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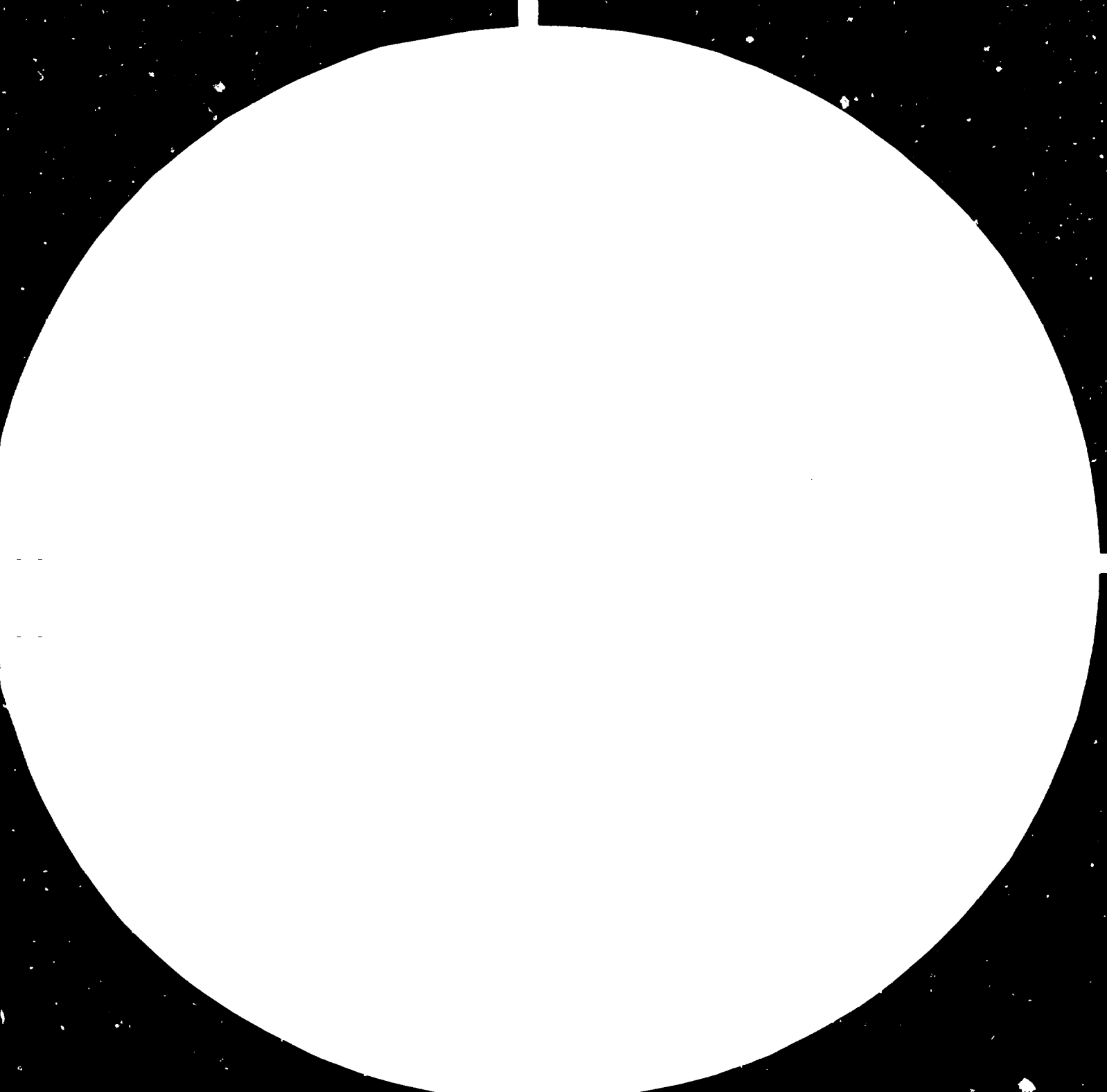
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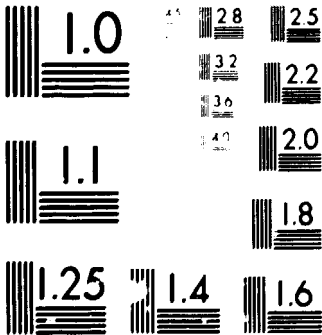
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Third Consultation on the Fertilizer Industry
São Paulo, Brazil, 29 September - 3 October 1980

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FIRST DRAFT OF THE UNIDO MODEL FORM OF
THE SEMI-TURNKEY CONTRACT FOR
THE CONSTRUCTION OF A
FERTILIZER PLANT*

by

the UNIDO Secretariat

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INTRODUCTION

1. The Second Consultation on the Fertilizer Industry in Innsbruck, Austria, 6-10 November 1978, requested the UNIDO Secretariat to prepare a UNIDO Model Form of Semi-Turn-Key Contract for the Construction of a Fertilizer Plant for consideration by the Third Consultation in 1980.
2. When preparing this first draft of this form of model contract, the UNIDO Secretariat has taken into account comments received on the UNIDO Model Forms of Turn-Key Lump-Sum and Cost Reimbursable Contracts presented to the Second Consultation and the further comments that were made on revised drafts of the two contracts at the Expert Group Meeting on UNIDO Model Forms of Contract for Fertilizer Plants convened in Vienna from 26-30 November, 1979.
3. Following this meeting, the order of the Articles was changed so as to correspond to the plan of implementing the work and some Articles were combined, thereby reducing the number from 47 to 40. As far as possible, this contract follows the presentation adopted for the Turn-Key and Cost Reimbursable Contracts.
4. The Annexures for this contract will be similar to those for the Turn-Key Contract. An Addendum will be issued showing where the major changes to these Annexures will be required.
5. The Consultation is invited to consider this draft, its potential for use by developing countries and consider what further work should be undertaken by the UNIDO Secretariat.

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AGREEMENT

This Agreement is made this (Day, Date and Year)
and entered into between (Legal Name of PURCHASER)

having its registered Head Office at (place)
with its Principal Place of Business at (place)

and hereinafter referred to as, PURCHASER which expression shall,
unless repugnant to the context or contrary to the meaning thereof,
include its successors and permitted assigns of the one part,
and (Legal Name of CONTRACTOR)

having its registered Head Office at (place)
and its Principal Place of Business at (place)

and hereinafter referred to as CONTRACTOR, which expression shall,
unless repugnant to the context or contrary to the meaning thereof,
include its successors and permitted assigns of the other party.

WITNESSETH

WHEREAS THE PURCHASER wishes to install at (place) (Plant Site)
facilities for the production of (quantity) metric tons of
Ammonia per day and of (quantity) metric tons per day of Urea.

WHEREAS THE PURCHASER desires to obtain the services of the
CONTRACTOR for the supply of the Plant on a semi-turnkey basis
including supply of licences, know-how, basic design and engineering,
supply of complete plant (inclusive of all equipment), supervision
of erection of the complete Plant and commissioning of the total
Plant as mentioned hereinafter and

WHEREAS THE CONTRACTOR is willing to undertake such work and
services as hereinafter agreed with the PURCHASER and as set out
in this Contract

IN CONSIDERATION of the premises and mutual covenants herein
contained, it is hereby agreed by the parties hereto as follows:

ARTICLE 1

DEFINITIONS

- 1.1 Unless the context otherwise requires the following expressions shall have the following meanings assigned to them in this Article.
- 1.2 "Absolute Guarantees" shall mean the performance guarantees of Ammonia and Urea Plants relating to capacity of the Plant(s) and quality of the products, as set forth in Article 26 and Annexure XVI.
- 1.3 "Act of Bankruptcy" has the meaning assigned to it by the Bankruptcy Acts in the applicable jurisdiction under governing laws.
- 1.4 "Approval" shall have the meaning ascribed in Article 39.3.
- 1.5 "Battery Limits" shall be defined to mean and include the overall facilities embodying the Plant as detailed in Annexure III, being all of the facilities required for the production of Ammonia and Urea including the power plant, other utilities and off-sites.
- 1.5.1 The Battery Limits of each individual plant (Ammonia and Urea Plants) shall include all the facilities existent between the points at which raw materials and influent streams enter the Plant and the points at which finished materials and effluent streams leave the Plant and shall be deemed to include, except where otherwise provided, the storage for the products.
- 1.6 "Commercial Production" shall mean the continuous production of specification grade ammonia and urea at the rate and for the period specified in Article 13.
- 1.7 "Confidential Information" shall mean the Confidential Information defined as such in Article 7.

- 1.8 "Contract" means this Contract (together with the Annexures and Specifications) entered into between the PURCHASER and the CONTRACTOR for the discharge and execution of the obligations expressed in the Articles, 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.
- 1.9 "CONTRACTOR" means the party named as such in this Contract or his successor or permitted assigns.
- 1.10 "CONTRACTOR's Equipment" means any equipment, sheds, materials, tools, stores or things brought on Site by or on behalf of the CONTRACTOR for the execution of the Contract, but not for permanent incorporation in the Plant.
- 1.11 "Contract Price" means the total amount referred to in Article 20.1, subject however, to any valid adjustments made through the application of relevant contractual provisions provided for therein or as specifically elsewhere provided for in the Contract.
- 1.12 "CONTRACTOR's Services" means the services to be provided and the work to be done by the CONTRACTOR in the execution of the Works, as set out in the Contract.
- 1.13 "Critical Item" shall mean all the equipment specifically designated as such in Annexure VIII.
- 1.14 "Days" shall be calendar days.
- 1.15 "Chief Engineer" means the person(s) of firm(s) appointed from time to time and designated by the PURCHASER as its representative with specified authority to review all work on the PURCHASER's behalf and to give such instructions and/or grant such approvals as may be necessary for the purposes of this Contract.

- 1.16 "Equipment" shall mean all of the equipment, machinery, materials, and first charge of chemicals and catalysts required to be incorporated permanently into the Plant(s) in order for the Plant to be built in accordance with the Contract.
- 1.17 "Final Acceptance" shall be deemed to mean the date on which the Plant(s) are finally accepted in accordance with Article 18 and specifically Article 18.20 and a Final Acceptance Certificate is issued.
- 1.18 "FOB" "CIF" and "C and F" shall have the meanings assigned to them in "INCOTERMS 1953", published by the International Chamber of Commerce.
- 1.19 "Guarantee Tests" shall mean the test operation of each individual plant and the Plant as a whole to be undertaken for the purpose of demonstrating the Performance Guarantees, as specified in Article 26.
- 1.20 "Holding Company" and "Subsidiary" have the meanings assigned to them by the prevailing statutes in the applicable jurisdictions under governing laws.
- 1.21 "Initial Operation" shall mean providing the first feed of the feedstock to the Plant concerned.
- 1.22 "Materials" means machinery, other items of equipment and other things needed or intended to form part of the Plant.
- 1.23 "Mechanical Completion" shall mean the time when the physical construction of the Plant(s) has been completed, all mechanical tests as specified under Annexure XX have been satisfactorily completed (in accordance with the detailed procedures as shall be agreed between the parties), and the Mechanical Completion Certificates of each of the Plants and inclusive of facilities within the Plants, and all sections of the Off-sites and Utilities have been issued.

- 1.24 "Mechanical Completion Certificate" means the document that will be issued pertaining to the Mechanical Completion of the Plant.
- 1.25 "Modification(s)" or "Modify" shall for the purposes of Article 29 be deemed to cover all work and/or services within the scope of the Contract required to be undertaken by the CONTRACTOR (which require implementation by a change order but do not involve any increase in price) incidental to and/or involving, corrective engineering, replacement and/or repair of equipment and parts related thereto, and/or elimination of design and/or mechanical and/or process defects whether or not the causes requiring the modifications became patently or latently manifest, and whether or not the said defects or malfunctions or problem arises in relation to a process, mechanical and/or design relationship, and/or relates to insufficiency and/or inadequacy in workmanship and/or materials and/or specifications.
- 1.26 "Penalizable Guarantees" shall mean the performance guarantees of the Plant(s) relating to consumption of raw materials and utilities as set forth in Article 26.
- 1.27 "Performance Guarantees" shall mean the Absolute Guarantees and the Penalizable Guarantees.
- 1.28 "Plant" means the ammonia plant, the urea plant, the off-sites, utilities and the administrative, maintenance, laboratory and other facilities as defined in this sub-article, in the Annexures and the specifications, to be supplied by the CONTRACTOR under the terms of this Contract, to be erected under the supervision of the CONTRACTOR and in respect of which the CONTRACTOR's Services are provided.
- 1.28.1 "Ammonia Plant" shall mean the ammonia plant as described in Annexure VIII.

- 1.28.1.1 "Ammonia Process" shall mean the know-how, basic engineering and the licence provided by (Name of Licensor) for the construction, operation and maintenance of the Ammonia Plant, under the Contract.
- 1.28.2 "Urea Plant" shall mean the urea plant described in Annexure VIII.
 - 1.28.2.1 "Urea Process" shall mean the know-how, basic engineering and the licence provided by (Name of Licensor) for the construction, operation and maintenance of the Urea Plant, under the Contract.
- 1.29 "Products" shall mean the ammonia and the carbon dioxide produced in the Ammonia Plant and the urea provided in the Urea Plant, of such quality as defined in the Annexures and Specifications.
- 1.30 "Provisional Acceptance" shall be deemed to mean the date when the individual plants have been provisionally accepted and confirmed by the issue of a Certificate of Provisional Acceptance in accordance with Article 18, and demonstration of the capability of the utilities and Off-sites (together with the sufficiency of carbon dioxide) to meet the guarantees specified in Article 26.
- 1.31 "PURCHASER" means the party named as such in this Contract or his successors or permitted assigns.
- 1.32 "Ready for Operation" shall mean that the Plant(s) concerned have completed the Mechanical Completion Tests and are ready for Initial Operation.
- 1.33 "Rectification" or "Rectify" shall have the meaning ascribed in Article 29 and shall in all cases be deemed to cover work and/or services within the scope of the Contract which do not require implementation by change order and do not involve any increase in price.
- 1.34 "Site" means the land upon which the Works are to be constructed as specified in Annexure I.

- 1.35 "Specifications" means the technical criteria, definitions and parameters governing all of the Plant, equipment, Work(s) and capacities of the Plant(s) as set out in the Contract, Annexures and Specifications as amended from time to time in accordance with the Contract.
- 1.36 "Sub-CONTRACTOR" means any person or firm to whom any part of the CONTRACTOR Services or the execution of any part of the Works is subcontracted by the CONTRACTOR, subject to any governing provisions of this Contract.
- 1.37 "Start-up" shall mean and refer to the date by which the operations of pre-commissioning and commissioning shall have been completed and the Plant(s) commence(s) the production of specification grade Product(s).
- 1.38 "Technical Documentation" shall mean the technical documents described in Annexure XV to be supplied by the CONTRACTOR under the Contract and shall include all other technical documentation required to be supplied by the CONTRACTOR.
- 1.39 "Ton(s)" refers to metric tons.
- 1.40 "Utilities" and "Off-sites of Plant" shall mean the facilities demarcated and indicated in the general Annexures and the plot plan attached to Annexure VIII.
- 1.41 "Work(s)" means the whole of the work(s), materials, plant (as defined in Article 1.28), and equipment, matters and things to be done, furnished, performed and accomplished pursuant to the Contract (inclusive of the services of the CONTRACTOR) but without restricting the generality of the foregoing, includes, according to the context all the relevant particulars specified elsewhere in this Contract.
- 1.42 "Vendor" shall mean the person or persons from whom the supply of any part of the Plant is obtained by the CONTRACTOR for the purposes of this Contract.

ARTICLE 2

OBJECT OF THE CONTRACT AND
DEADLINE OF DELIVERY

- 2.1 The object of this Contract is to establish a modern, reliable, efficient and integrated Plant for the production of ammonia and (prilled/uncoated) urea, together with the required utilities, off-sites and other facilities necessary for the purpose. The scope of the CONTRACTOR covers a semi-turn-key supply, which includes the grant of licence and know-how, the provision of basic and detailed engineering, basic civil engineering data, supply of the Plant(s) comprising the equipment, the supervision of the erection works, commissioning and start-up of the Plant, and the demonstration of the capability of the Plant to continuously produce ammonia and urea in accordance with the specifications contained in the Contract at a capacity of (1000) tons per day of ammonia and (1725) tons per day of urea with a stream factor of 330 days per calendar year.
- 2.2 The location of the Plant shall be at (Name of Town) in (Country).
- 2.3 The CONTRACTOR hereby affirms that he is in possession of all the necessary experience and expertise and is technically and financially qualified to discharge his obligations to meet the objectives of this Contract and that he is aware of the PURCHASER's economic interest in the successful realization and completion of the Works.
- 2.4 The CONTRACTOR declares his responsibility for the fulfilment of the contractual obligations, notwithstanding any work, activities or services that may be fulfilled by himself or by his sub-contractors and/or vendors.
- 2.5 The CONTRACTOR states that the execution of this Contract is a confirmation that the Plant to be designed and to be supplied by him, shall comply in every respect with all the provisions

of the present Contract. Furthermore, he declares that the raw and auxiliary materials as to quality and characteristics (indicated in Annexure II), as well as other supplies, utilities and services of the PURCHASER (indicated in Annexures IX, X and XI) are suitable and sufficient and in conformity with the stipulations of the present Contract for the commercial operation of the Plant defined in Article 2.1 under the Contract.

- 2.6 The Contract envisages the provision of both On-site and Off-site training services and facilities, for the PURCHASER's personnel, to enable them to operate and manage the Plant at optimum capacity and efficiency.
- 2.7 The target dates for different elements of the construction, supply and completion of the Plant are given in the bar chart attached to Annexure XV. Other essential target dates shall be agreed upon during the technical conferences as provided for in the Contract.
- 2.8 The basis of the overall time-schedule is as follows and the periods referred to herein in respect of the time-schedule(s) shall be deemed to commence from the Effective Date of the Contract in each case:
 - 2.8.1 The CONTRACTOR shall make available the basic data for the civil engineering works, to be executed by PURCHASER by the sixth (6) month.
 - 2.8.2 Basic engineering and know-how documents shall be supplied by CONTRACTOR as per Annexure V from the second (2) month up to the eighth (8) month.
 - 2.8.3 FOB delivery of equipment shall commence not later than in the fourteenth (14) month and shall end (95 per cent value) not later than in the twenty-fourth (24) month.

- 2.8.4 Delivery FOB of critical items shall not exceed twenty-six (26) months.
- 2.8.5 The Plant shall be mechanically completed by the thirty-second (32) month.
- 2.8.6 The Plant shall be in commercial production, on or before the end of the thirty-sixth (36) month.
- 2.8.7 The Plant shall be started-up not later than two (2) months after mechanical completion and the guarantee tests shall be performed within months thereof.

2.9 The CONTRACTOR and the PURCHASER agree, that within the Battery Limits the cost of the project, under this Contract, as of the date of the award of the Contract shall be determined upon the following:

- 2.9.1 (i) Know-how and Basic Engineering
- (ii) Plant(s) comprising equipment, materials, FOB port of despatch including detailed engineering, and inspection
- (iii) Erection supervision
- (iv) Training
- (v) Supervision during start-up, commissioning testing and management of the Plant Operations until Provisional Acceptance
- (vi) Procurement of spare parts

Total Contract Price: _____

- (vii) Other costs of the PURCHASER,
 - machinery to be manufactured by PURCHASER as to Ann _____
 - preliminary costs
 - cost of construction and erection
 - Civil Engineering costs
 - Transport, freight, insurance, clearance from FOB port of despatch to Site

Total Project Costs: _____

- 2.9.2 The costs specified in Article 2.9.1 ((i) to (ii) inclusive) shall be firm. The cost specified under 2.9.2 ((iii) to (vi) inclusive) shall be deemed to be an estimate and shall not be construed as being firm.
- 2.9.3 The cost specified in Article 2.9.1 (vi) shall represent an estimate mutually determined by the PURCHASER and CONTRACTOR for the purchase of spare parts in accordance with Article 10. The cost of spare parts utilized by the CONTRACTOR (until satisfactory completion of the Guarantee Tests) shall be included within the cost stated in Article 2.9.1 (vi).

ARTICLE 3

OVERALL SCOPE OF WORK AND
DIVISION OF RESPONSIBILITY

- 3.1 The scope of the work required for the establishment of the Plant shall be as follows:
- 3.1.1 Establishment of the design basis of the Plant which shall be placed at the disposal of the CONTRACTOR by the PURCHASER, (as described in Annexure II).
- 3.1.2 Supply of know-how and basic engineering, including but not limited to:
- Process flow diagrams
 - Material and energy balances
 - Equipment data and specifications
 - Piping and instrument diagrams and specifications
 - Plant layout
 - Electric steam and other distribution systems
 - Effluent and emission specifications
 - Operational manuals
 - Maintenance manuals
- The detailed engineering for the Plant.
- 3.1.3 Establishment of (as far as possible) the complete detailed engineering specifications of the goods (equipment, bulk materials, etc.) to be supplied in respect of the Plant(s) by CONTRACTOR.
- 3.1.4 Identification of the time-critical and process items.
- 3.1.5 Prequalification of vendors for the supply of the critical items as per 3.1.4.
- 3.1.6 Establishment of the list of spare parts to enable the PURCHASER to operate the Plant(s) for two (2) years after commissioning.

- 3.1.7 Participation of PURCHASER's experts in the inspection of equipment in the shops of the manufacturers/vendors before the despatch of them.
- 3.1.8 Provision of test certificates and Certificates of Inspection for the equipment wherever laid down under the laws of the country of the manufacturer and/or the laws of (PURCHASER's country).
- 3.1.9 Transportation of the goods from the manufacturer's workshops FOB or FOR port of despatch and thereafter to the Site.
- 3.1.10 Revision of the civil engineering drawings of the PURCHASER which shall be prepared on the basis of the initial data to be supplied by CONTRACTOR.
- 3.1.11 Cleaning, levelling and otherwise developing the Site by the PURCHASER.
- 3.1.12 Arranging the infrastructural installations at the Site (roads, railways, steam, electric and other energy sources, water supply, etc. within and outside the Battery Limits) by the PURCHASER.
- 3.1.13 Construction of a housing colony for the erection and start-up personnel of the CONTRACTOR.
- 3.1.14 Facilities for the storage of the equipment and their transport to Site. Hoisting and other necessary tools for the erection.
- 3.1.15 Execution of the erection works to be supervised by CONTRACTOR.
- 3.1.16 Provision of training for the PURCHASER's Plant operators by the CONTRACTOR.
- 3.1.17 Testing all erected equipment individually, and later as a complete Plant before "feedstock-in", by the CONTRACTOR.

- 3.1.18 Supplying feedstock, chemicals and all other material inputs, necessary for the start-up of the Plant.
 - 3.1.19 Commissioning and start-up of the Plant until successful demonstration of the guaranteed test parameters and Provisional Acceptance of the Plant by PURCHASER.
 - 3.1.20 (Optional) Management Assistance for operation of the Plant during the twelve (12) months after the Provisional Acceptance of the Plant.
 - 3.1.21 Establishment of a list of equipment to be manufactured by PURCHASER as per Annexure XIV.
- 3.2. For each of the functions described in the overall scope of work above, the obligations of the CONTRACTOR and PURCHASER (as more particularly expressed in Articles 4 and 5 and elsewhere in the Contract) and the responsibilities for cooperation, coordination, tests, guarantees, commissioning and conditions of Acceptance as stated in the Contract shall be as follows:
- 3.2.1 The PURCHASER undertakes to supply the design basis stated in Article 3.1.1 as contained in Annexures II and IV. The CONTRACTOR shall be obliged to review the design basis so specified, and shall expeditiously advise the PURCHASER of any discrepancies, errors or omissions that shall be corrected, and of any necessary amendments to be made.
 - 3.2.2 Know-how and basic engineering (Article 3.1.2) shall be supplied by the CONTRACTOR as specified in Article 4 and the detailed engineering for the Plant referred to in Article 3.1.3 shall be undertaken by the CONTRACTOR.
 - 3.2.3 The CONTRACTOR and the PURCHASER shall jointly pre-qualify vendors (as stated in Article 3.1.5) for critical items of equipment on the basis of conditions satisfactory to the CONTRACTOR.

