrigation has received a loan from The OPEC Fund for International Development (OPEC), No. 13027P. The Ministry intends to use part of the proceeds of this loan to finance a part of the contract resulting from the current call for tender.

The Mechanical and Electrical Department (MED) invites sealed bids from eligible bidders **SUPPLY AND ERECTION OF MECHANICAL WEED SCREEN CLEANING MACHINES AND WEED SCREEN**. Criteria for the eligibility of bidders are specified in the Instructions to Bidders (ITB).

Bids will be evaluated according to a two envelope procedure using accept and reject system as specified in the instructions to bidders.

This Invitation for Bids follows an international competitive bidding procedure and is open to eligible bidders.

Low No. 182 for the year of 2018 issuing contracts entered into by public authorities and its executive regulations shall be applied for this tender, but not conflict with the conditions of OPEC loan

Interested eligible Bidders may obtain further information from and inspect the bidding documents at the office of:

Mechanical and Electrical Department
Ministry Of Water Resources and Irrigation
Central Directorate for Electromechanical studies

The New Administrative Capital – Government district– Arab Republic of Egypt
A complete set of Bidding Documents may be purchased by any eligible bidders on the submission of a written application to the address above and upon payment of a non-refundable fee of

(See tender data sheet)

Sale of Bidding Documents will start on: **(See tender data sheet)**
And will end on: **(See tender data sheet)**

The last date for receiving clarification will be held at the address given above on:

(See tender data sheet)

And a joint site meeting one day after the pre-bid meeting
The Employer will open the technical bids, including withdrawals and modifications in the presence of bidders' designated representatives who may choose to attend the bid opening procedure on:

(See tender data sheet)

The bid must be accompanied by a Bid Security in an acceptable form for a total amount of

(See tender data sheet)

And it must be delivered to the:

Mechanical and Electrical Department
Ministry of Water Resources and Irrigation
Central Directorate for Electromechanical studies
The New Administrative Capital – Government district
Arab Republic of Egypt

At the above address at or before 12:00 o'clock (noon) on

(See tender data sheet)

Late bids will be rejected.

As already mentioned, the technical bids will be opened in the presence of the bidder's representatives who may choose to attend at the above address at the day of submission.

Head of M/E/D

Chapter 2 Instructions to Bidders
(ITB)
and
Chapter 3 Tender Data Sheet

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Instructions to Bidders

A. Introduction

1. **Source of Funds**
 - 1.1 The Employer named in the Tender Data Sheet has received a loan (hereafter called "loan") from OPEC The OPIC Fund for International Development (hereafter called "OPEC"). The loan will be used in various currencies toward the cost of the Project named in the Tender Data Sheet. The Employer intends to apply a portion of the proceeds of this loan to payments under the contract for which this Invitation for Bids is issued.
 - 1.2 Disbursement under the OPEC loan will be made to the Employer in accordance with the terms and conditions of the loan agreement, and will be subject in all respect to the terms and conditions of that agreement.
2. **Eligible Bidders**
 - 2.1 This Invitation for Bids, issued by the Employer named in the Tender Data Sheet, is open to all eligible bidders.
 - 2.2 Bids will be rejected, if the bidder is or was involved as a consultant in the preparation or implementation of the project. The same applies to an enterprise or an individual that is closely connected to the bidder under a company group or a similar business link, or to several enterprises or individuals associated correspondingly.
 - 2.3 Government-owned enterprises in the Employer's country may only participate if they are legally and financially autonomous, operate under commercial law, and are not dependent agencies of the Employer.
 - 2.4 If the bidder is legally barred from the procurement process in the Arab Republic of Egypt on the grounds of previous violations of regulations on fraud and corruption he may not submit a bid.
 - 2.5 Bidders shall not be ruled out by sanctions issued by the UN Security Council.
3. **Eligible Plant, Equipment and Services**
 - 3.1 For the purposes of these bidding documents, the terms "Facilities," "Plant and Equipment," "Installation Services," etc., shall be construed in accordance with the respective definitions given to them in the Conditions of Contract (CC, Cl. 1.15 ff.).
 - 3.2 The terms "Design" and "Training" have to be considered too, even not explicit defined in the Conditions of Contract.
 - 3.3 For purposes of this clause, "Country of Origin" means the place where the plant and equipment or component parts thereof are mined, grown, or produced. Plant and equipment are produced when, through manufacturing, processing or substantial and major assembling of

components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.

3.4 The origin of the plant etc. may be distinct from the nationality of the Bidder. In such a case the manufacturing workshop has to provide the references showing the required experience in designing, manufacturing and/or installation of the facilities (see Item 9.3 (c)).

4. Cost of Bidding

4.1 The Bidder shall bear all costs associated with the preparation and submission of its bid, and the Employer will in no case be responsible or liable for these costs, regardless of the conduct or outcome of the bidding process.

B. The Bidding Documents

- 5. Content of Bidding Documents**
- 5.1 The Works required, bidding procedures, contract terms and technical requirements are prescribed in the bidding documents. The bidding documents include the following sections:

Volume I – Commercial Conditions

- Invitation for Bids (IFB)
- Instructions to Bidders (ITB)
- Tender Data Sheet
- Conditions of Contract (CC)
- Sample Forms and Procedures (SFP)
 1. Form of Contract Agreement and payment schedule
 2. Performance Security Forms
 3. Bank Guarantee Form for Advance Payment
 4. Form of Notification "Ready for Tests on Completion"
 5. Form of Completion Certificate
 6. Change Order Procedures

Volume II – Technical Specifications (TS), Schedules and Including details of technical evaluation procedure.

1. Data Sheets
2. Price Schedules

Bids not containing a filled and signed Data Sheets will be considered legally not responsive and rejected.

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

**6. Clarification
of Bidding
Documents;
and Pre-Bid
Meeting**

- 6.1 A prospective Bidder requiring any clarification of the bidding documents may notify the Employer in writing or by cable (hereinafter, the term cable is deemed to include Electronic Data Interchange (EDI), telex or telefax) at the Employer's mailing address indicated in the Tender Data Sheet. Similarly, if a Bidder feels that any important provision in the documents is missing, such an issue should be raised at this stage. The Employer will respond in writing to any request for clarification or modification of the bidding documents that it receives no later than specified in the Tender Data Sheet. Written copies of the Employer's response (including an explanation of the query but not identification of its source) will be sent to all prospective bidders that have purchased the bidding documents.
- 6.2 The Bidder is advised to visit and examine the site where the Works are to be executed and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a turnkey contract for the Works. The costs of visiting the site shall be at the Bidder's own expense. The bidder shall attach to his bid the signed and confirmed Site Visit Format (see Volume II). **Bids without this confirmation will be rejected.**
- 6.3 The Bidder 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 Bidder, its personnel and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof and 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.
- 6.4 The Bidder's designated representative is invited to attend a pre-bid meeting, which, if convened, will take place at the venue and time stipulated in the Tender Data Sheet. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage. The Bidder is requested, as far as possible, to submit any question in writing or by cable, to reach the Employer not later than one week before the meeting.
It may not be practicable at the meeting to answer questions received late, but questions and responses will be transmitted as indicated hereafter. Minutes of the meeting, including the text of the questions raised and the responses given, together with any responses prepared after the meeting will be transmitted without delay to all purchasers of the bidding

documents. Any modification of the bidding documents listed in ITB Sub-Clause 5.1 which may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to ITB Clause 7 and not through the minutes of the pre-bid meeting.

7. Amendment of Bidding Documents

7.1 At any time prior to the deadline for submission of bids, the Employer may, for any reason, whether at its own initiative, or in response to a clarification requested by a prospective Bidder, amend the bidding documents.

7.2 The amendment will be notified in writing or by cable to all prospective bidders that have purchased the bidding documents and will be binding on them. Bidders are required to immediately acknowledge receipt of any such amendment, and it will be assumed that the information contained therein will have been taken into account by the Bidder in its bid.

7.3 In order to afford prospective Bidders reasonable time in which to take the amendment into account in preparing their bid, the Employer may, at its discretion, extend the deadline for the submission of bids, in which case, the Employer will notify all bidders in writing of the extended deadline.

C. Preparation of Bids

8. Language of Bid

8.1 The bid prepared by the Bidder and all correspondence and documents related to the bid exchanged by the Bidder and the Employer shall be written in the language specified in the Tender Data Sheet. Any printed literature furnished by the Bidder may be written in another language, as long as such literature is accompanied by a translation of its pertinent passages in the language specified in the Tender Data Sheet, in which case, for purposes of interpretation of the bid, the translation shall govern.

9. Documents Comprising the Bid

9.1 The bid submitted by the Bidder shall comprise the following documents:

(a) Bid Form duly completed and signed by the Bidder, together with all Attachments identified in ITB Sub-Clause 9.3 below.

(b) Price Schedules duly completed by the Bidder.

9.2 If a Bidder wants to submit an alternative bid in addition to his basic bid he shall follow the same instructions as valid for the basic bid.

9.3

Each Bidder shall submit with his bid the following attachments:

(a) **Attachment 1 : Bid Security**

A bid security furnished in accordance with ITB Clause 13.

(b) **Attachment 2: Power of Attorney**

A power of attorney, duly notarized, indicating that the person(s) signing the bid has(ve) the authority to sign the bid and thus that the bid is binding upon the Bidder during the full period of its validity in accordance with ITB Clause 14. The notarized Power of Attorney shall be authenticated by the Consulate General of A.R.E. at the bidder's home country and by the Ministry of Foreign Affaires in Cairo.

(c)

Attachment 3: Bidder's Eligibility and Qualifications

The Bidder has to prove in accordance with ITB Clause 2 that he is eligible to bid and is qualified to perform the obligations of a turn key contract if its bid is accepted.

The Bidder has to submit documents which prove his eligibility and qualifications in

- Certified Financial Statements for the recent five years;
- Annual Turnover for the recent five years;
- Number of technical, administrative and workman staff for last five years;
- List of available equipment for the Project;
- Site Organsation Chart including CVs of qualified key personal (e.g. site manager, contracts engineer etc.) to be nominated to the Project;

Additional requirements may be given in the Tender Data Sheet. Lacking documents and references will result in a rejection of the bid. When ever applicable sub-contractors have to add their references.

(d)

Attachment 4: Eligibility and Conformity of the Works

Documentary evidence shall be established in accordance with ITB Clause 3 that the facilities offered by the Bidder in his bid or in any alternative bid (if permitted) are eligible and conform to the bidding documents.

The documentary evidence of the eligibility of the facilities shall consist of a statement on the country of origin of the equipment offered, which shall be confirmed by a certificate of origin issued at the time of shipment.+73

The documentary evidence of the conformity of the facilities to the bidding 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, a

- detailed description of the building programme, chosen constructions and measures for Quality-Assurance in accordance with the requirements of the Technical Specifications;
- 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;
 - iii. a commentary on the Employer's Technical Specifications and adequate evidence demonstrating the substantial responsiveness of the facilities to those specifications. Bidders shall note that standards for workmanship, materials and equipment designated by the Employer in the bidding documents are intended to be descriptive (establishing standards of quality and performance) only and not restrictive. The Bidder may substitute alternative standards, brand names and/or catalog numbers in its bid, provided that he demonstrates to the Employer's satisfaction that the substitutions are substantially equivalent or superior to the standards designated in the Technical Specifications.

- (e) **Attachment 5:** Subcontractors Proposed by the Bidder
The Bidder has to list his sub-contractors and sub-manufacturers according to major (supply, works, services, vendors etc.) items not manufactured by himself. **A bid not indicating clearly the name of the contractor and the name of the subcontractors will be rejected.** The Employer reserves the right to delete any proposed Subcontractor from the list prior to award of contract.
- (f) **Attachment 6:** Deviations

In order to facilitate evaluation of bids, deviations, if any, from the terms and conditions or Technical Specifications shall be listed in Attachment 6 to the bid. The Bidder may also provide the additional price, for withdrawal of the deviations. However, the attention of the bidders is drawn to the provisions of ITB Sub-Clause 22.4 regarding the rejection of bids that are not substantially responsive to the requirements of the bidding documents. Deviations which are not expressly listed are understood to be not existing and Employer's terms and conditions or Technical Specifications remain valid

- (g) **Attachment 7:** Alternative Bids
The Bidder may quote for one main offer and one

alternative offer. Both will be considered and studied by the Employer and should be in conformity with the conditions of these tender documents accompanied with the drawings attached.

An alternative for the "Time for Completion" is accepted only if the Bidder can prove that he can complete the contract in a shorter "Time for Completion" than given in the Tender Data Sheet (Cl. 24 (d)).

(h) **Attachment 8** : Declaration of Undertaking

The Bidder is requested to sign the Declaration of Undertaking as attached to the Tender Documents.

A bid not containing the signed Declaration of Undertaking will be rejected.

