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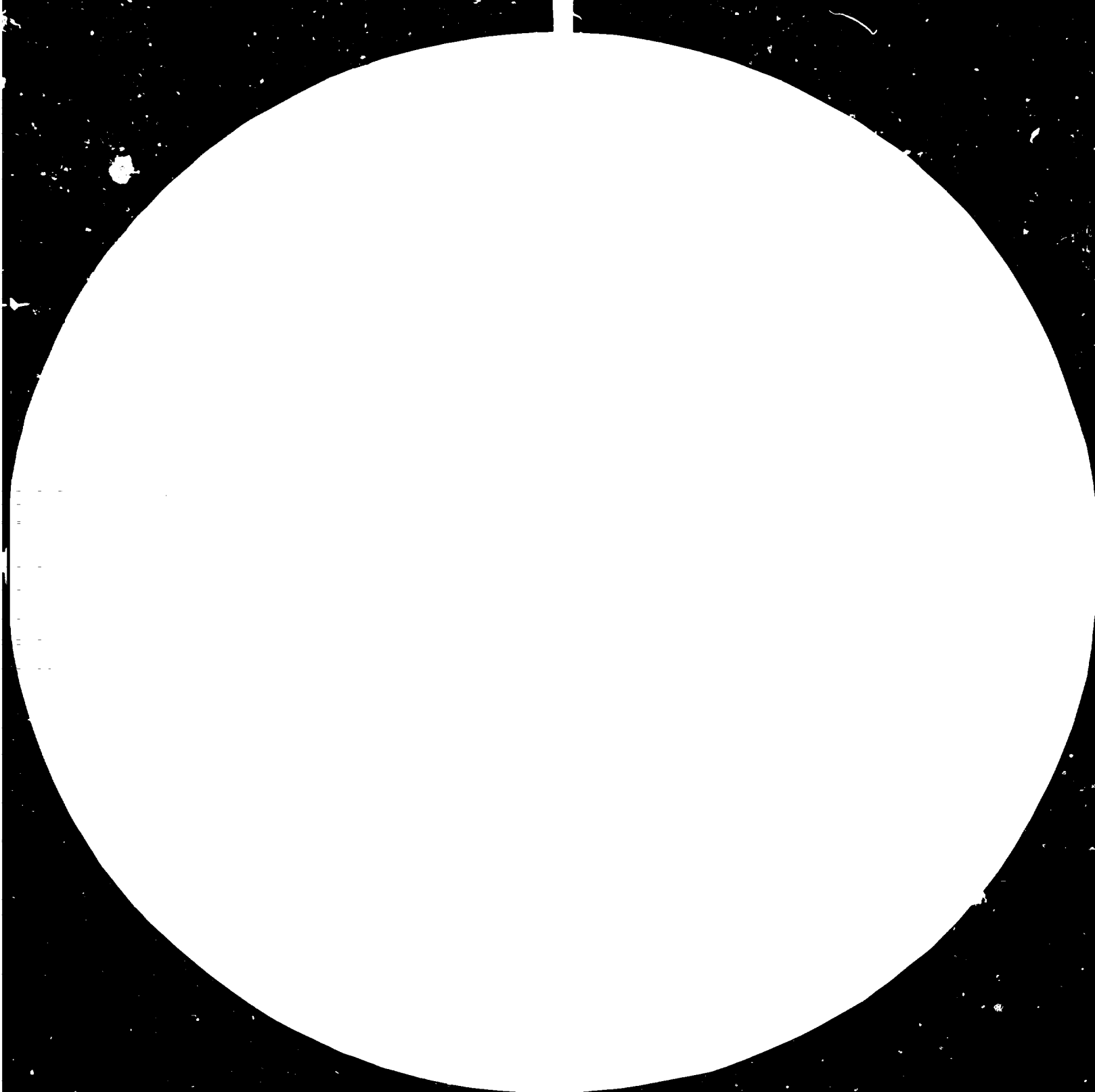
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Vienna, 15-17 December, 1982

CONTRACTUAL ARRANGEMENTS FOR
THE SETTING UP OF A PLANT
FOR THE PRODUCTION OF BULK
DRUGS OR INTERMEDIATES*

Prepared by
the UNIDO Secretariat

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Preface

In accordance with the recommendation No. 2 of the First Consultation on the Pharmaceutical Industry held in Lisbon (December 1980), UNIDO has been requested to prepare documents on the various contractual conditions, and variations thereof including background notes, related to contractual arrangements for the transfer of technology in the pharmaceutical industry.

The Morocco Round Table on the Pharmaceutical Industry (December 1981) recommended to concentrate, in the first stage of work, on licensing agreements for the manufacture of bulk drugs and intermediates.

Purposes, scope and content of this document

This document is primarily addressed to parties negotiating this type of agreements and in particular for enterprises in developing countries, which are able and willing to increase the range of bulk drugs (or intermediates) locally produced.

In the preparation of this document a number of general principles have been taken into account, as described in previous UNIDO documents, and recommended at the Morocco Meeting.^{1/}

This document has been conceived in line with the recommendations referred to, and is based on the assumption that the contractor executes an engineering contract and that the purchaser a) has established a process licensing agreement with a third party and discloses to the contractor the relevant know-how; b) carried out the erection of the plant, under the supervision of the contractor and c) undertakes the procurement of the required equipment, with the assistance of the contractor. Under these conditions, the contractor's responsibilities extend, in principle, until the mechanical completion of the plant, and the licensor is responsible for the demonstration of the performance guarantees, once it is verified that the plant is mechanically complete.^{2/}

^{1/} See in particular "Background paper for discussion on the relevant issues to be taken into account when negotiating transfer of technology agreements and the various terms, conditions and variations thereof that could be included in contractual agreements: possible scope, structure and content", PC.19.17 Oct. 1981.

^{2/} During the mechanical check-up, the final water trials are taken to check that there is no leakage and the equipment including piping, can stand the desired pressure and achieve desired temperature required by the operation. Sometimes, defects pertaining to welding and some of steel joints left inside the pipe or equipment by mistake come out during the water trial and rectified. Similarly, the instruments are tested to give the desired performance during operation.

The Licensor is also presumed to supervise the start up of the plant and its initial operation.

The approach followed implies the unpackaging of the various tasks involved in the setting up of a plant, and requires a considerable effort of co-ordination by the purchaser. Besides, since the work is divided among various suppliers, difficulties may arise out as to the attribution of responsibility in case of failure to achieve the expected results. The suggestions contained herein should be integrated, for its proper use, with those relating to a licensing agreement for the production of bulk drugs or intermediates, as presented in a separate UNIDO document.

This document contains specimen clauses on the various issues to be dealt with in an engineering contract for plants relating to bulk drugs or intermediates, and technical annexes related to the scope of detailed engineering services and supervisory services. It will be completed later with the respective background notes and variations of such clauses.

The preparation of the draft texts included here has largely relied on previous UNIDO documents relating to contractual arrangements for transfer of technology, and particularly on documents UNIDO/PC.25 and UNIDO/PC.26, December 1981.

Since the recommendations made in this document are addressed to parties located in any country, the formulations proposed here are not referred to any particular national legislation. This does not mean, however, to support the idea of a contract "without law", i.e. which is self-sufficient for solving all aspects of the relationship between the parties.

Obviously, national approaches and solutions to a number of aspects considered, vary considerably between the common law and the continental law systems, or even from country to country. To the extent possible, the document attempts to suggest formulations which conform to the general principles referred to above, and at the same time, are compatible with the main current regulation trends at the international and national level, particularly in developing countries.