- 3.2.4 The CONTRACTOR shall supply the complete Plant, and all goods under the Contract FOB (port of despatch) or FOR (railhead) in sea-worthy or road-worthy packing, and will obtain the necessary clean on-board bills of lading evidencing shipment.
- 3.2.5 The CONTRACTOR shall establish the complete specifications of equipment and materials to be supplied under this Contract, and shall establish a schedule of deliveries FOB.
- 3.2.6 The CONTRACTOR shall undertake, in association with the PURCHASER all procurement (except where otherwise agreed) of spare parts (Article 3.1.6) in accordance with the provisions of Article 10.
- 3.2.7 The CONTRACTOR shall inspect equipment during manufacture and arrange for all proper test certificates (Article 3.1.8) to be issued and shall be responsible for the carrying out by his manufacturers or vendors of all packing and transportation FOB to the point of despatch.
- 3.2.8 The PURCHASER shall arrange for inspection of equipment during manufacture and/or before despatch (if so required) and shall appoint inspectors in good time to enable this to be accomplished (Article 3.1.7).
- 3.2.9 The limitations as to size and weight of packages are contained in the Annexures to this Contract, and the CONTRACTOR shall supply the equipment accordingly. Within the first four (4) months of this Contract, the PURCHASER and the CONTRACTOR shall review the procedures for all transport of equipment, goods and materials ex works to the Site.

- 3.2.10 The PURCHASER shall be responsible for arranging insurance during transportation pursuant to Article 24 and the CONTRACTOR shall carry such insurance policies consistent with the CONTRACTOR's activities under the terms of the Contract.
- 3.2.11 The PURCHASER shall be responsible for all matters connected with obtaining and developing the land (Articles 3.1.11 and 3.1.12).
- 3.2.12 The PURCHASER shall be responsible for carrying out soil tests. The CONTRACTOR shall however, indicate the points at which heavy loads are to be expected, and shall also review all load tests.
- 3.2.13 The PURCHASER shall be responsible for the design and construction of all road, rail and other communication within the Battery Limits and Off-sites (Article 3.1.12).
- 3.2.14 The PURCHASER shall be responsible for the design of all civil engineering works. The CONTRACTOR shall, however, supply the line drawings, machinery and piping lay-out, load data, and all other information necessary to undertake the design of the Civil Engineering.
- 3.2.15 The PURCHASER shall be responsible for the construction of all Civil Engineering works including the housing colonies.
- 3.2.16 The CONTRACTOR shall inspect all equipment on receipt at Site and shall assist the PURCHASER in the identification of any shortages in receipt, and to help the PURCHASER in making claims for insurance, and to verify all shortages. The CONTRACTOR's Site representative shall also advise the PURCHASER on storage at Site.

- 3.2.17 The CONTRACTOR shall, within four (4) months after Effective Date of the Contract provide a list of erection equipment and materials to the PURCHASER.
- 3.2.18 The Plant shall be erected (Article 3.1.15) by the CONTRACTOR or by such other party appointed by the PURCHASER (provided that such other party is not a competitor of the CONTRACTOR), under the technical direction and supervision of the CONTRACTOR's personnel.
- 3.2.19 The CONTRACTOR shall provide training to the PURCHASER's personnel as specified in Article 16 in this Contract.
- 3.2.20 The PURCHASER's personnel at Site shall carry out all testing (Article 3.1.17) and start-up and operation of the Plant (Article 3.1.19) under the direct supervision of the CONTRACTOR and the CONTRACTOR shall be responsible for the performance guarantee testing of the Plant(s) until Provisional Acceptance.
- 3.2.21 The PURCHASER shall provide all feedstocks, outside utilities, chemicals and other materials required for the Plant start-up and operation (Article 3.1.18). The feedstocks shall be, in accordance with the specifications contained in this Contract or as otherwise agreed. The CONTRACTOR shall advise the PURCHASER of the requirements for the supply of outside utilities (power, water, etc.) within nine (9) months of the Effective Date of the Contract. The requirements for all chemicals and other material necessities required thereafter, shall be intimated by the CONTRACTOR to the PURCHASER at least nine (9) months before Mechanical Completion of the Plant.

3.2.22 The CONTRACTOR shall demonstrate to the PURCHASER the performance of the Plant by carrying out the Guarantee Tests in accordance with the provisions as stated in the Contract. This shall be considered an essential part of the services of the CONTRACTOR.

3.2.23 The services relating to Management of Plant Operations, optional Management Assistance and optional Technical Advisory Services contemplated under Articles 3.1.20 and 4.32 shall be embodied in appropriate arrangements and agreements executed by virtue of the application of Article 17.

3.3 In the event that any activity or work of the type necessary for the successful implementation of this Contract is not particularly mentioned in the scope of work above, or in the specifications, drawings, or any of the Annexures of this Contract, but becomes necessary to ensure the successful operation of the Plant according to the specifications as stated 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. The PURCHASER and the CONTRACTOR shall mutually agree on the quantum of work to be undertaken by each party in such an eventuality, and the payments to be made by the PURCHASER to the CONTRACTOR, if any.

3.4 Except where otherwise not provided for within the terms of Article 15 or elsewhere in this Contract the PURCHASER and the CONTRACTOR may by mutual agreement, amend or change the conditions governing the responsibilities or work to be undertaken, without prejudice to the expressed and/or implied obligations of the parties as stated in the Contract. All amendments and/or changes to be incorporated in the terms of the Contract shall be properly made by duly constituted and authorized representatives of the parties herein, and the Contract together with such amendments and/or changes, shall be deemed to have full force and effect.

ARTICLE 4

OBLIGATIONS OF THE CONTRACTOR

- 4.1 The overall obligations of the CONTRACTOR pursuant to this Contract and for specific items in the scope of the work are described more particularly in this Article, Annexure VI as well as in other relevant parts of this Contract. The CONTRACTOR shall accept total responsibility for all work except those that are within the scope of the PURCHASER's responsibilities. The CONTRACTOR shall also be liable for all work which may be reasonably inferred from the scope of his responsibilities.
- 4.2 The CONTRACTOR shall, commencing within seven (7) days of the Effective Date of the Contract, proceed with utmost diligence and care in carrying out all of the services specified as his obligation pursuant to this Contract, and provide such documentation indicated in Annexure XV in order to meet the time-schedule stated in that Annexure and indicated in the bar chart attached to that Annexure.
- 4.3 The CONTRACTOR shall execute the work in accordance with good engineering practice. The execution of the work shall be subject to such variations that may be incorporated in accordance with the provisions of Article 15.
- 4.4 The design bases for the Plant(s) are contained in Annexures II and IV and the CONTRACTOR shall take responsibility for ensuring that all design criteria used for the design or operation of the Plant(s) are adequate and sufficient. The CONTRACTOR, upon receiving the results of the soil tests/data from the PURCHASER, shall make necessary evaluation and provide appropriate recommendations to the PURCHASER, if any.

- 4.5 The CONTRACTOR shall provide or obtain (as the case may be) the know-how for various processes from the Process Licensors, if any, as follows:

Ammonia Plant - (name of Licensor(s))

Urea Plant - (name of Licensor(s))

(specify any other, e.g. water treatment)

and shall design the Plant in conformity with the basic engineering and design criteria of the Process Licensor(s). Documentation relative to all know-how and basic engineering provided by the CONTRACTOR or obtained from the Licensor(s) shall be provided to the PURCHASER by the CONTRACTOR. The CONTRACTOR also hereby agrees that such documents referred to in Article 4.4 shall cover and be based upon the latest commercially proven know-how available to the Process Licensor(s) at the time of making such documents available (such documentation to cover state-of-the-art of know-how at the time of signing the Contract, or if mutually agreed, at a later date), and that detailed engineering will be undertaken by the CONTRACTOR according to the latest design standards available and/or known to the CONTRACTOR at the time of design. The CONTRACTOR further specifically agrees to provide documentary evidence in proof of the acceptance by the Process Licensor of the conditions governing the supply of know-how and basic engineering referred to herein, and furthermore shall ensure that the Process Licensor is in full agreement with the requirements of Articles 7 and 33 of this Contract in connection therewith.

- 4.6 The CONTRACTOR shall perform the general basic and detailed engineering of the Plant and the process design, layout, equipment design, piping and instrument design, and all other design work in order that:

- 4.6.1 The work shall constitute, when assembled, a technological entity, capable of producing the final products of the quality and quantity in accordance with the criteria set out in this Contract, and complying with the economic and technical performance figures contained in this Contract.
- 4.6.2 The design work undertaken shall obligate the CONTRACTOR to place at the disposal of the PURCHASER all data and documentation required by the latter to carry out his obligations in accordance with Article 3, and Article 5, so that the Plant can meet the time-schedule stated in the Contract.
- 4.6.3 The Plant to be supplied under this Contract shall be complete and shall conform to the specifications stated in Annexure VIII, and/or elsewhere in the Contract, and the materials of construction used therein shall be in accordance with the CONTRACTOR's best experience in designing such plants. In any event the plant supplied will not be inferior to technological specifications and materials of construction specified in Annexure VIII, or elsewhere in the Contract.
- 4.7 The CONTRACTOR shall carry out the Engineering of the Plant(s) in accordance with the Standards and Codes laid down in Article 25 and Annexure II. Where specialized design criteria are being used, the PURCHASER shall be advised of such specialized design codes. Notwithstanding the use of the Codes and Standards indicated in Article 25 if the CONTRACTOR is aware up to the date of signing the Contract 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 these 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 project safety regulatory provisions required in (PURCHASER's country), as stated in Annexure II.

- 4.8 The CONTRACTOR shall supply FOB^{1/} a complete operable plant for the integrated production of (1000 tons) per day of Ammonia and (1725 tons) per day of Urea. The Plant shall conform to the specifications in Annexure VIII, however if any equipment not specified in this Contract is required to complete the Plant, (except where otherwise specifically mentioned in Annexure XIII), these shall form part of the CONTRACTOR's supply pursuant to this Contract and shall be supplied FOB without additional cost or expense to the PURCHASER within the agreed lump sum price as per Article 20.
- 4.9 The CONTRACTOR undertakes to supply the critical equipment as identified in Annexure VIII and the CONTRACTOR undertakes to procure the same from selected vendors, to be agreed upon with the PURCHASER. Annexure VIII indicates the names of manufacturers, from which the final list of vendors shall be selected. The CONTRACTOR shall not supply such equipment from another manufacturer without prior consent of the PURCHASER.
- 4.10 The CONTRACTOR shall undertake, in association with the PURCHASER, procurement of spare parts, in accordance with the provisions of Article 25, Article 10 and Annexure XXVI of this Contract. The CONTRACTOR shall procure spare parts sufficient for two (2) years operation of the Plant, and such other equipment as may be agreed under the provision of Article 10, on behalf of the PURCHASER in accordance with the Procurement provisions as stated in the Contract, in its Annexure XXVI. The CONTRACTOR shall make efforts that all procurement should be accomplished

^{1/} If CIF supply is agreed upon, then appropriate adjustments to the terms of the Contract are required.

so as to enable the equipment and spare parts to reach Site so as to enable the agreed time-schedule to be met, provided, that PURCHASER places the formal orders for these items in due time.

- 4.11 The CONTRACTOR shall ensure that his supply is undertaken so as to enable the Plant to meet the objectives stated in Article 2, and the time-schedules contained in Annexure XV, and the CONTRACTOR shall be fully responsible for meeting the contractual guarantees, and tests contained in Article 26.
- 4.12 The CONTRACTOR shall inspect all equipment in accordance with Article 14 and arrange for all test certificates and shall arrange all packing export permits and transportation FOB to point of despatch.
- 4.13 The limitations as to size and weight of packages at the entry port and to Site are contained in the Annexures to this Contract, and the CONTRACTOR shall design and procure the Plant accordingly.
- 4.14 The CONTRACTOR shall be responsible for undertaking such insurances as required by Article 24.
- 4.15 The CONTRACTOR shall provide an adequate number of personnel for the erection, mechanical testing, commissioning, start-up and initial operation of the Plant, so as to meet the specified time-schedules. Unless otherwise provided, the CONTRACTOR shall train the PURCHASER's personnel to assist in the commissioning, start-up, operation and maintenance of the Plant in accordance with the requirements of Article 16. The CONTRACTOR shall provide the necessary supervisory personnel and shall ensure that all such personnel reach the Site of work in time so as to meet the requirements of the time-schedules contained in Annexure XV.

- 4.16 The CONTRACTOR shall supply all technical documentation required for the implementation of the Project (and in particular the Technical Documentation stated in Annexure IV) within the dates contained in Annexure XV and, in any event in sufficient time to meet the requirements of the time-schedule contained in Annexure XV.
- 4.17 The PURCHASER shall try to fulfil the Mechanical Completion of the Plant within thirty-two (32) months from the Effective Date of the Contract, in close co-operation with (and as is true of) the CONTRACTOR.
- 4.18 The CONTRACTOR shall undertake the initial Guarantee Tests of the Plant within forty-five (45) days after the start-up of the Plant, but in any event not later than three (3) months after Mechanical Completion of the Plant (as stated in Article) provided that the PURCHASER has carried out his obligation to supply feedstock, outside utilities, chemicals and other agreed materials. The CONTRACTOR shall be allowed to extend this period and repeat Guarantee Tests in accordance with Article 19.10 of the Contract.
- 4.19 The CONTRACTOR's personnel at Site shall direct and supervise the carrying out of all mechanical testing of the Plant and the CONTRACTOR's personnel shall assist in the start-up and operation of the Plant until completion of the Guarantee Tests, under the direction of the CONTRACTOR.
- 4.20 The CONTRACTOR shall satisfactorily demonstrate to the PURCHASER the carrying out of the performance of the Guarantee Tests in accordance with the provisions stated in the Contract.
- 4.21 Subject to Articles 18 and 26 the CONTRACTOR shall demonstrate the initial Guarantee Tests of the Plant within (15) days after the start-up of the Plant, but in any event not later than ninety days following after Mechanical Completion of the Plant, provided that the PURCHASER has carried

out his obligation to supply feedstock, outside utilities, chemicals and other agreed materials in accordance with his obligations under Article 5. The CONTRACTOR shall be allowed to extend this period and repeat Guarantee Tests in accordance with Article 26.1C.1 of the Contract.

- 4.22 The CONTRACTOR shall be responsible for the necessary rectifications, corrections and/or modifications of the Plant pursuant to the Contract requirements (free of any additional costs to the PURCHASER) within twelve (12) months of the Provisional Acceptance of the Plant in the event that for any reason attributable to the CONTRACTOR, the Plant is found to be incapable of continued production at the rated capacity on account of design defects, latent and/or patent faults, and/or other inadequacies in any one/or other of process(es)/design/equipment supply/erection and the works or portions or parts thereof which were not apparent or recognizable at the time when the CONTRACTOR demonstrated the Guarantee Tests. The responsibilities of the CONTRACTOR specified in this Article and in the other Articles of the Contract shall apply *mutatis mutandis*.
- 4.23 The CONTRACTOR shall ensure that the number and level of training (to be arranged by the CONTRACTOR within or outside the country of the PURCHASER) of the PURCHASER's personnel is adequate for the smooth operation and maintenance of the Plant in peak condition.
- 4.24 The CONTRACTOR shall be responsible for taking out and keeping in force the various Insurance policies which are his responsibility under Article 24 (as as specified therein), and shall in any event carry such corporate Insurance policies consistent with its activities as a CONTRACTOR.

- 4.25 The CONTRACTOR shall make arrangements for speedy replacement of any shortages in equipment, or for any damaged equipment.
- 4.26 (Subject to agreement) the CONTRACTOR shall provide all erection equipment and materials for the erection and installation of the Plant.
- 4.27 Up to a period of five (5) years following the start-up of the Plant, the CONTRACTOR shall on the PURCHASER's enquiry answer questions related to the operation of the Plant. As promptly as possible after receipt of such enquiries, the CONTRACTOR will respond in as much detail as possible. It is hereby agreed that there shall be no limitations on the number of such queries advanced, provided these queries are directly linked with CONTRACTOR's activity under the present Contract. Independently of the specific questions asked by the PURCHASER, the CONTRACTOR on request and approval by the PURCHASER and at the PURCHASER's cost shall send an advisor (on a once yearly basis) to visit the Plant and review its operation and who shall recommend ways to improve operation.
- 4.28 The CONTRACTOR shall provide such assurances as the PURCHASER may reasonably require concerning the essential legal validity and enforceability of this Contract insofar as the CONTRACTOR is a properly organized legal entity duly entitled to perform this Contract and that the CONTRACTOR has properly executed this Contract in accordance with all legal requirements of law, of governing charter and by-laws, and of its governing board of directors, as the case may be.
- 4.29 Annexure III of the present Contract includes the preliminary plot plan made by the PURCHASER with a scale of 1/1000 and approved with signature of both CONTRACTOR and PURCHASER determining the Battery Limits of the Plant according to Article 2 of the present Contract as well as geographical location of the different units with the best possible dimensional accuracy and indication of the different connection points.

- 4.30 While the PURCHASER will provide all feedstocks, outside utilities, chemicals and other materials required for the operation of the Plant in accordance with Article 5.8, the CONTRACTOR shall supply a first charge of all catalysts, and the chemicals agreed as the CONTRACTOR's scope of supply in Annexures IX and XI. The maximum quantity per hour and conditions of outside utilities (power, water, etc.) will be intimated by the CONTRACTOR to the PURCHASER within nine (9) months of the Effective Date of the Contract. The requirement for the start-up of the Plant and regularly thereafter, until take-over shall be intimated by the CONTRACTOR to the PURCHASER at least nine (9) months before the Mechanical Completion of the Plant.
- 4.31 Should the PURCHASER so desire, the CONTRACTOR shall enter into a separate agreement with the PURCHASER to manage the Plant, or to assist the PURCHASER to manage the Plant, as the PURCHASER may desire, for a period of twelve (12) months after Provisional Acceptance, under conditions to be mutually agreed within three (3) months after commercial production has commenced but not later than following completion of the Performance Guarantee requirements provided by Article 19.
- 4.32 Without prejudice to the provisions of this Contract, the CONTRACTOR shall agree to grant an option to the PURCHASER for the execution of a separate Agreement providing for Technical Advisory Services to be provided by the CONTRACTOR to the PURCHASER upon mutually acceptable terms. Such an Agreement shall become effective immediately following Provisional Acceptance of the Plant and shall have a duration of not less than () years. The PURCHASER may exercise the said option (at his sole discretion) no later than the expiry of one month following commencement of commercial production. For the purposes of this Contract the rights and obligations envisaged in such an Agreement for

Technical Advisory Services shall be considered to be wholly separate and distinct from the liabilities and the responsibilities contained in this Contract. The terms of such Agreement shall include (but shall not be restricted to) any one and/or other of the following matters:

- 4.32.1 Provision of senior advisory personnel to conduct half-yearly reviews of Plant and efficiency of its operations
- 4.32.2 Recommendations as to improvement of Plant operations.
- 4.32.3 Provision of answers to technical queries related to Plant operations.

ARTICLE 5

OBLIGATIONS OF THE PURCHASER

- 5.1 The obligations to be undertaken by the PURCHASER within the overall scope of work shall be as defined in this Article and in the appropriate Annexures. The PURCHASER shall carry out his obligations so as to enable the CONTRACTOR to meet the time-schedules contained in Annexure XV.
- 5.2 To enable the CONTRACTOR to work on the process/technological design, the PURCHASER shall make available to the CONTRACTOR all necessary basic design data, part of which is detailed in Annexure II, and shall advise the CONTRACTOR of statutory specifications and regulations published by the relevant authorities, part of which are included in Annexure V.
- 5.3 The PURCHASER shall secure within _____ from the Effective Date the Site for construction of the work free of all encumbrances, including the necessary rights-of-way. The PURCHASER shall also make available adequate space for storage depots at or near the Site.
- 5.4 The PURCHASER shall obtain and make available to the CONTRACTOR all necessary permits/Approval and/or licences from local authorities and/or Government as may be necessary for the execution of the Contract inclusive of import licences, visas for CONTRACTOR's personnel, entry permits, etc.
- 5.5 The PURCHASER shall be responsible (unless otherwise agreed) for the transportation of equipment from the port of despatch (FOB) to the entry port (C and F or purchase FOR) in the PURCHASER's country, for clearance at the entry port and for transportation of the equipment to the Site.

- 5.6 The PURCHASER shall be responsible for arranging and maintaining such insurances as may be necessary to cover transportation of all plant, equipment and materials from manufacturers' works to the Site inclusive of marine and/or rail and road transportation in accordance with Article 24.
- 5.7 The PURCHASER shall be responsible for the timely design and construction of all road, rail and other communication within the Battery Limits and Off-site(s).
- 5.8 The PURCHASER shall be responsible (either directly or through his sub-contractors) for the construction of the Civil Engineering Works.
- 5.9 The PURCHASER shall undertake (either directly or through his sub-contractors) the erection of all equipment, under the supervision of the CONTRACTOR's personnel.
- 5.10 Whenever any approval(s) 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 ten (10) days of receipt unless if 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.
- 5.11 The PURCHASER shall provide all feedstocks, outside utilities, chemicals and other materials required for the operation of the Plant (Article 3.1.26) except the first charge of catalysts and chemicals to be supplied by the CONTRACTOR within his scope of supply. The feedstocks shall be in accordance with the specifications contained in this Contract or as otherwise agreed. The maximum quantity per hour and conditions of outside utilities (power, water, etc.) will be intimated by the CONTRACTOR

to the PURCHASER within six (6) months of the Effective Date of the Contract. The requirement of all chemicals and other material inputs required for the start-up of the Plant and regularly thereafter, shall be intimated by the CONTRACTOR to the PURCHASER at least nine (9) months before the Mechanical Completion of the Plant.

- 5.12 The PURCHASER shall provide free of charge, operation and maintenance personnel for the use of the CONTRACTOR throughout the period from the beginning of the mechanical test of equipment till the date of acceptance of the Plant, in adequate numbers and of corresponding competence to the requirements of manning, which requirements are to be developed by the CONTRACTOR in the form of a Manpower and Qualification Chart and which is to be approved by the PURCHASER.
- 5.13 The PURCHASER shall provide all the equipment and services required to be supplied by him, as stated in Annexure XVI.
- 5.14 The PURCHASER will delegate for training such personnel as are required to be trained under Annexure XVIII of the Contract.
- 5.15 The PURCHASER shall provide the CONTRACTOR and his personnel deputed to Site with such facilities as are detailed in Annexure VII.
- 5.16 The PURCHASER shall be responsible for making all payments to the CONTRACTOR in accordance with the provisions of this Contract.
- 5.17 The PURCHASER shall be responsible for making all payments to the Vendors of equipment, in accordance with the Procurement Purchase Orders issued to them in the name of the PURCHASER, on the advice of the CONTRACTOR. This shall only apply to equipment or spare parts purchased by the CONTRACTOR in accordance with Article 10.8 and 10.9.

5.18 The PURCHASER will provide the CONTRACTOR with office space, secretarial facilities and typing services for the CONTRACTOR's personnel assigned to the PURCHASER's office or to Site.

ARTICLE 6

COOPERATION AND COORDINATION BETWEEN
CONTRACTOR AND PURCHASER

- 6.1 The parties to this Contract hereby agree to undertake all reasonable cooperation to implement and execute their responsibilities as stipulated in the Contract. The parties through their designated representatives will meet periodically to take stock of the progress of work, and mutually agree upon ways and means to improve the operations; to expedite/economise the work and resolve outstanding issues between the parties (proposed repairs at Site, if any, to be carried out by PURCHASER's experts at the cost of CONTRACTOR). Minutes of meetings shall be recorded and circulated for confirmation and necessary action.
- 6.2 The PURCHASER and the CONTRACTOR each shall appoint a Project Manager to coordinate and monitor the work under this Contract, on behalf of PURCHASER and CONTRACTOR within the scope of authority entrusted to each of them.
- 6.3 Within 30 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 coordination procedure, the Procurement Procedure, Vendors list, Design Criteria and Critical items. The matters related to the concept of location of each Plant, Off-sites and Utilities within the Plant location and Sites shall be finalized at such meeting.
- 6.4 All notices, instructions and decisions on meetings shall be given in writing. Minutes of meetings between CONTRACTOR's and PURCHASER's representatives held at Site, or in the offices of the PURCHASER or CONTRACTOR shall after recording and confirmation have the same effect as notices in writing.