10. Bid Form
and Price
Schedules

10.1 The Bidder shall complete the Bid Form and the appropriate Price Schedules furnished in the bidding documents as indicated therein and in the Subsection "Bid Form and Price Schedules" of the bidding documents, following the requirements of ITB Clauses 11 and 12.

11. Bid Prices

11.1 Unless otherwise specified in the Technical Specifications, and the Tender Data Sheet bidders shall quote for the entire Works on a single responsibility basis such that the total bid price covers all the Contractor's obligations mentioned in or to be reasonably inferred from the bidding documents in respect of the design, calculating, manufacture, including procurement and subcontracting (if any), delivery, construction, installation and completion of the Works. This includes all requirements under the Contractor's responsibilities for testing, precommissioning and commissioning of the Works and, where so required by the bidding documents, the acquisition of all permits, approvals and licenses, etc.; the operation, maintenance and training services and such other items and services as may be specified in the bidding documents, all in accordance with the requirements of the Conditions of Contract. Items against which no price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed to be covered by the prices for other items.

11.2 Bidders are required to quote the price for the commercial, contractual and technical obligations outlined in the bidding documents. If a Bidder wishes to make a deviation, such deviation shall be listed in Attachment 6 of its bid. The Bidder shall also provide the additional price, if any, for withdrawal of the deviations (in Bid-Envelope 2, see Cl. 16.4 ITB)

11.3 The Price Schedules showing the required breakdown of prices are attached in Volume II.

11.4 In the Schedules (see Cl. 11.3), bidders shall give the required details and a breakdown of their prices as follows and as specified in the Technical Specification, Chapter 2:

- (a) Any Facilities to be supplied from abroad shall be quoted CIF prices at port of entry.
- (b) Any facilities manufactured or fabricated within the Employer's country shall be quoted on an EXW (ex factory, ex works, ex warehouse or off-the-shelf, as applicable) basis, and shall be inclusive of all costs as well as duties and taxes paid or payable on components and raw materials incorporated or to be incorporated in the Works.
- (c) Local Transport, insurance for any activities of the Contractor in the country of the Employer, fees, duties, charges, contributions, etc. to be paid in the country of

the Employer according to actual laws and regulations, and any other services incidental to the delivery of the Facilities, the erection / installation of the works are to be dealt with as Local Costs, to be included in the prices for installation, testing etc. and broken down as given in the price schedule attached to Volume II.

(d) Quotation for spare parts shall be included according to the respective schedules attached to Volume II.

11.5 The terms EXW, CIF, CIP, etc., shall be governed by the rules prescribed in the current edition of *Incoterms*, published by the International Chamber of Commerce, 38 Cours Albert 1^{er}, 75008 Paris, France.

12. Bid Currencies

12.1 Prices shall be quoted in the following currencies:

- (a) Materials and equipment to be supplied from abroad and services rendered by foreigners or rendered abroad shall be quoted and paid in (US\$ or EURO)
- (b) Plant and equipment covered under ITB Sub-Clause 11.4 (b) to be supplied from within the Employer's country, and related Contractor's prices shall be quoted in Egyptian Pound (L.E.) , unless otherwise specified in the Tender Data Sheet.
- (c) Unless otherwise specified in the Tender Data Sheet, local transportation, insurance and other services incidental to delivery of the plant and equipment covered under ITB Sub-Clause 11.4 (c) and installation services covered under ITB Sub-Clause 11.4 (d) shall be quoted in local currency (L.E.).
- (d) Spare parts shall be quoted and paid in US\$ or Euro and LE according to their origin: spare parts from abroad in (US\$ or Euro) spare parts from in within Egypt LE.
- (e) Bidders who may not receive payments in local currency (to be proven by the Bidder) shall sign together with their subcontractor (or subcontractors, if more than one) the "Declaration on payment in local currency" attached to Volume II of the Tender Documents .

13. Bid Security **13.1 The Bidder shall furnish, as part of its bid, a bid security in the amount stipulated in the Invitation for Bids.**

13.2 The bid security shall, at the Bidder's option, be in the form of letter of credit or a bank guarantee from a reputable bank selected by the Bidder and located in any eligible country, or Deposit the value of bid Security in MED account No. (12200301), (document proving that shall be submitted with

tender).

The format of the bank guarantee shall be in accordance with the form of bid security included in the bidding documents (Vol. I, Chapter V); other formats may be permitted, subject to the prior approval of the Employer. Bid security shall remain valid for a period of twenty-eight (28) days beyond the original bid validity period, and beyond any extension subsequently requested under ITB Sub-Clause 14.2.

13.3 Any bid not accompanied by an acceptable bid security shall be rejected by the Employer as being non-responsive, pursuant to ITB Clause 22.5.

13.4 The bid securities of unsuccessful bidders will be returned as promptly as possible, but not later than twenty-eight (28) days after the expiration of the bid validity period.

13.5 The bid security of the successful Bidder will be returned when the Bidder has signed the Contract Agreement, pursuant to ITB Clause 31, and has furnished the required performance security, pursuant to ITB Clause 32.

13.6 The bid security may be forfeited

- (a) if the Bidder withdraws his bid during the period of bid validity specified in Clause 14.1.
- (b) in the case of a successful Bidder, if the Bidder fails within the specified time limit:
 - (i) to sign the Contract Agreement, in accordance with ITB Clause 31, or
 - (ii) to furnish the required Performance Security, in accordance with ITB Clause 32.

14. Period of Validity of Bid

14.1 Bids shall remain valid for the period named in the Tender Data Sheet after the closing date prescribed by the Employer for the receipt of bids, pursuant to ITB Sub-Clause 17.1. A bid valid for a shorter period shall be rejected by the Employer as being nonresponsive.

14.2 In exceptional circumstances, the Employer may solicit the Bidder's consent to an extension of the bid validity period. The request and responses thereto shall be made in writing or by cable. If a Bidder accepts to prolong the period of validity, the bid security shall also be suitably extended. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request will not be required nor permitted to modify its bid.

15. Format and Signing of Bid

15.1 The Bidder shall prepare an original and the number of copies/sets of the bid specified in the Tender Data Sheet, clearly marking each one as "ORIGINAL Bid," "COPY NO. 1," "COPY NO. 2," etc., as appropriate. In the event of any discrepancy between

them, the original shall govern.

15.2 The original and all copies of the bid, each consisting of the documents listed in ITB Sub-Clause 9.1, shall be typed or written in indelible ink and shall be signed by the Bidder or a person or persons duly authorized to bind the Bidder to the contract. The latter authorization shall be indicated by written power of attorney accompanying the bid and submitted as Attachment 2 to the Bid under ITB Sub-Clause 9.3. All pages of the bid, except for unamended printed literature, shall be initialed by the person or persons signing the bid.

15.3 The bid shall contain no alterations, omissions or additions, unless such corrections are initialed by the person or persons signing the bid.

15.4 The Bidder shall furnish information as described in the last paragraph of the Form of Bid on commissions or gratuities, if any, paid or to be paid to agents relating to this bid, and to contract execution if the Bidder is awarded the contract.

D. Submission of Bids

16. Sealing and Marking of Bids

16.1 The Bidder shall seal the original and each copy of the bid in separate envelopes, duly marking the envelopes as "ORIGINAL BID" and "COPY NO. [number]" The envelopes shall then be sealed in an outer envelope.

16.2 The inner and outer envelopes shall

- (a) be addressed to the Employer at the address given in the Tender Data Sheet, and
- (b) bear the contract name indicated in the Tender Data Sheet, the Invitation for Bids title and number indicated in the Tender Data Sheet, and the statement "DO NOT OPEN BEFORE [date]," to be completed with the time and date specified in the Tender Data Sheet, pursuant to ITB Sub-Clause 17.3.

16.3 The inner envelope shall also indicate the name and address of the Bidder so that the bid can be returned unopened in case it is declared "late".

16.4 The **inner envelope shall contain the bid in two envelopes**, one containing the **Technical Proposal** and the other **the Financial Proposal**. The envelopes shall marked as:

- **Bid-Envelope 1** "TECHNICAL PROPOSAL-Do not open before (bid opening date)" containing the following documents:
 - all documents requested in ITB Cl. 9.3 except price of Alternatives (if any)
 - Tech. Data Sheets signed (except Bid Form, Price Schedules and price of deviations)
 - Other documents sustaining the Bid

This Envelope shall not contain any commercial figures

26.9 Patent

Indemnity

Only the Final Taking Over Certificate shall be deemed to constitute acceptance of the Works.

26.10 Unfulfilled Obligations

After the Final Taking Over Certificate has been issued, each party shall remain liable for the fulfillment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.

26.11 Clearance of Site

Upon receiving the Final Taking Over Certificate, the Contractor shall remove any remaining Contractor's equipment, surplus material, wreckage, rubbish and temporary works from the Site.

If these items have not been removed within 28 days after the Employer issues the Final Taking Over Certificate, the Employer may sell or otherwise dispose of any remaining items. The Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

Any balance of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the Employer's costs, the Contractor shall pay the outstanding balance to the Employer.

**27. Patent
Indemnity**

27.1 The Contractor shall, subject to the Employer's compliance with Sub-Clause 29.2, 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 Works or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the Works 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.

27.2 If any proceedings are brought or any claim is made against the Employer arising out of the matters referred to in Sub-Clause 27.1, 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 after receipt of such notice that he intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on his own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) days period, the Employer shall make no admission that may be prejudicial to the defense 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.

27.3 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.

28. Limitation of Liability

Except in cases of criminal negligence or willful 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, loss of use, loss of production, or loss of profits or interest costs, 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, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.

29. Transfer of Ownership

G. Risk Distribution

29.1 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.

29.2 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.

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29.3 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 Subcontractors.

29.4 Ownership of any Plant and Equipment in excess of the requirements for the Works shall revert to the Contractor upon Completion of the Works 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 Works.

29.5 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 Clause 30 [Care of Works] hereof until Completion of the Works or the part thereof in which such Plant and Equipment are incorporated.

30. Care of Works

30.1 The Contractor shall be responsible for the care and custody of the Works or any part thereof until the date stated in the Taking Over Certificate issued by the Employer pursuant to Clause 24, and shall make good at its own cost any loss or damage that may occur to the Works from any cause whatsoever during such period. The Contractor shall also be responsible for any loss or damage to the Works caused by the Contractor or its Subcontractors in the course of any work carried out, pursuant to Clause 26 [Defect Liability]. Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the Works or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a) and (b) of Sub-Clause 30.2.

30.2 If any loss or damage occurs to the Works or any part thereof or to the Contractor's temporary Works by reason of

- (a) any use or occupation by the Employer or any third party (other than a Subcontractor) authorized by the Employer of any part of the Works
- (b) 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 Works executed, notwithstanding that the same be lost, destroyed or damaged, and will pay to the Contractor the replacement value of all temporary works 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 Works thereby occasioned, the Contractor shall make good the same at the cost of the Employer in accordance with Clause 36 [Change in the Works]. If the Employer does not request the Contractor in writing to make good any loss or damage to the Works thereby occasioned, the Employer shall either request a change in accordance with Clause 36, excluding the performance of that part of the Works thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Works, the Employer shall terminate the Contract pursuant to Sub-Clause 39.1 [Termination for Employer's

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30.3 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 Works, except (i) as mentioned in Sub-Clause 30.2 (with respect to the Contractor's temporary works), and (ii) where such loss or damage arises by reason of any of the matters specified in Sub-Clause 30.2 (a) and (b).

**31. Loss of or
Damage to
Property;
Accident or
Injury to
Workers;
Indemnification**

31.1 Subject to Sub-Clause 31.3, 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 Works 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.

31.2 If any proceedings are brought or any claim is made against the Employer that might subject the Contractor to liability under Sub-Clause 31.1, 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 after 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 that may be prejudicial to the defense 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.

31.3 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 Works not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under Clause 32, provided that such fire, explosion or other perils were not caused by any act or failure of the Contractor.

31.4 The party entitled to the benefit of an indemnity under this Clause, 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.

32. Insurance

32.1 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 . The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, who should not unreasonably withhold such approval.

- (a) Cargo Insurance During Transport
Covering loss or damage occurring while in transit from the Contractor's or Subcontractor's works or stores until arrival at the Site, to the Plant and Equipment (including spare parts therefor) and to the Contractor's Equipment.
- (b) Installation All Risks Insurance
Covering physical loss or damage to the Works at the Site, occurring prior to Completion of the Works, 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 Works.
- (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 the corresponding Appendix.

32.2 The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to Sub-Clause 32.1, except for the Third Party Liability, 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 Sub-

Clause 32.1 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.

32.3 The Contractor shall, in accordance with the provisions of the corresponding Appendix (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 no less than twenty-one (21) days' notice shall be given to the Employer by insurers prior to cancellation or material modification of a policy.

32.4 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.

32.5 The Employer shall at its expense take out and maintain in effect during the performance of the Contract those insurances specified in the corresponding Appendix (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-insureds 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 Sub-Clause.