1. Recitals

This Contract, made and entered into this day ofby and between:.....a corporation organized and existing under the laws of.....having its head office at.....(hereinafter referred to as "the Contractor"), and..... a corporation organized and existing under the laws of..... having its head office at.....(hereinafter referred to as "the Purchaser").

WITNESSED

1. Whereas the Contractor has experience in the construction of plants for the production of drugs (intermediates).
2. Whereas the Purchaser desires to establish a Plant for the production of.....(the Products) in.....(country).
3. Whereas the Contractor acknowledges that the Purchaser has executed a process licensing agreement with.....for the production of.....(the Products), and that the engineering work to be carried out by the Contract must be executed in the context of said agreement.

NOW, THEREFORE, the parties hereto agree as follows:

2. Definitions

The following expressions will have in this agreement the meaning assigned in this article.

1. "Purchaser" shall mean the party named as such in this Contract or his successors or permitted assigns.
2. "Contractor" shall mean the party named as such in this Contract or his successors or permitted assigns.
3. "Contract" shall mean this Contract (together with the Annexures) entered into between the Purchaser and the Contractor for the execution of the work howsoever made, together with all of the documents to which reference has been made in the Contract documents, including such amendments and/or changes (properly made from time to time by mutual agreement between the parties) to the documents constituting this Contract.
4. "Civil Works" shall mean all the buildings, roads, foundations and any other work requiring civil engineering.
5. "Effective Date of the Contract" shall mean the date on which the Contract comes into force in accordance with Article 22.
6. "Equipment" shall mean the equipment, machinery, instruments, commissioning equipment and spares, and other major items required for incorporation in the Plant as specified in Annex..... and in respect of which the Contractor has provided procurement services.
7. "Plant" shall mean a plant for the production of.....(drugs or intermediates), to be constructed at.....and in respect of which the Contractor's services are provided.
8. "Products" shall mean.....(drugs or intermediates).
9. "Vendor" shall mean the person or persons from whom the supply of any equipment is obtained by the Purchaser.
10. "Raw materials" shall mean the materials necessary for the production of the Products.
11. "Site" shall mean the land upon which the Plant is to be constructed as specified in Annex.....

12. "Mechanical Completion" shall mean the time when the physical construction of the Plant has been completed, all mechanical tests have been satisfactorily completed, and a mechanical Completion Certificate has been issued.

13. Licensor shall mean _____ the party named as such in the licensing agreement entered into by the Purchaser and the Licensor on.....

3. Division of work and responsibilities

3.1. In accordance with the terms and conditions provided for in this Contract, the division of work and responsibilities shall be as follows:

3.1.1. The Contractor shall be responsible for:

- a) Detailed engineering for the Plant;
- b) Supervision of the erection, pre-commissionary and mechanical completion tests until Mechanical Completion of the Plant;
- c) Checking the detailed design and material specification for Civil works;
- d) Inspection of Equipment during fabrication and providing certificates of inspection;
- e) Establishment of a list of would-be Vendors of Equipment;
- f) Assistance to the Purchaser in pre-qualifying Vendors for Equipment

3.1.2. The Purchaser shall be responsible for:

- a) The establishment of the design basis of the Plant. The Contractor shall however review such design and suggest all changes the Contractor will deem appropriate. If such changes are approved by the Purchaser and entail modifications as to the terms agreed upon in this Contract, the parties will modify the Contract in accordance with Article 11;
- b) Procurement, transportation, receipt and storage of the Equipment at Site;
- c) Obtaining and developing the Site, including, construction of roads, transport and communication facilities;

- d) Testing the soil characteristics of the Plant;
- e) Design and construction of all Civil works;
- f) Erecting all Equipment;
- g) Mechanical testing, commissioning and start up of the Plant;
- h) Obtaining all know-how for the production of the Products.

3.2. In the event that any activity or work, of the type necessary for the successful implication of this Contract is not particularly mentioned in the scope of work above or in the specifications, drawings, or any of the Annexes of this Contract, but becomes necessary to ensure the successful operation of the Plant according to the specifications laid down in the Contract and the intent thereof, such activity or work shall also become part of this Contract as if the same had been originally included in the scope of work to be undertaken by each party in such an eventuality. Payments due, if any, will be governed by the provisions of Article 9.

4. Co-ordination of work

4.1. The Purchaser and the Contractor each shall appoint a Project Manager, who shall co-ordinate and monitor the work under this Contract. on behalf of the Purchaser and Contractor, respectively, within scope of the authority entrusted to each of them.

4.2. The Purchaser and the Contractor through their designated representatives will meet periodically according to a pre-determined schedule and when necessary, to examine the progress of work and mutually agree to expedite the work and resolve outstanding issues.

4.3. All notices, instructions and decisions on meetings shall be given in writing. Minutes of meetings shall be recorded and circulated for confirmation and necessary action. Minutes of meetings between Contractor's and Purchaser's representatives held at Site, or in the offices of Purchaser or Contractor shall after recording and confirmation have the same effect as notices in writing.

4.4. Whenever any approvals are required from the Purchaser under the provisions of this Contract, such approvals or reasons for withholding such approvals shall be conveyed to the Contractor within () days of receipt, unless otherwise provided in this Contract. If no reply is received from the Purchaser within the period specified, such items submitted for approval shall be deemed to be approved.

4.5. Within.... days from the Effective Date of the Contract a meeting shall be held in (country) between the Contractor and the Purchaser to discuss all matters of common interest, including but not restricted to the finalization of co-ordination procedure, list of Vendors, and design criteria. The matters related to the concept of location of the Plant and off-sites within the Site shall be finalized at such a meeting.

4.6. Within..... months from the Effective Date of the Contract, a meeting shall be held at the Purchaser's offices at (town) between the Contractor and the Purchaser to discuss work completed up to that time. The detailed in-Plant layout, design sizes of the off-sites, time schedule, project cost and production cost optimization, and other items of common interest shall also be discussed. The Contractor shall take into account in his design any changes suggested by the Purchaser, which are acceptable

technically to the Contractor; and the Contractor shall advise the Purchaser of any changes in the Contract Price and/or time schedule, arising from such changes.

4.7. The Contractor shall open an office at Site, for which an agreed amount of space shall be provided by the Purchaser. This office shall be managed within the jurisdiction of the Construction Manager of the Contractor, who shall be responsible for all liaison with the Purchaser and for the supervision of erection. This office shall be opened in good time for checking the progress of Civil Works and before any of the Equipment arrives at Site. For the purpose of co-ordination, the Contractor's Construction Manager at Site shall liaise with Senior Site Representatives of the Purchaser. The Purchase and Contractor shall agree at the time of the meeting contemplated under Article 4.6, the quantum of services and office personnel which shall be provided by the Purchaser at his cost, for the office of the Contractor at Site.

4.8. The Purchaser shall have the right to review completed work of the Contractor in the Contractor's offices, so as to monitor the progress and status of the work. Such review will be reasonable both in scope and time so as not to unduly interfere with the Contractor's work.

4.9. The Purchaser shall have the right to appoint from time to time a Consultant Engineer as his representative with the specified authority to participate in the meetings referred to above in this Article, and to review all work on the Purchaser's behalf and give such instructions and grant such approvals as may be necessary for the purposes of this Contract.

4.10. The Purchaser, if he so desires, shall have the right to assign up to a maximum of....,engineers to the design offices of the Contractor at () to be present during the detailed design of the Plant. The Contractor shall make available all technical documentation, as defined in Annex.... of the detailed design of the Plant to the engineers of the Purchaser. All costs in connection with the travel and stay of his engineers shall be borne by the Purchaser.