- 6.5 The CONTRACTOR shall submit drawings, equipment specifications and other documents required for approval or distribution to the PURCHASER under this Contract. The PURCHASER shall reply (if required) with appropriate approval(s) or disapproval as the case may be (with reasons indicated if the requirements under the Contract are not technically or commercially met) within the period specified in Article 5.
- 6.6 The CONTRACTOR shall immediately thereafter prepare the necessary documents for placing orders for critical items (time-critical and process-critical items) as identified in Annexure XII.
- 6.7 The CONTRACTOR shall prepare for discussion at the meeting contemplated in Article 6.8, a detailed list of equipment along with technical specifications including materials of construction, as well as lay-out and P and I diagrams, where such diagrams have not been previously submitted to the PURCHASER. Such specifications shall conform to the technical specifications in Annexure VIII. Where the CONTRACTOR requests deviations, he shall obtain the PURCHASER's approval at the meeting.
- 6.8 Within four (4) 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 process and design completed up to that time. The detailed in-plant layout, design sizes of the equipment, utility units, time-schedules, local procurement, training programme 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 overall price, and/or project schedule, arising from such changes.

- 6.9 The CONTRACTOR shall perform the general basic and detailed engineering of the Plant within the Battery Limits of the units defined in Annexure VIII, and the process design work, design of all machines, equipment, apparatus, instruments, etc. will be carried out so as to constitute, when assembled a technological entity, producing the final products defined in the present Contract and complying with the economic and technical performance figures fixed in the present Contract. In order to enable the PURCHASER to carry out his obligations under the Contract, the CONTRACTOR shall design each Plant, the layout of equipment within each Plant, the piping, instrumentation and electrical connection within, to and from each Plant, and load details and he will place at the PURCHASER's disposal in accordance with the schedule agreed in Annexure XV data which shall enable the PURCHASER to complete the mechanical, civil and electrical engineering work. The CONTRACTOR shall make available to the PURCHASER all technical data or information, which are necessary in accordance with good engineering practice, to enable the work to be performed by the PURCHASER.
- 6.10 The CONTRACTOR acknowledges that he has examined the basic design information contained in Annexures II and IV and states that the data contained in the Annexures is sufficient for him to design the Plant and to enable him to produce the drawings necessary for the PURCHASER to carry out his obligations. In the event that any supplementary data is required, the CONTRACTOR shall request such data at the design meeting contemplated in Article 6.3.
- 6.11 The CONTRACTOR shall design the plant and equipment being supplied by him in accordance with the standards contained in Annexures II and IV, and the effluent standards contained in Annexure XV. If the CONTRACTOR wishes to deviate from such standards, he shall take the permission of the PURCHASER at the design meeting contemplated under Articles 6.3 or 6.8.

- 6.12 The CONTRACTOR will submit technical documentation for approval of the PURCHASER in accordance with Annexure V and the time-schedule as stated in the Contract. The PURCHASER is entitled to give comments on the technical documents and plans submitted by the CONTRACTOR within thirty (30) days reckoned from the receipt of the relevant document, either during the next technical meeting, or by a registered air mail letter. Should the CONTRACTOR make no counter-comments within fifteen (15) days reckoned from their receipt, they are to be considered as accepted by the CONTRACTOR. In case of the CONTRACTOR's counter-comments, which lead to a difference of opinion, this shall be settled in course of a technical consultation meeting to be called immediately and to be held at Site, or in (PURCHASER's country). Should one fail to settle the difference of opinion in mutual agreement in course of the consultation, the CONTRACTOR's view will prevail.
- 6.13 The PURCHASER shall have the right to submit to the CONTRACTOR for approval at least two (2) copies of the plans he has made for checking compliance of these plans with the basic data supplied by the CONTRACTOR and with CONTRACTOR's stipulated process, layout and mechanical requirements. The CONTRACTOR shall return to the PURCHASER one copy of each of the technical documents sent to him for approval, stating his approval or comments within thirty (30) days from receipt of same. Should the CONTRACTOR fail to return the plans to the PURCHASER, (with appropriate approval(s) or comment(s) within the allocated time), these plans will be considered as approved by the CONTRACTOR. Should the CONTRACTOR, within this period, make comments on the plans submitted to him by the PURCHASER and should the PURCHASER not agree with them, the parties will settle the difference of opinion in course of the next technical consultation, unless an extraordinary consultation is required due to urgent considerations.

- 6.14 The CONTRACTOR's Site office shall be managed within the jurisdiction of the Construction Manager of the CONTRACTOR. This office shall be opened before any of the equipment arrives at Site. For the purpose of coordination, the CONTRACTOR's Construction Manager at Site shall liaise with the Senior Site Representative of the PURCHASER.
- 6.15 The CONTRACTOR's Supervision personnel at Site shall assist in checking the equipment received, survey any damages incurred and assist the PURCHASER in submitting claims to the insurers.
- 6.16 Throughout the period of the Contract, the PURCHASER shall have the right to ask for written information from the CONTRACTOR about the progress of his equipment procurement to enable the PURCHASER to set up a monthly report on the progress of purchasing and other work and the deviation if any from estimates of time.
- 6.17 In addition to the meetings contemplated under Articles 6.3 and 6.8, the representatives of the PURCHASER and the CONTRACTOR shall have regular meetings at (town, normally PURCHASER's country or Site) to discuss and resolve any differences. Each party shall pay their own costs for personnel attending the meetings. In addition to the regular meetings, either party may call an extraordinary meeting to be held within thirty (30) days on the same basis as the regular meetings. Results of all meetings shall be recorded in Minutes, but where contractual conditions are proposed to be modified directly or indirectly, the approval of the PURCHASER and CONTRACTOR shall be obtained in writing before giving effect to such changes.
- 6.18 Within one hundred and eighty (180) days of the Mechanical Completion of each unit, the CONTRACTOR shall give a set of five (5) copies each of as-built drawings of the unit to the PURCHASER for the PURCHASER's record.

6.19 The PURCHASER, if he so desires, shall have the right to assign up to a maximum of four (4) engineers to the design offices of the CONTRACTOR at (town) to be present during the detailed design of the Plant, and the procurement of the equipment. The CONTRACTOR shall make available all documentation calculations, etc. on the detailed design of the Plant and the procurement to the Engineers of the PURCHASER. All costs in connection with the travel and stay of the Engineers shall be borne by the PURCHASER.

ARTICLE 7

PROPRIETARY RIGHTS AND LICENCES,
SECURITY AND PATENTS

- 7.1 The CONTRACTOR hereby affirms that it has or has obtained the unqualified right(s) to grant, and hereby does grant to the PURCHASER irrevocable, non-exclusive, non-transferable, fully paid-up licence(s) for use in the operation of all the processes in the life time of the Plant, and in particular, the Ammonia Process and the Urea Process.
- 7.2 The CONTRACTOR shall ensure (through specific arrangements with proof provided to the PURCHASER) that the Process Licensors shall make available to the PURCHASER through the CONTRACTOR all basic process data received by the CONTRACTOR from Process Licensors relating to the Contract and that all basic process documentation and all drawings prepared by the CONTRACTOR shall also be made available to the PURCHASER, as mentioned in Article 3. The CONTRACTOR also hereby undertakes to make available to the PURCHASER the latest know-how and techniques available to the Process Licensors and to the CONTRACTOR at the time of design.
- 7.2.1 The PURCHASER shall also have the right to establish direct contractual arrangements with the said Process Licensor in the event that the circumstances envisaged in Article 33 apply.
- 7.3 The CONTRACTOR shall ensure that the Process Licensors and the CONTRACTOR shall make available free of cost to the PURCHASER for a period of ten (10) years from the Effective date of the Contract:
- 7.3.1 Any technological developments and improvements in operating techniques, preventive maintenance and safety measures applicable to the Plants constructed pursuant to this Contract, and other relevant data and proprietary information that may or may not

become licensable by the Process Licensors within the same period. The PURCHASER will also make available to the Process Licensor, free of charge, any improvements in operating techniques which the PURCHASER shall have made in the same period.

- 7.3.2 On payment, at a reasonable cost, rights to use proprietary processes developed or acquired by the CONTRACTOR including patented processes which could result in significant improvement(s) in the capacity, reliability and efficiency of the Plant, and quality of the products.
- 7.4 The CONTRACTOR shall undertake to enter into specific arrangements with the Process Licensor(s) (with satisfactory proof provided to the PURCHASER), to ensure the continued availability to the PURCHASER of confidential information similar in scope and content to that provided pursuant to Article 7.3.
- 7.5 The PURCHASER shall not be deemed to have infringed the conditions stipulated in this Article, where following the Final Acceptance of the Plant(s) (but within the period specified in Article 7) the PURCHASER determined that modifications of the Plant(s) are required to be made (which in his opinion would result in improved or better Plant operation) or where the PURCHASER requires an expansion or modernization of the Plant(s) with incorporation of contemporary technology, and, in consideration of the foregoing the PURCHASER has requested the CONTRACTOR to assist in accomplishing the necessary work, and the CONTRACTOR is unable or unwilling (for whatsoever reason) to undertake same, then the PURCHASER shall have the right to employ or retain any other person, firm or agency to undertake and complete such work above referred to, and in such an eventuality, the PURCHASER shall not be held to be in breach of the secrecy provisions of this Article.

- 7.6 For the purposes of this Article, the grant to the PURCHASER of the right to use the processes referred to in Article 7.1 shall not be interpreted to mean a passing to the PURCHASER of proprietary rights and title to the processes.
- 7.7 The provisions of Article 7.12 applicable to continuation of secrecy obligations upon Termination and/or Cancellation shall apply in like manner to the provisions of this Article relating to the right for use of proprietary rights and licences.
- 7.8 The PURCHASER agrees that he shall treat as confidential all process and technical information, proprietary know-how, patented processes, documents, data and drawings supplied by the CONTRACTOR (whether owned by him or otherwise) in accordance with the Contract, all of which is hereinafter referred to as "confidential information". The CONTRACTOR shall, (after obtaining a declaration of acceptance to the provisions of this Article from the PURCHASER) be free to make the confidential information available to the PURCHASER. The PURCHASER shall not without the prior approval of the CONTRACTOR divulge such confidential information available to a third party, other than when required by law, and provided that when so required by law the PURCHASER shall duly advise the CONTRACTOR.
- 7.9 This Article shall not apply to such confidential information:
- 7.9.1 Which is or becomes a part of the public domain.
- 7.9.2 Which is already known to the PURCHASER, his representatives before the obtaining of declaration required of them under Article 7.7.
- 7.10 The PURCHASER shall not utilize the confidential information for any purpose other than for completing, operating, using, repairing, maintaining or modifying the Plant(s). Similarly, the CONTRACTOR will not use or divulge any technical data or confidential drawings or technical documents given by the PURCHASER, his representatives to the CONTRACTOR except for the purposes strictly connected with the Contract.

- 7.11 The CONTRACTOR shall provide firm guarantees to the PURCHASER relative to the continued use of know-how and patented processes, and associated proprietary knowledges, similar in scope and content to the "confidential information" in Article 7.8, without prejudice to any matters occurring which might inhibit the continued use of the acquired know-how and procedures.
- 7.12 The PURCHASER and CONTRACTOR hereby agree that the aforementioned obligations of this Article subject to Article 7.4, shall not be affected by a termination of this Contract under Article 33 herein.
- 7.13 Except when otherwise agreed, the provisions of Subarticles 7.8, 7.9 and 7.10 shall be valid for a period of eight (8) years from the Effective Date of the Contract.
- 7.14 The PURCHASER shall give the CONTRACTOR prompt notice, in writing, of any claim or suit (referred to in Article 22) of which it has knowledge. The CONTRACTOR shall have sole charge and direction of the defence and disposal of such suit or action and the PURCHASER shall render all reasonable assistance but shall not be obligated to sustain any expenses. The PURCHASER shall have the right to be represented by legal counsel experienced in technology contracts of its own choice at its own expense.
- 7.15 The CONTRACTOR shall have the right to acquire immunity from suit and to make or cause to be made alterations at his own cost to the Plant(s) to eliminate the alleged infringement provided such alteration does not prevent the Plant from meeting its Performance Guarantees mentioned in Article 26.
- 7.16 Neither the CONTRACTOR nor the PURCHASER shall settle or compromise any suit or action without the written consent of the other if such settlement or compromise would oblige the other to make any payment or part with any property, to assume any obligation or grant any licences or other rights, or to be subjected to any injunction by reason of such settlement or compromise.

- 7.17 The CONTRACTOR shall indemnify and hold harmless the PURCHASER in connection with any liabilities arising out of patent infringement and/or matters arising out of secrecy and/or proprietary information referred to in Articles 7.8 and/or 7.13 in accordance with the requirements of Article 22.1.
- 7.18 The CONTRACTOR acknowledges and agrees that the PURCHASER has unlimited rights of sale of the products of the Plant (Ammonia, Urea or any by-products) in (PURCHASER's country) and/or in any other country in the world.
- 7.19 Where a future extension of the Plant or the establishment of a new plant in the PURCHASER's country is planned, the parties shall agree mutually acceptable terms concerning the licence fee relating to the same. The CONTRACTOR undertakes the commitment hereby not to require a licence fee for a new plant in excess of _____ dollars.
- 7.20 The PURCHASER shall not disclose any "confidential information" defined in Article 7.8 obtained from the CONTRACTOR to a third party without the approval of the CONTRACTOR other than where required by law when the PURCHASER shall inform the CONTRACTOR (Article 7.8).

ARTICLE 8

EFFECTIVE DATE OF CONTRACT

- 8.1 The Contract shall become valid upon the formal execution (signing) by the duly authorised 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:
- 8.1.1 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.
- 8.1.2 Approval of the Government of () where the CONTRACTOR resides and has his principal place of business, if required, such approval to be obtained by the CONTRACTOR.
- 8.1.3 The provision by the CONTRACTOR of the Performance Bond as provided under Article 21.1 under the terms of the Contract.
- 8.1.4 The remittance of the advance payment by the PURCHASER as provided under Article 20 secured by the Bank Guarantee provided by the CONTRACTOR in accordance with Article 21.1.
- 8.2 If the PURCHASER does not open the Letter of Credit specified in Article 20.16 or does not make equivalent arrangements within six (6) months, the CONTRACTOR may elect (at his own discretion) to suspend its activities and obligations under the Contract until such time as Article 20.16 is complied with.
- 8.3 The expression "Effective Date" whenever used in this Contract or in the Annexures or in the Specifications (or in any other document deemed to form a part of this Contract) shall be interpreted to mean "Effective Date of Contract".

ARTICLE 9

ASSIGNMENT OF CONTRACT

- 9.1 This Contract shall inure to the benefit of and be binding upon the parties hereto and their and each of their executors, administrators, curators, successors and assigns, however subject to the provisions of Article 9.2.
- 9.2 This Contract may not be assigned by the CONTRACTOR without the written consent of the PURCHASER.
- 9.3 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, as specified in Article 9.1 with assured guarantees for payment(s) under the Contract.
- 9.4 The CONTRACTOR shall not sub-contract the whole or any part of the Work and/or services relating to the design, procurement, start-up, operations or test running of the plant and equipment (as defined in the Contract) with respect to the Works, without the written consent of the PURCHASER. Furthermore, the CONTRACTOR shall also strictly adhere to the requirements of Article 12.1.7 (and as elsewhere expressed in the Contract) and as specified in Annexures VIII and XII in connection with the supply of critical items by selected manufacturers and machinery from specified manufacturers.
- 9.5 The CONTRACTOR may sub-contract any other work or services under the Contract, provided the PURCHASER is advised of all such sub-contracts. Where sub-contracts are to be awarded to firms or individuals in (PURCHASER's country) the PURCHASER shall have the right to pre-qualify all firms or persons bidding for such sub-contracts.

ARTICLE 10

PROCUREMENT OF SPARE PARTS

- 10.1 The CONTRACTOR shall supply to the PURCHASER the following services in connection with the procurement of two-years requirements of spare parts, for use from the period after successful completion of the Performance Guarantee Tests, in accordance with Annexure XXVI, and subject to Articles 25, 29 and 30.
- 10.1.1 The CONTRACTOR shall submit a list of spare parts for the approval of the PURCHASER not later than the 4th month after Effective Date.
- 10.1.2 Where spare parts of a proprietary nature are to be procured, the CONTRACTOR shall obtain from the Vendors and/or suppliers on a direct basis in the name of, and for, the PURCHASER a list of 2-years supply of spare parts as recommended by the CONTRACTOR, for approval of the PURCHASER.
- 10.1.3 For the procurement of all other spare parts, and for any other equipment to be purchased through the CONTRACTOR, the CONTRACTOR shall prepare bid documents on the basis of the technical specifications prepared by him and submit the same to the PURCHASER for approval, and shall issue appropriate purchase orders to the Vendors.
- 10.1.4 The CONTRACTOR shall forward the bid documents on behalf of the PURCHASER to the respective Vendors listed in the Vendors list (which list shall have been previously agreed between the parties).
- 10.1.5 The CONTRACTOR shall use its best endeavours to obtain from the Vendors a minimum three competitive (3) offers.

- 10.1.6 The offers received from the Vendors shall be evaluated by the CONTRACTOR who shall submit the bid evaluation with appropriate recommendations to the PURCHASER for final selection. The PURCHASER's final selection of the Vendor shall be communicated to the CONTRACTOR within twenty (20) days from the date of the CONTRACTOR's submission of the bid tabulation.
- 10.1.7 All spare parts supplied pursuant to this Article shall conform with the requirements of Article 12.1.1, 12.1.3, 12.1.5 and 12.1.6.
- 10.1.8 After the selection of the Vendor(s) by the PURCHASER, the CONTRACTOR shall purchase the spare parts and on delivery despatch them in accordance with Articles 10.1.1 to 10.1.6 inclusive.
- 10.2 The PURCHASER (on the recommendation of the CONTRACTOR) shall set aside further funds, as provided in Article 20.5 to cover the purchases by the CONTRACTOR on behalf of the PURCHASER, and the procedure as follows shall apply:
- 10.2.1 The CONTRACTOR shall advise the PURCHASER of the erection equipment and tools required for erection of the Plant, within three (3) months after the Effective Date. Both parties shall discuss the list, availability of the equipment with the PURCHASER, and decide on the quantum of equipment to be purchased by the CONTRACTOR on behalf of the PURCHASER.
- 10.2.2 Thereafter the CONTRACTOR shall purchase the equipment following approval by the PURCHASER in accordance with the procedure stated in Articles 10.1.1 to 10.1.6 inclusive above.

- 10.2.3 Should the PURCHASER desire to purchase other tools or equipment under this clause, (subject to the availability of funds referred to in Article 20.5) the CONTRACTOR will also procure such tools or equipment at the request of the PURCHASER in accordance with the procedure stated in Articles 10.1.1 to 10.1.6 inclusive.
- 10.3 The CONTRACTOR shall prepare three-monthly (3) forecasts of deliveries specifying details of proposed consignments, value, and other relevant information, and furnish the same to the PURCHASER.

ARTICLE 11

TIME OF ESSENCE

- 11.1 The PURCHASER and CONTRACTOR agree that time is of the essence in this Contract. They agree that every endeavour shall be made by both parties to meet the target dates set forth in the Contract (and as set out in Annexure XV).
- 11.2 It is agreed that the timely supply of the equipment and spare parts is the essence of the Contract and accordingly the CONTRACTOR shall take all necessary steps to meet the time schedule provided in this Contract for supply of the goods by the CONTRACTOR. The CONTRACTOR shall be obliged to take such necessary precautions that are reasonably necessary to ensure that the sources of supply are constant, and shall in anticipation of any shortfall in the supply of such equipment and spare parts (for whatever reason) undertake steps to obtain them from alternative sources without compromising the criteria as to quality and/or quantity expressed in this Contract.
- 11.3 In the event that the CONTRACTOR during the required shop inspection anticipates delays in delivery of any equipment, the CONTRACTOR shall be obliged to undertake remedial measures to overcome delays.

ARTICLE 12

DELIVERY OF EQUIPMENT, GOODS AND MATERIALS

12.1 Supply of Goods

- 12.1.1 All goods to be supplied under this Contract shall be "brand new" and in accordance with the provisions of this Contract, and all such goods shall have been inspected and tested before despatch in accordance with Article 14.
- 12.1.2 The scope of delivery of the CONTRACTOR is contained in Annexure VIII.
- 12.1.3 The technical specifications for the equipment and the materials of construction are contained in Annexure VIII and the CONTRACTOR shall supply such of the equipment and materials in strict conformance to the technical specifications and materials of construction specified. Any change in the materials of construction shall be subject to approval by the PURCHASER which permission shall not be unreasonably withheld.
- 12.1.4 The CONTRACTOR acknowledges that the list contained in Annexure VIII is not exhaustive and within six (6) months after Effective Date, the CONTRACTOR shall provide a revised list to the PURCHASER for his review and approval particularly where the list or technical specifications and/or materials of construction have been altered. This list shall also indicate the auxiliary plant such as pipes, valves, instruments, electrical cables, etc. which are to form part of the plant.

- 12.1.5 Where materials of construction or technical specifications are not specified, the materials shall be such as are proven to be resistant to those chemicals with which they come into contact, and the technical specifications shall be such as to ensure meeting the guarantees for the Plant.
- 12.1.6 Notwithstanding any approval(s) of the PURCHASER to any of the technical specifications and for materials of construction, the equipment shall be of such quality and criteria so as to be able to meet the contractual obligations of the CONTRACTOR, particularly as to those relating to guarantees and warranties^{1/}.
- 12.1.7 The PURCHASER and CONTRACTOR agree that certain items of equipment shall be obtained by the CONTRACTOR from selected vendors only. The list of these critical items and the selected vendors from whom they shall be procured are provided in Annexures VIII and XII. The CONTRACTOR shall procure the equipment from such vendors only unless otherwise agreed in writing between the CONTRACTOR and PURCHASER.
- 12.1.8 The CONTRACTOR shall include the cost of one charge of each catalyst required and one spare charge, within the Contract price. The type and specifications of catalysts to be supplied are given in Annexure IX.
- 12.1.9 The CONTRACTOR shall provide the type and quantities of chemicals identified as within the scope of his supply in Annexure XI.
- 12.1.10 Unless otherwise specified, the CONTRACTOR shall supply all other materials required for the operation of the Plant including, in particular, a first charge of refrigerant for all equipment requiring such charge.

^{1/} Clauses 12.2 to 12.6 are separate for Sea shipment or Road shipment and alternatives are given

- 12.1.11 The CONTRACTOR shall inspect the items of equipment referred to in Article 11.1.2 before despatch and on receipt at Site and if PURCHASER so desires, inspection reports for such items of equipment shall be made available to the PURCHASER.
- 12.1.12 The PURCHASER or his agent shall have the right to inspect equipment, materials and goods during fabrication or before despatch in accordance with Article 14.

12.1 Marking, Packing and Despatch of Goods

- 12.2.1 All goods shall be marked and the invoices prepared in accordance with the instructions of the PURCHASER, as specified in Annexure XXIV and/or as provided to the CONTRACTOR not later than the review meeting contemplated under Article 6.8.
- 12.2.2 On despatch of all goods, two copies of the invoices will be sent to the PURCHASER, or his Site representative.
- 12.2.3 The CONTRACTOR shall supply particulars of the manufacturer from whom the CONTRACTOR has purchased any equipment, materials or spare parts, and shall supply a "Certificate of Origin" if required by the PURCHASER.
- 12.2.4 All goods shall be adequately and properly packed before despatch to satisfactorily cope with the mode of transportation utilized (particularly to ensure the avoidance of damage and deterioration) and for subsequent storage at Site. All packing cases will be properly marked in accordance with Annexure XXIV. All goods despatched, by sea or over land, shall be adequately protected by protective coatings. Cargo shall not be despatched on deck except where size limitations so require, and in such event further precautions for packing and

latching shall be taken. The deck cargo shall be completely protected, and fully painted with adequate types of protective paint. All closed packings shall contain a packing list(s) inside.