32.6 If the Contractor fails to take out and/or maintain in effect the insurances referred to in Sub-Clause 32.1, the Employer may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Contractor under the Contract any premium that 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 Sub-Clause 32.5, the Contractor may take out and maintain in effect any such insurances and may from time to time claim from the Employer under the Contract any premium that 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.

32.7 Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies affected by it pursuant to this Clause, 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.

**33. Unforeseen
Conditions**

33.1 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 Works (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 Works, 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,
- (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,
- (c) the extent of the anticipated delay, and
- (d) the additional cost and expense that the Contractor is likely to incur.

On receiving any notice from the Contractor under this Sub-Clause, 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.

33.2 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 Sub-Clause 33.1 shall be paid by the Employer to the Contractor as an addition to the Contract Price.

33.3 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 Sub-Clause 33.1, the Time for Completion shall be extended in accordance with Clause 37.

34. Change In Laws and Regulations

If, after the date twenty-eight (28) days prior to the date of Bid 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 these Conditions.

35. Force Majeure

35.1 Definition of Force Majeure

In this Clause, "Force Majeure" means an exceptional event or circumstances:

- (a) which is beyond a Party's control,
 - (b) which such Party could not reasonably have provided against before entering into the Contract,
 - (c) which, having arisen, such Party could not reasonably have avoided or overcome, and
 - (d) which is not substantially attributable to the other Party.
- Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:
- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
 - (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,
 - (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors,
 - (iv) munitions of war, explosive materials, ionizing radiation or contamination by radio activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
 - (v) natural catastrophes such as earthquake, hurricane, typhoon, or volcanic activity.

35.2 Notice of Force Majeure

If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting

the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party become aware, or should have become aware, of the relevant event or circumstances constituting Force Majeure.

The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

35.3 Duty to Minimize Delay

Each Party shall at all times use all reasonable endeavors to minimize any delay in the performance of the Contract as a result of Force Majeure.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

35.4 Consequences of Force Majeure

If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 35.2, and suffers delay and/or incurs cost by reason of such Force Majeure, the Contractor shall be entitled, subject to Sub-Clause 6.1 to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 37, and
- (b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 35.1 and, in the case of sub-paragraphs (i) to (iv), occurs in the Country, payment of such cost

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 6.1 to agree or determine these matters.

35.5 Force Majeure Affecting Sub-contractor

If any Sub-Contractor is entitled under any contract or agreement relating to the works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

35.6 Optional Termination, Payment and Release

If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause 35.2, or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either either Party may give to the other Party a notice of termination of the Contract. In this

event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 21.6.2.

Upon such termination, the Employer shall determine the value of the work done and issue a Payment Certificate which shall include:

- (a) the amounts payable for any work carried out for which a price is stated in the Contract;
- (b) the Cost of Plant and Materials orders for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery; this plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;
- (c) any other cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works;
- (d) the cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and
- (e) the cost of repatriation of the Contractor's staff and labor employed wholly in connection with the Works at the date of termination.

35.7 Release from Performance under the Law

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfill its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

- (a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
- (b) the sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 35.6 if the Contract had been terminated under Sub-Clause 35.6.

H. Change in Contract Elements

36. Change in the Works

36.1 Introducing a Change

- 36.1.1 Subject to Sub-Clauses 36.2.5 and 36.2.7, 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 Works

(hereinafter called "Change"), provided that such Change falls within the general scope of the Works and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Works and the technical compatibility of the Change envisaged with the nature of the Works as specified in the Contract.

36.1.2 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 that the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Works. 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 Works.

36.1.3 Notwithstanding Sub-Clauses 36.1.1 and 36.1.2, 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.

36.1.4 The procedure on how to proceed with and execute Changes is specified in Sub-Clauses 36.2 and 36.3, and further details and sample forms are provided in the Sample Forms and Procedures Section in the bidding documents.

36.2 Changes Originating from Employer

36.2.1 If the Employer proposes a Change pursuant to Sub-Clause 36.1.1, 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:

- (a) brief description of the Change
- (b) effect on the Time for Completion
- (c) estimated cost of the Change
- (d) effect on Guarantees figures
- (e) effect on any other provisions of the Contract.

36.2.2 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 do one of the following:

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

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

36.2.3 Upon receipt of the Employer's instruction to proceed under Sub-Clause 36.2.2 (a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with Sub-Clause 36.2.1.

36.2.4 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.

36.2.5 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 Clause 36 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 percent (15%), 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.

36.2.6 Upon receipt of the Change Proposal, the Employer and the Contractor shall mutually agree upon all matters therein contained. Within fourteen (14) days after 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 Sub-Clause 36.2.2.

36.2.7 If the Employer and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, 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 shall be settled in accordance with the provisions of Clause 6.

36.2.8 Changes Originating from Contractor

If the Contractor proposes a Change pursuant to Sub-Clause 36.1.2, 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 Sub-Clause 36.2.1.

Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in Sub-Clauses 36.2.6 and 36.2.7. 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.

37. Extension of Time for Completion

37.1 The Time for Completion 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 Works as provided in Clause 36
- (b) any occurrence of Force Majeure as provided in Clause 35, unforeseen conditions as provided in Clause 33, or other occurrence of any of the matters specified or referred to in paragraphs (a) and(b) of Sub-Clause 30.2
- (c) any suspension order given by the Employer under Clause 38 hereof or reduction in the rate of progress pursuant to Sub-Clause 38.2 or
- (d) any changes in laws and regulations as provided in Clause 34, or
- (e) any default or breach of the Contract by the Employer, specifically including failure to supply the items listed in the corresponding Appendix (Scope of Works and Supply by the Employer) to 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.

37.2 Except where otherwise specifically provided 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 matter shall be settled in accordance with the provisions of Sub-Clause 6.1.

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

38. Suspension

38.1 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 therefor. The Contractor shall thereupon suspend performance of such obligation (except those obligations necessary for the care or preservation of the Works) 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 Clause 36, 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 Works, as a deletion of such part in accordance with Clause 36 or, where it affects the whole of the Works, as termination of the Contract under Sub-Clause 39.1.

38.2 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 the corresponding Appendix (Terms and Procedures of Payment) to 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 Sub-Clause 12.3, 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 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 in accordance with Sub-Clause 10.2, or failure to obtain any governmental permit necessary for the execution and/or completion of the Works, 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.

38.3 If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this Clause 38, then the Time for Completion shall be extended in accordance with Sub-Clause 37.1, 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.

38.4 During the period of suspension, the Contractor shall not remove from the Site any Plant and Equipment, any part of the Works or any Contractor's Equipment, without the prior written consent of the Employer.

39. Termination

39.1 Termination for Employer's Convenience

39.1.1 The Employer may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this Sub-Clause 39.1.

39.1.2 Upon receipt of the notice of termination under Sub-Clause 39.1.1, 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 Works already executed, or any work required to leave the Site in a clean and safe condition
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii) below
- (c) remove all Contractor's Equipment from the Site, repairate 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

(d) In addition, the Contractor, subject to the payment specified in Sub-Clause 39.1.3, shall

(i) deliver to the Employer the parts of the Works executed by the Contractor up to the date of termination

(ii) 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 of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors

(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 Works.

39.1.3 In the event of termination of the Contract under Sub-Clause 39.1.1, the Employer shall pay to the Contractor the following amounts:

(a) the Contract Price, properly attributable to the parts of the Works executed by the Contractor as of the date of termination

(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

(c) any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges.

(d) costs incurred by the Contractor in protecting the Works and leaving the Site in a clean and safe condition pursuant to paragraph (a) of Sub-Clause 39.1.2

(e) 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.

39.2 Termination for Contractor's Default

39.2.1 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 Sub-Clause 39.2:

- (a) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is 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
- (b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of Clause 40.
- (c) if the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
For the purpose of this Sub-Clause:

“corrupt practice” means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.

“fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Employer, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition.

39.2.2 If the Contractor

- (a) has abandoned or repudiated the Contract
- (b) has without valid reason failed to commence work on the Works promptly or has suspended (other than pursuant to Sub-Clause 38.2) the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from the Employer to proceed
- (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
- (d) refuses or is unable to provide sufficient materials, services or labor to execute and complete the Works in the manner specified in the program furnished under Sub-Clause 18.2 at rates of progress that give reasonable assurance to the Employer that the Contractor can attain Completion of the Works 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 that refers to this Sub-Clause 39.2.

39.2.3

Upon receipt of the notice of termination under Sub-Clauses 39.2.1 or 39.2.2, the Contractor shall, either immediately or upon such date as is 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
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) below
- (c) deliver to the Employer the parts of the Works executed by the Contractor up to the date of termination
- (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 of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors
- (e) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Works.

39.2.4

The Employer may enter upon the Site, expel the Contractor, and complete the Works 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 the 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 Works or at such earlier date as the Employer thinks appropriate, the Employer shall give 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.

39.2.5 Subject to Sub-Clause 39.2.6, the Contractor shall be entitled to be paid the Contract Price attributable to the Works executed as of 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 Works and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of Sub-Clause 39.2.3. Any sums due 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.

39.2.6 If the Employer completes the Works, the cost of completing the Works by the Employer shall be determined.

If the sum that the Contractor is entitled to be paid, pursuant to Sub-Clause 39.2.5, plus the reasonable costs incurred by the Employer in completing the Works, exceeds the Contract Price, the Contractor shall be liable for such excess.

If such excess is greater than the sums due the Contractor under Sub-Clause 39.2.5, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due the Contractor under Sub-Clause 39.2.5, 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.

39.3 Termination by Contractor

39.3.1 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 the corresponding Appendix (Terms and Procedures 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 Sub-Clause 12.3, 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 Works.

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 Sub-Clause 39.3.1, forthwith terminate the Contract.

39.3.2 The Contractor may terminate the Contract forthwith by giving a notice to the Employer to that effect, referring to this Sub-Clause 39.3.2, 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.

39.3.3 If the Contract is terminated under Sub-Clauses 39.3.1 or 39.3.2, 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 Works already executed, or any work required to leave the Site in a clean and safe condition
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii)
- (c) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractors' personnel from the Site.
- (d) In addition, the Contractor, subject to the payment specified in Sub-Clause 39.3.4, shall
 - (i) deliver to the Employer the parts of the Works executed by the Contractor up to the date of termination
 - (ii) 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 of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors

(iii) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Works.

39.3.4 If the Contract is terminated under Sub-Clauses 39.3.1 or 39.3.2, the Employer shall pay to the Contractor all payments specified in Sub-Clause 39.1.3, and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.

39.3.5 Termination by the Contractor pursuant to this Sub-Clause 39.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by Sub-Clause 39.3.

39.4 In this Clause 39, 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 Works, up to and including the date of termination.

39.5 In this Clause 39, 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 the corresponding Appendix (Terms and Procedures of Payment) to the Contract Agreement.

40. Assignment

Neither the Employer nor the Contractor shall, without the express prior written consent of the other party (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 that may become due and payable to it under the Contract.

26.9 Patent
Indemnity

Only the Final Taking Over Certificate shall be deemed to constitute acceptance of the Works.

26.10 Unfulfilled Obligations

After the Final Taking Over Certificate has been issued, each party shall remain liable for the fulfillment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.

26.11 Clearance of Site

Upon receiving the Final Taking Over Certificate, the Contractor shall remove any remaining Contractor's equipment, surplus material, wreckage, rubbish and temporary works from the Site.

If these items have not been removed within 28 days after the Employer issues the Final Taking Over Certificate, the Employer may sell or otherwise dispose of any remaining items. The Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

Any balance of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the Employer's costs, the Contractor shall pay the outstanding balance to the Employer.

**27. Patent
Indemnity**

27.1 The Contractor shall, subject to the Employer's compliance with Sub-Clause 29.2, 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 Works or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the Works 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.

27.2 If any proceedings are brought or any claim is made against the Employer arising out of the matters referred to in Sub-Clause 27.1, 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 after receipt of such notice that he intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on his own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) days period, the Employer shall make no admission that may be prejudicial to the defense 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.

27.3 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.

28. Limitation of Liability

Except in cases of criminal negligence or willful 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, loss of use, loss of production, or loss of profits or interest costs, 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, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.

29. Transfer of Ownership

G. Risk Distribution

29.1 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.

29.2 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.

29.3 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 Subcontractors.

29.4 Ownership of any Plant and Equipment in excess of the requirements for the Works shall revert to the Contractor upon Completion of the Works 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 Works.

29.5 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 Clause 30 [Care of Works] hereof until Completion of the Works or the part thereof in which such Plant and Equipment are incorporated.

30. Care of Works

30.1 The Contractor shall be responsible for the care and custody of the Works or any part thereof until the date stated in the Taking Over Certificate issued by the Employer pursuant to Clause 24, and shall make good at its own cost any loss or damage that may occur to the Works from any cause whatsoever during such period. The Contractor shall also be responsible for any loss or damage to the Works caused by the Contractor or its Subcontractors in the course of any work carried out, pursuant to Clause 26 [Defect Liability]. Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the Works or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a) and (b) of Sub-Clause 30.2.