5. Detailed engineering ^{3/}

5.1. The Contractor will undertake the detailed engineering of the plant, in accordance with the technical information and basic design data laid down by the Licensor, as transmitted to the Contractor by the Purchaser, and according to the latest design standards known to the Contractor at the time of design, and particularly to the standards and codes in force in (Purchaser's country), as laid down However, if the Contractor is aware of the up-to-date design of superior engineering codes or design methods, or where experience from previous contracts has resulted in proven improvements, the Contractor shall use such improved methods or codes in the design of the Plant and where required, shall make the appropriate data in design methods available to the Purchaser. The Contractor shall also take into account all safety rules/regulations normal to industry-practice, and safety regulations prescribed in (Purchaser's country), as stated in

5.2. The Contractor shall check the detailed design and material specifications for Civil works submitted by the Purchaser, in order to establish their compliance with the specifications and drawings supplied by the Contractor. Any differences or mistakes shall be communicated to the Purchaser within following the date of submission of documentation by the Purchaser.

5.3. The engineering services to be undertaken by the Contractor shall be entirely undertaken from his offices at and the prior approval of the Purchaser shall be required to carry out any part of the work at other offices.

5.4. All the documentation prepared by the Purchaser shall be in (language) and shall include but not be limited to the following items:

-
-
-

5.5. The documentation shall be dispatched to the Purchaser by airway bill on a freight pre-paid basis and the Purchaser shall acknowledge each dispatch within days following its receipt.

^{3/} See Annex I.

5.6. The documentation shall be supplied in copies.

5.7. The Purchaser shall have the right to submit the documentation prepared in pursuance to this Article to the Licensor, for the review and approval of the Licensor in accordance with the licensing agreement entered into with the Purchaser on

6. Supervisory services ^{4/}

6.1. The Contractor shall provide an adequate number of supervisory personnel for erection, pre-commissioning and mechanical testing of the Plant. At the Purchaser's request, the Contractor shall also assist the Purchaser during commissioning of the Plant.

6.2. For the purposes of the precedent sub-article, the Contractor shall depute to Site the following personnel:

<u>Category</u>	<u>Number</u>	<u>Expected man-months</u>
.....
.....
.....
.....

6.3. The period of stay stated above is indicative and, upon request by the Purchaser, the Contractor shall extend it or provide additional personnel in the required categories. Within months from the Effective Date of Contract, and thereafter periodically, as may be required, the parties will review the adequacy of the number and period of stay of Contractor's supervisory personnel.

6.4. The Contractor shall ensure that all supervisory personnel are available at Site in due time in order to carry out the work expeditiously and in accordance with the time schedule as agreed upon (Article 10).

6.5. The Contractor's supervisory personnel shall be qualified and competent for the tasks assigned. At least months before any of the Contractor's personnel is sent to Site, the Purchaser shall be informed of his bio-data and the Purchaser shall have the right to satisfy himself of the competence of such a person. Any person rejected shall be substituted promptly by the Contractor.

^{4/} See Annex II

6.6. In addition to the remuneration provided for under Article 9 the Purchaser shall provide the following:

i) The Purchaser shall pay to each of the deputed personnel a living allowance at the rate of (local currency) for each calendar day of stay at the Site. That allowance will be paid directly to the expatriate personnel at Site every fortnight in advance.

ii) The Purchaser shall bear the costs of tourist class return air ticket from the home office to the Site.

6.7. While at Site, the Contractor's personnel will comply with all applicable laws, rules and regulations. If any of the Contractor's personnel is guilty of misconduct, the Purchaser shall have the right, after giving reasons thereof to the Contractor in writing to send him back to his home office country, and ask for and obtain an adequate replacement at the Contractor's expense.

6.8. The Purchaser shall provide in good time all permits necessary for the entrance and stay of the Contractor's personnel in (Purchaser's country).

6.9. The Purchaser shall provide the Contractor's office space, securities and typing facilities for the Contractor's personnel deputed to the Purchaser's office or to Site.

7. Services relating to procurement

7.1. The Contractor shall provide the Purchaser a list of would-be Vendors of Equipment, and all data and information known to the Contractor on the ability of the Vendors to meet specifications and the delivery terms.

7.2. The Contractor shall advise and assist the Purchaser during the pre-qualification of Vendors, including in the preparation of a general format for the purchase orders, tender specifications for each item of Equipment, bid tabulations, and in the selection of Vendors.

7.3. If the Contractor has sound reasons for the exclusion of certain Vendors, he may so recommend this to the Purchaser. In case the Purchaser intends to select a Vendor who is not acceptable to the Contractor, the Contractor shall indicate the specific changes in his obligations, if any, which would result from such selection. The Purchaser shall thereafter still have the choice of purchasing the Equipment from the selected Vendor subject to the reservations of, and modifications of the Contractor obligations which are reasonably commensurate with the circumstances.

7.4. The Purchaser will be responsible for the final selection of Vendors and shall ensure that all procurement is accomplished so as to enable the Completion of the Plant within the terms specified in article 10.

7.6. The Contractor shall inspect or cause to be inspected the Equipment and obtain certification at all appropriate stages of work by the Vendors, and on completion of the orders.

7.6. Following the issue of purchase order(s), the Contractor shall carry out (in accordance with standard procedures) or cause to be carried out the inspection and testing, as per relevant codes given in the specifications at the shops of Vendors during manufacture and before despatch.

7.6.2. During progressive inspection of Equipment fabrication the Contractor shall take appropriate measures in order that the Vendors strictly follow fabrication instructions and codes, and that the quality of workmanship meets acceptable levels to enable the production of Equipment in accordance with the qualitative and quantitative standards expressed in the Contract.

7.6.3. The Contractor shall also require Vendors to provide the necessary test certificates and all other documents required by the inspecting authorities in the country of manufacture or as may be required by the Purchaser in consideration of the regulations in force in (country) and/or provided for in the Contract.

7.7. The Contractor shall issue or cause to be issued certificates of inspection for all Equipment and Materials.

7.7.1. When the Equipment is ready for final inspection, the Contractor shall take appropriate measures in order that the purchase order(s) have been complied with correctly as specified.

7.7.2. The Contractor shall issue or cause to be issued a certificate of inspection in respect of each item of Equipment before despatch, and shall send copies of such certificates to the Purchaser, and certificates of tests carried out in connection with issue of such certificates of inspection.

7.8. Wherever required by the Purchaser, the Contractor shall associate the Purchaser or his representatives with such inspection, and arrange for joint inspection.

7.9. In the event that the Contractor during shop inspection, anticipates delays in delivery of any equipment, the Contractor shall promptly notify the Purchaser and shall suggest measures to overcome delays. In the event that the delays appear inevitable, the Contractor shall anticipate the quantum of such delays, and inform the Purchaser so that the time schedule may be modified accordingly, and the Contractor shall undertake such remedial steps as may be practical, in the circumstances, to alleviate the difficulties that would be caused by the delays.

7.10. If any defect is found during inspection (before despatch) of Equipment of Vendors, or during erection or pre-commissioning tests at the Site of the Plant, the Contractor shall immediately advise the Purchaser as to what action should be taken to have the Vendors replaced, or to repair, defective equipment in the shortest possible time. The Contractor shall assist the Purchaser in facilitating any action which may be necessary in such circumstances.

7.11. The Purchaser will be responsible for requiring to the Vendors the proper packaging and transportation of the Equipment to the point of despatch, and for the obtention of import permits, transportation and despatch thereof to Site.