12.2.5 The CONTRACTOR shall despatch, at his own expense goods by air freight, if this is necessitated by the time schedules, due to his inability to despatch the equipment and goods under the terms of the Contract.

12.2.6 For purposes of storage at Site, all packages shall be marked in an appropriate manner for storage outdoors, under a roof, in locked warehouses or in rented premises, etc. as agreed upon at the meeting contemplated under Article 6.9.

Alternative 1 (by Sea):

FOB/C and F Contracts

12.3 The CONTRACTOR shall deliver FOB (ports or port) at least 95 per cent by value of all the goods (except spare parts) under this Contract, not later than the twentieth (20) month after Effective Date of the Contract, except for any time-critical items which shall be delivered not later than the twenty-sixth (26) month. The balance of the equipment (being 5 per cent or less in value) shall be shipped in a timely manner in accordance

with the agreed erection programme, to meet the anticipated mechanical completion of the Plant by the thirty-second (32) month. No equipment (except erection equipment) shall be shipped before the fourteenth (14) month.

12.4 The CONTRACTOR shall obtain freight pre-paid clean on-board bills of lading evidencing shipment. Where shipments of bulky cargo are being made, such bulky cargo may be shipped on deck subject to packing as per Annexure XXIV.

12.5 At least 35 days before any anticipated shipment, the CONTRACTOR shall send to the PURCHASER five (5) copies of a proforma invoice by registered airmail, giving full particulars of the number, marking and size of all packages anticipated to be shipped and a packing list indicating the contents of each package in accordance with Annexure VIII and XXIV and classified according to the 6-figure Brussels nomenclature. All invoices shall state that the shipments are a part of a complete Fertilizer Plant, and shall provide a breakdown of price.

Alternative 2 (by Rail/Road):

FOR Contract

12.6 The CONTRACTOR shall deliver FOR (railhead or heads) at least 95 per cent by value of all the goods (except spare parts) under this Contract not later than the twentieth (20) month after Effective Date of the Contract except however for any time-critical items which shall be despatched FOR not later than the twenty-sixth (26) month. The balance of the equipment (being 5 per cent or less in value) shall be delivered in a timely manner in accordance with the agreed erection programme so as to complete the mechanical completion of the Plant by the thirty-second (32) month. No equipment, except erection equipment shall be delivered before the fourteenth (14) month.

- 12.7 The CONTRACTOR shall despatch all goods under freight pre-paid international railway bills to (destination railhead). The final address marked on the rail bill shall be as follows:

The international railway bills obtained shall be clean and shall have no endorsement that any of the packages were damaged or inadequately packed.

- 12.8 Wherever any unusually heavy or bulky packages are being despatched by rail, the CONTRACTOR shall give at least forty-five (45) days notice to the PURCHASER so that necessary unloading arrangements may be made by the PURCHASER.

- 12.9 The CONTRACTOR shall notify the PURCHASER by cable or telex the expected date of despatch, at least thirty-five (35) days before each despatch indicating for each package:

- 12.9.1 Name of the firm supplying the goods, place of despatch.
- 12.9.2 The nature of the goods.
- 12.9.3 The Plant Unit to which each package belongs and the item number as per Annexure VIII of the Contract.
- 12.9.4 Net and gross weight of the goods, and the dimensions of the package.
- 12.9.5 Price as indicated in the relative invoice of CONTRACTOR.

The CONTRACTOR will confirm this information by airmail and will also send five (5) copies of an advance proforma invoice and a packing list.

- 12.10 Immediately on the despatch of the goods, the CONTRACTOR shall advise the PURCHASER by cable or telex:

- 12.10.1 The number of wagons or other vehicles despatched.
- 12.10.2 Separately for each wagon or vehicle: contents of the wagon - including number and marking of packages, contents of goods and their classification in relation to Annexure VIII, as well as classification in accordance with the 6-figure Brussels nomenclature.

- 12.10.3 Gross and net weight of each package.
- 12.10.4 Price broken down for each package and each item therein under the Brussels nomenclature.

(Common Clause)

- 12.11 Immediately on despatch, the CONTRACTOR shall send to the PURCHASER:
 - 12.11.1 Three (3) copies of the clean on board bills of lading, or International Railway bills, as the case may be.
 - 12.11.2 Five (5) copies of the proforma invoices and packing lists, with prices broken down by package and by separate items if the items are separate in the Brussels nomenclature.
 - 12.11.3 Two (2) copies of the Certificate of Origin.
 - 12.11.4 Two (2) copies of the Inspection Reports, if any.
- 12.12 Supply of Documents
 - 12.12.1 The documents and manuals to be supplied by the CONTRACTOR within the deadline dates are indicated in Annexures V, XIV and XXI (see Subarticle 4.2).
 - 12.12.2 All documents shall be forwarded to the PURCHASER by air freight with a minimum of five (5) copies, including one reproducible copy. Immediately upon despatch, a telegram/telex shall be sent to the PURCHASER confirming the despatch, indicating the air way bill number, the flight number or other express means of transportation. The document shall as far as practically possible be sent by a direct flight to (name of airport in PURCHASER's country).

12.13 Storage of Goods at Site

- 12.13.1 The PURCHASER shall be obliged to arrange for and have ready adequate warehouse facilities at the Site to receive packages. In the event that permanent facilities are not ready or available, the PURCHASER shall provide sufficiently adequate temporary facilities in good time at the Site, for the purposes of storage.
- 12.13.2 For purposes of storage at Site, all packages shall be marked in an appropriate manner for storage outdoors, under a roof, in locked warehouses or in rented premises, etc. as agreed upon at the meeting envisaged under Article 6.9.
- 12.13.3 Notwithstanding the requirements for the marking of packages, under Article 12.2.1 above, and the instructions contained in Annexure XXV, the instructions of the CONTRACTOR as regards storage shall be adhered to in the event that additional storage protection is required.
- 12.13.4 The CONTRACTOR's personnel at Site shall undertake such additional inspection as may be required to ensure that goods have not been damaged during transport to Site, and shall assist the PURCHASER in making insurance claims.

ARTICLE 13

SUPERVISION OF THE WORK

- 13.1 The CONTRACTOR shall provide all of the required supervisory services pursuant to the Contract. An adequate number of suitably qualified and experienced personnel shall be available for the supervision of all work at Site until Provisional Acceptance of the Work. Such supervision shall include, but shall not be limited to the following:
- 13.1.1 Supervision of the equipment manufactured by or on behalf of the PURCHASER.
 - 13.1.2 Supervision of erection and installation of erection equipment.
 - 13.1.3 Supervision of stores and warehouse.
 - 13.1.4 Supervision of pre-commissioning tests and start-up operations.
 - 13.1.5 Supervision and demonstration of performance guarantee tests.
- 13.2 The CONTRACTOR (as represented by its supervisory personnel) shall be constantly on Site during working hours, until all of the Acceptance Certificates for the Plant have been issued and they shall devote their entire time to the supervisory functions. Such supervisory personnel shall have full authority to act for and bind the CONTRACTOR and shall instruct the staff of the PURCHASER. The CONTRACTOR's supervisory personnel shall be sufficiently fluent in the language governing the Contract and/or in languages as agreed upon with the PURCHASER so as to be able to receive and to give directions and instructions and to correspond with the PURCHASER in that language.

- 13.3 The CONTRACTOR shall, upon a justified request of the PURCHASER remove any of his supervisory personnel or any workman, if such personnel or workmen are incompetent or have been conducting themselves improperly, and the CONTRACTOR shall promptly replace such person(s) in equal number.
- 13.4 For the purposes of this Article the expression "supervision" shall be deemed to include direction and responsibility for the activities or matters or work or procedures being the subject of supervision.
- 13.5 Erection
- 13.5.1 The CONTRACTOR shall be responsible for giving technical direction and supervising the erection of all the plant and equipment within the Battery Limits (inclusive of those specified in Annexure III). Without limiting the generality of the foregoing, these supervisory services shall cover, (but shall not be limited to):
- 13.5.1.1 Erection of all equipment in place.
 - 13.5.1.2 Erection of all steel structures, walkways, gangways, stairs, platforms, etc.
 - 13.5.1.3 Assembly and welding of all piping, fittings, etc. both above and below the ground.
 - 13.5.1.4 Assembly and erection of instrumentation, panel control boards and all interconnecting wiring, piping and equipment.
 - 13.5.1.5 Installation of all electrical equipment, and connection of all cables, starters and all other equipment.
 - 13.5.1.6 Installing of all utility equipment, and connecting such equipment.

- 13.5.1.7 Insulation of all equipment where required (including supply of insulation).
 - 13.5.1.8 Painting of all equipment (including supply of paint).
 - 13.5.1.9 Installation of all workshop, laboratory and office equipment, including air-conditioning equipment and telephone facilities.
 - 13.5.1.10 Installation and erection of all waste treatment and sewerage facilities.
 - 13.5.1.11 Installation of all safety and warning devices.
 - 13.5.1.12 All or any other erection work that may be required to complete the Plant, other than the exclusions contained in Annexure XIII.
 - 13.5.1.12.1 The erection of the plant and equipment shall conform with the details specified in Annexure XXIX.
- 13.6 The CONTRACTOR shall be responsible inter alia during the erection for the following:
- 13.6.1 For correctness and competency of the instructions given by him or his Chief Engineer.
 - 13.6.2 For securing that the units be erected and connected, if necessary, according to requirements of the technical documents drafted by the CONTRACTOR or further instructions regarding modifications, corrections and other kinds of alterations as the case may be.
 - 13.6.3 For technically checking the erection works, to reveal erection faults, if any. The CONTRACTOR shall issue suitable and workmanlike instructions to remove such defects.

- 13.6.4 For checking compliance with the instructions issued by him. If any deficiencies are found, the Chief Engineer shall enter the deficiencies during the execution in the erection journal of the relevant unit and suggest remedies.
- 13.7 In the course of the erection work, the CONTRACTOR and PURCHASER shall jointly maintain journal or journals to be kept for each unit of the Plant separately.
- 13.8 The authorized representatives of the PURCHASER and the CONTRACTOR shall mutually agree on a procedure for testing/ checking that any part(s) or the whole of the Plant or the Works have been properly erected, constructed, tested and/or completed, before at least two (2) months prior to the mechanical completion of the part to be tested, or the complete mechanical testing of the Plant or completion of the Works, as the case may be. The test procedures leading to mechanical completion of the Works shall thereafter follow as stated in Article 18.
- 13.9 Start-up, Commissioning and Testing
- 13.9.1 Before start-up, the CONTRACTOR and PURCHASER shall undertake all the necessary tests for the Completion of the Plant as laid down in Article 18.
- 13.9.2 All Supervisory, Start-up and Commissioning Personnel of the CONTRACTOR shall be despatched to Site, at least eight (8) weeks before start-up, in accordance with Annexure XXVII.
- 13.9.3 In the event that such personnel are considered insufficient by the PURCHASER, the CONTRACTOR shall immediately depute additional personnel to Site if requested by the PURCHASER.
- 13.9.4 The CONTRACTOR shall provide all the necessary supervisory staff required to demonstrate the Performance Guarantees, in accordance with Article 26 or as mentioned elsewhere in the Contract.

13.10 Time Schedules

- 13.10.1 The CONTRACTOR acknowledges that the target dates for different elements of the construction and completion of the Plant are indicated in the bar chart attached to Annexure IV. The PURCHASER at his option shall prepare a Critical Path Network, which shall list significant activities connected with the completion of the Project.
- 13.11 The CONTRACTOR and the PURCHASER and any person(s) authorized by either of them shall at all times have access to the Works, to all workshops and places where work is being done or undertaken, prepared or where materials, manufactured articles or machinery are being fabricated for the Works. The CONTRACTOR shall afford every facility for access to any place where work is being undertaken under this Contract and shall give every assistance in obtaining the right for such access in connection with the execution of the work under this Contract.
- 13.12 The PURCHASER shall afford every facility and assistance in or for obtaining, reasonable right of access to any information, Site, workshops or persons within (PURCHASER's country) as is required in connection with this Contract.
- 13.13 The CONTRACTOR and his personnel shall have free access to the Site of the Works, storage yards, fabrication sheds, utilities and laboratories set up for the Works under the Contract where the CONTRACTOR is working. The PURCHASER shall provide necessary assistance in obtaining permission from its Government for visit(s), stay and travel of the CONTRACTOR's personnel.
- 13.14 The CONTRACTOR shall be entitled to visit the Works in operation for a period of three (3) years after Provisional Acceptance to examine it as to its operating results, to take measurements required for establishing exact operating data and demonstrate the Plant to his potential customers. The CONTRACTOR shall give four (4) weeks notice to the PURCHASER for such visits, permission for which shall not be withheld by PURCHASER. However, the PURCHASER may exclude the nationals of certain countries from visiting the Plant and/or the Site.

13.15 The CONTRACTOR shall be responsible, under applicable laws, rules and regulations, for damage done to highways, roads, bridges, and other public utilities, by himself, his agents, his sub-contractors and their staff in the execution of work under the Contract, and shall at his own cost repair and/or rectify such damage.

ARTICLE 14

INSPECTION, TESTING AND CERTIFICATION

- 14.1 The CONTRACTOR shall assume full responsibility for the inspection, testing and certification of all equipment, materials, spare parts and other items during manufacture, prior to despatch, prior to and during inspection. The CONTRACTOR's supervisory personnel shall provide such assurances as may be necessary as to the proper condition of the equipment, and all other items to be installed and incorporated in the Plant. Notwithstanding the appointment of a duly authorized representative by the PURCHASER (if any) to witness the activities referred to, the CONTRACTOR shall be liable for the proper, adequate and sufficient conduct of the functions envisaged in this Article, pursuant to Articles 25 and 28.
- 14.2 The CONTRACTOR:
- 14.2.1 Shall undertake, at the shops of fabricators during manufacture and before despatch (in accordance with agreed procedures) the necessary inspection and certification testing to assure conformance with the relevant codes and standards provided in the specifications.
- 14.2.2 Shall, during progressive inspection of equipment fabrication, take every necessary measure to ensure that the fabricators and/or their employees strictly follow fabrication instructions and codes specified by the CONTRACTOR and/or Process Licensor and that the quality of workmanship is maintained at acceptable levels to enable the production of equipment and other items in accordance with the minimum qualitative standards expressed in the Contract.

- 14.2.3 Shall require its suppliers to provide the necessary test certificates in proper form together with 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 as provided for in the specifications.
- 14.3 The CONTRACTOR:
- 14.3.1 Shall issue such confirmation to the PURCHASER's inspectors prior to their inspection, when the equipment, machinery or material is ready for final inspection.
- 14.3.2 Shall issue proper Certificates of Inspection in respect of all items of Plant and Equipment respectively, before despatch, and shall send copies of such Certificates to the PURCHASER, and certificates of tests carried out in connection with the issue of such Certificates of Inspection.
- 14.4 The CONTRACTOR shall expedite and control the delivery by making his best efforts in order that the Equipment Supplier(s) maintain the delivery of equipment in order to meet the time schedule as stated in the Contract.
- 14.5 The PURCHASER may appoint representatives or a sub-contractor to act as his representative for inspection of equipment during manufacture or prior to despatch. When any equipment is ready for inspection, the CONTRACTOR shall give at least forty-five (45) days notice to the PURCHASER's representative of the time, place and goods to be inspected. Should the PURCHASER's representative desire to be present the CONTRACTOR shall be advised within thirty (30) days thereafter. Wherever required by the PURCHASER, the CONTRACTOR shall associate the

PURCHASER or his representative with such inspection, and shall undertake the necessary coordination for joint inspections. The presence of the PURCHASER's representative shall not in any way imply contractual acceptance of goods or transfer of ownership.

- 14.5.1 Inspection and Tests at Factory All work shall be subject to inspection and testing at CONTRACTOR's factory and shall conform to the requirements of the Contract.
- 14.5.2 Inspection and Test at Site All work shall be subject to inspection and testing on Site and shall conform to the requirements of the Contract. After installation of the work on Site, the CONTRACTOR shall carry out such required tests to prove compliance with the Contract, notwithstanding any tests which may have been carried out earlier at CONTRACTOR's factory.
- 14.5.3 Inspection and Tests on Mechanical Completion Pursuant to the provisions of Article 18.10 the PURCHASER shall, upon due notice to the CONTRACTOR of his readiness to undertake the tests to demonstrate and prove completion of the Works, proceed forthwith to commence the procedures but subject to the provisions of Article 18.12.

- 6 All equipment, machinery, material and work performed in connection with this Contract shall be available for inspection by the PURCHASER (through his duly authorized representative, including his underwriters as the case may be). The CONTRACTOR shall provide and/or arrange for safe and necessary access for the inspection envisaged by this Article. The PURCHASER shall be afforded full and free access to the shops, factories, Site or place of business of the CONTRACTOR, the sub-contractors

and/or suppliers for such inspection to determine the condition and progress of work under the Contract. Neither the failure to make such inspection nor failure to discover defective workmanship, materials or equipment, nor approval of, or payment to the CONTRACTOR for such work, materials or equipment (pursuant to this Contract) shall prejudice the rights of the PURCHASER thereafter to require correction, replacement or reject the same as herein provided. If any services or workmanship supplied by the CONTRACTOR, the sub-contractors and/or suppliers are determined by the PURCHASER, either during the performance of the work, on inspection, or during any applicable warranty period(s), to be defective and not complying with requirements of this Contract and arising out of the fault or negligence of the CONTRACTOR, the sub-contractors and/or suppliers, the PURCHASER shall notify the CONTRACTOR in writing that such work is being rejected. Thereupon the CONTRACTOR shall, at his own expense, promptly remove and replace or correct such defective work by making the same comply strictly with all requirements.

- 14.7 If the PURCHASER waives his right of inspecting or testing as herein provided, it shall in no way relieve the CONTRACTOR of full liability for the quality, proper operation and performance of the completed work, and/or sections or parts thereof, nor shall it prejudice or affect the rights of the PURCHASER set forth under the Contract.
- 14.8 Should the PURCHASER's representative establish during inspection any deficiency in the inspected items, the CONTRACTOR shall take immediate steps to eliminate them. The CONTRACTOR shall maintain records of deficiencies noted and corrected. In case of a difference of opinion, the CONTRACTOR shall act at his own risk subject, however, to the provisions of Articles 25 and 27 to 30 inclusive.

- 14.9 The CONTRACTOR shall at the PURCHASER's cost and after notice from the PURCHASER review the quality of the items being supplied by the PURCHASER as listed in Annexure XIV of the present Contract, as soon as they shall have been manufactured (but prior to beginning of the erection of each item) and shall satisfy himself as to whether the specifications of the technical documents supplied by the CONTRACTOR have been met, and if not, the CONTRACTOR shall advise the PURCHASER of such non-compliance concerning the use of any wrong materials for manufacture of these goods. The CONTRACTOR shall convey such findings to the PURCHASER immediately in writing and of his requirements for the necessary modifications, if any, and the PURCHASER shall undertake such modifications or repairs immediately. Should modification or repair of any of the goods have occurred, the CONTRACTOR shall repeat the inspection after the modifications or repairs have been completed, at the PURCHASER's cost and the CONTRACTOR shall fully satisfy himself as to the sufficiency and adequacy of such modifications.
- 14.10 Where the CONTRACTOR or any of his sub-contractors are undertaking any performance tests of any equipment to be supplied under this Contract, or any tests required under statutory law, the CONTRACTOR shall give at least forty-five (45) days notice of such tests to the PURCHASER, or his representatives if such have been designated, and if desired the said representatives shall be present at such tests.
- 14.11 During all inspection, the PURCHASER or his representatives may have recourse to such tests as they may consider necessary in order to establish whether the materials, objects, supplies or methods of construction and erection are of the requisite quantity and quality. The PURCHASER or his representatives may require the replacement or repair, as the case may be, of items which do not conform with the Contract, even after they have been incorporated into the Works, and the provisions of Article 14.8 shall apply *mutatis mutandis*.

- 14.12 The CONTRACTOR shall place at the disposal of the PURCHASER, free of charge, such instruments, and in particular equipment for the radioactive check of welds, along with specialized operating staff, if requested by the PURCHASER, to enable the PURCHASER to carry out his inspection of the CONTRACTOR's work or supplies, efficiently.
- 14.13 The CONTRACTOR shall ensure that the despatch and delivery of equipment are expeditiously implemented and efficiently coordinated as required by Article 4.7 in complete accordance with the terms, conditions and procedures for delivery in this Contract.
- 14.14 The CONTRACTOR shall take all necessary measures to ensure that all export licences (if necessary) and shipping documentation are arranged and issued in a timely manner.
- 14.15 The inspection by the PURCHASER and/or repair or replacement of equipment or construction works at the request of the PURCHASER shall not excuse the CONTRACTOR from the liabilities, warranties or guarantees as expressed in this Contract.

ARTICLE 15

VARIATIONS, CHANGES AND ADDITIONS
TO SCOPE OF WORKS

- 15.1 Whenever the PURCHASER shall make 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 obliged to perform under this Contract, or which in the CONTRACTOR's opinion require additional payment by the PURCHASER, the CONTRACTOR shall promptly advise the PURCHASER, of the cost of such further services.
- 15.2 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) agree to pay for such services in accordance with payment terms to be mutually agreed.
- 15.3 In the event that the PURCHASER and the CONTRACTOR are unable to agree on whether such required services are within the contractual obligations of the CONTRACTOR, or if the PURCHASER considers that the payment demanded for such required services by the CONTRACTOR is exorbitant, a neutral third party shall have the right to decide on the quantum of payment, if any, which may be payable by the PURCHASER to the CONTRACTOR. In such an eventuality the CONTRACTOR shall endeavour without delay to carry out the design changes, and/or provide the services which are the subject of the dispute, pending the decision of the neutral third party. The decision of the neutral third party shall be without prejudice to the rights of the CONTRACTOR to submit the dispute to Arbitration.

- 15.4 The CONTRACTOR may at any time during his performance of the Contract submit to the PURCHASER for his approval written proposal(s) for a variation in his work and/or services. If the CONTRACTOR is of the opinion that such variation is necessary to correct any defect in sections of the equipment (or in the Plant as a whole) which has occurred or which would otherwise occur, then such proposals shall specify such defect and state the reasons for the CONTRACTOR's said opinion. The CONTRACTOR, in connection with any proposal he makes pursuant to this Article and Article 4 and/or for a Contract modification pursuant to Article 29 and/or any other Article, shall furnish a breakdown in sufficient detail to permit an analysis of all material, labour, equipment, sub-contracts and project schedule overruns (estimated) and design changes and shall include in such proposal or report all work involved in the variation and/or modification, whether such work was deleted, to be added or changed. The request for time extension shall be supported by the justification of the proposal referred to herein.
- 15.5 The CONTRACTOR acknowledges that(unless otherwise agreed) there shall be no entitlement for any claims for any increases in the amount of work undertaken or to be undertaken for rectification work or modifications undertaken whether or not related to design and/or other errors, mistakes, omissions and lack of accuracy, in the undertaking of its obligations pursuant to this Contract.
- 15.6 If the PURCHASER approves the CONTRACTOR's proposal referred to in Article 15.4 then subject to Article 15.3 the CONTRACTOR shall make the variation so approved. The PURCHASER shall not refuse to approve any variation which is necessary to correct any defect in the Plant(s) which has occurred or which would otherwise occur if the CONTRACTOR's proposal is not accepted, or if any modifications or rectifications are required pursuant to Article 18.