30.2 If any loss or damage occurs to the Works or any part thereof or to the Contractor's temporary Works by reason of

- (a) any use or occupation by the Employer or any third party (other than a Subcontractor) authorized by the Employer of any part of the Works
- (b) 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 Works executed, notwithstanding that the same be lost, destroyed or damaged, and will pay to the Contractor the replacement value of all temporary works 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 Works thereby occasioned, the Contractor shall make good the same at the cost of the Employer in accordance with Clause 36 [Change in the Works]. If the Employer does not request the Contractor in writing to make good any loss or damage to the Works thereby occasioned, the Employer shall either request a change in accordance with Clause 36, excluding the performance of that part of the Works thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Works, the Employer shall terminate the Contract pursuant to Sub-Clause 39.1 [Termination for Employer's

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30.3 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 Works, except (i) as mentioned in Sub-Clause 30.2 (with respect to the Contractor's temporary works), and (ii) where such loss or damage arises by reason of any of the matters specified in Sub-Clause 30.2 (a) and (b).

**31. Loss of or
Damage to
Property;
Accident or
Injury to
Workers;
Indemnification**

31.1 Subject to Sub-Clause 31.3, 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 Works 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.

31.2 If any proceedings are brought or any claim is made against the Employer that might subject the Contractor to liability under Sub-Clause 31.1, 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 after 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 that may be prejudicial to the defense 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.

31.3 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 Works not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under Clause 32, provided that such fire, explosion or other perils were not caused by any act or failure of the Contractor.

31.4 The party entitled to the benefit of an indemnity under this Clause, 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.

32. Insurance

32.1 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 . The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, who should not unreasonably withhold such approval.

- (a) Cargo Insurance During Transport
Covering loss or damage occurring while in transit from the Contractor's or Subcontractor's works or stores until arrival at the Site, to the Plant and Equipment (including spare parts therefor) and to the Contractor's Equipment.
- (b) Installation All Risks Insurance
Covering physical loss or damage to the Works at the Site, occurring prior to Completion of the Works, 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 Works.
- (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 the corresponding Appendix.

32.2 The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to Sub-Clause 32.1, except for the Third Party Liability, 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 Sub-

Clause 32.1 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.

32.3 The Contractor shall, in accordance with the provisions of the corresponding Appendix (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 no less than twenty-one (21) days' notice shall be given to the Employer by insurers prior to cancellation or material modification of a policy.

32.4 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.

32.5 The Employer shall at its expense take out and maintain in effect during the performance of the Contract those insurances specified in the corresponding Appendix (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-insureds 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 Sub-Clause.

32.6 If the Contractor fails to take out and/or maintain in effect the insurances referred to in Sub-Clause 32.1, the Employer may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Contractor under the Contract any premium that 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 Sub-Clause 32.5, the Contractor may take out and maintain in effect any such insurances and may from time to time claim from the Employer under the Contract any premium that 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.

32.7 Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies affected by it pursuant to this Clause, 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.

**33. Unforeseen
Conditions**

33.1 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 Works (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 Works, 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,
- (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,
- (c) the extent of the anticipated delay, and
- (d) the additional cost and expense that the Contractor is likely to incur.

On receiving any notice from the Contractor under this Sub-Clause, 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.

33.2 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 Sub-Clause 33.1 shall be paid by the Employer to the Contractor as an addition to the Contract Price.

33.3 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 Sub-Clause 33.1, the Time for Completion shall be extended in accordance with Clause 37.

34. Change In Laws and Regulations

If, after the date twenty-eight (28) days prior to the date of Bid 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 these Conditions.

35. Force Majeure

35.1 Definition of Force Majeure

In this Clause, "Force Majeure" means an exceptional event or circumstances:

- (a) which is beyond a Party's control,
 - (b) which such Party could not reasonably have provided against before entering into the Contract,
 - (c) which, having arisen, such Party could not reasonably have avoided or overcome, and
 - (d) which is not substantially attributable to the other Party.
- Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:
- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
 - (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,
 - (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors,
 - (iv) munitions of war, explosive materials, ionizing radiation or contamination by radio activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
 - (v) natural catastrophes such as earthquake, hurricane, typhoon, or volcanic activity.

35.2 Notice of Force Majeure

If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting

the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party become aware, or should have become aware, of the relevant event or circumstances constituting Force Majeure.

The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

35.3 Duty to Minimize Delay

Each Party shall at all times use all reasonable endeavors to minimize any delay in the performance of the Contract as a result of Force Majeure.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

35.4 Consequences of Force Majeure

If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 35.2, and suffers delay and/or incurs cost by reason of such Force Majeure, the Contractor shall be entitled, subject to Sub-Clause 6.1 to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 37, and
- (b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 35.1 and, in the case of sub-paragraphs (i) to (iv), occurs in the Country, payment of such cost

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 6.1 to agree or determine these matters.

35.5 Force Majeure Affecting Sub-contractor

If any Sub-Contractor is entitled under any contract or agreement relating to the works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

35.6 Optional Termination, Payment and Release

If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause 35.2, or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either either Party may give to the other Party a notice of termination of the Contract. In this

event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 21.6.2.

Upon such termination, the Employer shall determine the value of the work done and issue a Payment Certificate which shall include:

- (a) the amounts payable for any work carried out for which a price is stated in the Contract;
- (b) the Cost of Plant and Materials orders for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery; this plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;
- (c) any other cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works;
- (d) the cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and
- (e) the cost of repatriation of the Contractor's staff and labor employed wholly in connection with the Works at the date of termination.

35.7 Release from Performance under the Law

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfill its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

- (a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
- (b) the sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 35.6 if the Contract had been terminated under Sub-Clause 35.6.

H. Change in Contract Elements

36. Change in the Works

36.1 Introducing a Change

- 36.1.1 Subject to Sub-Clauses 36.2.5 and 36.2.7, 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 Works

(hereinafter called "Change"), provided that such Change falls within the general scope of the Works and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Works and the technical compatibility of the Change envisaged with the nature of the Works as specified in the Contract.

36.1.2 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 that the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Works. 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 Works.

36.1.3 Notwithstanding Sub-Clauses 36.1.1 and 36.1.2, 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.

36.1.4 The procedure on how to proceed with and execute Changes is specified in Sub-Clauses 36.2 and 36.3, and further details and sample forms are provided in the Sample Forms and Procedures Section in the bidding documents.

36.2 Changes Originating from Employer

36.2.1 If the Employer proposes a Change pursuant to Sub-Clause 36.1.1, 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:

- (a) brief description of the Change
- (b) effect on the Time for Completion
- (c) estimated cost of the Change
- (d) effect on Guarantees figures
- (e) effect on any other provisions of the Contract.

36.2.2 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 do one of the following:

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

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

36.2.3 Upon receipt of the Employer's instruction to proceed under Sub-Clause 36.2.2 (a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with Sub-Clause 36.2.1.

36.2.4 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.

36.2.5 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 Clause 36 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 percent (15%), 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.

36.2.6 Upon receipt of the Change Proposal, the Employer and the Contractor shall mutually agree upon all matters therein contained. Within fourteen (14) days after 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 Sub-Clause 36.2.2.

36.2.7 If the Employer and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, 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 shall be settled in accordance with the provisions of Clause 6.

36.2.8 Changes Originating from Contractor

If the Contractor proposes a Change pursuant to Sub-Clause 36.1.2, 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 Sub-Clause 36.2.1.

Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in Sub-Clauses 36.2.6 and 36.2.7. 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.

37. Extension of Time for Completion

37.1 The Time for Completion 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 Works as provided in Clause 36
- (b) any occurrence of Force Majeure as provided in Clause 35, unforeseen conditions as provided in Clause 33, or other occurrence of any of the matters specified or referred to in paragraphs (a) and(b) of Sub-Clause 30.2
- (c) any suspension order given by the Employer under Clause 38 hereof or reduction in the rate of progress pursuant to Sub-Clause 38.2 or
- (d) any changes in laws and regulations as provided in Clause 34, or
- (e) any default or breach of the Contract by the Employer, specifically including failure to supply the items listed in the corresponding Appendix (Scope of Works and Supply by the Employer) to 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.

37.2 Except where otherwise specifically provided 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 matter shall be settled in accordance with the provisions of Sub-Clause 6.1.

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

38. Suspension

38.1 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 therefor. The Contractor shall thereupon suspend performance of such obligation (except those obligations necessary for the care or preservation of the Works) 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 Clause 36, 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 Works, as a deletion of such part in accordance with Clause 36 or, where it affects the whole of the Works, as termination of the Contract under Sub-Clause 39.1.

38.2 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 the corresponding Appendix (Terms and Procedures of Payment) to 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 Sub-Clause 12.3, 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 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 in accordance with Sub-Clause 10.2, or failure to obtain any governmental permit necessary for the execution and/or completion of the Works, 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.

38.3 If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this Clause 38, then the Time for Completion shall be extended in accordance with Sub-Clause 37.1, 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.

38.4 During the period of suspension, the Contractor shall not remove from the Site any Plant and Equipment, any part of the Works or any Contractor's Equipment, without the prior written consent of the Employer.

39. Termination

39.1 Termination for Employer's Convenience

39.1.1 The Employer may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this Sub-Clause 39.1.

39.1.2 Upon receipt of the notice of termination under Sub-Clause 39.1.1, 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 Works already executed, or any work required to leave the Site in a clean and safe condition
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii) below
- (c) remove all Contractor's Equipment from the Site, repairate 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

(d) In addition, the Contractor, subject to the payment specified in Sub-Clause 39.1.3, shall

(i) deliver to the Employer the parts of the Works executed by the Contractor up to the date of termination

(ii) 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 of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors

(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 Works.

39.1.3 In the event of termination of the Contract under Sub-Clause 39.1.1, the Employer shall pay to the Contractor the following amounts:

(a) the Contract Price, properly attributable to the parts of the Works executed by the Contractor as of the date of termination

(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

(c) any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges.

(d) costs incurred by the Contractor in protecting the Works and leaving the Site in a clean and safe condition pursuant to paragraph (a) of Sub-Clause 39.1.2

(e) 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.

39.2 Termination for Contractor's Default

39.2.1 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 Sub-Clause 39.2:

- (a) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is 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
- (b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of Clause 40.
- (c) if the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
For the purpose of this Sub-Clause:

“corrupt practice” means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.

“fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Employer, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition.

39.2.2 If the Contractor

- (a) has abandoned or repudiated the Contract
- (b) has without valid reason failed to commence work on the Works promptly or has suspended (other than pursuant to Sub-Clause 38.2) the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from the Employer to proceed
- (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
- (d) refuses or is unable to provide sufficient materials, services or labor to execute and complete the Works in the manner specified in the program furnished under Sub-Clause 18.2 at rates of progress that give reasonable assurance to the Employer that the Contractor can attain Completion of the Works 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 that refers to this Sub-Clause 39.2.

39.2.3

Upon receipt of the notice of termination under Sub-Clauses 39.2.1 or 39.2.2, the Contractor shall, either immediately or upon such date as is 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
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) below
- (c) deliver to the Employer the parts of the Works executed by the Contractor up to the date of termination
- (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 of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors
- (e) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Works.

39.2.4

The Employer may enter upon the Site, expel the Contractor, and complete the Works 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 the 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 Works or at such earlier date as the Employer thinks appropriate, the Employer shall give 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.

39.2.5 Subject to Sub-Clause 39.2.6, the Contractor shall be entitled to be paid the Contract Price attributable to the Works executed as of 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 Works and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of Sub-Clause 39.2.3. Any sums due 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.

39.2.6 If the Employer completes the Works, the cost of completing the Works by the Employer shall be determined.

If the sum that the Contractor is entitled to be paid, pursuant to Sub-Clause 39.2.5, plus the reasonable costs incurred by the Employer in completing the Works, exceeds the Contract Price, the Contractor shall be liable for such excess.

If such excess is greater than the sums due the Contractor under Sub-Clause 39.2.5, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due the Contractor under Sub-Clause 39.2.5, 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.

39.3 Termination by Contractor

39.3.1 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 the corresponding Appendix (Terms and Procedures 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 Sub-Clause 12.3, 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 Works,

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 Sub-Clause 39.3.1, forthwith terminate the Contract.

39.3.2 The Contractor may terminate the Contract forthwith by giving a notice to the Employer to that effect, referring to this Sub-Clause 39.3.2, 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.

39.3.3 If the Contract is terminated under Sub-Clauses 39.3.1 or 39.3.2, 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 Works already executed, or any work required to leave the Site in a clean and safe condition
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii)
- (c) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractors' personnel from the Site.
- (d) In addition, the Contractor, subject to the payment specified in Sub-Clause 39.3.4, shall
 - (i) deliver to the Employer the parts of the Works executed by the Contractor up to the date of termination
 - (ii) 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 of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors

(iii) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Works.