7.12. The Contractor shall assist the Purchaser in obtaining remedial action from Vendors, wherever such is necessary.

8. Information supplied to the Contractor

8.1. The Purchaser shall provide the Contractor with information pertaining to the suitability of the Site, the applicable law, rules and regulations in force in (Purchaser's country) that are available to the Purchaser and pertinent for the execution of the Contract. The Contractor shall review all such information, and obtain such other information as he may consider necessary to carry out his work under the Contract, particularly those bearing on availability of water and power for construction purposes, approach roads, physical condition of Site, uncertainty of weather and ground conditions. It shall be the responsibility of the Contractor in any event to obtain all information required for him to carry out his obligations under the Contract.

8.2. The Purchaser shall, within following the Effective Date of the Contract, make available to the Contractor all basic process and engineering data received by the Purchaser from the Licensor, as necessary for the carrying out by the Contractor of all his obligations under this Contract.

8.3. The Contractor shall be subject to the same confidentiality obligations as the Purchaser had agreed upon under the respective licensing agreement with the Licensor.

8.4. The Contractor shall not use or divulge any technical data or information given by the Purchaser or his representatives, except for the purposes strictly connected with the Contract.

9. Contract price, terms of payment and bonuses

9.1. In full consideration for the performance of the Contract, the Purchaser shall pay to the Contractor the following:

- (i) A firm price being the sum of (amount and currency) for the supply of detailed engineering and the services supplied under this Contract which are not contemplated in sub-article (ii) below.

(ii) For all the supervisory activities at Site concerning erection, precommissioning and testing of the Plant, for each day of absence from Home Office of expatriate personnel the following rate:

<u>Category of personnel</u>	<u>Rate per day</u>
.....
.....
.....

(iii) The daily rates referred to will be related to a normal working week of hours. Overtime charges shall be paid, except for engineers and any other staff who would not normally be paid overtime charges in their home country, as follows:

- Above hours/week percent of normal rate
- For weekly and public holidays per cent of normal rate.

9.2. The total estimated costs of Contractor's services in accordance with sub-articles (ii) and (iii) above is (currency).

9.3. The payments due under Article 9.1.(i) above, shall be made as follows:

- (i) per cent as an advance payment.
- (ii) per cent on receipt by the Purchaser of all the documents relating to detailed engineering.
- (iii) per cent on mechanical completion of the Plant but not later than from the effective date of the Contract.
- (iv) per cent on the date of final acceptance of the Plant but not later than from the effective date of the Contract.

9.4. The advance payment shall be effected by direct remittance by the Purchaser to a bank designated by the Contractor, upon provision by the Contractor of a bank guarantee, as stipulated in Article 15.

9.5. Payments under 9.3.(ii), (iii) and (iv) above shall be made against irrevocable divisible letters of Credit established by the Purchaser in favour of the Contractor at a specified bank in (country), upon presentation, respectively, of

- (i) a certificate from the Purchaser that the relevant documentation has been received;
- (ii) the Mechanical Completion Certificate;
- (iii) the Final Acceptance Certificate.

9.6. The payments of services referred to in sub-article 9.1.(ii) above, shall be made out of irrevocable letters of credit established days before the commencement of services by the Purchaser in favour of the Contractor for an amount to be mutually negotiated between the parties, upon presentation of monthly invoices countersigned by the Purchaser.

9.7. In the event that the Mechanical Completion of the Plant is effected in less than after the Effective Date of the Contract, the Contractor shall be entitled to receive as a bonus per cent of the remuneration stipulated in 9.1.(i) above, for each complete of saved time. Payments under this Article shall be made within following the Final Acceptance of the Plant.

10. Time schedule

10.1. The target date for different elements of the construction and completion of the Plant are given in the bar chart attached as Annex ... It is agreed that within months after the Effective Date of the Contract the Contractor shall prepare a critical path network, generally conforming to the bar chart attached, which shall be discussed between the Purchaser and Contractor and shall be mutually approved, and which shall list significant activities connected with the completion of the Plant.

10.2. Except where otherwise stated, all dates or periods indicated in this Article and in Annex ... will be counted from the Effective Date of the Contract.

10.3. The bid documents for procurement of the Equipment shall be sent by the Purchaser by the (month) and in any event not later than the (month).

10.4. The detailed design and material specifications for Civil works shall be submitted by the Purchaser for the Contractor's checking by the (month) and in any event not later than the (month).

10.5. The Contractor shall depute his personnel, in accordance with Article, within days of the Purchaser requesting the deputation of any person to Site.

10.6. All supervisory personnel for pre-commissioning and mechanical tests shall be deputed to Site at least before commencement of such operations.

10.7. Within days following an inspection in accordance with Article 7, the Contractor shall make available to the Purchaser copies of all inspection reports prepared, in (language).

10.8. The Purchaser shall obtain and make available to the Contractor all necessary permits/approvals and/or licences from local authorities and/or Governments as may be necessary for the timely execution of the Contract inclusive of import licences, visas for Contractor's personnel, entry permits, work permits etc.

11. Changes and additions to scope of contract

11.1. Whenever the Purchaser makes a request to the Contractor for change in design, or where services are required to be performed by the Contractor, which in the opinion of the Contractor are in addition to the services which the Contractor is obligated to perform under this Contract, or which in the Contractor's opinion require additional payment by the Purchaser, the Contractor shall advise the Purchaser of the cost of such further services, within days following the Purchaser's request.

11.2. If the Purchaser agrees that the services required of the Contractor are in addition to the Contractor's obligations under this Contract, the Purchaser shall (subject to negotiations as to the cost and extent of such services and effect on the time schedule, if any) agree to pay for such services in accordance with payment terms and time schedules to be mutually agreed.

11.3. The Contractor shall be entitled to claim for additional costs and or time delays when a modification, change or variation occurs in the event of any one of the following:

11.3.1. Any modification required by the Purchaser which is an addition to the scope of the work as per the obligations of the Contractor under this Contract.

11.3.2. Any additional engineering/re-engineering required for compliance with applicable laws, and in conformity with local statutes consequent on changes in such laws/statutes enacted after the signing of the Contract.

11.3.3. Any additional engineering/re-engineering required for compliance with local statutes consequent on changes in environmental protection standards, as for example, introduction of more stringent standards relating to air pollution and/or effluent characteristics that have been guaranteed by the Contractor and agreed to by the Purchaser, at the time of signing of the Contract.

11.3.4. Any additional engineering/re-engineering required relating to incorporation of improvement in know-how or technologies that have become known after the signing of the Contract.

11.3.5. Any additional engineering/re-engineering required consequent on the Purchaser altering the specifications of the Raw Materials and/or changing the characteristics of the utilities and/or altering the basis of the meteorological data which had earlier been agreed as the basis of design between the Purchaser and the Contractor.

11.4. In all cases envisaged in Article 11.3. and its sub-articles, the Contractor shall furnish a breakdown in sufficient details to permit an analysis of all material, labour, equipment, sub-contracts and estimate project schedule overruns and specify design changes and shall further include all work involved in the variation and/or modification, whether such work was deleted, to be added or changed. The Contractor and Purchaser will thereafter meet and discuss the implications of such variations.

11.5. Whenever the provisions of Article 11.3. are applicable, the Contractor shall prepare and submit to the Purchaser a detailed cost and/or execution time estimate of the modifications to the Contractor's Services.

11.5.1. The Purchaser shall within days agree or disagree on the adjustments proposed by the Contractor.

11.5.2. If the Purchaser agrees on the (a) cost, (b) execution time and (c) modified guarantees, if any, proposed by the Contractor, the cost shall be either added to or subtracted from the Contract Price as the case may be; and the Contract execution time shall be modified accordingly, wherever necessary.