- 15.7 Upon receiving a notice of a variation order from the PURCHASER and if in the opinion of the CONTRACTOR such variation is 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 re-confirms 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 and subject to the provision of Articles 30, 15.3 and 15.5.
- 15.8 All additional payments for the required work or services due from the PURCHASER to the CONTRACTOR under the provisions of this Article shall be embodied in a Change Order upon conditions specified therein which shall be signed by the PURCHASER and the CONTRACTOR (or their authorized representatives), and such Change Order(s) shall be deemed to form part of the Contract and subject to all of the terms and conditions therein, unless otherwise excepted.
- 15.9 Any and all modifications to the technical specifications pursuant to the Contract (as may be specified further in the Annexures) agreed to by the PURCHASER shall be embodied in a Change Order which shall be signed by the PURCHASER and the CONTRACTOR (or their authorized representatives), and such Change Orders shall be deemed to form part of the Contract and subject to all of the terms and conditions therein, unless otherwise excepted.

ARTICLE 16

TRAINING

- 16.1 The CONTRACTOR agrees and acknowledges that the adequate training of the PURCHASER's personnel is a necessary condition for the fulfilment of the objectives of the Contract.
- 16.2 The CONTRACTOR shall provide training for the PURCHASER's personnel both at Site and at plants outside (PURCHASER's country) in accordance with the requirements of Annexure XVIII, Article 4 and Article 16.3.
- 16.3 Training facilities to be provided by the CONTRACTOR shall be as agreed between the parties and as detailed in Annexure XVIII.
- 16.4 The PURCHASER and CONTRACTOR shall agree at the first coordination meeting contemplated under Article 6.8 the time, place and details to be established for the training of the PURCHASER's personnel and final details for training shall be forwarded to the PURCHASER within months following the Effective Date. The CONTRACTOR covenants that he shall competently train the PURCHASER's personnel for the purposes and on the basis referred to herein for the periods contemplated in Article XVIII at a plant or plants, using the Processes of the Licensors identified in Article which have commenced production in the five (5) years immediately preceding the Effective Date of this Contract.
- 16.5 The PURCHASER shall undertake to provide personnel for training with qualification and experience recommended by the CONTRACTOR and agreed to by the PURCHASER.

ARTICLE 17

MANAGEMENT AND TECHNICAL ADVISORY SERVICES

17.1 The conditions upon which any Management and/or Technical Advisory Services are required to be provided by the CONTRACTOR, shall be the subject of Supplementary Agreement(s) which shall contain appropriate provisions to the mutual satisfaction of both parties. Such Agreement(s) may include any one and/or other of the terms expressed in this Article 17. The provisions of this Article 17, however, shall not in any way prejudice the effect, intent or scope of any of the other Articles to this Contract which are formally binding upon the parties herein.

17.1.1 The CONTRACTOR shall manage the operations of the Plant following the Mechanical Completion stage as specified in Article 17. The management of the Plant by the CONTRACTOR shall cease upon the successful completion of the Performance Guarantee Tests and Provisional Acceptance of the Works by the PURCHASER.

17.1.2 The CONTRACTOR may also be required to provide Management Assistance Services to the PURCHASER from Provisional Acceptance stage until the Final Acceptance of the Works. The CONTRACTOR shall provide necessary Site personnel in accordance with Article 17.3 hereunder.

17.1.3 The CONTRACTOR's staff required to accomplish Management Assistance Services in accordance with Article above shall consist of:

(List of Personnel as indicated in supplementary document) ^{1/}

^{1/} It is suggested that the minimum requirements should be:
2 Production Engineers, 1 Maintenance Engineer (Mechanical)
1 Maintenance Engineer (Instrumentation)

- 17.1.3.1 The number and type of CONTRACTOR's personnel to be maintained at Site for the purposes of Management Assistance shall as far as practicable be selected by the CONTRACTOR and PURCHASER from the category of personnel who have been responsible for the actual start-up and operation of the Plant, up to and including the Performance Guarantee Tests.
- 17.1.4 The CONTRACTOR's obligations pursuant to the requirements of Article 17.1.2 shall be as follows:
- 17.1.5 Provide Management Assistance to the PURCHASER to ensure maintenance of production levels at optimum capacity, and with maximum efficiency.
- 17.1.6 Provide Management Assistance to the PURCHASER to assure maintenance of the plant and equipment to enable operations to be kept at design levels of production, and efficiency ratios.
- 17.1.7 Provide Management Assistance to the PURCHASER through in-plant training of PURCHASER's personnel.
- 17.1.8 During the period between the Provisional Acceptance stage and the Final Acceptance of the Works, all Plants shall be operated at pre-established levels and under agreed conditions.
- 17.1.9 In every case where the CONTRACTOR's personnel at Site apprehend any damage to plant and/or equipment, as a result of conditions leading to overloading, and/or inadequate or poor maintenance, the PURCHASER's representative at Site shall be informed forthwith in writing.

- 17.1.10 Provided however that if the PURCHASER elects to operate any piece of equipment above its designed (nameplate) capacity, or operates such of them with inadequate maintenance in disregard of the instructions of the CONTRACTOR's instructions the Mechanical Warranties in respect of such equipment shall (in the appropriate case) lapse, and the CONTRACTOR shall not be held responsible for mechanical failure of the equipment even though the Mechanical Warranties specified in Article 28 in respect of such equipment have not been exhausted.
- 17.1.11 The PURCHASER may elect to retain part or all of the personnel covered by Article 17.1.3 for an extended period, not to exceed eighteen (18) months after Final Acceptance of the Plant, on terms and conditions to be mutually agreed in advance and the payment of additional fees to the CONTRACTOR.
- 17.1.12 Following the management of the Plant by the CONTRACTOR in accordance with the provisions of Article 17.1.2 and subsequent to Final Acceptance of the Plant, the CONTRACTOR shall (pursuant to provisions of Article 17.1) agree to grant an option to the PURCHASER for the execution of a separate Agreement for the provision of Technical Advisory Services to be provided by the CONTRACTOR to the PURCHASER upon mutually agreed terms to cover those services mentioned below. Such an Agreement shall become effective immediately following Final Acceptance of the Plant and shall have a duration of not less than () years. The PURCHASER may exercise the said option (at his sole discretion) no later than the expiry of one (1) month following Provisional Acceptance. For the

purposes of this Contract the rights and obligations envisaged in such an Agreement for Technical Advisory Services shall be considered to be wholly separate and distinct from the liabilities and the responsibilities contained in this Contract. The terms of such Agreement shall include (but shall not be restricted to) any one and/or other of the following matters:

- 17.1.12.1 Provision of senior advisory personnel to conduct half-yearly review of Plant and efficiency of its operations.
- 17.1.12.2 Recommendations as to improvement of Plant operations.
- 17.1.12.3 Provision of answers to technical queries related to Plant operations.

ARTICLE 18

MECHANICAL COMPLETION, TAKE-OVER AND
CONDITIONS OF ACCEPTANCE

- 18.1 The erection works shall be performed by the PURCHASER under the technical direction and control of the CONTRACTOR. The CONTRACTOR shall provide personnel in adequate number and quality for the supervision of the erection. The qualifications, number and approximate manmonths of the specialists sent to Site by the CONTRACTOR as well as details relating to the delegation of the specialists are contained in Annexure XXVII of the Contract.
- 18.2 The PURCHASER shall determine the time of commencement of the erection of each unit or part of the same. He shall inform the CONTRACTOR of this intention ninety (90) days in advance by telex and by registered airmail letter requesting that the CONTRACTOR's personnel be present at the Site forty-five (45) days before commencement of erection to draw up the detailed erection programme. The representatives of the parties herein shall jointly make erection programmes for each of the units, taking into account the available erection documents and equipment, the actual condition of the goods supplied and the state of the works at Site as to complete a detailed erection programme fifteen (15) days prior to the time of the commencement of erection. Erection shall be carried out as far as possible according to these programmes.
- 18.3 At least thirty (30) days prior to time of starting erection the contracting parties shall advise each other of the names and addresses of the responsible local managers (Chief Engineers) appointed by them for management at Site. The CONTRACTOR and PURCHASER shall each appoint their respective Chief Engineers

as their representatives at Site during the erection period, having the right of decision on all technical problems, with the qualification that no agreement shall be reached which would modify in any manner the present Contract. In case of disputes which cannot be settled by the Chief Engineers, either of the parties may request a technical meeting with the participation of persons authorized for making decisions.

- 18.4 Should any of the parties wish to change their appointed Chief Engineer, notification shall reach the other party fifteen (15) days prior to the date of the intended exchange, stating at the same time the name and qualifications of the new Chief Engineer.
- 18.5 In the course of the erection works, erection journals are to be kept separately for each unit from beginning of the erection, and at commencement they shall be signed by the representatives of both parties certifying that the Site is ready for erection. They are to be considered as legal documents for the erection procedure. Every circumstance of importance for the erection must be properly entered in the erection journal. These erection journals shall be signed by authorized representatives located at each unit and must be countersigned by the Chief Engineers.
- 18.6 Immediately on the Site or any part thereof, being ready for erection the CONTRACTOR shall take measures to delegate his specialists to Site in accordance with the stipulations of the erection programme foreseen under Article 18.2.
- 18.7 Before commencement of erection work in any building or Plant area, the representatives of both parties shall check together whether the civil engineering works have proceeded to the stage wherefrom erection can be commenced and appropriate entry shall be made in the erection journal.

- 18.8 Unless otherwise agreed the CONTRACTOR shall supply all materials needed for the erection and installation of the Works, all tools, tackles, cranes and other erection equipment required, and shall provide all instruments required for the proper erection and testing of the Works.
- 18.9 The PURCHASER shall be responsible for the erection of all equipment within the Battery Limits (inclusive of those specified in Annexure II (vii) and III), under the technical direction and supervision of the CONTRACTOR, pursuant to the provision of Article 13 and as elsewhere expressed in this Contract.
- 18.10 As soon as the Plant or any of the main units thereof, is (in the opinion of the PURCHASER) substantially complete and ready for inspection, the PURCHASER shall notify the CONTRACTOR by means of an erection journal entry. This entry shall contain particulars as to which parts of the Plant (proposed to be inspected by the CONTRACTOR) have been completed in accordance with the specifications, and which have passed such tests as may have been specified in the Contract or otherwise agreed. The PURCHASER shall propose a programme for such inspection, and (provided the CONTRACTOR has no reasonable objections) the CONTRACTOR shall adhere to it.
- 18.11 Upon satisfactory completion of any such inspection the CONTRACTOR and the PURCHASER shall sign the Mechanical Completion Report affirming that the CONTRACTOR stated the Mechanical Completion of the Plant or any of the main units thereof, and that the procedures required to be undertaken before the Plant is put into operation may safely be carried out. Such Mechanical Completion Report shall also include notes of any minor items (punch list items, etc.) requiring completion before the start-up.

- 18.12 If the CONTRACTOR is not satisfied that the Plant or one of the main units thereof are substantially complete, he shall establish a punch list indicating in detail the works to be executed required to mechanically complete the Works. On the completion of the works particularized in the punch list, the CONTRACTOR shall sign with the PURCHASER the Mechanical Completion Report. The date of the Mechanical Completion Report means the date of the Mechanical Completion of the Plant or any of the main units thereof.
- 18.13 The different sections or parts of the Plant shall be considered to have been mechanically completed, when all items of equipment comprised in the Plants or any of the sections of the Off-sites and Utilities have been completely erected, installed and tested pursuant to this Contract.
- 18.14 Upon Mechanical Completion of the Plant, each Plant or Plant section will be tested in accordance with Articles 18.15 and 18.16 and Annexure XX, and will, as soon as possible thereafter be brought into operation.
- 18.15 The pre-commissioning of the Plants and each section of the Utilities and Off-sites and the carrying out of the Mechanical Completion Tests shall consist of the carrying out of such operations and making of such tests as are detailed in Annexure XX to establish the correct mechanical functioning of the Plants. When all such operations and tests have been fully and satisfactorily completed individually and/or together on the Ammoria Plant, the Urea Plant and all sections of Utilities and Off-sites subject to the provisions of Article 18.18 and the Mechanical Completion of the Works has been achieved, the PURCHASER shall thereupon prepare a Mechanical Completion Report which shall be signed by both parties following a joint examination of the Plant(s) or those sections of Utilities and Off-sites concerned, and upon such signature of such Report by both parties, the Mechanical Completion of the Plants or sections of Utilities and Off-sites concerned shall be deemed to be achieved.

- 18.16 Following the Mechanical Completion of the Plant and upon the satisfactory availability of all services and utilities for the Plant, the PURCHASER shall prepare a Ready for Commissioning Report which shall be signed by both parties following a joint examination of the Plants of those sections of Utilities and Off-sites concerned, and upon signature of such Report by both parties, the state of readiness for commissioning of the Plants or sections or Utilities and Off-sites concerned shall be deemed to be achieved.
- 18.17 The operations and tests referred to in Articles 18.15 and 18.16 above shall be carried out by the PURCHASER's personnel and under the direction and supervision of the CONTRACTOR's personnel.
- 18.18 If during the course of the tests mentioned above, any defect(s) or malfunction(s) are apparent in the equipment supplied by the CONTRACTOR the CONTRACTOR shall immediately take such steps to replace the defective equipment and/or rectify the defects in the minimum of time as may be required by Articles 25 (if applicable), 28, 29 and subject to Article 30.
- 18.19 Upon Mechanical Completion of any Plant and testing of each Plant in accordance with Article 18.15 and Annexure XX, as soon as possible thereafter, the relevant Plant shall be brought into operation.
- 18.20 Prior to the beginning of start-up, commissioning and test-runs of the Plant the CONTRACTOR shall send his personnel supervising these operations in the number and qualifications contained in Annexure XXVII to the Site of the Plant in accordance with the start-up programme agreed to between the PURCHASER and the CONTRACTOR. The PURCHASER shall ensure that the raw materials, utilities and personnel required for the start-up of the Plant are available in good time.

- 18.21 At least thirty (30) days prior to the expected mechanical completion of each unit, the CONTRACTOR shall communicate to the PURCHASER the names and qualifications of his Chief Engineer, engineers and specialists to be delegated for the start-up, commissioning and test-runs of the Plant. The PURCHASER shall also forward to the CONTRACTOR within fifteen (15) days from the receipt of the above list of names, the name and qualifications of the "Chief Engineer" appointed by him for the start-up and commissioning of the Plant. The powers of the persons appointed pursuant to Article 18.21 will be the same, subject to mutually agreed changes, as those of the Chief Engineer as defined above in Articles 18.3 and 18.4.
- 18.22 During the start-up, commissioning and tests of the Plant(s) until the Provisional Acceptance of the Plant the Chief Engineers of the two (2) parties shall continue to keep the erection journals up to date for each unit. These journals shall also detail the results of the test-runs.
- 18.23 Thereafter the Plant shall be started-up and when all sections of the Plant(s) are in a satisfactory operating state, and specification grade Ammonia and Urea are in continuous and uninterrupted production for (____) days at (____)% capacity in accordance with the terms of the Contract, then, the Plant shall be deemed to be in Commercial Production.
- 18.24 The CONTRACTOR shall thereafter be responsible for demonstrating that the Plant(s) is capable of achieving all the Guarantee Tests and requirements specified in Article 20 and as elsewhere expressed in the Contract to prove contractual compliance.
- 18.25 The Plant shall be deemed to have been Provisionally Accepted when the CONTRACTOR shall have satisfactorily demonstrated that the Plant is capable of meeting its Performance Guarantees as specified in Article 26 and the PURCHASER has given a Provisional Acceptance Certificate following satisfactory discharge of the conditions of Article 18.26 below, subject however to the exercise of the rights of the PURCHASER pursuant to Articles 14, 25, 28 and this Article.

- 18.26 The conditions governing acceptance shall be as provided herein. The Provisional Acceptance Certificate shall be issued when all of the following have been satisfactorily discharged together with full compliance by the CONTRACTOR of all other contractual terms:
- 18.26.1 When the CONTRACTOR has provided to the PURCHASER all Certificates of Inspection and Certificates of Materials applying to each of the major equipment, and machinery.
- 18.26.2 When the CONTRACTOR has prepared a statement indicating the conditions of the Mechanical Warranty for the Plant(s) and provided the same to the PURCHASER, after confirmation by the Chief Engineer in writing in verification of the CONTRACTOR's statements.
- 18.26.3 When the CONTRACTOR has provided all documents listed in Annexure XV to the PURCHASER, including as-built drawings.
- 18.26.4 When the Mechanical Completion Report has been signed by both Parties in respect of each unit/Plant(s) included in the Contract, in accordance with Article 18.10 of the Contract, and the tests have been successfully completed and the Plant(s) have demonstrated their capability as specified in the Contract.
- 18.26.4.1 In the event that any of the test(s) results have been unsatisfactory in reference to any equipment/section/Plant(s), the CONTRACTOR shall rectify defects and undertake such corrective measures as are necessary in accordance with the requirements of Article 18.18 and shall demonstrate such of the tests as required to prove the performance of the Plant(s).

18.26.5 When the Performance Guarantee Tests (governed by Article 26, in accordance with criteria stated in Articles 26.3 to 26.7 inclusive, the methodology specified in Article 26.8 and procedures indicated in Articles 26.4, 26.10, 26.11 to 26.13 and subclauses thereof) shall have been successfully demonstrated and proved in accordance with the Contract, and the CONTRACTOR has prepared Performance Test Certificate(s) and submitted the same for signatures and acceptance by the PURCHASER.

18.26.5.1 The approval of the Performance Test Certificate(s) by the PURCHASER (if without reservations) shall be expressed in the Provisional Acceptance Certificate which shall be signed by PURCHASER signifying the acceptance of the Plant(s) and the completion of the obligations of the CONTRACTOR with respect to the Guarantee Tests stated in Article 26 shall be deemed to have been fulfilled.

18.26.5.2 If for any reason the Guarantee Test performance is not accepted by the PURCHASER, or is accepted subject to certain conditions for modification or rectification of defects and the CONTRACTOR has modified or rectified the defects pursuant to Article 29 and demonstrated Performance Guarantee Tests, the Plant(s) shall be deemed to have been Accepted.

18.27 The CONTRACTOR's work at Site shall be deemed to have been completed when the CONTRACTOR shall have received the Provisional Acceptance Certificate from the PURCHASER pursuant to Article 20 herein as qualified by the provisions of Article 18.25.

- 18.28 The Provisional Acceptance of the Plant(s) or the Take-Over of any specified part or section of the Plant(s) by the PURCHASER shall not in any way release the CONTRACTOR from his obligations under the terms of this Contract, and shall not be construed as evidence that the Plant(s) are free of defects.
- 18.29 If for reason attributable to the CONTRACTOR the CONTRACTOR is unable to demonstrate any or all of the Guarantee Tests and/or Performance Requirements referred to in Article 18.24 above pursuant to Articles 18 and 26, the provisions of Articles 27. to 27. (inclusive) (as the case may be) shall apply but subject nevertheless to the requirements of Article 18.30 below.
- 18.30 The CONTRACTOR shall be responsible in any event for undertaking repairs and modification(s) of the Plant(s) and/or of any of the parts thereof, supplied by him or for which he is responsible under this Contract, and, without restricting the generality of the foregoing, in any one and/or other of the following circumstances, namely:
- 18.30.1 If Guarantees and/or Performance Guarantee Tests and/or any of the tests required are not capable of being commenced, undertaken, met or completed for reasons attributable to the CONTRACTOR's work and/or services, referred to in the Contract and in Article 18.29.
- 18.30.2 If the Plant(s) and/or parts thereof, and/or Process(es) are found to be incapable or insufficient due to the reasons, inter alia, referred to in Article 4.22.
- 18.30.3 If the quality of workmanship and materials fail to comply with the requirements of the Contract as specified in Article 25.
- 18.30.4 If the requirements as to Warranties are found to have been breached or are not in accordance with the Contract pursuant to Article 28.

18.30.5 If any rectification(s) undertaken pursuant to Article 29.1 are found to be inadequate or insufficient.

18.30.6 If any work pursuant to the requirements of the Contract is incomplete, insufficient or inadequate.

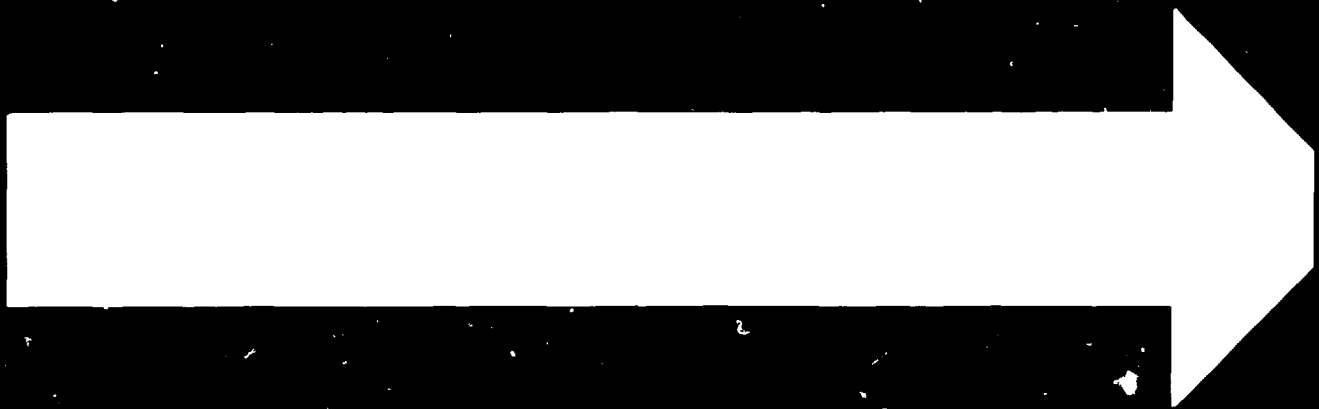
Any and all modification(s) required to be undertaken under the terms of the Contract shall be governed by the provisions of Article 29. to 29. (inclusive), and such modification work shall be accomplished in a diligent and bona fide manner. The conditions governing extension(s) of time required to complete such work and the terms of such extension(s) shall be determined in accordance with the provisions of Article 29. subject however to the provisions of Article 25 and Articles 28 to 30 (inclusive). The modification(s) undertaken shall not be deemed to be complete until all the contractual stipulations governing such work and services are satisfied, and the cause(s) giving rise to the necessity for such modification(s) are eliminated. The CONTRACTOR shall not require the PURCHASER to provide a formal waiver of rights and/or remedies prior to agreeing upon modification work required pursuant to appropriate provisions of the Contract.