39.3.4 If the Contract is terminated under Sub-Clauses 39.3.1 or 39.3.2, the Employer shall pay to the Contractor all payments specified in Sub-Clause 39.1.3, and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.

39.3.5 Termination by the Contractor pursuant to this Sub-Clause 39.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by Sub-Clause 39.3.

39.4 In this Clause 39, 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 Works, up to and including the date of termination.

39.5 In this Clause 39, 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 the corresponding Appendix (Terms and Procedures of Payment) to the Contract Agreement.

40. Assignment

Neither the Employer nor the Contractor shall, without the express prior written consent of the other party (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 that may become due and payable to it under the Contract.

10. Employer's Responsibilities

10.1 The Employer submitted all his information on project data at his best knowledge. The Contractor has to verify such information in accordance with Clause 9 of these Conditions.

10.2 The Employer shall give to the Contractor right of access to, and possession of, all parts of the site within 14 days from the Commencement Date. The right and possession may not be exclusive to the Contractor. If, under the Contract, the Employer is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Employer shall do so in the time and manner stated in the Technical Specifications. However, the Employer may withhold any such right or possession until the Performance Security has been received.

If no such time is stated in the Appendix to Tender, the Employer shall give the Contractor right of access, and possession of, the site within such times as may be required to enable the Contractor to proceed in accordance with the program submitted by the Contractor under Clause 18 [Work Program].

If the Contractor suffers delay and or incurs cost as a result of failure by the Employer to give any such right or possession within such time, the Contractor shall give notice to the Employer and shall be entitled subject to Clause 6 to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Clause 37, and
- (b) payment of any such cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this notice, the Employer shall proceed in accordance with Clause 6 to agree or determine these matters.

However, if and to the extent that the Employer's failure was caused by an error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's documents, the Contractor shall not be entitled to such extension of time, cost or profit.

10.3 If requested by the Contractor, the Employer shall use its best endeavors 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 that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.

10.4 The Employer will be responsible for the availability of electric energy, of water to be pumped and that the water may be discharged without limiting Contractor's services and works. The Contractor shall inform the Employer of such needs twenty-eight (28) days in advance.

C. Payment

11. Contract Price

11.1 The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of Contract Agreement.

11.2 Subject to Sub-Clauses 9.2, 10.1 and 33 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 the corresponding Appendix (Terms and Procedures 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.

12.2 No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the Works or any part(s) thereof.

12.3 The currency or currencies in which payments are made to the Contractor under this Contract shall be specified in the corresponding Appendix (Terms and Procedures 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 specified in Article 2 of Contract Agreement.

13. Securities

13.1 Issuance of Securities

The Contractor shall provide the securities specified below in favor of the Employer at the times, and in the amounts, manner and form specified below.

13.2 Advance Payment Security

13.2.1 The Contractor shall, within twenty (20) working days from the date of receiving detailed order, provide a security in an amount equal to the advance payment calculated in accordance with the corresponding Appendix (Terms and Procedures of Payment) to the Contract Agreement, and in the same currency or currencies.

13.2.2 The amount of the Advance Payment Security (Bank Guarantee for Advance Payment) for the foreign component of the Contract Price shall become null and void two (2) months after all supplies from abroad (except spare parts) are shipped, as evidenced by shipping and delivery documents.

The amount of the Advance Payment Security (Bank Guarantee for Advance Payment) for the local component of the Contract Price shall become null and void two (2) months after all supplies from the local market (except spare parts) have been supplied to the site, as evidenced by the Project Manager at site and the corresponding approval of the Employer.

13.3 Performance Security

13.3.1 The Contractor shall obtain (at his cost) a Performance Security for proper performance, in the amount and currencies stated in the Appendix to Tender. The Contractor shall deliver the Performance Security to the Employer within (20) working days after receiving the Letter of Acceptance. The Performance Security shall be issued by an entity and from within a country approved by the Employer, and shall be in the form of the "Un-Conditional Guarantee Form" attached hereto in the Chapter on "Sample Forms and Procedures".

13.3.2 The Contractor shall ensure that the Performance

Security is valid and enforceable until the expiration of the guarantee Period. If an extension of time of the guarantee Period is required and commonly agreed upon between the Employer and the Contractor, in accordance with Sub-Clause 26.8 of these Conditions, due to failure of the Works as a whole or parts thereof during the guarantee Period, the Contractor shall provide a new performance security. The amount of the new security shall be determined as follows:

- In case the Works as a whole cannot be used by reason of such defect and/or making good of such defect, the amount of the new security shall have the amount of the original security at its date of becoming null and void. The period of validity of the new security is the time of extension of the guarantee Period. At the end of the time of extension of the Defects Liability Period, this new security becomes automatically null and void - whether returned to the Contractor or not.

- In case any vital part cannot be used by reason of such defect and / or making good of such defect, the amount of the new security shall have the amount of twenty percent (20%) of the original security at its date of becoming null and void. The period of validity of the new security is the time of extension of the guarantee Period for the vital defect part. At the end of the time of extension of the guarantee Period for the vital part this new security becomes automatically null and void - whether returned to the Contractor or not. "Vital" means: a pumping set cannot be operated, the traveling crane cannot be used, and / or operation cannot be controlled or monitored/reported or comparable defects.

If the parties to this Contract fail to agree on the extension of the Defects Liability Period or if the Contractor fails to submit the new Performance Security, the Employer may claim the amount of the original Performance Security.

At the end of the Defects Liability Period the Employer and the Contractor shall commonly agreed upon a

successful completion of the Defects Liability Period and the Employer shall issue the Final Taking Over Certificate without delay.

14. Taxes and Duties

14.1. Government

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 Works in and outside of the country where the Site is located.

14.2 The Employer will pay add value taxes and import duties on supplies from abroad only.

14.3. Confidential Information

14.3 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) 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 bid submission in the country where the Site is located (hereinafter called "Tax"). 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 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 Clause 34 hereof.

D. Intellectual Property

15. Copyright

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 work 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 Clause.

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 Works. Similarly, the Contractor shall not use such documents, data and other

16. Representations

information received from the Employer for any purpose other than the design, Installation Services, construction or such other work and services as are required for the performance of the Contract.

16.3 The obligation of a party under Sub-Clauses 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,
- (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, and
- (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 Clause 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 Works or any part thereof.

16.5 The provisions of this Clause shall survive termination, for whatever reason, of the Contract.

E. Execution of the Works

17.1 Project Manager

If the Project Manager is not named in the Contract, then within fourteen (14) days of the Commencement 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 the Works. 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 validity period 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.

The Employer shall nominate a Site Engineer not later than fourteen (14) days before Contractor's scheduled start of site works (as given in Contractor's Time Schedule). The Site Engineer shall be vested with the power to confirm documents on site or halt the works in case of danger or lack of quality, final approval of such confirmed documents will have to be issued by the Employer.

17. Representatives

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 Commencement 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 Sub-Clause 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 validity period 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 Sub-Clause 17.2.1 of these Conditions.

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. 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 in accordance with this Sub-Clause shall be deemed to be an act or exercise by the Contractor's Representative.

17.2.4 From the commencement of the Works until completion, the Contractor's Representative shall assign to the Site a suitable person as Construction

18. Work Program

Manager (CM). 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 deputy.

The Employer reserves the right to request the replacement of the CM in case he finds that the person assigned by the Contractor's Representative is not suitable.

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 Sub-Clause 21.3 [Site Regulation and Safety]. The Employer shall provide evidence of the same, whereupon the Contractor shall remove such person from the Works.

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

18. Work Program

18.1 Contractor's Organization

The Contractor shall supply to the Employer and the Project Manager a chart showing the proposed organization to be established by the Contractor for carrying out its work in fulfilling the contract. 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 Commencement Date. The Contractor shall promptly inform the Employer and the Project Manager in writing of any revision or alteration of such an organization chart. The Final Organization Chart shall be submitted to the Employer within 28 days from the Commencement Date.

18.2 Program of Performance (Contractor's revised Time Schedule)

Within twenty-eight (28) days after the date of Commencement, the Contractor shall prepare and submit to the Project Manager a detailed program of performance of the Contract, showing the sequence in which it proposes to design, manufacture, transport, assemble, install and Test the Works, 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 program and to achieve completion of the Works in accordance with the Contract. The program so submitted by the Contractor shall accord with the Time Schedule included in the corresponding Appendix (Time

Schedule) to the Contract Agreement and any other dates and periods specified in the Contract. The Contractor shall update and revise the program as and when appropriate or when required by the Project Manager, but without modification in the Time for Completion given in the Appendix to Tender and any extension granted in accordance with Clause 37, and shall submit all such revisions to the Project Manager.

18.3 Progress Report

The Contractor shall monitor progress of all the activities specified in the program referred to in Sub-Clause 18.2 above, and supply a progress report to the Project Manager every month.

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 program, giving comments and likely consequences and stating the corrective action being taken.

18.4 Progress of Performance

If at any time the Contractor's actual progress falls behind the program referred to in Sub-Clause 18.2, 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 program, 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 Works within the Time for Completion under Sub-Clause 8.2, any extension thereof entitled under Clause 37, or any extended period as may otherwise be agreed upon between the Employer and the Contractor.

18.5 Work Procedures

The Contract shall be executed in accordance with the Contract Documents and the procedures given in the Chapter on Sample 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 The corresponding Appendix (List of Approved 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

the Works. 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 Sub-Clause 19.1.

19.3 For items or parts of the Facilities not specified in the corresponding Appendix (List of Approved 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 . The Contractor shall submit all design , drawings and calculation sheets , to be approved by MED Project Manager 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.

20.1.2 The Contractor is in charge of any design required for the Works. He may not rely on data submitted to him with the tender documents or afterwards. The Contractor is not entitled to any extra-payment if he notices during implementation that any information submitted to him is incorrect. Despite of such errors the Contractor has to supply and install the Facilities and repair the civil works in accordance with good engineering standard to the state of the art.

The Contractor will not be responsible for hidden deficiencies of the civil structure or other deficiencies which he could not have detected by applying normal engineering diligence and care during his visual site investigations for preparing his bid.

20.2 Codes and Standards

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 bid 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 Clause 36 [Change in the Works].

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 the corresponding Appendix (List of Documents for Approval or Review) to the Contract Agreement for its approval or review in accordance with the sequence specified in Sub-Clause 18.2 [Program of Performance].

Any part of the Works 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.

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 Sub-Clause 20.3.1, 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 therefore and the modifications that the Project Manager proposes.

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 resubmit it, within 7 days, for the Project Manager's approval in accordance with Sub-Clause 20.3.2. 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 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.

20.3.6 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 Sub-Clause 20.3.

If the Project Manager requests any change in any already approved document and/or in any document based thereon, the provisions of Clause 36 [Change in the Works] shall apply to such request.

21. Installation

21.1 Setting Out/Supervision/Labor

21.1.1 Bench Mark: The Contractor shall be responsible for the true and proper setting-out of the Works in relation to bench marks, reference marks and lines provided to it in writing by or on behalf of the Employer. The Contractor shall check the data of the Bench Mark data - provided to him by the Employer or the Project Manager - in relation to other (neighboring) bench marks in order to verify correct elevation of the local Bench Mark and shall inform the Employer immediately in writing if discrepancies are detected. The Employer shall take a decision within fourteen (14) days how to proceed.

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.

21.1.2 Contractor's Supervision: The Contractor shall give or provide all necessary superintendence during the installation of the Facilities, and the Construction Manager or its deputy shall be constantly on the Site to provide full-time superintendence 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 adequately supervise the work at hand.

21.1.3 Labor:

- (a) The Contractor shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled and unskilled labor as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged to use local labor that has the necessary skills.
- (b) Unless otherwise provided in the Contract, the Contractor shall be responsible for the recruitment, transportation, accommodation and catering of all labor, local or expatriate, required for the execution of the Contract and for all payments in connection therewith.
- (c) The Contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labor and personnel to be employed on the Site into the country where the Site is located.
- (d) 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.

(e) The Contractor shall at all times during the progress of the Contract use its best endeavors to prevent any unlawful, riotous or disorderly conduct or behavior by or amongst its employees and the labor of its Subcontractors.

(f) The Contractor shall, in all dealings with its labor and the labor of its Subcontractors employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of labor.

21.2 Contractor's Equipment

21.2.1 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.

21.2.2 Unless otherwise specified in the Contract, upon completion of the Works, the Contractor shall remove from the Site all Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.

21.2.3 The Employer will, if requested, use its best endeavors 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.

21.3 Site Regulations and Safety

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 Works, gate control, sanitation, medical care, and fire prevention.

21.4 Opportunities for Other Contractors

21.4.1 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 for carrying out their respective contracts.

21.4.2 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.

