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First Meeting of the Working Group on
Model Contracts for Fertilizer Plants
Vienna, 10 April 1978

REPORT OF THE MEETING *

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1. The representatives of the Fertilizer Corporation of India and the National Design and Industrial Services Corporation Limited of Pakistan and the Instituto Mexicano del Petroleo of Mexico who were present at the meeting are listed in Annex C. The meeting was informed that the representative of the State Organization of Industrial Design and Construction, Ministry of Industry and Minerals, Government of Iraq, regretted that it was unable to join the present meeting but that the Organizations would be represented at future meetings by Mr. Mohammed Al Shukri, Director of Fertilizers and Mr. Adnan Al Ani, Director of Petrochemicals.
2. The meeting agreed the following timetable:
 - 19-23 June 1978, Vienna - Review of first drafts of four forms of model contract
 - July 31 1978 - Submission of revised draft of model contracts to UNIDO
 - 1-20 August 1978 - Preparation by UNIDO of consolidated document including guidelines for the use of the model contracts
 - 21-25 August 1978, New Delhi - Review of final drafts of model contracts and guidelines to be submitted to the Consultation Meeting
 - September 1978 - Translation and reproduction by UNIDO of model contracts
 - 6-10 November 1978, Innsbruck, Austria - Second Consultation Meeting on the Fertilizer Industry.
3. In view of the addition of the August meeting to the timetable, it was felt unnecessary to meet formally in May. However, it was understood that the Institutions concerned in Pakistan, India and perhaps Iraq might meet in New Delhi at the invitation of the Fertilizer Corporation of India. UNIDO supported this initiative to maintain close co-operation during the early stages of work.
4. It was agreed that uniform terminology would be applied in all four contracts but that it would only be possible to apply this once the first drafts were prepared. However, the definition of terms was discussed with the results shown in Annex A. It was also agreed to prepare the four different types of model form of contract with the main articles in a uniform order. Outlines of the main clauses provided by the three institutions were discussed. This led to agreement of the list of 40 articles listed in Annex A.
5. It was agreed that UNIDO's legal adviser would draft certain clauses common to all contracts. However, this should not prevent each of the institutions including their own versions of these clauses in the first draft of the model

contract. At the June meeting the different versions would be considered and a harmonized approach would be adopted. The clauses for which the legal adviser would be mainly responsible are marked with an asterisk in Annex A.

6. It was agreed that contracts should be drafted not only to protect the interests of buyers but in a way that would be acceptable to sellers. It was later suggested that for the August meeting in New Delhi representatives of a number of sellers might be invited.

7. It was recognized that the annexures to the main commercial contract were of particular importance. It was agreed that these had to be drafted with a specific plant in mind and that the following plants would be considered:

Pakistan - 1000 tons per day Ammonia plus Urea based on natural gas (stripping urea process)

India - 1000 tons per day Ammonia/Urea based on fuel oil (conventional urea process)

Mexico - 1500 tons per day Ammonia based on natural gas; 500 tons per day Phosphoric Acid; 1000 tons per day Ammonium Phosphate.

Iraq - 1000 tons per day Ammonia plus Urea based on natural gas.

8. It was recognized that the draft technical annexures would be based on annexures of contracts for existing plants. As regards the technical specifications, the emphasis should be on preparing appropriate guidelines that would indicate essential items of equipment and points to be covered rather than an exhaustive detailed listing which would require too much space. Other annexures however should be prepared in full whenever this is possible since they constitute an essential part of the model contract.

9. It was anticipated that the organizations preparing the model forms of contract would be invited to the Consultation Meeting in Innsbruck as consultants of UNIDO so that they could explain the texts which they had drafted to the participants.

1/ State Organization of Industrial Design and Construction, Ministry of Industry and Minerals, Iraq - Lump-sum contract for the turn-key delivery of a fertilizer plant;

National Design and Industrial Services Corporation Ltd. Pakistan - Contract for the construction of a fertilizer plant on a cost reimbursable basis;

The Fertilizer Corporation of India - Contract covering only the process know-how and engineering services required for the construction of a fertilizer plant;

Instituto Mexicano del Petroleo, Mexico - Contract for the construction of a set of duplicate fertilizer plants.