11.5.3. If the Contractor and the Purchaser do not agree either on the cost adjustments and/or time delays, and/or modifications of guarantees, the Purchaser shall have the right to request the Contractor to proceed to execute the work pending settlement of the dispute in the manner prescribed in the Article below.

11.6. The Purchaser and the Contractor shall mutually agree to nominate an independent expert and refer the dispute to the independent expert for a decision on the disputed points.

11.6.1. In the event that there is no agreement as to the choice of the independent expert, the parties shall mutually agree to refer the matter to (*) for the appointment of such independent expert.

11.6.2. The decision of the independent expert shall be without prejudice to the rights of either party to submit the dispute to Arbitration in accordance with Article ...; however, and in such event, the Purchaser shall make an "on account" payment to the Contractor of the sum in accordance with the decision of the independent expert but without prejudice to the rights of either party for further adjustments of the amounts so paid consequent on the award rendered by the Arbitrator.

(*) To be determined by prior negotiations at the time of signing of the Contract from case to case.

11.7. Changes/variations as per the provisions in this Article of the Contractor's obligations, and any modifications to the Contract Price and technical specifications contained in the Contract and/or time schedule, shall be incorporated in a written change order which shall be signed and issued by the Purchaser.

11.7.1. Upon receiving a change order from the Purchaser either in accordance with Article 11.2. or 11.3. and if in the opinion of the Contractor such variations are likely to prevent or prejudice the Contractor from fulfilling any of his obligations under the Contract, he shall notify the Purchaser thereto in writing and the Purchaser shall decide forthwith whether or not the same shall be carried out. If the Purchaser reconfirms in writing his intention to carry out the variations, then the said obligations of the Contractor shall be modified to such an extent as may be justified.

11.8. Except as specifically provided for in this Article, any change to the Contractor's Services and/or to the work shall be governed by all the other provisions of the Contract.

12. Extension of time

12.1. If by reason of the happening of any one and/or other of the following occurrences which are beyond the Contractor's control, namely:

- 12.1.1. Vandalism, malicious damages;
- 12.1.2. Non-fulfilment by the Purchaser of his obligations in a timely fashion;
- 12.1.3. Temporary suspension of work pursuant to Article 21;
- 12.1.4. Force Majeure occurrence pursuant to Article 26 which affects the work in the Purchaser's country;

which damage or delay the work required to be undertaken pursuant to this Contract, the Contractor shall, as soon as the effect of such occurrence is known to the Contractor, make written request to the Purchaser for a reasonable extension of time for completion of the

work of any portion of it and reasonable compensation of cost additionally required because of such occurrence. The Purchaser shall grant such extension in time and compensation of cost which shall reasonably make up for the delay and damage suffered by the Contractor. In case of disagreement in time and amount, the matter shall be settled in similar manner as stated in Article 11.6. The Contractor shall be responsible for the completion of all of the work and activities affected by the above-mentioned delay or occurrences. The Contractor shall be free of liabilities on account of the said occurrences referred to in this Article in connection with his contractual activities affected by the delay caused.

12.2. Payments and/or entitlement to any costs pursuant to this Article, or pursuant to the provisions of Article 21 shall be established on a quantum meruit basis, provided, however, that in the circumstances envisaged by Article 21 the suspension of work was not made necessary due to default by the Contractor, and provided that the Contractor has otherwise adhered to the terms of the Contract.

12.3. The conditions of any extension granted shall, if applicable, be included as an amendment to the existing documents governing the activities or work affected or delayed by the occurrences referred to above.

13. Mechanical tests and completion of the Plant

13.1. The Contractor guarantees that the Plant shall be engineered and completed using good engineering practices in accordance with the specifications applicable under the Contract, and that upon Mechanical Completion it shall be capable of correct mechanical functioning.

13.2. As soon as the Plant or any part thereof is substantially complete, it shall be inspected by the Purchaser and Contractor before any tests are carried out.

13.3. When all the items of Equipment in the Plant or part thereof are ready and have been erected, installed and initially tested pursuant to this Contract, the Contractor and Purchaser shall review the procedures for the pre-commissioning and the demonstration of the Mechanical Completion of the Plant.

13.4. The pre-commissioning of the Plant and the Mechanical Completion tests shall be undertaken in accordance with Annex .. The detailed procedures of execution of such tests will be mutually agreed upon before the commencement thereof. Instrument tolerances will be as given by the supplier of equipment.

13.5. During the tests the authorized representatives of the parties will jointly ascertain and record the operating data and results. If the tests are fully and satisfactorily carried out and the Mechanical Completion and Contractor shall thereupon prepare a "Mechanical Completion Certificate" which shall be signed by both parties following a joint examination of the Plant.

13.6. In the event that any defects are found during the tests mentioned above, the Contractor shall ask the Purchaser to proceed to effect the rectifications, modifications or replacements which in this Contractor's judgement are necessary to eliminate the defects and mechanically complete the Plant. The Contractor shall provide free of charge to the Purchaser all the engineering, drawings, procurement inspection and supervisory services necessary for such rectifications, modifications or replacements.

13.7. The parties shall determine a mutually agreeable period to incorporate the changes required, and to repeat the mechanical tests. Such a period will not exceed from

13.8. If the Contractor refuses or neglects to take the necessary measures to ensure the elimination of the defects within a reasonable time, or does not observe the term stipulated in the precedent sub-article, or is unable to eliminate such defects, the Purchaser may take such remedial steps as are necessary to carry out or complete the required rectifications, modifications or replacement of equipment. The cost of such remedial steps taken by the Purchaser shall be to the Contractor's account and could be deducted from any payment due to the Contractor. In the case contemplated in this Article, the Purchaser shall also have the right to terminate the Contract.

13.9. The Contractor or the Purchaser, as the case may be, shall in every case keep such contemporary and accurate records of the costs of making good any defect(s) in pursuance of this Contract and as may be reasonably required and each party shall be entitled to receive copies of relevant documents.

13.10. The Contractor's obligation to rectify defects and to take corrective steps shall continue unabated, even if the period of extension granted by Article 13.7. above is exhausted, and the Contractor shall continue his endeavours at his own cost to rectify the defects and take corrective measures provided the Purchaser agrees to allow such further extension(s) in time (in writing), as requested by the Contractor.

13.11. The Purchaser shall issue a Final Acceptance Certificate when all conditions specified in this Article have been fulfilled and the Contractor has completed his work in accordance with the provisions of this Contract. Subject to the completion of any and all work more particularly referred to in this Article and as elsewhere required under the terms of the Contract, the Purchaser shall issue a "Final Acceptance Certificate" within after Mechanical Completion, unless during that period the Plant has shown defects requiring modifications, which were not apparent or recognizable at the time of the Mechanical Completion. In such case the Purchaser shall issue a Final Acceptance Certificate when all the defects have been removed.

13.12. The obligations of the Contractor shall be deemed to have been fulfilled, if for reasons not attributable to the Contractor the tests under this Article cannot be carried out within months from the Effective Date of the Contract, provided that in the event of Force Majeure the period shall be extended by the period of Force Majeure but not exceeding months.