21.4.3 The Contractor shall also so arrange to perform its work as to minimize, 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.

21.4.4 The Contractor shall notify the Project Manager promptly of any defects in the other contractors' work that come to its notice, and 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 Works. Decisions made by the Project Manager shall be binding on the Contractor.

21.5 Emergency Work

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 Works, 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 such work to be done as the Employer may determine is necessary in order to prevent damage to the Works. 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 that 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.

21.6 Site Clearance

21.6.1 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.

21.6.2 After Completion of all parts of the Works, the Contractor shall clear away and remove all wreckage, rubbish and debris of any kind from the Site, and shall leave the Site and Works clean and safe.

The Site Clearance also refers to wreckage, rubbish etc. within the premises of the Works which are not directly related to the Works. The Contractor has to take into consideration valid and general rules for adequate environmental protection when clearing the site.

21.7 Watching and Lighting

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 Works, or for the safety of the owners and occupiers of adjacent property and for the safety of the public.

21.8 Work at Night and on Holidays

21.8.1 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 Works 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 Sub-Clause 21.8.1 shall not apply to any work which is customarily carried out by rotary or double-shifts.

21.8.2 Notwithstanding Sub-Clauses 21.8.1 or 21.1.3, 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.

22. Tests and Inspection

22.1 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 Works as are specified in the Contract.

22.2 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 traveling and board and lodging expenses.

22.3 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.

22.4 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.

22.5 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 Works 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.

22.6 If any Plant and Equipment or any part of the Works fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Plant and Equipment or part of the Works and shall repeat the test and/or inspection upon giving a notice under Sub-Clause 22.3.

22.7 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 Works it shall be settled in accordance with the procedures specified under Clause 6 [Settlement of Disputes].

22.8 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 Works 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 a reasonable prior notice.

22.9 The Contractor agrees that neither the execution of a test and/or inspection of Plant and Equipment or any part of the Works, nor the attendance by the Employer or the Project Manager, nor the issue of any test certificate pursuant to Sub-Clause 22.4, shall release the Contractor from any of its responsibilities under the Contract.

22.10 No part of the Works shall be covered up on the Site without the Contractor 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 Works 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.

22.11 The Contractor shall uncover any part of the Works, or shall make openings in or through the same as the Project Manager may from time to time require at the Site, and shall reinslate and make good such part or parts.

If any parts of the Works have been covered up at the Site

after compliance with the requirement of Sub-Clause 22.10 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.

23. Tests on Completion

23.1 Contractor's Obligations

As soon as the Works or any part thereof has, in the opinion of the Contractor, been completed operationally 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 Works, the Contractor shall so notify the Employer in writing. The Contractor shall carry out the Tests on Completion in accordance with this Clause. The Contractor shall give to the Employer not less than twenty eight (28) days' notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion. The Contractor shall reconfirm his notice of the committed date not later than seven (7) days before the scheduled start of the Tests on Completion.

Tests on Completion shall be carried out in the following sequence:

- (a) pre-commissioning tests, which shall include the appropriate inspections and ("dry" or "cold") functional tests to demonstrate that each item of Plant can safely undertake the next stage;(b);
- (b) commissioning tests, which shall include the specified operational tests to demonstrate that the Works or Section can be operated safely and as specified , under all available operating conditions; and
- (c) trial operation, which shall demonstrate that the Works or Section perform reliably and in accordance with the Contract.

The Contractor shall give notice to the Employer forty -two (42) days in advance that the Works are ready for Tests on Completion, including performance tests to demonstrate whether the Works conform with criteria specified in the Technical Specifications. The Employer or an authority named by him will do the Tests on Completion in order to verify the Guaranteed figures of the pumping equipment as given in the Data Sheets attached to the Contract.

Trial operation shall not constitute a taking over under Clause 24 [Employer's Taking Over]. As soon as the Works have passed each of the Tests on Completion described under this Clause, the Contractor shall submit a certified report of the results of these Tests to the Employer.

23.2 Delayed Tests

If the Tests on Completion are being unduly delayed by the Employer for more than 28 days, from carrying out the Tests on Completion by a cause for which the Employer is responsible, the Contractor shall be entitled to the following:

- (a) the Time for Completion shall be extended for the period of suspension without imposition of liquidated damages pursuant to Sub-Clause 25.2.
- (b) payments due to the Contractor in accordance with the provision specified in the corresponding Appendix (Terms and Procedures of Payment) to the Contract Agreement, which would not have been payable in normal circumstances due to non-completion of the subject activities, shall be released to the Contractor against submission of a security in the form of a bank guarantee of equivalent amount acceptable to the Employer, and which shall become null and void when the Contractor will have complied with its obligations regarding those payments, subject to the provision of sub-paragraph (c) below;
- (c) the expenses related to the above security and extension of other securities under the Contract, of which validity needs to be extended, shall be reimbursed to the Contractor by the Employer;
- (d) the additional charges towards the care of the Works pursuant to Sub-Clause 30.1 shall be reimbursed to the Contractor by the Employer – after having received adequately documented proof and after having commonly agreed upon between the parties.

If the Tests on Completion are being unduly delayed by the Contractor, the Employer may by notice require the Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Employer.

If the Contractor fails to carry out the Tests on Completion within the period of 21 days, the Employer's personnel may proceed with the Tests at the risk and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

23.3 Retesting

If the Works, or a Section, fail to pass the Tests on Completion, the Employer may reject the Works or Section by giving notice the Contractor with reasons. The Contractor shall then promptly remedy the deficiencies and ensure that the rejected item complies with the Contract.

If the Employer requires the Works or Section to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Employer to incur additional costs, the Contractor shall pay these costs to the Employer.

23.4 Failure to Pass Tests on Completion

If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 23.3, the Employer shall be entitled to:

- a) order further repetition on Tests on Completion under Sub-Clause 23.3 above
- b) if the failure deprives the Employer of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Employer shall terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the site and returning the Plant and Material to the Contractor; or
- c) issue a Taking Over Certificate

In the event of sub-paragraph (c), the Contractor shall then proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduce value to the Employer as a result of this failure. Unless the relevant reduction of this failure is stated (or its method of calculation is defined) in the Contract, the Employer may require the reduction to be agreed by both parties (in full satisfaction of this failure only) and paid before the Taking-Over Certificate is issued.

24. Employer's Taking Over

Except as stated in Sub-Clause 22.6, the Works shall be taken over by the Employer when (i) the Works have been completed in accordance with the Contract including achieving the passing of the Tests on Completion and except as allowed in sub-paragraph (a) below, and (ii) a Taking Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.

The Contractor may apply by notice to the Employer for a Taking Over Certificate not earlier than 14 days before the Works will, in the Contractor's opinion, be complete and ready for taking over.

The Employer shall within 28 days after receiving the Contractor's application:

- (a) issue the Taking Over Certificate to the Contractor, stating the date on which the Works were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works for their intended use (either until or whilst this work is completed and these defects are remedied); or
- (b) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking Over Certificate to be issued. The Contractor shall then complete this

work before issuing a further notice under this Sub-Clause.

If the Employer fails either to issue the Taking Over Certificate or to reject the Contractor's application with the period of 28 days, and if the Works are substantially in accordance with the Contract, the Taking Over Certificate shall be deemed to have been issued on the last day of that period.

F. Guarantees and Liabilities

25. Time for Completion

25.1 Time for Completion

The Contractor shall complete the Works within the Time for Completion specified in the Appendix to Tender, or within such extended time to which the Contractor shall be entitled under Clause 37 [Extension of Time for Completion] including:

- a) achieving the passing of the Tests on Completion, and
- b) completing all work which is stated in the Contract as being required for the Works to be considered to be completed for the purposes of taking over under Clause 24 [Employer's Taking Over]

26. Defects Liability

25.2 Liquidated Damages

If the Contractor fails to comply with Sub-Clause 25.1 [Time for Completion] within the Time for Completion or any extension thereof under Clause 37 [Extension of Time for Completion], the Contractor shall pay to the Employer liquidated damages for this default. These liquidated damages shall be in the amount specified in the Appendix to Tender, which shall be paid for every day which shall elapse between the relevant Time for Completion and the date stated in the Taking Over Certificate. However, the total amount due under this Sub-Clause shall not exceed the maximum amount of delay damages stated in the Appendix to Tender. Once the "Maximum" is reached, the Employer may consider termination of the Contract, pursuant to Sub-Clause 39.2.2.

Such payment shall completely satisfy the Contractor's obligation to attain Completion of the Works within the Time for Completion or any extension thereof under Clause 37. 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 his obligations to complete the Works or from any other obligations and liabilities of the Contractor under the Contract.

26. Defects Liability

26.1 Completion of Outstanding Work and Remedying Defects

In order that the Works shall be in the condition required by the Contract (fair wear and tear expected) by the expiry date of the Defects Liability Period or as soon as practicable thereafter, the Contractor shall:

- a) complete any work which is outstanding on the date stated in a Taking Over Certificate, within such reasonable time as is instructed by the Employer, and
- b) execute all work required to remedy defects or damage, as

may be notified by (or on behalf of) the Employer on or before the expiry date of the Defects Liability Period for the Works.

If a defect appears or damage occurs, the Contractor shall be notified accordingly by (or on behalf of) the Employer.

26.2 Costs of Remedying Defects

All work referred to in sub-paragraph (b) of Sub-Clause 26.1 shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributed to:

- a) the design of the Works, other than a part of the design for which the Employer is responsible (if any)
 - b) Plant, Materials or workmanship not being in accordance with the Contract,
 - c) Improper operation or maintenance which was attributable to matters for which the Contractor is responsible, or
 - d) failure by the Contractor to comply with any other obligation.
- If and to the extent that such work is attributable to any other cause, the Contractor shall be notified promptly by (or on behalf of) the Employer, and Clause 36 shall apply.

26.3 Extension of guarantee Period

The Employer shall be entitled to an extension of the Defects Liability Period for the Works if and to the extent that the Works or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or damage. However, a Defects Liability Period shall not be extended by more than two years.

If delivery and/or erection of Plant and/or Materials was suspended under Clause 38, the Contractor's obligations under this Clause shall not apply to any defects or damage occurring more than two years after the Defects Liability Period for the Plant and/or Materials would otherwise have expired.

26.4 Failure to Remedy Defects

If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the Employer, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.

If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor under Sub-Clause 26.2, the Employer may (at his option):

- (a) carry out the work himself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work; and the Contractor shall pay to the Employer the costs reasonably incurred by the Employer in remedying the defect or damage;
- (b) determine a reasonable reduction in the Contract Price; or
- (c) if the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in

respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Equipment to the Contractor.

26.5 Removal of Defective Work

If the defect or damage cannot be remedied expeditiously on the Site and the Employer gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Contractor to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security.

26.6 Further Tests

If the work of remedying of any defect or damage may affect the performance of the Works, the Employer may require the repetition of any of the tests described in the Contract, including Tests on Completion. The requirement shall be made by notice within 28 days after the defect or damage is remedied.

These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the party liable, under Sub-Clause 26.2, for the cost of remedial work.

26.7 Right to Access

Until the Final Taking Over Certificate has been issued, the Contractor shall have the right of access to all parts of the Works and to records of the operation and performance of the Works, except as may be inconsistent with the Employer's reasonable security restrictions.

26.8 Contractor to Search

The Contractor shall, if required by the Employer, search for the cause of any defect, under the direction of the Employer. Unless the defect is to be remedied at the cost of Contractor under Sub-Clause 26.2, the cost of the search plus reasonable profit shall be agreed or determined by the Employer and shall be included in the Contract Price.

26.9 Final Taking Over Certificate

Performance of the Contractor's obligations shall not be considered to have been completed until the Employer has issued the Final Taking Over Certificate to the Contractor, stating the date on which the Contractor completed his obligations under the Contract.

The Employer shall issue the Final Taking Over Certificate within 28 days after the expiry date of the Defects Liability Period, or as soon thereafter as the Contractor has supplied all the Contractor's documents and completed and tested all the Works, including remedying any defects.

- **Bid-Envelope 2** "FINANCIAL PROPOSAL - Do not open before finalization of technical evaluation)". containing the following documents only:

- signed Bid Form
- Price Schedules (Vol. II)
- Price of Alternatives (if any)
- Price for Bidder's modifications (if any)

This Envelope shall not contain any additional technical data or information which modify or restrict the technical proposal. Envelope 2 will be opened only for the bidders who's offer was considered as technically acceptable. It will be sent back to be bidder unopened if the technical bid was rejected.

16.5 If the outer envelope is not sealed and marked as required by ITB Sub-Clause 16.2 above, the Employer will assume no responsibility for the bid's misplacement or premature opening. If the outer envelope discloses the Bidder's identity, the Employer will not guarantee the anonymity of the bid submission, but this disclosure will not constitute grounds for bid rejection.

17. Deadline for Submission of Bids 17.1 Bids must be received by the Employer at the address specified and no later than the time and date stated in the Invitation for Bids.