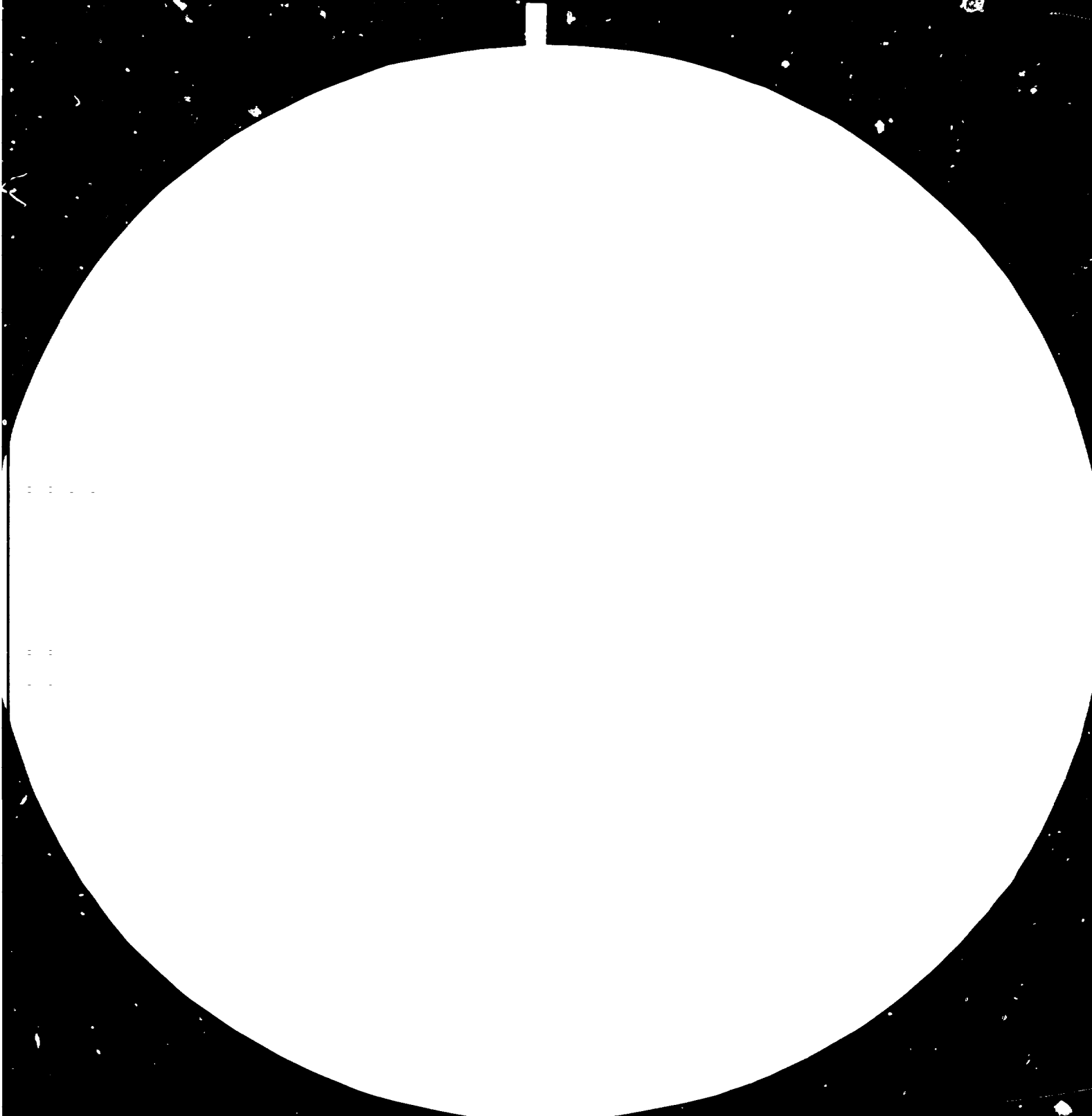
18.31 Unless otherwise agreed or in the event that the rectifications and modifications have not been satisfactorily completed and in any event without prejudice to the rights of the PURCHASER under the Contract, the PURCHASER shall take-over the Plant upon the issue of the Certificate of Provisional Acceptance.

18.32 The PURCHASER shall issue a Final Acceptance Certificate when all the conditions specified in this Article and in Articles 17. to 17. (inclusive) together with all of the contractual requirements have been satisfactorily complied with. Subject to Articles 18.29 and 18.30 the PURCHASER shall issue the Final Acceptance Certificate within 12 months of the Provisional Acceptance of the Plant, unless during the intervening period the Plant has shown defects referred to in Article 4.22 and/or requirements for modifications specified in Article 29.

18.33 The provisions of Articles 25, 26 and 29 (as the case may be) shall apply to the provisions of this Article *mutatis mutandis*.

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3.2



3.6



Resolution Test Chart

Resolution Test Chart

Resolution Test Chart

Resolution Test Chart

ARTICLE 19

EXTENSION(S) OF TIME

- 19.1 If by reason of the happening of any one and/or other of the following occurrences which are de facto beyond the CONTRACTOR's or PURCHASER's control namely:
- 19.1.1 Vandalism
 - 19.1.2 Malicious Damage
 - 19.1.3 Death or Injury to essential personnel
- (but not including any of the occurrences or events covered by Articles 18.30, 29. or Article 34) which affect or delay specific work required to be undertaken pursuant to this Contract, the CONTRACTOR shall within ten (10) days of such occurrence specified above, make written request to the PURCHASER for a reasonable extension of time for completion of work or any portion of it to the extent that the factors affecting delay prevailed in the circumstances. Should the PURCHASER consider such request justified, he shall grant such extension in time which shall reasonably make up for the delay(s) suffered by the CONTRACTOR. The PURCHASER's grant of such extension pursuant to Article 19.1) shall be without prejudice, and the CONTRACTOR shall be fully liable for the completion of all of the specific work and activities affected by the above-mentioned delay or occurrences in like manner as prior to the happening of the occurrences referred to. The CONTRACTOR shall also extend the period of validity of the Bank Guarantee(s) and Performance Bond commensurate with the period of extension granted by the PURCHASER.
- 19.2 Payments and/or entitlement to any costs pursuant to this Article, or pursuant to the provisions of Article 32 or 34 shall be established on a quantum meruit basis. Provided however that in the circumstances envisaged by Article 32 that the Suspension of Work was not made necessary due to breach of Contract by the CONTRACTOR, and provided that the CONTRACTOR has otherwise adhered to the terms of the Contract.

- 19.3 In the event of the occurrences referred to in Article 19.1 or Article 32.4 and 32.5 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, as provided by the terms of Article 3.4.
- 19.4 For the purpose of Article 19.1 only, "delay(s)" shall be construed to refer to any day or period being utilized legitimately for completion of the work under the Contract, if on any such day or period the causes accepted by the PURCHASER as being beyond the control of the CONTRACTOR referred to in Article 19.1 above delayed completion of the work.

ARTICLE 20

CONTRACT PRICE, TERMS OF PAYMENT

20.1 The PURCHASER will pay to the CONTRACTOR, as consideration for the execution of the Contract (and subject always to Article 20.1.2 below and to any qualification provided herein or elsewhere in the Contract) the amounts mentioned in this Article. The overall price for the Contract is divided into:

A firm price, being the sum of:

(amount)

for the items detailed in Articles 20.2 to 20.6 inclusive.

A price of a reimbursable nature estimated at

(amount)

for the items detailed in Articles 20.9, 20.10 and 20.11.

20.1.1 Insofar as these presents constitute a Semi-Turnkey Contract (which contain prices fixed and firm as well as prices of a reimbursable nature) the above-mentioned Firm Price shall be final and conclusive as to the amount payable being firm for the duration of the Contract, it being expressly agreed that, for the purposes of a more detailed price-citation, there is provided hereinbelow a breakdown of the Firm Price (as categorized in Articles hereunder) to the intent that such amounts broken down shall be valid only to the extent that the total of the amounts in the said categories do not exceed the Firm Price payable as above-mentioned, subject to the provisions of terms of payment herein.

20.1.2 The Contract Price mentioned in Article 20.1 above shall be modified only if the PURCHASER acknowledges that additional services and/or additional equipment outside the scope of the delivery of the CONTRACTOR and/or improvements to the specifications, pursuant to Article 15, justify an increase or decrease in the Contract Price, or as otherwise formally agreed in writing between the PURCHASER and CONTRACTOR as regards services, equipment, materials or responsibilities hereinbefore not included within the scope of the Contract, and the aforementioned Contract Prices may in the proper case be increased or decreased to Adjusted Contract Prices. The CONTRACTOR acknowledges that costs arising out of changes in material and equipment due to modifications and/or rectifications required shall not be treated as changes and extras within the provisions of Article 15.

20.2 For the granting of the licences, know-how and supply of basic and detailed engineering for the Plant(s) referred to in Article :

For the Ammonia Plant	(Amount)	(Currency)
For the Urea Plant	(Amount)	(Currency)
For Utilities	(Amount)	(Currency)

20.3 For the supply of the equipment, FOB, port of despatch, FOR (port) or (railhead), provided for under Annexure XXIV, together with all other goods (with the exception of spare parts and other specialized equipment), referred to in Article :

(Amount) (Currency)

- 20.4 (Optional)
For the CIF transport of equipment from the port of despatch,
a sum of:
(Amount) (Currency)
- 20.5 For the procurement of spare parts, and for the purchase of
specialized equipment (such as erection equipment, or other
materials and equipment) referred to in Article :
(Amount) (Currency)
- 20.6 For providing training and training facilities referred to in
Article 16 and Annexure XVIII of the Contract, a sum of:
(Amount) (Currency)
- 20.7 All the prices contained in Articles 20.2 to 20.6 inclusive
are fixed and firm for the duration of the Contract and cannot
be escalated in any manner, as stated in Article 20.1.1.
- 20.8 The amounts stated in this Article shall be payable on the
dates due in the Contract in the currencies mentioned.
- 20.9 The CONTRACTOR shall be paid in accordance with Article 20.10
to 20.12 below and Annexure , for the cost incurred for
the provision of expatriate personnel for supervisory services
in (country of Site of Plant) for erection, the commissioning,
and Start-up of the Plant, and for conducting Guarantee Tests,
and for supervisory services at Site during the period between
the Provisional and Final Acceptance, if any.
- 20.10 The PURCHASER will pay to the CONTRACTOR daily rates in
accordance with the schedule of charges as contained in Annexure
XIVII, for each calendar day of absence from the (respective)
normal place of work in (country) of the specified expatriate
personnel supplied by the CONTRACTOR.
- 20.11 The daily rates contained in Annexure XIVII shall be related to a
normal working week of (48) hours, with, at least, one day
included as a holiday. In the event of any overtime for

expatriate staff (excluding Engineers, and any other staff who would not normally be paid overtime in their home country), or for work on weekly holidays or public holidays in (country of Plant Site) the expatriate personnel shall be paid overtime charged at the rates contained in Annexure XXVII.

- 20.12 The total estimated cost of CONTRACTOR's services contained in Articles 20.9 to 20.11 inclusive, and Annexure XXVII is (Amount) in foreign exchange and (Amount) local currency. In addition to the payments due under Articles 20.10 and 20.11 above, the CONTRACTOR's personnel will be provided travel facilities, and facilities at Site in accordance with Annexure XXVII.
- 20.13 The payments due to the CONTRACTOR under Article 20.2 above shall be payable as follows:
- 20.13.1 50% (Amount) as an advance payment
 - 20.13.2 25% (Amount) on receipt of copies of all of the documents.
 - 20.13.3 25% (Amount) on completion of the Guarantee Tests of the Plant, and issuance of a Provisional Acceptance Certificate by the PURCHASER.
- 20.14 The payment due under Article 20.3 above shall be made as follows:
- 20.14.1 15% (Amount) as an advance payment
 - 20.14.2 75% (Amount) pro-rata shipment of goods FOB (port) or FOR (rail) as the case may be; but not earlier than the _____ () month after Effective Date, and subject to the deduction of liquidated damages for late deliveries under Article 27.
 - 20.14.3 10% (Amount) on Provisional Acceptance of the Plant(s).
- 20.15 The payments under Article 20.4 above shall be made at .
- 20.16 The payments under Article 20.5 shall be made at .

- 20.16.1 90% (Amount) of the CIF price pro-rata shipment to Site.
- 20.16.2 10% (Amount) of the CIF price on Provisional Acceptance of the Plant(s).
- 20.17 The payments due under Article 20.6 shall be payable on completion of the overseas training of the PURCHASER's personnel, in accordance with Annexure XVIII.
- 20.18 The advance payments contained in Articles 20.13.1, 20.14.1, above shall be made by direct remittance to (name of Bank) and shall be made only if an Advance Payment Bond/Bank Guarantee for an equivalent amount has been remitted, and confirmed in (PURCHASER's country) by the CONTRACTOR. The Bond or Bank Guarantee shall be in a form satisfactory to the PURCHASER, in conformity with the requirements of Article 21.
- 20.19 For the payment to be made under the Articles 20.13.2 and 20.13.3 and 20.14.2 and 20.15 and 20.16.1 and 20.16.2 and 20.17 the PURCHASER shall establish in favour of the CONTRACTOR at a specified bank in (CONTRACTOR's country or as agreed otherwise) irrevocable Letters of Credit providing for payments in accordance with the stage and schedule laid down in Articles 20.13, 20.14, 20.15, 20.16 and 20.17. The payments under the Letters of Credit referred to in this Article 20.19 shall be made only upon the fulfilment of the procedure mentioned hereunder subject to the application of Article 27 (Liquidated Damages) and/or any final provisions under the Contract as the case may be.
- 20.20 The payments under the Letters of Credit referred to in Article 20.19 shall be made upon the fulfilment of the following:
- 20.20.1 For payments under Article 20.13.2 a Certificate from the PURCHASER shall be presented stating the documents required to be provided under Article 3 and 4.5 above have been received. Where any liquidated damages are to be paid for late delivery of documents, the PURCHASER shall indicate this on his Certificate, and only the net amount due to the CONTRACTOR shall be paid to him.

- 20.20.2 For payments to be made under Article 20.13.3 the photocopy of the Provisional Acceptance Certificate
- 20.20.3 For payments under Article 20.14.2 the following documents have to be presented in triplicate signed by the CONTRACTOR:
- 20.20.3.1 Invoices
 - 20.20.3.2 Clean on-board bill of lading (except for equipment forwarded as deck cargo in which event a bill of lading shall be sufficient).
 - 20.20.3.3 Packing lists.
 - 20.20.3.4 Certificate(s) of origin (where required)
 - 20.20.3.5 Certificate(s) of the CONTRACTOR that all required tests and inspections under the Contract have been successfully performed.
 - 20.20.3.6 Other documents, if required.
- 20.20.4 For the payment of the remaining 10% under the Article 20.14.3 shall be made against the Provisional Acceptance Certificate and an invoice in triplicate signed by the CONTRACTOR.
- 20.20.5 For the payment under Article 20.15 the following documents shall be presented by the CONTRACTOR:

20.20.6 For the payments under Article 20.16.1 the following documents have to be presented:

20.20.6.1 Invoices in triplicate signed by the CONTRACTOR.

20.20.6.2 Packing lists.

20.20.6.3 Certificates of Inspection.

20.20.6.4 Certificates of origin (where required).

20.20.6.5 Clean on-board bill of lading.

20.20.6.6 Other documents, if required.

20.20.7 For the payment under Article 20.16.2 the CONTRACTOR shall present:

20.20.7.1 Invoice in triplicate duly signed by him.

20.20.7.2 The Provisional Acceptance Certificate.

20.20.8 For payment under Article 20.17 the CONTRACTOR shall present:

20.20.8.1 The statement of the PURCHASER that the overseas training programme as envisaged in the Annexure XVIII has been completed.

20.20.8.2 Invoices in triplicate duly signed by the CONTRACTOR.

20.21 Without prejudice to the PURCHASER's rights, in the event that, for reasons not attributable to the CONTRACTOR, the Plant could not be started-up within the sixty (60) months from the Effective Date, or thirty (30) months after the last shipment FOB, whichever is later, the CONTRACTOR shall be entitled to the payments of the Contract due under Articles 20.20.2, 20.20.4 and 20.20.7 (in like manner as if the Plant had been started-up and that the Guarantee Tests had been fulfilled) within sixty (60) days after notifying the PURCHASER in accordance with the provisions of Article 20.22 and by presenting:

- 20.21.1 An invoice in triplicate signed by an Authorized Officer of the CONTRACTOR.
- 20.21.2 An affidavit executed by the CONTRACTOR stating that for reasons not attributable to the CONTRACTOR the Plant has not been started-up.
- 20.21.3 Proof as to the issue of an open unconditional Bank Guarantee in the form specified in Annexure XXIII for the proper amount (as specified in Article 20.22 below).
- 20.21.4 Proof as to the notification made by the CONTRACTOR to the PURCHASER as required by the provisions of Article 20.22, together with presentation of Bank Guarantee(s) commensurate with the payment(s) claimed.
- 20.22 Should the CONTRACTOR wish to invoke his rights for payment of the amount under Article 20.21 he shall promptly notify the PURCHASER by telegram, and by letter, of his claim. Should the PURCHASER dispute such claim, the CONTRACTOR shall nevertheless be entitled to receive the payments stated to be due under Article 20.21 against presentation of the said documents specified in Article 20.21.1 to 20.21.3 inclusive, together with a Bank Guarantee (for amount(s)) equivalent to payments under the relevant Articles referred to in Article 20.21 in the form given in Annexure XVIII. The Bank Guarantee shall be valid for twelve (12) months, but if the PURCHASER or the CONTRACTOR should refer any dispute arising therefrom to Arbitration then in such eventuality such Bank Guarantee shall continue to remain valid until a period of at least three (3) months after the Award of the Arbitrator.
- 20.23 The PURCHASER and the CONTRACTOR agree that the payments due under this Article shall be subject to claims, deductions or debts arising out of default, breach and/or reduced work and services than that contemplated by the original terms of the Contract herein.

- 20.24 Any payments due under the Contract (which are not secured by Letters of Credit), shall be made to the CONTRACTOR within eight (8) weeks of receipt by the PURCHASER of invoices duly certified by the PURCHASER's Site representative, subject nevertheless, to legitimate deductions as the PURCHASER shall be entitled to make under the provisions of the Contract.
- 20.25 In the event of disputes as to any amount(s) or payment which the CONTRACTOR claims is presently due (including any question or dispute related to the amount of any deduction that may have been made by the PURCHASER under any provisions of the Contract), the CONTRACTOR shall be entitled to receive the uncontested portion of the amount. Such uncontested portions of amounts shall be receivable by the CONTRACTOR within eight (8) weeks following ascertainment of the amount.
- 20.26 The payments under the Articles 20.7, 20.8, 20.9 and 20.10 shall be made in the following manner:
- 20.26.1 The PURCHASER shall establish with a specified Bank irrevocable Letters of Credit in favour of the CONTRACTOR for an amount to be mutually negotiated between the parties. This Letter of Credit shall be established one (1) month before the commencement of services by the CONTRACTOR pursuant to Article 20.9 and provisions for payment shall be made in the manner detailed hereunder.
- 20.26.2 Payments for daily rates and/or overtime of the CONTRACTOR's expatriate personnel as provided in Articles 20.10 and 20.11 and Annexure XXVII shall be made out of the said relevant Letter of Credit upon presentation to the PURCHASER of:
- 20.26.2.1 Monthly invoice(s) supported by time-logs of each of the CONTRACTOR's expatriate personnel working in (country) for the Plant(s), duly countersigned by the PURCHASER's representative at Site.

- 20.27 The daily allowances detailed in Annexure XXVII shall be payable in local currency directly to the CONTRACTOR's expatriate personnel at Site and shall be made by the PURCHASER every fortnight in advance, if and when due.
- 20.28 The reimbursement in local currency to the CONTRACTOR's expatriate personnel for the justifiable expenses defined in the Contract and Annexure XXVII incurred within (country) shall be made directly by the PURCHASER to the CONTRACTOR's expatriate personnel at Site within thirty (30) days of the claim duly supported by the relevant receipts.
- 20.29 Any and all Bank Guarantees to be provided by the CONTRACTOR pursuant to the Contract shall be encashable by the PURCHASER in (currency). Such Guarantees shall be valid for the period required under the Contract and the CONTRACTOR shall take any and all actions including renewals at the appropriate times to keep the said guarantees current and valid for the said periods.
- 20.30 Should the CONTRACTOR so desire, the Letter(s) of Credit to be established under Article 20.19 shall be confirmed by the PURCHASER at the bank specified by the CONTRACTOR. All charges in connection with such confirmation shall be borne by the CONTRACTOR.

ARTICLE 21

PERFORMANCE BONDS AND BANK GUARANTEES

- 21.1 Upon the execution of the Contract, the CONTRACTOR shall provide to the PURCHASER, a Performance Bond guaranteed by a Bonding Institution in favour of PURCHASER callable without preconditions at the option of the PURCHASER or a Bank Guarantee, as the case may be in (PURCHASER's country) in the form given in Annexure XXII for the amount of (Amount) in favour of the PURCHASER. The Performance Bond shall be valid for the period required under the Contract and such extensions thereof, and the CONTRACTOR shall take any and all actions including renewals at the appropriate time to keep the said Bond current and valid for the said period. This Performance Bond shall be released upon Final Acceptance of the Plant.
- 21.2 In consideration of the advance payment remitted by the PURCHASER (as provided for herein) the CONTRACTOR shall provide an adequate Bank Guarantee or in lieu an Advance Payment Bond shall be for an amount equivalent to the sum total of the advance payment required to be made by the PURCHASER pursuant to Articles 20. to 20. (inclusive). The advance payments due from the PURCHASER shall be remitted directly to (Name of Bank) for the CONTRACTOR's account. The amount of the Bank Guarantee or Advance Payment Bond shall be released within _____ () months after the Effective Date of the Contract.
- 21.3 Upon Mechanical Completion of the Plant, and provided the CONTRACTOR elects to exercise his option under Article 20. , the CONTRACTOR shall deliver a Bank Guarantee for an amount equal to (Amount) at least equivalent to the amount of retention monies requested to be released by the PURCHASER under Article 20. from the (Name of Bank) and confirmed by a BANK in (PURCHASER's country) in the form given in Annexure XXIII. This Bank Guarantee shall remain valid and in force up to the date of the Final Acceptance of the Plant, or any extension(s) thereof.

21.4 The Bank Guarantee envisaged in Article 20. shall be in like form as that specified in Article 21.2 above and such Bank Guarantee shall remain valid for the period(s) mentioned in Article 20. .

ARTICLE 22

INDEMNIFICATION

22.1 The CONTRACTOR shall indemnify and hold harmless the PURCHASER and anyone directly or indirectly employed by him from and against all claims, demands, losses, costs, damages, actions, suits, expenses (including legal fees), or proceedings by whomsoever made, brought or prosecuted in any manner based upon, arising out of, related to, occasioned by or attributable to the work of the CONTRACTOR in connection with this Contract, or to an infringement or alleged infringement by the CONTRACTOR of a patent or invention (for patents granted up to Provisional Acceptance of the Plant) and/or to know-how referred to or "Confidential Information" in Articles 7. and 7. during and after completion of his obligations, and shall defend all such claims (filed by whomsoever) in connection with any infringement or alleged infringement of such rights. The foregoing notwithstanding, the CONTRACTOR shall continue his performance of the work utilizing substantial non-infringing equipment and methods (where possible) but may be subject to reduction in payments as may be determined by the PURCHASER.

22.1.1 For the purpose of Article 22.1 above, "work" includes an act improperly carried out, an omission to carry out an act and a delay in carrying out an act.

ARTICLE 23

CONTRACT AUDIT

- 23.1 The CONTRACTOR shall maintain suitable accounting pertaining to the payments received by him from the PURCHASER for the supply of the equipment, materials and other goods under the Contract.
- 23.2 The CONTRACTOR shall maintain suitable accounting pertaining to the payments received by him from the PURCHASER for the services of his expatriate personnel.

ARTICLE 24

INSURANCE

- 24.1 Without restricting in any manner the generality of any other provision of the Contract, it is expressly agreed that throughout the period beginning from the date of commencement of the work or Effective Date of the Contract, whichever is earlier, and continuing until Final Acceptance of the Work(s), (and/or for such extended periods) the PURCHASER and CONTRACTOR shall agree upon and/or as required by law undertake the following:
- 24.1.1 The CONTRACTOR shall take out and keep in force Insurance Policies as enumerated in Article 24. for such period(s) of time as may be necessary under the Contract and for the full and complete discharge of the CONTRACTOR's responsibilities and liabilities.
- 24.1.2 The CONTRACTOR shall, at the CONTRACTOR's expense, maintain additional insurance policies, normal to its activities through its corporate coverage (in regard to which the PURCHASER shall be entitled to be informed), such policies to be of the respective natures, in the amounts, against the risks, and for the periods required by the Contract, or implied therein.
- Each of the policies envisaged herein, shall contain such specific terms and conditions, stipulated as being required or obliged to be included by virtue of the responsibilities and obligations contained in this Contract.
- 24.2 Within thirty (30) days after obtainment of each of such policies contemplated by Article 24.2.2 above, the CONTRACTOR shall deposit originals of each of such policies with the PURCHASER as required by Article 24.3 below, provided however that acceptance by the

PURCHASER of any such original shall for no purpose be construed as an acknowledgement by the PURCHASER that the insurance is adequate in nature, amount and/or scope.