14. Liquidated damages

14.1. The Contractor shall be liable to the payment of liquidated damages in the following circumstances:

(a) For the delay in the delivery of the technical detailed engineering, an amount of for each week of delay, subject to an overall maximum liability under this Article of

(b) For the delay in carrying out pre-commissioning and mechanical tests, for reasons attributable to the Contractor, an amount of for each week of delay, subject to an overall maximum liability under this Article of

(c) For the delay in the Mechanical Completion of the Plant, in case of failure of first mechanical tests, for reasons attributable to the Contractor an amount of for each week of delay, subject to an overall maximum liability under this Article of

15. Bank guarantees

15.1. In consideration of the advance payment remitted by the Purchaser the Contractor shall provide a first demand Bank Guarantee from a first class Bank, for an amount equivalent to the sum total of the advance payment required to be made by the Purchaser pursuant to Article 9.3.(i). The amount of this Bank Guarantee shall be released on receipt by the Purchaser of all documentation as provided for in Article 5.5.

15.2. The Contractor shall provide the Purchaser with a first demand Performance Bank Guarantee on receipt of payment stipulated in 9.3.(ii) for an amount equivalent toper cent of the total lump sum stipulated in 9.1.(i).

15.3. This guarantee will remain in force until the Final Acceptance of the Plant.

15.4. The guarantees referred to in this article shall be encashable by the Purchaser in (currency).

15.5. The Contractor shall take all actions, including renewals and extensions, to keep the guarantees valid for the periods provided for.

16. Liabilities, set-off and waiver

16.1. The Contractor shall not be liable for any property or equipment of the Purchaser damaged or lost during transportation, erection, start-up and mechanical tests, except where;

- (1) such loss or damage has occurred due to a negligence act or omission of the Contractor and
- (2) such loss or damage is not covered by the insurance specified in Article 18.

Notwithstanding the above, the Contractor's liability for loss or damage to the Purchaser's property and equipment shall in any event be limited to the amounts recovered by the Contractor from his Third Party Liability Insurance, the coverage and value of which must be reasonable and agreed to by the Purchaser before the Effective Date of the Contract.

16.2. The total liability of the Contractor under the Contract shall not exceed () per cent of the total Contract Price with the exception of the Contractor's unlimited liability for rectification or modifications for the Mechanical Completion of the Plant, as well as the reimbursement to the Purchaser of any amount(s) received by the Contractor, under any insurance policies held by the Contractor as well as through those others specifically taken out for the purposes of this Contract.

16.3. The Contractor shall not be liable under the Contract for loss of anticipated profits or for any consequential loss or consequential damage.

16.4. In the event that the Purchaser considers that he possesses a claim against the Contractor under, arising out of, or in any way connected with, this contract, the Purchaser may at any time (whether before or after the completion of the work under this Contract and whether such completion is affected by the Contractor, the Purchaser or another person) calculate the amount of the damage or loss upon which such claim is based and (without restricting any right of set-off or counter-claim given or implied by law) may set off against any amount then or to be subsequently payable to the Contractor under this Contract, any sum deemed by the Purchaser to be payable to the Purchaser by the Contractor pursuant to any such above-mentioned claim, and, without restricting the generality of the foregoing, the Purchaser may deduct from any sum otherwise then or to be subsequently payable or repayable to the Contractor under any provision of this Contract

any sum so deemed payable or retainable to or by the Purchaser by virtue of any other provisions of this Contract or by virtue of the right of set-off or counter-claim, whether as conferred by this Article or otherwise. Should the Purchaser exercise any such right of set-off as envisaged herein, the Purchaser shall specifically notify the Contractor in writing that the said right is being exercised. At any time up to 60 days after the receipt of the notification, the Contractor may institute proceedings in a Court of competent jurisdiction to establish that the damage or loss as calculated by the Purchaser did not in whole or in part constitute a valid legal claim against the Contractor, but after the expiry of the said 60 days the Contractor shall be deemed to have acknowledged the validity, both as regards quantum and otherwise of the aforesaid claim of the Purchaser. Should the amount of the abovementioned claim of the Purchaser exceed the amount or value of the set-off, nothing herein shall be construed as a bar to the right of the Purchaser to adopt any other legal measures available against the Contractor for the amount of such excess.

16.5. No previous waiver of a particular right or remedy by either party shall operate as a waiver of a future right or remedy (which would normally be invocable) unless otherwise stated.

17. Indemnification

17.1. The Contractor shall indemnify and hold harmless the Purchaser and anyone employed by him from and against all claims, demands, losses, costs, damages, actions, suits, expenses (including legal fees) or proceedings by whomsoever made for personal injuries, death or third party property damage, brought or prosecuted in any manner based upon, arising out of, related to, or occasioned by the negligent act or omission of the Contractor or his Sub-Contractors and their employees in connection with this Contract.

17.2. The Purchaser shall indemnify and hold harmless the Contractor, his employees and agents from and against all claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the Contractor's activities under this Contract for personal injuries, death (other than occasioned by the Purchaser's and his Sub-Contractors' and their employees' negligence.

18. Insurance

18.1. Without restricting in any manner the generality of any other provisions of the Contract, and in particular any such provision as pertaining to the liability of the Contractor, it is expressly agreed that, throughout the period beginning from the date of commencement of the work, and continuing until the Mechanical Completion of the Plant, the following policies shall be taken out:

(a) The Contractor shall take out and keep in force insurance policies covering risks arising out of any error, omission or negligence in engineering or in the supply of services stipulated under the Contract, and personnel accident and liability insurances for the Contractor's personnel deputed to Site.

(b) The Purchaser shall take out at its own charge all other appropriate policies, including coverage of the Plant from commencement of work and against any injury or damage derived to persons or property, including Contractor's personnel and property, thorough acts, omission or negligence of Purchaser's personnel.

18.2. Whenever required from time to time, the Contractor and the Purchaser shall submit to the other party adequate proof that the insurance(s) as contemplated by Article 18.1. have been taken and remain in force. The parties hereto shall also provide each other with certified documentation with regard to the coverage and value of the policies.

18.3. Should the Contractor fail to take out and/or keep in force the insurances contemplated by this Article within the scope of his responsibility, together with any other insurances to be taken out by the Contractor agreed between the Purchaser and the Contractor, then the Purchaser may at the Purchaser's option take out insurance(s) considered appropriate and necessary in the circumstances, in which event any premiums paid or payable by the Purchaser shall immediately constitute a debt due from the Contractor to the Purchaser, the amount of which debt may be retained as the Purchaser's monies out of any amount(s) otherwise payable by the Purchaser to the Contractor.

18.4. Should the Purchaser fail to take out and/or keep in force the insurance(s) contemplated by this Article within the scope of this responsibility, then the Contractor may at the Contractor's option take out insurance(s) considered appropriate and necessary in the circumstances in which event any premium paid or payable by the Contractor shall immediately constitute a debt due from the Purchaser to the Contractor.

19. Taxes and levies

19.1. Each and every price cited in or contemplated by this Contract as described in Article 9 includes and covers all taxes, rates, charges and assessments of any kind whatsoever (whether Federal, State or Municipal, and whether or not in the nature of excise taxes/duties, land taxes, license fees or otherwise) outside the Purchaser's country pertinent to the Contractor's services provided pursuant to this Contract, and/or the performance of the work, and all other costs and charges whatsoever relevant to such Contractor's services and/or to such performance of the work by the Contractor.

19.2. All taxes and/or levies under any existing or future law of (Licensee's country) applicable to the amount payable in accordance with this Contract will be borne by

(Alternative a: The Licensor. Upon request, the Licensee will provide the Licensor with the receipts of payment of such taxes or levies).

(Alternative b: The Licensor).

20. Access to work

20.1. The Contractor and the Purchaser and any person(s) authorized by either of them shall at all reasonable times have access to the Plant.

20.2. The Purchaser shall afford every facility and assistance for obtaining the right of access to such information, site workshops or persons within his country as is required in connection with this Contract.