17.2 The Employer may, at its discretion, extend this deadline for submission of bids by amending the bidding documents in accordance with ITB Sub-Clause 7.3, in which case all rights and obligations of Employer and bidders will thereafter be subject to the deadline as extended.

18. Late Bids 18.1 **Any bid received by the Employer after the bid submission deadline prescribed by the Employer, pursuant to ITB Clause 17, will be rejected and returned unopened to the Bidder.**

19. Modification and Withdrawal of Bids 19.1 The Bidder may modify or withdraw its bid after submission, provided that written notice of the modification or withdrawal is received by the Employer prior to the deadline prescribed for bid submission.

19.2 The Bidder's modifications shall be prepared, sealed, marked and dispatched as follows:

(a) The Bidders shall provide an original and the number of copies specified in the Tender Data Sheet of any modifications to its bid, clearly identified as such, in two inner envelopes duly marked "BID MODIFICATIONS—ORIGINAL" and "BID MODIFICATIONS—COPIES". The inner envelopes shall be sealed in an outer envelope, which shall be duly marked "BID MODIFICATIONS". The "BID MODIFICATIONS" shall be sealed in two Envelopes containing "BID MODIFICATIONS-TECHNICAL PROPOSAL" and "BID MODIFICATIONS FINANCIAL PROPOSAL" both attached to the referring "Bid Envelope" as specified in Sub-Clause 16.4.

(b) Other provisions concerning the marking and dispatch of bid modifications shall be in accordance with ITB Sub-Clauses 16.2, 16.3 and 16.4.

19.3 A Bidder wishing to withdraw its bid shall notify the Employer in writing prior to the deadline prescribed for bid submission. The notice of withdrawal shall

(a) be addressed to the Employer at the address named in the Tender Data Sheet, and

(b) bear the contract name, the IFB number, and the words "BID WITHDRAWAL NOTICE." Bid withdrawal notices received after the bid submission deadline will be ignored, and the submitted bid will be deemed to be a validly submitted bid.

19.4 No bid may be withdrawn in the interval between the bid submission deadline and the expiration of the bid validity period specified in ITB Clause 14. Withdrawal of a bid during this interval may result in the Bidder's forfeiture of its bid security, pursuant to ITB Sub-Clause 13.6.

E. Bid Opening and Evaluation

20. Opening of Bids by Employer

20.1 The Employer intends to evaluate the bids according to a Two Envelope Procedure. In the first step only the Technical Proposals are opened on the date and at the time advised in the Invitation to Bidders. The Financial Proposals shall remain sealed until the Technical Proposals have been evaluated. After full evaluation and documentation of the evaluation results the Financial Proposals will be opened and evaluated according to ITB Cl. 24 and Cl. 25. The Employer will open the Technical Proposals, including withdrawals and modifications made pursuant to ITB Clause 19, in the presence of bidders' designated representatives who choose to attend, at the time,

date, and location stipulated in the Invitation for Bids. The bidders' representatives who are present shall sign a register evidencing their attendance.

20.2 Envelopes marked "WITHDRAWAL" shall be opened first and the name of the Bidder shall be read out. Bids for which an acceptable notice of withdrawal has been submitted pursuant to ITB Clause 19 shall not be opened.

20.3 The bidders' names, deviation, bid modifications and withdrawals, the presence (or absence) of bid security, and any such other details as the Employer may consider appropriate, will be announced by the Employer at the opening. Subsequently, all envelopes marked "MODIFICATION" shall be opened and the submissions therein read out in appropriate detail. No bid shall be rejected at bid opening except for late bids pursuant to ITB Clause 18.

20.4 The Employer shall prepare minutes of the bid opening, including the information disclosed to those present in accordance with ITB Sub-Clause 20.3.

20.5 Bids not opened and read out at bid opening shall not be considered further for evaluation, irrespective of the circumstances.

21. Clarification of Bids

21.1 During bid evaluation, the Employer may, at its discretion, ask the Bidder for a clarification of his bid. The request for clarification and the response shall be in writing, and no change in the price or substance of the bid shall be sought, offered or permitted.

22. Preliminary Examination of Bids

22.1 The Employer will examine the bids to determine whether they are complete, whether required sureties have been furnished, whether the documents have been properly signed, and whether the bids are generally in order.

22.2 The Employer may waive any minor informality, nonconformity or irregularity in a bid that does not constitute a material deviation, whether or not identified by the Bidder in Attachment 6 to its bid, and that does not prejudice or affect the relative ranking of any Bidder as a result of the technical evaluation, pursuant to ITB Clauses 24 and 25.

22.3 Prior to the detailed evaluation, the Employer will determine whether each bid is of acceptable quality, is complete and is substantially responsive to the bidding documents. For purposes of this determination, a substantially responsive bid is one that conforms to all the terms, conditions and specifications of the bidding documents without material deviations,

objections, conditionalities or reservations. A material deviation, objection, conditionality 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 bidding documents, the Employer's rights or the successful Bidder's obligations under the contract; or (iii) whose rectification would unfairly affect the competitive position of other bidders who are presenting substantially responsive bids.

22.4 If a bid is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by the Bidder by correction of the nonconformity. The Employer's determination of a bid's responsiveness is to be based on the contents of the bid itself without recourse to extrinsic evidence.

23. Conversion to Single Currency
23.1 Please see Cl. 25.4

24. Technical Evaluation (shall be applied only in supply and erection works)

24.1 The Employer will carry out a detailed evaluation of the bids previously determined to be substantially responsive in order to determine whether the technical aspects are in accordance with the requirements set forth in the bidding documents; a merit scheme (see Clause 28.1). In order to reach such a determination, the Employer will use accept and reject method

24.2 Where alternative technical solutions have been permitted and offered in Attachment 7 to the bid, the Employer will make a similar evaluation of the alternatives, which will be treated in the technical and commercial evaluations as if they were base bids. Where alternatives are not permitted, but have in any event been offered, they shall be ignored

Bidders are requested to submit all detailed descriptions works for each of the a/m items.

25. Commercial Evaluation

25.1 The commercial evaluation will be based on the total bid price taking into consideration the bid prices of the individual bid items as given in the price schedules attached to in Volume II, any penalty to be imposed as described in the TS, and other quantifiable costs resulting from the application of the evaluation procedures described in ITB Sub-Clause 25.2.

25.2 In addition to the bid prices indicated in Price Schedules (ITB Cl. 25.1) the following costs and factors will be added to each Bidder's bid price in the evaluation using pricing information available to the Employer, in the manner and to the extent indicated as follows:

(a) **Contractual and commercial deviations**

The evaluation shall be based on the evaluated cost of fulfilling the contract in compliance with all commercial, contractual and technical obligations under this bidding document. In arriving at the evaluated cost, the price for withdrawal of deviations shown in Attachment 6 of the bid will be used, if necessary. 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 fair comparison of bids.

(b) **Works, services, facilities, taxes etc., to be provided by the Employer**

Where bids include the undertaking of works or the provision of services or facilities or payments to be effected by the Employer the Employer shall assess the costs of such additional work, services, facilities and/or payments etc. during the duration of the contract and add such costs to the bid price for evaluation.

25.3 Any adjustments in price that result from the above procedures shall be added, for purposes of comparative evaluation only, to arrive at an "Evaluated Bid Price". Bid prices quoted by bidders shall remain unaltered.

25.4 To facilitate evaluation and comparison, the Employer will convert all bid prices expressed in one or more different currencies to one currency as specified in the Tender Data Sheet

25.5 Unrealistically low proposed prices may be the reason for eliminating a bid from competition either on the basis that the bidder does not understand the requirement or has made an unrealistic proposal.

26. Contacting the Employer

26.1 From the time of bid opening to the time of contract award, if any Bidder wishes to contact the Employer on any matter related to its bid, it should do so in writing.

26.2 Any effort by a Bidder to influence the Employer in the Employer's bid evaluation, bid comparison or contract award decisions may result in rejection of the Bidder's bid.

27. Post-qualification

F. Award of Contract

27.1 In the absence of prequalification, the Employer will if not otherwise stated in the Tender Data Sheet determine to its satisfaction whether the Bidder, selected as having submitted the lowest evaluated responsive bid, is qualified to satisfactorily perform the contract.

- 27.2 The determination will take into account the Bidder's financial, technical and production capabilities, in particular the Bidder's contract work in hand, future commitments and current litigation. It will be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder in Attachment 3 to the bid, 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 Bidder. A negative determination will result in rejection of the Bidder's bid, in which event the Employer will proceed to the next lowest evaluated bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.
- 27.4 The capabilities of the vendors and subcontractors proposed in Attachment 5 to the bid to be used by the lowest evaluated Bidder will also be evaluated for acceptability. Their participation should be confirmed with a letter of intent between the parties, as needed. Should a vendor or subcontractor be determined to be unacceptable, the bid will not be rejected, but the Bidder will be required to substitute an acceptable vendor or subcontractor without any change to the bid price.
28. Award Criteria
- 28.1 Award will be made to the lowest evaluated bid price among the technically accepted bids.
29. Employer's Right to Accept Any Bid and to Reject Any or All Bids
- 29.1 The Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to award of contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the reason for the Employer's action.
30. Notification of Award ("Letter of Acceptance")
- 30.1 The Employer will notify the successful Bidder in writing by the "Letter of Acceptance" send by registered letter or by cable, to be confirmed in writing by registered letter, that its bid has been accepted.
- 30.2 Upon the successful Bidder's furnishing of the performance security pursuant to ITB Clause 32, the Employer will promptly notify each unsuccessful Bidder and will discharge its bid security, pursuant to ITB Sub-Clause 13.4.
31. Signing the Contract Agreement
- 31.1 Within twenty-eight (28) days of receipt of the Letter of Acceptance the Contract Agreement should be signed by both Parties.
32. Performance Security
- 32.1 The successful Bidder shall furnish the performance security in the amount given in the Tender Data Sheet and in accordance with

the regulations under CC Cl. 13.3.

33. Settlement of claims and disputes reference is made to CC claims and disputes Clause 6.

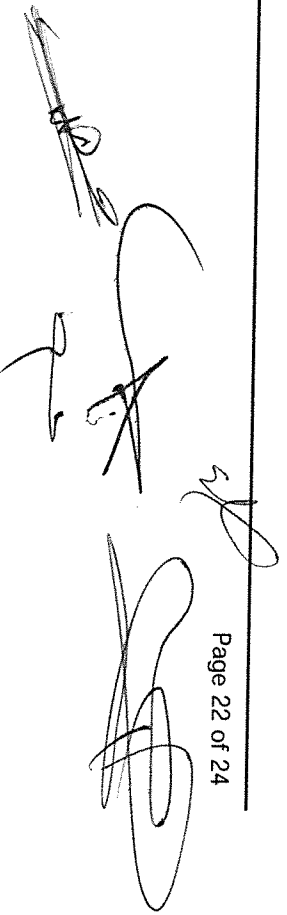
34. Corrupt or Fraudulent Practices

34.1 OPEC requires that Employers, as well as Contractors observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, OPEC:

- (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 of any thing of value to influence the action of a public official in the procurement process or in contract execution; and
 - (ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Employer, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition;
- (b) will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
- (c) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded OPEC-financed contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a OPEC - financed contract.

34.2 The Bidder has to sign the Declaration of Undertaking as attached in Volume II. The lack of signature shall result in rejection of the bid.

Chapter III Tender Data Sheet

The page contains several handwritten signatures and initials. On the left side, there are three distinct signatures. In the center, there are initials that appear to be 'SP'. On the right side, there is a large, complex signature that fills most of the vertical space.

Tender Data Sheet

The following bid-specific data for the plant and equipment to be procured shall amend and/or supplement the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions herein shall prevail over those in the ITB.