MAIN ARTICLES OF MODEL CONTRACTS

(Check list of articles and order in which they are to be presented)

(Clauses marked with an asterisk will be drafted by UNIDO's Legal Adviser so that, as far as possible, the same text can be included in all four forms of contract)

+ 1. Definition of Terms

Use Green Book, page 8 as basis but use 'buyer' and 'seller' instead of 'purchaser' and 'contractor'.

Add a definition of (a) Damages, including liquidated damages; (b) Penalties; (c) Guarantees; (d) Warranties; (e) Proprietary Rights; (f) Effective Date.

2. Broad scope of the contract
Refer to Annexure for details of scope of work.

3. Interpretation
'Applicable law will be the law of the land where the plant site is located or as otherwise agreed between parties in conformity with laws of the country where plant is located'.

4. Responsibilities of the Seller
Refer to Annexure for detailed description

5. Responsibilities of the Buyer
Refer to Annexure for detailed description

6. Time schedule and completion of work
The contract should define and agree important specific milestones in the progress of the work and include a CPM chart (critical path method)

7. Licences
This clause should cover:
Patent and other protected rights; Licence to operate; Licences to design process.

+ 8. Patents including indemnification

9. Basic Engineering
- Technical documentation

10. Detailed Engineering
- Technical documentation

11. Variations (Changes in the scope of work)

12. Procurement

13. Items requiring buyer's approval

14. Spares
See Annexure for details

15. Inspection and certification
(Include provision for international inspection when appropriate)
16. Expediting
17. Project management
Construction management and other aspects
(For turn-key projects, define buyer's rights)
18. Contract price
19. Reimbursement of services of personnel
See Annexure for rates
20. Terms of payment (Include currency of payment; applicable exchange rates)
21. Accounting and audit
22. Agreed criteria and procedures for performance tests
- + 23. Guarantees and guarantee tests
- + 24. Obligations of contractor after performance test
(a) if successful
(b) if unsuccessful
- + 25. Rights of Buyer if plant fails to pass performance tests
- + 26. Equipment guarantees and warranties
- + 27. Liabilities including penalties
28. Training
- + 29. Force Majeure
- + 30. Arbitration
31. Secrecy
32. Effective date
- + 33. Termination and suspension
34. Giving of notices
35. Standards and codes
36. Sub-contracts
- + 37. Insurance
To include all types of insurance considered at Lahore Seminar 25-29
November 1977; To include clause of consequential loss agreed at
working group on Contracts and Insurance 14-17 February 1978.
38. Co-ordination procedures between buyer and seller
- + 39. Assignments
40. Language of contract
41. List of Annexures

ANNEXURES (APPENDICES)

- A. Brief description of the plant
- B. Basis of design (provided by buyer and seller)
 - (i) Raw material specifications
 - (ii) Metereological data
 - (iii) Soil conditions
 - (iv) codes and standards
 - (v) Statutory regulations (boiler etc.)
 - (vi) Limitation on transportation of equipment
 - (vii) Definition of battery limits
 - (viii) Characteristics of utilities and services and limits of supply
 - (ix) Effluent standards; emission standards
- C. Design criteria agreed
- D. Detailed description of services to be performed by seller
- E. Detailed description of services to be performed by buyer
- F. List of equipment and equipment specifications
Use process sequence to list all mechanical equipment
Lump together electrical, piping, instruments, safety, refractories and other general items

Indicate broad guidelines for specifications for critical items of equipment that should be provided. Specifications must be based on technical experience and be designed to produce reliable plant
- G. Exclusions
Services, supplies
- H. Time schedule and technical documentation
- I. Quality and quantity of products
- J. Quality and quantity of effluent
Effluent standards; emission standards
- K. Technical training of buyer's personnel

- L. Procedures for changes in scope of work
- M. Pre-operating procedures and procedures for guarantee tests
- N. Manuals
 - (a) Operation, maintenance and safety manuals;
 - (b) manuals for monitoring environmental aspects;
 - (c) manual for chemical analytical methods;
 - (d) manual for instrumentation
- O. Form of performance bonds
- P. Form of bank guarantees
- Q. List of catalysts
- R. List of spare parts
- S. List of chemicals
- T. Exclusions:
 - List of materials to be supplied by buyer
- U. Packing, shipping and marking instructions
- V. Procurement procedures (where appropriate)
- W. Schedule of rates and charges