20.3. The Purchaser shall provide necessary assistance in obtaining permission from his Government, if required.

20.4. Where, in the opinion of the Purchaser, it is necessary that technical consultants, provided that such technical consultants are not direct competitors of the Contractor, be sent to check the work of the Contractor, the Contractor shall allow them access to any place where work is being performed and shall co-operate with them in the carrying out of their duties and obligations.

21. Suspension of work

21.1. The Purchaser may, when in the Purchaser's opinion it is deemed necessary, require the Contractor to suspend the execution of the work, or part of the work, either for a specified or unspecified period by communicating notice to that effect to the Contractor. If the period is unspecified, the Purchaser shall specify the period of suspension within days thereafter.

21.2. The Contractor, upon receiving notice of the Purchaser's requirement pursuant to Article 21.1. above, shall suspend all operations except those which, in the Purchaser's and Contractor's opinion, are necessary for the care or preservation of the Plant.

21.3. During the period of suspension, the Contractor shall not remove from the Site any part of the Plant or Equipment without the consent of the Purchaser.

21.4. If the period of suspension is (.....) days or less, the Contractor, upon the expiration of the period of suspension, shall resume the execution of the Contract in accordance with an extension of time granted by the Purchaser reasonably commensurate with the period during which the execution of the Plant or part of the Plant was suspended and the Contractor shall be reimbursed for his reasonably justified additional costs which should be evidenced by necessary documentation.

21.5. If the period of suspension is more than (.....) days, upon the expiration of the period of suspension, the Contractor shall resume operations and fulfil the Contract in accordance with the terms and conditions of this Contract, provided, however, that the time schedule will be extended accordingly and his reasonably justified costs as evidenced by documentation will be reimbursed to him for the period of suspension subject to any further amendments to the Contract in accordance with Article 11.

21.6. If the period of suspension exceeds days and if either the Purchaser requests the Contractor to recommence the work upon amended terms (to be agreed mutually) and the Purchaser and Contractor are unable to reach agreement on the method for the completion of the Contract, or the Contractor states in writing that he is unwilling in any event to undertake further work, the Contract shall be terminated according to Article 25.

21.7. Both the Purchaser and Contractor shall make bona fide endeavours to resume the work as expeditiously as possible.

21.8. Payments if any made under this Article shall be governed by the provisions of Article 9.

22. Effective Date of Contract

22.1. The Contract shall become valid upon the formal execution (signing) by the duly authorized officers of the Purchaser and Contractor properly witnessed and sealed and in accordance with the applicable law. The Effective Date of the Contract shall be the date upon which the last of the following requirements has been fulfilled:

22.1.1. (i) Approval of the Contract by the Government of () where the Plant is to be located, such approval to be obtained by the Purchaser, if required.

22.1.2. (ii) Approval of the Government of () where the Contractor resides and has his principal place of business such approval to be obtained by the Contractor, if required.

22.1.3. (iii) The provision by the Contractor of the Performance Bank Guarantee as provided under Articleto be effected simultaneously with receipt of the advance payment by the Contractor, referred to in Article

23. Assignment of Contract

23.1. This Contract may not be assigned by the Contractor without the written consent of the Purchaser.

23.2. The Purchaser shall have the right to assign the Contract provided that such assignment does not increase the Contractor's liabilities over what they would have been if such assignment or transfer had not been made, and provided that the obligations of the Purchaser are binding upon the assignee, with assured guarantees for payment(s) under the Contract.

23.3. Neither the whole nor any part of the Contractor's obligations may be sub-contracted by the Contractor without the written consent of the Purchaser.

23.4. The Contractor shall ensure that every sub-contracting by the Contractor shall comply with all terms and conditions of this Contract.

24. Language of Contract

24.1. The governing language of the Contract shall, and the definitions in such language shall be final in the use and interpretation of the terms of the Contract.

24.2. All correspondence, information, literature, data, manuals, etc. required under the Contract shall be in..... language.

25. Termination and cancellation of Contract

Termination

25.1. In the event that the Purchaser is subject to any circumstances which are wholly unavoidable and/or beyond his control (but not including occurrences constituting force majeure) then the Purchaser may at any time by giving notice in writing to that effect, terminate this Contract.

25.2. The Contractor shall upon receipt of a notice pursuant to Article 25.1. above cease all operations forthwith.

25.3. If the Contract is terminated pursuant to Article 25.1. the Purchaser will pay to the Contractor an amount equal to the greater of:

25.3.1. The cost of the work properly supplied or done by the Contractor as at the date of the termination, including the cost of terminating commitments made in good faith to his Sub-Contractors, as substantiated by appropriate evidence, less all amounts already paid to the Contractor by the Purchaser, and less all amounts which the Contractor is liable under the Contract to pay to the Purchaser or owing to the Purchaser, and

25.3.2. The amount calculated in accordance with the terms of payment which would have been legitimately payable to the Contractor up-to-date of termination provided the Contractor had in fact fulfilled his contractual obligations to such date.

25.4. In the event of a termination of this Contract pursuant to this Article, the Purchaser shall be entitled to receive:

25.4.1. All the Technical Documentation completed or done at the date of termination, in accordance with Annexes

25.4.2. All calculation, computer print-outs or other materials pertaining to the detailed engineering, completed at the date of termination.

25.5. The Purchaser shall be given all inspection reports, reports on visits to Vendor's factories and copies of test certificates received from Vendors up to the date of termination.

25.6. Nothing herein shall invalidate the rights of the Purchaser or the Contractor as to contractual grounds of action (in relation to damages or costs due to either party) whether through litigation or arbitral procedures, and notwithstanding the termination of the Contract herein, the parties to this Contract may proceed to Arbitration or may institute actions in the courts or competent jurisdiction.

Cancellation

25.7. In any of the following cases, the Purchaser may, without any other authorization, cancel the Contract and take all or any part of the Contract and/or of the work to be undertaken by the Contractor out of the Contractor's hands and may employ such means as the Purchaser sees fit to complete this Contract.

25.7.1. Where the Contractor has delayed commencement of work formonths, for reasons attributable to the Contractor and that the Purchaser has given notice to the Contractor and the Contractor has not replied or not taken action to commence work for () months after such notice was given.

25.7.2. Where the Contractor has become insolvent and/or made an assignment of the Contract without the approval of the Purchaser.

25.7.3. Where the Contractor has committed an act of bankruptcy.

25.7.4. Where the Contractor has abandoned the work.

25.8. Where this Contract or any portion thereof has or have been taken out of the Contractor's hand under Article 25.7. the Contractor shall not, except as provided in Article 25.9. hereunder, be entitled to any further payment including payments then due and payable, but not paid and the obligation of the Purchaser to make payments as provided for in the terms of payment shall be at an end, and either party at their option may proceed to Arbitration or institute actions for recovery of damages.

25.9. Where this Contract, or any portion or portions thereof has or have been taken out of the Contractor's hands under Article 25.7. and is subsequently completed by the Purchaser, the Purchaser shall determine the amount, if any, of retention monies and progress claims of the Contractor unpaid at the time of taking the work out of the Contractor's hands that, in the Purchaser's opinion, are not required by the Purchaser for the purposes of the Contract and subject to any actions already instituted or proposed to be commenced in Courts or under Arbitration, the Purchaser shall, if he is of the opinion that no financial prejudice to the Purchaser will result, authorize payment of that amount to the Contractor.

25.10. The taking of this Contract, or of any portion thereof, out of the Contractor's hands pursuant to this Article does not operate so as to relieve or discharge the Contractor from the obligations imposed upon the Contractor by law, except the obligation to complete physically the execution of such portion of the Contract as has been taken out of the Contractor's hands.