- 24.3 The CONTRACTOR shall, within thirty (30) days after obtainment of each policy contemplated by Article 24.1.1 above, deposit authenticated copies of the originals of each such policy, as proof that the insurance(s) contemplated by 24.1 above being his responsibility, remain in force and the PURCHASER shall be entitled to ask for such proof updated from time to time and duly authenticated.
- 24.4 Should the CONTRACTOR fail to take out and/or keep in force the insurances contemplated by 24.1 within the scope of his responsibility, then the PURCHASER may at the PURCHASER's option either:
- 24.4.1 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, without restricting, superseding or invalidating any other rights or remedies of the PURCHASER under this Contract or otherwise may be retained as the PURCHASER's monies out of any amount(s) otherwise payable by the PURCHASER to the CONTRACTOR.
- 24.4.2 Hold the CONTRACTOR liable in the same manner and degree as if the CONTRACTOR were the insurance underwriter of the policies such as those contemplated by 24.1 above.
- 24.5 The Insurance Policies referred to in Article 24.1 required to be taken out by the CONTRACTOR (naming the PURCHASER as ultimate beneficiary) shall be as follows:

- 24.5.1 For equipment and materials supplied by the CONTRACTOR until final acceptance by the PURCHASER. Endorsements to the policy shall include "faults in design", requiring the replacement and repair of damaged machinery due to faults in design, faulty workmanship and faulty material, up to the Guarantee Tests. Specific insurances for Bodily Injury and Personal Liability Insurance, (excluding that to third parties) shall also be included.
- 24.5.2 "Loss of Advanced Profits Insurance" (otherwise called "Machinery Consequential Loss (Interruption) Insurance") to cover consequential loss to the PURCHASER, which may arise following any damage to the Plant during testing and maintenance periods.
- 24.5.3 "Machinery Breakdown Policy" to cover the breakdown of machinery during testing, at start-up or during trial operation of the Plant, including boilers, pressure vessels, turbines etc., and explosion risks incidental thereto.
- 24.5.4 "Professional Indemnity Insurance" to cover the liability for errors and omissions, negligence, failure in performance, mistakes in design, etc., arising from the CONTRACTOR's work.
- 24.5.5 ("Marine Insurance" or "Cargo Insurance Policies" to cover the transit of goods ex-works from the fabricator's workshops FOB ship (or as otherwise agreed). This shall include War Risks insurance, under the discretionary responsibility of the CONTRACTOR.)

- 24.6 ^{1/} To the extent not covered by the above policies and provided such policy is available, the PURCHASER and the CONTRACTOR shall by mutual agreement obtain a special insurance policy (where the PURCHASER shall be deemed to be the beneficiary) providing coverage for consequential loss caused by defective design, material or workmanship (including defective construction or erection) within the control of the CONTRACTOR or his sub-contractors, suppliers or manufacturers. It is expressly agreed however that no liability to the extent that it refers to consequential loss only shall attach to the PURCHASER or the CONTRACTOR purely by reason of payment of the premium for such a policy.
- 24.7 The CONTRACTOR shall be responsible for the taking out of all the policies referred to in Article 24.1 as enumerated in Article 24.5 together with other policies referred to in Article 24.1.2.
- 24.7.1 All policies taken out by the CONTRACTOR except Professional Indemnity Insurance shall be jointly in the name of the CONTRACTOR and the PURCHASER with the PURCHASER designated as the ultimate beneficiary.
- 24.8 Any failure by the CONTRACTOR to maintain the Insurances required to be carried by virtue of this Article and in keeping with its contractual responsibilities shall be deemed to be a fundamental breach of this Contract.
- 24.9 If the scope of the CONTRACTOR's supply be lost, damaged or destroyed and monies are payable to the PURCHASER in respect of the loss, damage or destruction under the insurances maintained by the CONTRACTOR pursuant to this Article above or otherwise, the monies will be held by the PURCHASER for the purposes of this Contract, and:

^{1/} Article 24.6 uses the wording suggested by the First Working Group on Contracts and Insurance, for Fertilizer Plants convened by UNIDO at Vienna, 14-17 February 1978. See Report of the Meeting (ID/WG.269/2 Rev.1)

- 24.9.1 The PURCHASER may elect to retain absolutely the said monies in such event, the monies belong absolutely to the PURCHASER, and,
- 24.9.2 The CONTRACTOR shall be liable to the PURCHASER in an amount equal to the amount by which the insurance monies payable is less than the loss, damage, and/or including costs associated with recouping the loss, and,
- 24.9.3 There shall be a financial accounting between the PURCHASER and the CONTRACTOR in respect of the portion of the work which was lost, damaged or destroyed and in respect of which monies have been retained absolutely by the PURCHASER and there shall be included in the financial accounting all amounts paid or payable by the PURCHASER under this Contract together with all amounts paid or payable by the CONTRACTOR under this Contract to the PURCHASER, and the PURCHASER will pay to the CONTRACTOR any amount which the financial accounting shows to be payable by the PURCHASER to the CONTRACTOR under this Contract and similarly the CONTRACTOR will pay to the PURCHASER any amount which the financial accounting shows to be payable by the CONTRACTOR to the PURCHASER under this Contract.
- 24.9.4 Upon payment as required by Article 24.9.3 above by the PURCHASER or the CONTRACTOR, as the case may be, the PURCHASER and the CONTRACTOR are discharged from all rights and obligations under this Contract in respect of the portion of the work which was lost, damaged or destroyed and in respect of which monies have been retained absolutely by the PURCHASER as though such portion of the work had been fully completed and executed by the CONTRACTOR in accordance with this Contract.

ARTICLE 25

GUARANTEE OF WORKMANSHIP AND MATERIALS

- 25.1 The CONTRACTOR shall be responsible for the quality of all materials and workmanship of the complete Work(s) and unless as otherwise specifically provided, all equipment, materials, and goods required to be supplied by CONTRACTOR under this Contract shall be new and of the most suitable grade for the purposes intended, and to the Contract specifications, standards and regulations detailed in Annexures II, IV, XXVI and XXVII and the CONTRACTOR shall in any event (whenever applicable) take into account the domestic standards and regulations of the PURCHASER's country. Unless otherwise already contained in the CONTRACTOR's proposal, the CONTRACTOR shall furnish to the PURCHASER upon his request any further details relating to identifying data and information respecting the performance, capacity, nature and rating of the machinery and mechanical and other equipment which the CONTRACTOR contemplates incorporating in the Plant(s). Machinery, equipment, material and articles installed or used (without prior approval if such is required) shall be at the risk of subsequent rejection. All work, labour and services under this Contract shall be performed in a skilful and workmanlike manner.
- 25.2 The CONTRACTOR agrees and acknowledges that the PURCHASER has not entered into any contractual relationship, directly or indirectly, with the CONTRACTOR's sub-contractors, suppliers, vendors, agents, manufacturers and/or fabricators (unless otherwise specified) and accordingly, the CONTRACTOR hereby agrees to assume full responsibility for the guarantee of workmanship and materials as provided in this Article (together with the inherent warranties as expressed in Article 28) with respect to the scope of CONTRACTOR's supply under the Contract.

- 25.3 The CONTRACTOR shall be fully responsible for ensuring that all of the materials used in the manufacture of equipment and machinery and other contractually required items are correct and that they completely conform to the specifications stated in the Contract. The CONTRACTOR shall ensure that his suppliers' certificates for the materials satisfy the minimum requirements (physical and chemical) specified by the CONTRACTOR, conform to the requirements stated in the Annexures to the Contract, and the CONTRACTOR shall have undertaken random testing of materials and shall have satisfied himself as to their adequacy, sufficiency and propriety thereof.
- 25.4 If the materials or workmanship fail to comply with the requirements of the Contract, or if the tests or Plant operations prove or indicate the existence of any fault or defect in any part(s) and/or Section(s) of the Work(s), the CONTRACTOR shall forthwith (at his own cost), re-execute or make good the defective materials and/or faulty workmanship or alter same to ensure compliance with the Contract, and thereafter (at the discretion of the PURCHASER) new tests and inspections shall, if required, be carried out. If the CONTRACTOR defaults or delays in diligently commencing, continuing and completing the making good of the defective materials and/or faulty workmanship as required by the terms of this Contract, then the PURCHASER shall do so, or cause same to be done by any other firm or corporation (of the PURCHASER's choice) in any manner and by any means the PURCHASER considers expedient or advisable in the circumstances and the CONTRACTOR shall be liable for all costs, charges and expenses incurred by the PURCHASER in connection therewith, and such monies shall be considered as a debt due to the PURCHASER from the CONTRACTOR. The provisions of this Article 25.4 shall be deemed to be complementary to Articles 18 and 29.
- 25.5 The equipment, machinery or material shall be subject to the inspection, testing and certification as provided in Article 14.

- 25.6 The CONTRACTOR shall ensure that the detailed design and materials specifications for civil works submitted by the PURCHASER for the CONTRACTOR's review and checking, are in accordance with the requirements supplied by the CONTRACTOR generally (and particularly for all load bearing structures and those exposed to corrosive agents/environments).
- 25.7 The CONTRACTOR shall assume complete responsibility for any failure of the equipment, materials, or machinery due to improper engineering, design, procurement, transport, inspection or testing and the CONTRACTOR shall be liable to take the necessary corrective measures under Article 29 and shall be subject to the conditions of Article 30.
- 25.8 In consideration of the procurement of spare parts by the CONTRACTOR on behalf of the PURCHASER pursuant to Article 10, the CONTRACTOR shall use its best efforts (for the benefit of the PURCHASER) to obtain from vendors and/or suppliers of the spare parts as the case may be, guarantees that all materials entering into and incidental to the manufacture of the spare parts etc., are free from defects and faulty workmanship. The vendors or suppliers shall agree to repair or replace FOB Plant Site, at their own expenses, any defective material, supplies, or equipment (comprised in the spare parts) provided such defects are discovered within thirty-six (36) months after date of shipment or twelve (12) months after commencement of use, whichever comes first, and the vendor or supplier, as the case may be, is given written notification as soon as defects are discovered.
- 25.9 The standards and codes to be used for the Works are provided in Annexure II, Annexure XXVIII and Annexure XXIX inclusive. The CONTRACTOR shall utilize these standards (or where applicable mandatory national standards) and/or superior standards if known to the CONTRACTOR (as required by the provisions of Article 4.)

for the design, procurement, supply and erection of the Works. Wherever standards or codes are not explicitly stated in the Contract, internationally recognized standards or codes, or those which have been previously used by the CONTRACTOR in a working ammonia/urea plant may be used, subject to the approval of the PURCHASER.

- 25.10 In case of dispute arising on any matter concerning the acceptability or the qualitative level of Standards or Code(s) the onus shall be upon the CONTRACTOR to prove to the PURCHASER the superiority or better competence of those Standard(s) or Code(s) recommended (or adopted) by the CONTRACTOR pursuant to this Contract.

ARTICLE 26

GUARANTEES AND PERFORMANCE GUARANTEE TESTS

- 26.1 This Article covers the Performance Guarantees of the Plant, and the obligations of the parties connected therewith.
- 26.2 The Plant shall be capable of meeting the requirements of normal operation, capacity, quality of products, consumption of raw materials and utilities, and efficiency of operations all of which are hereby guaranteed by the CONTRACTOR and which shall be proven and demonstrated by test-runs as stated in this Article provided that the equipment has been supplied by the CONTRACTOR in accordance with the terms and provisions of the Contract, and the Plant(s) have been erected and operated in accordance with the CONTRACTOR's supervision, technical directions and instructions, and that such test-runs are conducted in accordance with the conditions set forth herein. For the purposes of the Guarantee Tests, the ammonia storage and the urea storage and bagging shall be excluded from the definition of the Plant.
- 26.2.1 The production capacity of Ammonia and Urea from the Plants shall be (1000) tons per day Ammonia and (1725) tons per day Urea, and capable of operating at a stream factor of 330 days per year.
- 26.2.2 The quality of the ammonia from the Ammonia Plant, and of the urea from the Urea Plant shall be in accordance with Annexure XVI.
- 26.2.3 The quality and quantity of carbon dioxide shall be adequate and suitable for the guaranteed capacity of the Urea Plant and quality of urea product.
- 26.2.4 The Plants shall be capable of sustained, steady and continuous operation.

- 26.2.5 The utilities and Off-sites shall be adequate for the sustained and continuous operation of the Plant.
- 26.2.6 The consumption of utilities and raw materials in each of the Ammonia and Urea Plants shall be in accordance with guarantees given below.
- 26.2.7 The effluents from the Plant shall be in accordance with Annexure XVII.
- 26.3 For the purposes of this Article 26, the guarantees outlined in Article 26.2 shall be divided into Absolute Guarantees and Penaltiable Guarantees, as follows:
- 26.3.1 Absolute Guarantees shall be deemed to cover:
- 26.3.1.1 The capacity of the Ammonia Plant
- 26.3.1.2 The capacity of the Urea Plant
- 26.3.1.3 The quality of ammonia and urea
- 26.3.1.4 The quality of effluents
- 26.3.1.5 The adequacy of the Utilities and Off-sites and availability of Carbon Dioxide to meet the capacity of the Ammonia and Urea Plants when operating together.
- 26.3.2 The Penaltiable Guarantees shall be deemed to be in respect of the consumption of raw materials and utilities for each of the Ammonia and Urea Plants.
- 26.3.3 The sustained steady operation of the Plant shall be demonstrated over a continuous period of, at least thirty (30) days as given in the test procedure below. Notwithstanding the completion of such tests, the CONTRACTOR warrants that the Plant(s) shall have been designed and procured for steady continuous operation at a stream factor of 330 days per year.

- 26.4 Absolute Guarantees shall be defined as those Guarantees which must be met to satisfy the criteria expressed more particularly in this Article and all of the contractual requirements.
- 26.5 Penaltiable Guarantees shall be defined as those Guarantees which if not met may be compounded by the payment of penalties as provided in Article 27, provided, however, that if the consumption of raw materials exceeds (3 per cent) or that the overall guaranteed consumption cost (see Article 27.3.4) exceeds (5 per cent), then the PURCHASER shall have the right to request the CONTRACTOR to modify the Plant in accordance with Article 29 and to demonstrate by such additional guarantee tests that the consumption of raw materials and utilities are within the above limits.
- 26.6 Absolute Guarantees for individual Plants shall be given hereunder.
- 26.6.1 Ammonia Plant
- 26.6.1.1 The Absolute Guarantees for the output of the Ammonia Plant shall be (1000) metric tons per stream day of specification grade ammonia (corrected for strength) representing 100 per cent capacity of the Ammonia Plant, which shall produce (10,000) metric tons of specification grade ammonia in ten (10) consecutive days. In the event that the provisions of Article 26.6.3 are invoked by the CONTRACTOR the Absolute Guarantees will be 95 per cent as provided in that Article.
- 26.6.1.2 The quality of the ammonia as per Annexure XVI, analysed in accordance with accepted international methods.
- 26.6.1.3 The quality and quantity of carbon dioxide is adequate and suitable for the guaranteed capacity of the Urea Plant and for manufacture of the desired quality of urea product.

26.6.2 Urea Plant

26.6.2.1 The Absolute Guarantees for the output of the Urea Plant shall be (1725) metric tons per stream day of specification grade urea (corrected for strength) representing 100 per cent capacity of the Urea Plant, which shall produce (17,250) metric tons of specification grade urea in ten (10) consecutive days. In the event that the provisions of Article 26.6.3 are invoked by the CONTRACTOR and satisfied accordingly, then the Absolute Guarantees shall be 95 per cent of these figures provided.

26.6.2.2 The quality of the urea shall conform to the criteria expressed in Annexure XVI.

26.6.3 Notwithstanding the provisions of Articles 26.6.1.1 and 26.6.2.1 above, the Absolute Guarantees for the Ammonia and Urea Plants shall be deemed to have been met if such Plant(s) produce 95 per cent of the capacity of ammonia and urea respectively, and provided the CONTRACTOR agrees to pay the liquidated damages stated in Article

The Absolute Guarantees shall only be deemed to have been met if the CONTRACTOR has paid such penalties due under this Article and as elsewhere provided in this Contract.

26.6.4 In the event that the CONTRACTOR does not conform with the requirement of Article 26.5, the CONTRACTOR shall be obliged to modify the Works and/or the Plant pursuant to Article 18.

26.7 Penaliable Guarantees for individual Plants shall be as expressed belows

26.7.1 Ammonia Plant

26.7.1.1 The Penaltiable Guarantees for the Ammonia Plant shall be as given below:

	Units	Units per metric ton of Ammonia
a) Consumptions		
- Natural Gas (1)*	Millions of Kcal	
- HP Steam	Metric tons	
- Electric Power (2)*	Kwh	
- Cooling Water (32°C)	m ³	
- Boiler Feed Water (110°C, 120 Kg/cm ²)	Metric tons	
b) Output		
- MP Steam	Metric tons	
- LP Steam	Metric tons	
- Purge Gas	Millions of Kcal	
- Boiler Feeding Water Preheating	Millions of Kcal	
- Condensates	Metric tons	

26.7.1 Urea Plant

26.7.2.1 The Penaltiable Guarantees for the Urea Plant shall be as given below:

	Units	Units per metric ton of urea
a) Consumptions		
- Ammonia (as 100%)	Metric tons	
- HP Steam	Metric tons	
- Electric Power (2)*	Kwh	
- Cooling Water (32°C)	m ³	
b) Productions		
- LP Steam	Metric tons	
- Condensates	Metric tons	

* (1) Natural gas consumptions refer to the consumption for process and fuel to primary reformer only.

(2) Electric power consumptions refer to process consumptions only, excluded being the Plant(s) lighting, instrumentation, air-conditioning etc.

26.8 Performance Guarantee Test Procedures

26.8.1 Ammonia Plant Performance Guarantees of the Ammonia Plant shall be proven by means of the following Performance Guarantee Tests:

26.8.1.1 A twenty (20) day sustained continuous test under normal operating conditions in order to demonstrate the capability for continuous steady operation and capacity at an average of 90 per cent of capacity of the Ammonia Plant, together with the capability to produce specification grade ammonia and carbon dioxide followed immediately by:

26.8.1.2 A ten (10) day uninterrupted continuous test under normal operating conditions, in which the operation of the ammonia Plant at 100 per cent capacity, and the consumption of raw materials and utilities, will be demonstrated, while producing specification grade ammonia. The tests for capacity and quality shall be applicable for all ten (10) days of the test. 100 per cent capacity of the Ammonia Plant shall be 10,000 metric tons of 99.8 per cent product, and shall be corrected for any increase in strength. For consumption of the raw materials and utilities the test period shall be seven (7) days.

26.8.2 Urea Plant Performance Guarantees on the Urea Plant shall be proven by means of the following Performance Guarantee Tests:

26.8.2.1 A twenty (20) day sustained continuous test under normal operating conditions in order to demonstrate the capability for continuous

steady operation and capacity at an average rate of 90 per cent of the Urea Plant together with the capability to produce urea of specification grade, followed immediately by:

26.8.2.2 A ten (10) day uninterrupted continuous test (as specified in Article 26.8.5) under normal operating conditions in which the operation of the Urea Plant at 100 per cent capacity, and the consumption of raw materials and utilities shall be demonstrated while producing specification grade urea. The tests for capacity and quality will be applicable for all ten (10) days, and the test for consumption shall be for seven (7) days within the ten (10) day test period. 100 percent capacity of the Urea Plant, shall be (17,250) metric tons of specification grade Product and shall be corrected for any increase in strength.

26.8.3 During the operations of the Urea Plant under Article 26.8.2.2, the Ammonia in the Ammonia storage at the beginning and end of the test shall be unchanged.

26.8.4 The ten (10) day simultaneous Guarantee Test(s) of the Ammonia and Urea Plant(s) shall run immediately after the successful completion of the relevant twenty (20) days test(s), concurrently with the operation of the Power Plant as stated below.

26.9 The procedures to be followed for the execution of the Guarantee Tests stated in this Article shall be agreed upon between the parties three (3) months before the commencement of the above tests.^{1/}

^{1/} The procedures for such tests may be agreed between the parties prior to the Effective Date of Contract if necessary.

Instrument tolerances shall be those warranted by the Vendors of the said instruments. The PURCHASER shall have the right to specify instruments with low margin of tolerance of measurement of the Plant capacity and consumptions.

26.10 The Performance Guarantee Tests of the Plants shall be run under the supervision of the CONTRACTOR's personnel but all measurements will be taken jointly by the PURCHASER and the CONTRACTOR. The provisions of Article 18. shall apply notwithstanding, with reference to the proving and demonstration of the capability of the Plants by means of the said Tests, and/or in connection with only modifications or rectifications required to enable the PURCHASER to receive a completed Plant in accordance with the Contract.

26.10.1 The first twenty (20) day test of Ammonia and/or Urea Plant shall commence within ninety (90) days from the start-up of the Plant(s), provided that the PURCHASER fulfills his obligations for the supply of feedstock etc. under Article 5. . Subject to the provisions of Article 26.10.2 this ninety (90) day period shall be extended if the Plant(s) is unable to operate normally and in the event of failure of this test the CONTRACTOR shall be permitted not more than two (2) other tests to be run within six (6) months immediately thereafter subject however to the provisions of Article 18.17.

26.10.2 If, for reasons ascribable to mistake(s) and/or error(s) in process and/or detailed engineering or for any other reasons related to the work and services provided or performed by the CONTRACTOR, and/or mistake(s) and error(s) in the Contractual Specifications and instructions, the CONTRACTOR is not able to perform the test(s) within the period(s) stated in Article 26.10.1 above, the provisions of Article 26.11 shall apply.

- 26.10.3 The CONTRACTOR shall have the right to have the Plant(s) operated in accordance with his requirements at his own risk during the period permitted for the CONTRACTOR to perform the test(s), and the PURCHASER's personnel shall work under the technical direction of the CONTRACTOR. The PURCHASER shall have the right to operate the Plant(s) as and when such operations do not interfere with the CONTRACTOR's work.
- 26.11 In the event that the CONTRACTOR does not complete or is unable to complete any or all of the Performance Tests and Guarantees of the Plant(s) for reasons attributable to the CONTRACTOR within the nine (9) months after Start-up of the Plant(s) the PURCHASER shall have the right to stop all payments due to the CONTRACTOR and the CONTRACTOR shall be required to undertake the work specified in Article 18. as required by Article 18. without delay and the validity of the Bank Guarantee shall be extended. The foregoing notwithstanding, the CONTRACTOR shall if necessary, commence the said modifications prior to the expiry of the nine (9) months period after Start-up of the Plant(s). It is agreed that the period during which the Plant(s) cannot be operated normally by the CONTRACTOR due to circumstances outside his control or fault of the PURCHASER shall not be counted in computing the said nine (9) months or subsequent extended periods granted pursuant to Article 29. . The CONTRACTOR shall diligently and expeditiously undertake the necessary modifications and/or rectifications to ensure that the Plant(s) shall be capable of demonstrating the tests as required by Article 18. and this Article, and on completion of all such necessary work (upon the terms herein), the CONTRACTOR shall prove by the specified Guarantee and Performance Tests (as required by this Article) the capability of the Plant(s) in accordance with the conditions of this Contract.

- 26.12 If the ten (10) days capacity Performance Test(s) are interrupted due to reasons for which the CONTRACTOR is not responsible, the Plant(s) shall be started again as soon as possible and when the Plant(s) have reached normal operating conditions the Test(s) shall continue immediately thereafter. The duration of the Test(s) shall be extended by the duration of such interruptions and the Test(s) shall then be deemed to have been performed continuously, provided however, that the Plant has in fact been operated for a minimum of a ten (10) day period continuously and without interruption in the manner stated in Article 26.8.5.
- 26.13 After completion of any Performance Test (which the CONTRACTOR accepts as being a successful test) the CONTRACTOR shall prepare a Performance Test Report which shall be signed by the CONTRACTOR and submitted to the PURCHASER for approval.
- 26.13.1 If in the PURCHASER's opinion, the said Report is found to be satisfactory, the PURCHASER shall issue within thirty (30) days from receipt of the CONTRACTOR's Report an Acceptance Certificate or shall inform the CONTRACTOR's Site representative within the same period the reasons for non-acceptance.
- 26.13.2 Provided Article 26.13 has been complied with, in the event of the PURCHASER failing to issue the Acceptance Certificate or to inform the CONTRACTOR as provided in Article 26.13.1, the CONTRACTOR shall request the PURCHASER for an explanation for the delay and if the PURCHASER fails to respond within another thirty (30) days the Acceptance of the Plant for which the Performance Test was conducted shall be deemed to have taken place, on the date that the test was successfully completed.