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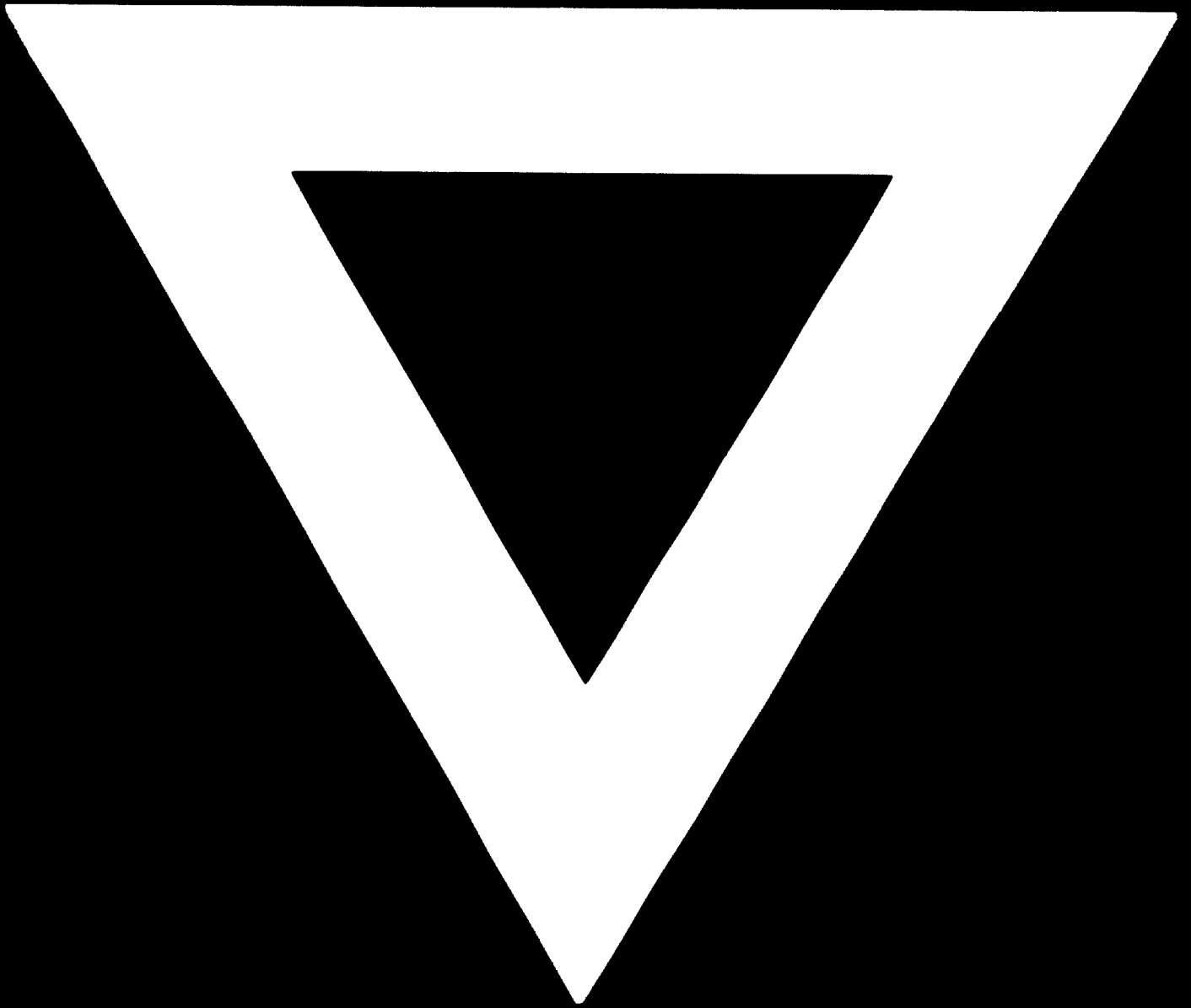
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