26. Force Majeure

26.1. In this Contract, Force Majeure shall be deemed to be any cause beyond the reasonable control of the Contractor or the Purchaser (as the case may be) which prevents, impedes, or delays the due performance of the Contract by the obligated party and which, by due diligence, the affected party is unable to control, despite the making of all reasonable efforts to overcome the delay, impediment or cause. Force Majeure may include, but shall not be limited to any one or other of the following:

- any war or hostilities;
- any riot or civil commotion;
- any earthquake, flood, tempest, lightning, unusual weather or other natural physical disaster. Impossibility in the use of any railway, port, airport, shipping-service or other means of transportation or communication (occurring concurrently);

- any accident, fire or explosion;
- any strike, lock-out, or concerted acts of workmen (except where it is within the power of the party invoking the Force Majeure to prevent);
- shortages or unavailability of materials (compounded by the same shortage or unavailability from alternate sources).

26.2. If either party is prevented or delayed in the performance of any of his obligations under this Contract by circumstances of Force Majeure, and if the affected party has given written notice thereof to the other party within days of the happening of such event, specifying the details constituting Force Majeure, with necessary evidence that a contractual obligation is thereby prevented or delayed, and that the anticipated period (estimated) during which such prevention, interruption or delay may continue, then the affected or obligated party shall be excused from the performance or punctual performance (as the case may be) of such obligation as from the date of such notice for so long as may be justified.

26.5. If the consultations referred to in the preceding clause have not resulted in mutual agreement, or have not taken place because the parties have been unable to communicate with one another
(Alternative a: either party will have the right to terminate the Contract giving written notice to the other party)
(Alternative b: either party will have the right to resort to arbitration pursuant to article("Settlement of disputes").

26.6. Both the Purchaser and the Contractor shall be prompt and diligent to remove all causes or interruption or delay in the work, insofar as each is liable to do so.

27. Applicable law

27.1. The laws applicable to the Contract shall be the laws of (country to be agreed), in conformity with the laws of the country where the Plant is located.

27.2. The Contractor, his staff, and representatives shall observe all codes, laws and regulations in force in the country of the Purchaser and in the region where the Plant is located. In the event that any code, law or regulations are enacted after the Effective Date of the Contract (which are proven to the satisfaction of the Purchaser), to have adverse effect on the Contractor's obligations, scope of work, prices and/or time schedule under this Contract, the Purchaser shall:

- (i) obtain appropriate exemption(s) from the relevant authorities on the Contractor's behalf; or
- (ii) negotiate with the Contractor for commensurate change(s) in the scope of the work to be performed under the Contract, together with such changes in price as properly reflect the actual increased costs that are anticipated.

28. Settlement of disputes

28.1. All disputes arising out or in connection with this Contract, if not resolved amicably by bona fide negotiation between the parties, shall be finally decided by

(Alternative a: the competent courts of)

(Alternative b: arbitration in accordance with(law of arbitration or rules, e.g. Arbitration Rules of the United Nations Commission on International Trade Law).

(i) If either party hereto defaults under any provision of this Contract and such default continues unremedied fordays after written notice has been given by one party to the defaulting party and settlement has not been arrived at by amicable negotiation then the former party will have the right to have the matter resolved and settled by arbitration.

(ii) The award of the Arbitrators will be final and binding on the parties hereto. Judgement upon the award may be entered by the court of (country).

(iii) The Contractor and the Purchaser will continue to undertake their obligations under the Contract during any arbitration proceeding unless otherwise agreed by the parties in writing. The Contractor and the Purchaser agree that in the event of arbitration proceedings, the Arbitrators will have unrestricted access to the Plant for the purpose of the said Arbitration.

(iv) Arbitration will be in (town) and all proceedings will be in language.

A N N E X I

SCOPE OF DETAILED ENGINEERING SERVICES

The documents/information and drawings as mentioned below have to be supplied by the Licensor.

I. Architecture and Civil Engineering

- i) Master Plan of entire plot and lay-out of various buildings and structures.
- ii) Drawings for grading and levels, showing plan and sectional views.
- iii) Layout of roads, and drains in the plant territory.
- iv) Basic lay-out and schemes of architectural drawings.
- v) Working architectural drawings.
- vi) Schedule of quantities for various construction items.
- vii) Pattern of flooring: ordinary floor, special floors i.e. acid proof etc.
- viii) Underground piping network.
- ix) Complete civil engineering design and structural drawings for RRC, structural steel and allied works.
- x) Tanks, underground - overhead storage tanks for water, solvents, and other liquids - ordinary and corrosive chemicals.
- xi) Special finishing - for sterile area, injectables, filling and packaging areas, laboratories.
- xii) Drawing for lightning protection and earthing of various vessels, and equipment etc. handling organic solvents.
- xiii) Painting codes and specifications.

II. Mechanical Engineering

- i) Plant and equipment lay-out.
- ii) Loading data for civil designs.
- iii) Mechanical design of equipment and manufacturer catalogues.
- iv) Specifications and armature sheets.
- v) Assembly and fabrication of drawing for equipment and piping requiring assembling and fabrication at site.
(Automatic filling lines in case of antibiotics)
- vi) Sizing of utilities system (including reffridgeration, air-conditioning, inert gas, steam, brine etc.)
- vii) P and I diagram for utility system.
- viii) Lay-out drawings for utility plant.
- ix) Specification of insulation for hot and cold duty.
- x) Checking of fabrication drawings.
- xi) Detailed specification for indigenious and import equipment.

III. Piping Documentation

- i) List of pipe-line accessories, along with specifications.
- ii) Pipe drawings for utilities such as, steam, water, fuel, inert gas, brine, and air-distribution.
- iii) Pipe drawings for process stream.
- iv) Isometric drawings.
- v) List of valves and fittings along with specifications.
- vi) Drawings for fire-fighting system.
- vii) Specifications for hot and cold insulation.
- viii) Welding procedures including specifications of electrodes.
- ix) Procedure for cleaning and treatment of pipes wherever required.

IV. Electrical Engineering Services

- i) Design of complete electrical work as per statutory rules.
- ii) Design of outdoor service station (receiving station) including lay-out of .T. distribution system, and starting from receiving station.
- iii) Design of distribution system and cable routing, single line diagram with details of High Tension and Low Tension lines.
- iv) List and detailed specifications of equipment e.g. motors, H.T. Oil circuit breaker, transformer, L.T. bus bar duct switch board, RCC capacitors, Panels etc.
- v) Installation, operation and maintenance instructions.
- vi) Plant intercommunication system.

V. Instrument Engineering

- i) Detailed specifications of instruments with P and I diagrams.
- ii) Detailed drawings of installation of instruments and the specification of accessory required.
- iii) Control loop specifications with details of the type of control.

A N N E X II

SCOPE OF CONSTRUCTION AND ERECTION SERVICES

1. The Contractor shall appoint a qualified and experienced engineer to carry out supervision services given hereunder, covering civil works and installation of plants and equipment, piping and instruments, etc.
2. These services will also cover co-ordination and inspection of site activities during all phases of construction and installation.
3. The supervision of construction and erection services will normally cover the following activities:
 - i) to schedule the site work;
 - ii) to inspect the quality of work;
 - iii) to measure and report the progress;
 - iv) to expediate the contract;
 - v) to ensure timely erection of various equipment;
 - vi) to inspect the tests;
 - vii) to check and approve the work performed.
- viii) to cause sub-contractors to carry out tests, to check mechanical fitness and tightness of the plant. These tests are limited to water tests.