INTRODUCTION

ITB 1.1 and ITB 2.1	Employer is: Mechanical and Electrical Department Central directorate for studies electromechanical The New Administrative Capital – Government district Arab Republic of Egypt						
ITB 1.1	Loan No. 13027 P						
ITB 1.1	Name of Project: "SUPPLY AND ERECTION OF MECHANICAL WEED SCREEN CLEANINGMACHINES"						
ITB 6.1/6.2 /6.4	<p>*The last date for receiving clarification will be on (Date: / /2025)</p> <p>* Any clarification submitted after this date shall be neglected</p> <p>* Bidder shall submit a hard copy and a soft copy of calarifications</p> <p>The Bidder is strongly advised to examine the site on his own responsibility after having coordinated his additional visit(s) with the Employer.</p>						
ITB 8.1	Language of bid is English.						
ITB 9.3 (c)	Bidder's Eligibility and Qualifications <ul style="list-style-type: none"> • Technical Specifications, Chapter 2 "Description of the Works and Technical Conditions" (Volume II) 						
ITB 9.3 (d) (ii)	<p>Spare parts</p> <p>The Bidder has to include in the bid his price for the spare parts as listed in the corresponding Schedules attached to the Price Schedules (Vol. II).</p>						
BID PREPARATION AND SUBMISSION							
ITB 13.1	The Bid Security to be submitted shall of EUR AND L.E <table border="1" data-bbox="593 534 739 1117" style="margin-left: auto; margin-right: auto;"> <tr> <td style="text-align: center;">Group</td> <td colspan="2" style="text-align: center;">G1</td> </tr> <tr> <td style="text-align: center;">Bid security</td> <td style="text-align: center;">EUR</td> <td style="text-align: center;">L.E</td> </tr> </table> <p>OR equivalent according to exchange rate on bid opening date of the technical offer</p> <p>And remain valid for a period of Twenty – Eight (28) days beyond the bid validity period</p>	Group	G1		Bid security	EUR	L.E
Group	G1						
Bid security	EUR	L.E					
ITB 14.1	Bidding documents Price: L.E						
ITB 15.1	Bid validity period: <u>150</u> days after fixed date of the submission of the bids						
ITB 16.1 & 19.2 (a)	One Original and (<u>3</u>) copies and one soft copy on CD or flash memory						

ITB 17.1	Address of bid submission: Mechanical and Electrical Department Central directorate for studies electromechanical The New Administrative Capital – Government district Arab Republic of Egypt Deadline for bid submission: 12 O'clock / / 2025
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BID EVALUATION

ITB 23.1	Currency chosen for the purpose of converting to a common currency: <ul style="list-style-type: none"> • Egyptian pound (L E) • Source of exchange rate: Central Bank of Egypt • Date of exchange rate: Bid opening date of the technical offer
ITB 24.1 (d)	Time Schedule The Bidder has to submit a Time Schedule as specified in Art. 5 (Volume 2) based on a "Time for Completion" for the Supply and erection of: 12 month in total from the date of the contract coming force.

**CHAPTER IV
 CONDITIONS OF CONTRACT**

Clause	Data
CC Cl. 8.2	See ITB 24.1 (d)
CC Cl. 13.3	Performance Security <ul style="list-style-type: none"> ○ The Performance Security is ten percent (10%) of the total Contract Price (for foreign portion funded by OPIC fund) and (5%)of total contract price (for local portion funded locally).
CC Cl. 25.1	See ITB 24.1 (d)
CC Cl. 25.2	Liquidated Damages # 1.0% (completion period) of complete bid price in foreign currency (exchange rate for local currency shall be the calculated date of completion). # The "Maximum" is 15% of complete bid price in foreign currency.
CC Cl. 26	Gurantee Period <ul style="list-style-type: none"> ○ 24 month starting from the date of " issuing the Operational acceptance certificate " of weed screen

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Chapter

Chapter IV Conditions of Contract (CC)

Chapter IV

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Conditions of Contract

A. Contract and Interpretation

1. Definitions

In the Conditions of Contract ("these Conditions"), the following words and expressions shall have the meanings hereby assigned to them:

- 1.1 "Contract" means the Contract Agreement entered into between the Employer and the Contractor, together with the Contract Documents listed in Article 1.1 of the Form of Contract Agreement (including any amendments thereto). They shall constitute the Contract, and the term "the Contract" shall in all such documents be construed accordingly.
- 1.2 "Project" Provision of fully equipped pumping stations ready for operation(turn key)
- 1.3 "Day" means calendar day of the Gregorian Calendar.
- 1.4 "Month" means calendar month of the Gregorian Calendar.
- 1.5 "Employer" means the Mechanical and Electrical Department and includes the legal successors or permitted assigns of the Employer.
- 1.6 "Project Manager" means the person appointed by the Employer to perform the duties delegated by the Employer.
- 1.7 "OPEC" means the OPEC Fund for International Development which is financing the Program.
- 1.8 "Contractor" means the person or persons, firm or company whose tender has been accepted by the Employer and includes the Contractor's personal representatives, successors and permitted assigns.
- 1.9 "Contractor's Representative" means any person nominated by the Contractor and named as such and approved by the Employer in the manner provided in Sub-Clause 17.2 [Contractor's Representative and Construction Manager] hereof to perform the duties delegated by the Contractor.
- 1.10 "Subcontractor," including vendors, means any person to whom execution of any part of the Works, including preparation of any design or supply of any Plant and Equipment, is sub-contracted directly or indirectly by the Contractor, and includes its legal successors or permitted assigns.
- 1.11 "The Bank" means an international lending institution related in one or in other way to this Contract.
- 1.12 "Contract Price" means the sum specified in Article 2.1 (Contract Price) of the Contract Agreement, subject to such additions and adjustments thereto or deductions there from, as may be made pursuant to the Contract.
- 1.13 "Letter of Acceptance" means the letter of formal acceptance, signed by the Employer, of the Letter of Tender.
- 1.14 "Tender Data Sheet" means the completed pages entitled appendix to tender which are appended to and form part of the Letter of Tender.

- 1.15 "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.
- 1.16 "Plant and Equipment" means permanent plant, equipment, machinery, apparatus, articles and things of all kinds to be provided and incorporated in the Works by the Contractor under the Contract (including the spare parts to be supplied by the Contractor under Sub-Clause 7.3), but does not include Contractor's Equipment.
- 1.17 "Installation Services" means all those services ancillary to the supply of the Plant and Equipment for the Works, 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, pre-commissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training, etc.
- 1.18 "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 Works that are to be provided by the Contractor, but does not include Plant and Equipment, or other things intended to form or forming part of the Works.
- 1.19 "Civil Works" mean any civil works related to modifications for the new equipment to be installed, for up-grading, for new structure(s) and / or repair and finish of existing pumping stations.
- 1.20 "Works" means the permanent works to be executed by the Contractor under the Contract and the temporary works of every kind (other than Contractor's equipment) required on Site for the execution and completion of the permanent works and the remedying of any defects.
- 1.21 "Site" means the places upon where the permanent works are to be executed and to which Plant and Materials are to be delivered and any other places as may be specified in the Contract as forming part of the Site.
- 1.22 "Commencement Date" means the date notified under Sub-Clause 8.1.
- 1.23 "Time for Completion" means the time for completing the Works under Clause 8.1 of these Conditions, calculated from the Commencement Date.
- 1.24 "Completion" means that the facilities are completely installed, civil works are ready, Tests on Completion are successfully completed, and the Works are ready for Taking-over by the Employer. Minor civil works may be finished after completion if the Employer and the Contractor commonly agree upon.
- 1.25 "Tests on Completion" means the tests specified in the Technical Specifications to be carried out to ascertain whether the Works or a specified part thereof is able to attain the Guaranteed Figures specified in the Technical Specifications in

accordance with the provisions of Clause 23.2 [Tests on Completion]. The Tests on Completion shall be carried out before the Works are taken over by the Employer.

1.26 "Taking-Over Certificate" means a certificate issued under Clause 24 [Employer's Taking Over].

1.27 "Guarantee Period" means the period for notifying defects in the Works under Clause 26, as stated in the Appendix to Tender (with any extension under Sub-Clause 26.8, calculated from the date on which the Works are completed as certified under Clause 24.

2. Contract Documents

Subject to Article 1.2 (Order of Precedence) of the Contract Agreement, all documents forming part of the Contract 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 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 specified under Sub-Clause 3.1.1 above, the English translation of such documents, correspondence or communications shall prevail in matters of interpretation.

3.2

Singular and Plural

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

3.3

Headings

The headings and marginal notes in the 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

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

3.5

Incoterms

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*.

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

3.6

Entire Agreement

Subject to Sub-Clause 16.4 herein, 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

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 authorized representative of each party hereto.

3.8

Independent Contractor

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.

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

Non-Waiver

3.10.1 Subject to Sub-Clause 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 authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

3.10

Severability

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

3.11

Country of Origin

"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

4.1 Unless otherwise stated in the Contract, all notices to be given

4. Notices

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 these Conditions, with the following provisions:

3. Governing Law

3. Application of Law

4.1.1 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.

4.1.2 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.

4.1.3 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.

4.1.4 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.

4.2 Notices shall be deemed to include any approvals, consents, instructions, orders and certificates to be given under the Contract.

5. Governing Law

The Contract shall be governed by and interpreted in accordance with the laws of the Arab Republic of Egypt.

6. Settlement of Disputes

6.1 Contractor's Claims

If the Contractor considers himself to be entitled to any extension of the Time for Completion and / or any additional payment, under any Clause of these Contract Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Employer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the claim is deemed not existing and the Employer shall be discharged from all liability in connection with the possible claim. Otherwise, the following provisions of this Sub-Clause shall apply:

- The Contractor shall submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

-
- The Contractor shall keep such contemporary records as may be necessary to substantiate any claim. Without admitting liability, the Employer may, after receiving any notice on a possible claim, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Employer to inspect all these records, and shall (if instructed) submit copies to the Employer.
 - Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the contractor and approved by the Employer, the Contractor shall send to the Employer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed.
 - If the event or circumstance giving rise to the claim has a continuing effect:
 - this fully detailed claim shall be considered as interim
 - the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Employer may reasonably require; and
 - the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Employer and approved by the Employer.
 - Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Employer and approved by the Contractor, the Employer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.
 - Each Payment Certificate shall include such amounts for any claim as has been reasonable substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.
 - The Employer shall proceed in accordance with

Sub-Clause

6.2 Amicable Settlement

If any dispute or difference of any kind whatsoever shall arise between the Employer and the Contractor in connection with, or arising out of the Contract, or the execution of the Works, whether during the progress of the Works or after their completion and whether before or after the termination, abandonment or breach of the Contract, it shall in first place be referred to and settled by amicable discussions between the Employer and Contractor within a period of 90 days.

6.3 Arbitration

Unless settled amicably, any dispute in respect of which amicable discussions did not settle shall be finally settled by international arbitration. Unless otherwise agreed by both Parties:

- (a) the dispute shall be finally settled under the Rules of Arbitration of the Cairo Regional Arbitration Center,
- (b) the dispute shall be settled by three arbitrators appointed in accordance with these Rules, and
- (c) the arbitration shall be conducted in English language and in accordance with the law of the Arab Republic of Egypt.

The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of (or on behalf of) the Employer, relevant to the dispute.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the parties shall not be altered by reason of any arbitration being conducted during the progress of the Works.

B. Subject Matter of Contract

7. Scope of Works

- 7.1 The scope of Works is described in the Technical Specifications.

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, delivery of the Plant and Equipment and the installation, completion in accordance with the plans, procedures, specifications, drawings, codes and any

7. Commencement and Time for Completion

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 labor, materials, equipment, spare parts (as specified in Sub-Clause 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 that will be provided or performed by the Employer, as set forth in the corresponding Appendix (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 that can be reasonably inferred from the Contract as being required for attaining Completion of the Works as if such work and/or items and materials were expressly mentioned in the Contract.

7.3

The Contractor shall supply spare parts. Genuine Parts as mentioned in the Technical Specifications and the respective Data Sheets and Price Schedules shall be attached to the Contract in accordance with the Bidding Document. The price of spare and Genuine parts shall be added to the Contract Price.

8. Commencement and Time for Completion

8.1

The Employer shall give the Contractor not less than 7 days' notice of the Commencement Date. The Contractor shall commence the design and the execution of the Works as soon as practicable after the Commencement Date, and then proceed with the Works with expedition and without delay.

8.2

The Contractor shall complete the whole of the Works, within the Time for Completion as specified in the Appendix to Tender, including:

- achieving the passing of the Tests on Completion
- completing all work which is stated in the Contract as being required for the works for the purposes of Taking Over under Clause 24 [Employer's Taking Over].

9. Contractor's Responsibilities

9.1

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

9.2

The Contractor shall acquire in its name 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 that 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 that are not the responsibility of the Employer under Sub-Clause 10.3 of these Conditions and that are necessary for the performance of the Contract.

9.3

The Contractor shall comply with all laws in force in the country where the Facilities are installed and where the Installation

Services are carried out. The laws will include all local, state, national 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 Sub-Clause 10.1 of these Conditions.

9.4 The Contractor shall permit the OPEC to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the World Bank, if so required by the World Bank.

9.5 The Contractor shall carry out training of Employer's personnel in the operation and maintenance of the Works to the extent specified in the Technical Specifications.

9.6 The Contractor shall prepare, and keep up-to-date, a complete set of "as-built" records of the execution of the Works, showing the exact as-built locations, sizes and details of the work as executed. These records shall be kept on the Site and shall be used exclusively for the purposes of this Sub-Clause. Two copies shall be supplied to the Employer prior to the commencement of the Tests on Completion.

9.7 Prior to the commencement of the Tests on Completion, the Contractor shall supply to the Employer provisional operation and maintenance manuals in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair the Facilities.

The Works shall not be considered completed for the purposes of taking-over under Clause 24 until the Employer has received final operation and maintenance manuals in such detail, and any other manuals specified in the Technical Specifications for these purposes.