- 26.14 The obligations of the CONTRACTOR shall be deemed to have been fulfilled if for reasons attributable to the PURCHASER, the first Guarantee Test cannot be carried out within eighteen (18) months from the Mechanical Completion of the Plant. In the event of a dispute as to the fulfilment of the CONTRACTOR's obligations and as to the entitlement for payment, the parties shall resort to Arbitration.
- 26.15 The Acceptance of the Plant(s) under Articles 26.13 and 26.14 and the issue of Provisional Acceptance Certificates thereof, shall be subject to Articles 4. , 25 and 28 until all the obligations of the CONTRACTOR under this Contract shall have been met, and a Final Acceptance Certificate issued. The issue of these Provisional Acceptance Certificates shall entitle the CONTRACTOR to receive due payments on completion of the Performance Guarantees and Acceptance of the Plant in accordance with Article 20.
- 26.16 In the event the Performance and Guarantee Tests cannot be made within the period stipulated in Article 26.14 above, the CONTRACTOR shall be obligated to send personnel to Site to start-up the Plant and to undertake tests on the Plant provided however that the PURCHASER shall pay additional fees and travel expenses for this service as may be agreed between PURCHASER and CONTRACTOR.

ARTICLE 27

LIQUIDATED DAMAGES

- 27.1 The CONTRACTOR shall be liable to the payment of Liquidated Damages for default of the several responsibilities under provisions of this Contract, except where any delay is caused by any act or omission on the part of the PURCHASER.
- 27.1.1 For the delay in the delivery of the technical documents stipulated in Annexure XV the agreed Liquidated Damages shall be as follows: For each week in delay in the submission of a required document an amount of (amount) subject to an overall maximum liability of (amount) under this Article.
- 27.1.2 For delay in obtaining Commercial Production as defined in Article 18. beyond a period of one hundred and five (105) days after Mechanical Completion of the Plant(s), an amount of (amount) for each one week (7 days) of delay, subject to a maximum of _____ () weeks.
- 27.1.3 For delay in the FOB/FOR supply of 95 per cent by value of the goods, the liquidated damages shall be _____ for each week of delay in the FOB/FOR supply of all the specified goods subject to a maximum of $\frac{1}{2}$ %. In the event that the balance of 5 per cent by value of goods are shipped late thus delaying erection, this same penalty pursuant to Article 27.1.3 will be applicable for each week of delay the erection is delayed.

27.1.4 For non-fulfilment of Absolute Guarantees for the entire Plant at 100 per cent capacity but subject to fulfilment of Absolute Guarantees at 95 per cent of capacity, a sum of 1 per cent of the total price of the Contract (amount) (as stated in Article 20) for each 1 per cent of lower production than of the 100 per cent capacity of urea, when both Ammonia and Urea Plants are operating together.

27.2 In the event that the Absolute Guarantees have been successfully demonstrated and proved but the Penaltiable Guarantees are not met, the CONTRACTOR shall have the option of either requesting the PURCHASER to execute the modifications, additions and deletions in the Plant(s) (specified in Articles 18 and 29) at CONTRACTOR's cost, or, to pay by way of liquidated damages, in consideration of any and all claims in connection with the non-fulfilment of the penaltiable guarantees only but subject nevertheless to the provisions of Article 26, the followings:

27.2.1 For the Ammonia Plant: for each full 0.5 per cent (zero point five per cent) exceeding the agreed daily consumption cost as given in Article 27.2.4 below an amount of _____ up to a maximum of _____.

27.2.2 For the Urea Plant: for each full 0.5 per cent (zero point five per cent) exceeding the agreed daily consumption cost as given in Article 27.2.4 below an amount of _____ up to a maximum of _____.

27.2.3 By virtue of the application of Article 27. the obligations of the CONTRACTOR solely in connection with the performance of the Penaltiable Guarantees (only) shall be considered as fulfilled.

27.2.4 The daily consumption cost shall be computed by calculating through the following method:

- 27.3 In the event that the CONTRACTOR does not elect to pay the Liquidated Damages for the non-fulfilment of the Penaltiable Guarantees the CONTRACTOR shall be liable to complete the necessary work and services pertaining to the required modifications, referred to in Article 29, within nine (9) months from the date of Start-up of the Plant(s).
- 27.4 Should the CONTRACTOR be unable or unwilling to fulfill the Absolute Guarantees within eighteen (18) months after Start-up, extended by such time as provided in Article 26. , the PURCHASER shall (at his option) have the right to recover the full costs necessary to correct the Plant or shall have the right to proceed to modify the Work(s) through engagement of such parties as the PURCHASER may deem fit, and the provisions of Article 30 shall apply. The determination of costs incurred by the PURCHASER shall be made by mutual agreement or through Arbitration procedures or court action.

- 27.5 If the CONTRACTOR should fail to complete the Work(s) thereof within the limits of time guaranteed in the Contract (Annexure XV) and within the authorized extension(s) of time (governed by Article 29), the CONTRACTOR in addition to the Liquidated Damages stated to be payable in Article 27.1, shall be liable for fundamental breach of Contract.
- 27.6 The PURCHASER without prejudice to any other method of recovery may deduct the amount of such Liquidated Damage payments from any payments due or which may become due to the CONTRACTOR. The payment of or deduction of such Liquidated Damages shall not relieve the CONTRACTOR from his total obligations to complete his obligations or from any other of his obligations and liabilities under the Contract.

ARTICLE 28

WARRANTIES

- 28.1 The CONTRACTOR warrants that the Plant, equipment, materials, tools and supplies incorporated in the Work(s) pursuant to this Contract conform with the specifications, plans and all of the contractual criteria, and that the work in every particular is free from defects in design, engineering, processes, materials, workmanship and constructions.
- 28.2 The CONTRACTOR shall be responsible for the quality, duration, and effect of the warranties (and guarantees) for the Plant, equipment and the Works and sections and/or parts thereof, and the fitness of the work for the particular purpose. The CONTRACTOR also warrants as to the correctness and completeness of the plans, all technical data and documents supplied by him as well as to the technical criteria of the equipment fabricated in accordance with his plans and instructions under the present Contract.
- 28.3 The CONTRACTOR shall be responsible for the design and quality of the goods and equipment in accordance with this Article, and as to the workmanship and materials pursuant to Article 25, and for the satisfactory continuous operation of the Plant and equipment supplied, pursuant to Article 26, and shall provide specific information as to warranties as required by Article 18.26.2. The CONTRACTOR warrants the Plant for twelve (12) months, commencing from the date of Provisional Acceptance as defined in Article 18. This period shall not exceed thirty (30) months from the Mechanical Completion of Plant and Equipment under this Contract, if for reasons only attributable to the PURCHASER the Plants cannot be started-up or brought into commercial production (within the said thirty (30) months period) subject however to the governing provisions of Articles 18.29 and 18.30.

- 28.4 If within the period specified in Article 28.3 or the date of Final Acceptance by the PURCHASER whichever is the later, the work or any part thereof becomes defective or broken or fails due to faulty or improper design, workmanship, material, manufacture, fabrication, shipment or delivery, or fails to meet the requirements of the Contract, then the CONTRACTOR upon notification in writing from the PURCHASER, shall forthwith make good every such defect, breakage or failure without cost (including without limitation, transportation cost) to the PURCHASER. If after such notification, the CONTRACTOR does not or is not willing to make good such defect, breakage or failure, the PURCHASER may proceed to do so independently and to place the work in good operating condition in accordance with the Contract, and the CONTRACTOR shall be liable for all costs, charges and expenses incurred by the PURCHASER in connection therewith and shall forthwith pay the PURCHASER an amount equal to such costs, charges and expenses upon receipt of invoices certified correct by the PURCHASER.
- 28.5 Pursuant to Article 28.4 above, should the removal of the defect require replacement of the equipment, the replacement shall be accomplished in minimal time, plus the shortest possible erection time for this equipment in the CONTRACTOR's country. Subject to prior approval by the CONTRACTOR (which shall not be unreasonably withheld) the PURCHASER shall have the right to repair minor defects at the CONTRACTOR's cost.
- 28.6 If any part(s) of the Plant(s) are repaired or replaced, pursuant to this Article and/or Article 29, the warranty period for repaired or replaced items shall begin anew for another twelve (12) months after bringing into satisfactory operation of the repaired and/or replaced part(s), of the equipment or Plant(s), irrespective of any portion of the original warranty period relating to the same having expired. In relation to such other equipment which could

not be operated due to the necessity of repair or replacement of the defective part(s) of the Plant(s) referred to herein, the warranty period shall be extended by a time equivalent to their periods of non-operation.

28.7 The CONTRACTOR's warranty shall not be deemed to cover:

28.7.1 Damage arising through disregard of the CONTRACTOR's written instructions by the PURCHASER.

28.7.2 Normal wear and tear.

ARTICLE 29

RECTIFICATION OF DEFECTS AND MODIFICATIONS

- 29.1 In the event that due to mistakes, negligence, omissions or errors in the processes and/or in the engineering, fabrication of the equipment by the CONTRACTOR and/or in his supervision, or specifications and/or inspections or for whatever reason falling within the CONTRACTOR's obligations, the CONTRACTOR is unable to demonstrate any of the Guarantees, Performance Guarantee Tests or complete the Work(s), whether or not arising out of or due to the matters or subjects covered by Articles 14.25, 26 and this Article or any of them, the CONTRACTOR shall proceed to effect the rectifications, additions and/or changes which are necessary to eliminate the defects and/or faults and thereby to achieve the specified guarantees and criteria referred to in the aforementioned Articles. The CONTRACTOR shall provide free of charge to the PURCHASER all necessary services as required to complete his work on the Plant or equipment. In the event that the PURCHASER performs any and all of the modifications and rectifications and other work referred to herein and/or as required pursuant to Article 18.30, the CONTRACTOR shall be liable to the PURCHASER for such costs and expenses as are due.
- 29.2 If the CONTRACTOR shall neglect or refuse to take the necessary measures to ensure the elimination of the defects and/or faults expeditiously, then the PURCHASER may take such remedial steps to rectify, modify, correct and replace any equipment, part(s) or section(s) thereof and/or erect new equipment and/or undertake repair and/or replacement of used equipment to eliminate the defects and correct all associated problems, and the cost of such remedial steps taken by the PURCHASER shall be recoverable in any manner at the discretion of the PURCHASER in accordance with the provisions of this Contract and applicable laws.

- 29.3 The PURCHASER will 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 required under Article 29.2 and the CONTRACTOR shall be entitled to receive copies in the appropriate cases.
- 29.4 Until all defective or faulty work has been made good, altered or eliminated through replacement or otherwise as provided in this Contract, the PURCHASER shall have the right to use any such faulty or defective work at the CONTRACTOR's sole risk and without thereby affecting the PURCHASER's rights under this Contract, unless however, the CONTRACTOR shall notify the PURCHASER in writing that, in its opinion, the faulty or defective work cannot be so used without undue risk to the work or persons operating or working in the vicinity of the Work.
- 29.5 Should any defects due to any one/or other of the reasons specified in Article 18.30 and/or Article 29.1 occur, the CONTRACTOR shall immediately thereafter advise the PURCHASER, and the procedure specified hereunder shall apply in connection with any rectification and/or modification work. The defective material, machinery and/or equipment shall be examined by the CONTRACTOR and PURCHASER.
- 29.5.1 In the event that the defect and/or damage is agreed to be minor the CONTRACTOR shall satisfactorily rectify the same through the most expeditious means.
- 29.5.2 In the case of a serious or extensive defect or damage the CONTRACTOR shall state the method of making good the defect or damage in any event at its own cost, and one of the following methods shall be adopted, subject however to the considerations of efficiency, speed and the contractual time-schedules:
- 29.5.2.1 The undertaking of rectification or modification work or repair at Site

- 29.5.2.2 Removal of the defective material or equipment from the Site and the undertaking of rectification or modifications away from the Site.
- 29.5.2.3 The removal of defective material, machinery or equipment and replacement by new and unused materials, machines or equipment or parts thereof.
- 29.5.3 The CONTRACTOR shall embody the most efficient means recommended in a report indicating the method proposed to be adopted and the detailed reasons for the course of action he intended to be taken, and shall submit such report as early as possible to the PURCHASER. If the PURCHASER has no objection, the CONTRACTOR shall undertake such repair and/or replacement immediately. The provisions as to warranties, guarantee requirements as elsewhere expressed in this Contract shall apply with equal force and effect.
- 29.5.4 Upon completion of such repair or replacement, the PURCHASER may require the CONTRACTOR to prove the repaired or replaced equipment.
- 29.6 Subject to the PURCHASER's necessity to hire assistance from any other firm (with the agreement of the CONTRACTOR), the CONTRACTOR's obligation to modify the Plant and rectify the defects and to take corrective steps including the replacement of equipment and/or materials shall be continuous and unabated, for the successive periods authorized by the PURCHASER in writing referred to in Article 29. above and the CONTRACTOR shall continue in his endeavours at his own cost to modify and/or rectify the defects, replace equipment and take such corrective measures to fulfil his obligations under the terms of the Contract.
- 29.7 The CONTRACTOR's obligations to execute the modifications, corrections, rectifications and replacement of equipment pursuant to Articles 29. and 29. shall not be restricted.

- 29.8 Any extension of time granted to the CONTRACTOR under the provisions of Article 29. shall be without prejudice to any rights or remedies of the PURCHASER whatsoever under this Contract, should the CONTRACTOR fail to accomplish work within the extended time so allowed.
- 29.9 No extension of time, whether on the PURCHASER's initiative or on the application of the CONTRACTOR, shall be deemed to have been granted unless the PURCHASER specifically so states by written notice to the CONTRACTOR.
- 29.10 In the procurement of spare parts pursuant to Article 10, if any defect is found in the Vendor's supply within the period during the valid guarantee period, the CONTRACTOR shall assist the PURCHASER in immediately undertaking the necessary measures to have the Vendor(s) replace the defective supplies within the shortest possible time, including the air freighting of the equipment or parts etc. at Vendor's cost.

ARTICLE 30

LIABILITIES, SET-OFF AND WAIVER

- 30.1 The CONTRACTOR shall be subject to liabilities and damages for default of his contractual responsibilities, and shall be duty-bound to fulfil all the obligations as expressed more particularly in each of the Articles of the Contract.
- 30.2 The CONTRACTOR shall be liable for the satisfactory fulfilment of the guarantee requirements and performance guarantee tests; for the adequacy of warranties, sufficiency of inspections, guarantee of workmanship and materials; and, shall be obligated to undertake necessary modifications to the Plant(s), and rectify and repair defective parts of the Work(s) and/or sections thereof, and shall be accountable for the completion of the work-scope and objects of the Contract as expressly specified.
- 30.3 Subject to the provisions of Article 24, the CONTRACTOR shall not be liable for any payment in case any property or equipment of the PURCHASER shall be damaged or lost during transportation, erection, start-up and during guarantee tests except where such loss or damage has occurred due to the negligence, errors, omissions or instructions attributable to the CONTRACTOR.
- 30.4 The CONTRACTOR shall reimburse the PURCHASER as to those amounts received by the CONTRACTOR under any insurance policies held by the CONTRACTOR pursuant to Article 24 as well as through those others required to be held or which should have been specifically taken out in any event for the purposes of this Contract.
- 30.5 The total liability of the CONTRACTOR under the Contract shall not exceed ____% of the total Contract Price, with the exception of the CONTRACTOR's unlimited liability for the

fulfilment of warranties, Absolute Guarantees, modifications, rectifications and completion of the Work(s) 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.

- 30.6 The CONTRACTOR shall not be liable under the Contract for loss of anticipated profits or for any consequential loss or damage arising from any cause, except to the extent of repaying to the PURCHASER any amount receivable under Article 21, and/or pursuant to other insurance policies held by the CONTRACTOR solely in connection with the types of losses referred to in this Article 30.6.
- 30.7 Without restricting any liability or obligation of the CONTRACTOR and/or right in the PURCHASER imposed, conferred or contemplated by any of the other Articles of this Contract, it is expressly agreed that, if the CONTRACTOR has failed within a reasonable time after being required by the PURCHASER to undertake any rectification or modification for which the CONTRACTOR is liable under this Contract, the PURCHASER may cause the rectification or modification to be made good as he deems fit, and the CONTRACTOR shall thereupon be liable to the PURCHASER for such costs, expenses and charges thereof and shall on demand compensate the PURCHASER for such losses and damages sustained.
- 30.8 No bond, undertaking or payment given, supplied or offered by the CONTRACTOR to the PURCHASER (whether required by the terms of this Contract or by any other agreement between the parties hereto) shall in any way or to any degree affect, alter or limit the liability of the CONTRACTOR under this Contract and the acceptance by the PURCHASER of any such bond, undertaking

or payment shall neither be interpreted or construed as effecting or implying any waiver by the PURCHASER of any PURCHASER-rights or remedies nor as the acceptance of coverage or protection in lieu of any PURCHASER-rights or remedies under this Contract.

- 30.9 Nothing in this Contract shall alter, vary or invalidate the CONTRACTOR's liabilities for damages and the responsibilities and obligations of the CONTRACTOR as required by law and in accordance with the stipulations of this Contract.

ARTICLE 31

TAXES AND LEVIES

- 31.1 Except as otherwise specified in this Contract, each and every price cited in or contemplated by this Contract as described in Article 20.1 - 20.7 inclusive, includes and covers all patent royalties, and 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, customs tariffs, sales taxes, land taxes, licence fees or otherwise) outside the PURCHASER's country pertinent to the equipment and material and CONTRACTOR's services provided with respect to the Works pursuant to this Contract, and/or to the performance of the work, and all other costs and charges whatsoever relevant to such equipment, material, services and/or to such performance of the work by the CONTRACTOR.
- 31.2 Subject to national laws in the PURCHASER's country, the amounts to be paid to the CONTRACTOR under the Contract shall be net and free of any Income Taxes or other taxes, duties, or imports or levies in (PURCHASER's country).

ARTICLE 32

SUSPENSION OF WORK

- 32.1 The PURCHASER may, when in the PURCHASER's opinion it is deemed necessary, require the CONTRACTOR to suspend execution of the work either for a specified or unspecified period by communicating notice to that effect to the CONTRACTOR.
- 32.2 The CONTRACTOR, upon receiving notice of the PURCHASER's requirement pursuant to Subarticle 32.1 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 Works.
- 32.3 During the period of suspension, the CONTRACTOR shall not remove from the Site any material, any part of the Works, or any Plant without the consent of the PURCHASER.
- 32.4 If the period of suspension is ninety (90) days or less, the CONTRACTOR, upon the expiration of the period of suspension, shall resume the execution of the Contract and the CONTRACTOR is entitled to payment to be determined in accordance with Article 19.2, for the supply of any material, work and/or Plant affected in complying with the suspension.
- 32.5 If the period of suspension exceeds ninety (90) days and if, upon the expiration of the period of suspension, the PURCHASER and the CONTRACTOR agree that the fulfilment of the Contract be accomplished by the CONTRACTOR, the CONTRACTOR shall resume operations and fulfil the Contract in accordance with the terms and conditions of this Contract subject to any amendments that are required by virtue of the suspension of work pursuant to this Article.

32.6 If the period of suspension exceeds one hundred and eighty (180) days and the PURCHASER and the CONTRACTOR are unable to reach agreement on the fulfilment of the Contract by the CONTRACTOR, or the parties are unable to agree upon mutually acceptable terms and conditions under which the CONTRACTOR shall fulfil the Contract, the Parties shall resort to Arbitration pursuant to Article 37.

ARTICLE 33

TERMINATION OR CANCELLATION OF THE CONTRACT

- 33.1 In the event that the PURCHASER is subject to any circumstances which are wholly unavoidable and/or beyond his control (but not including occurrences which are covered by Article ____) then the PURCHASER may at any time by giving notice in writing to that effect terminate this Contract.
- 33.2 The CONTRACTOR shall upon receipt of a notice pursuant to Article 33.1 above cease all operations forthwith.
- 33.3 If the Contract is terminated pursuant to Article 33.1 the PURCHASER will pay to the CONTRACTOR an amount equal to the greater of:
- 33.3.1 The cost of the Works properly supplied or done by the CONTRACTOR as at the date of the termination 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, or which the PURCHASER claims is due as damages pursuant to other Articles herein, and
- 33.3.2 The amount calculated in accordance with the Terms of Payment which would have been legitimately payable to the CONTRACTOR up to the date of Termination provided the CONTRACTOR had in fact fulfilled his contractual obligations to such date, without prejudice to PURCHASER-rights as expressly provided for in this Contract.
- 33.4 In the event that the CONTRACTOR and the PURCHASER are unable to agree upon the amount of payments then the aggrieved party may resort to Arbitration as provided for in Article 37.

33.5 In the event of a termination of this Contract pursuant to this Article, the following rights shall accrue to the PURCHASER:

- 33.5.1 To the extent that the PURCHASER has made payments pursuant to Article 19 (subject to recovery or deduction of other monies by the PURCHASER under Contract terms) the PURCHASER shall have the right to obtain from the CONTRACTOR where he is also the Process Licensor the documentation for know-how and basic engineering (unless already supplied by the CONTRACTOR) to the extent that the PURCHASER had made payments to the CONTRACTOR pursuant to Article 19.2, the PURCHASER shall have the right to directly obtain from the Process Licensor (where the CONTRACTOR is not the Process Licensor) the documentation referred to above unless already supplied through the CONTRACTOR.
- 33.5.2 The PURCHASER shall be entitled to receive all detailed engineering documents, calculations, computer printouts and other materials related thereto as completed up to the date of the Termination.
- 33.5.3 The PURCHASER shall be entitled to receive lists of all equipment for which orders have been placed, together with all copies of Purchase Orders for equipment supplied and not supplied.
- 33.5.4 The PURCHASER shall be entitled to take delivery and receive the shipping papers for all equipment for which whole or partial payment(s) have been made to the CONTRACTOR.

- 33.5.5 The PURCHASER shall be provided with all procurement documentation for purchases under Article _____ including copies of all tenders issued or prepared, bids received, bid tabulations completed or under preparation and CONTRACTOR's recommendations completed and Purchase Orders prepared and issued up to the date of Termination.
- 33.5.6 The PURCHASER shall be provided with all inspection reports, reports on visits to the factories of the CONTRACTOR's suppliers and copies of test certificates received from them up to the date of Termination.
- 33.5.7 The PURCHASER shall be entitled to receive all completed or incomplete documentation pertaining to work and services to be provided by the CONTRACTOR pursuant to Article 4 (as detailed in Annexure VI and in particular to the technical documentation specified in Annexure XV).
- 33.5.8 In circumstances where Article 33 applies, the PURCHASER shall have the right to establish the direct contractual arrangements with the Process Licensor as provided under Article _____.
- 33.5.9 The PURCHASER shall have the right to take over the Works including all work done to date on the Site.
- 33.5.10 The PURCHASER shall be entitled to receive copies of all detailed Civil Engineering, Piping, Instrumentation, lay-out and erection drawings.
- 33.6 Nothing herein shall invalidate the rights of the PURCHASER as to the contractual grounds of action (in relation to damages or costs due to the PURCHASER) whether through litigation or arbitral procedures, and, notwithstanding the Termination of the Contract herein, the parties to this Contract shall be subject to the courts of competent jurisdiction.

33.7 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 and/or the Works:

33.7.1 Where the CONTRACTOR has made default or delayed in commencing or in executing, completing or delivering the work or any portion thereof to the reasonable satisfaction of the PURCHASER, and the PURCHASER has given notice thereof to the CONTRACTOR and has by such notice required the CONTRACTOR to put an end to such default or delay, and such default or delay continues for a period of _____ after such notice was given;

33.7.2 Where the CONTRACTOR has become insolvent and/or made an assignment of the Contract without the approval of the PURCHASER;

33.7.3 Where the CONTRACTOR has committed an act of bankruptcy;

33.7.4 Where the CONTRACTOR has abandoned the work;

33.7.5 Where the CONTRACTOR has failed to make proper disclosures as referred to in Article 40.

33.8 If the CONTRACTOR has defaulted due to any of the cases specified in Article 33.7, then the CONTRACTOR shall not, except as provided in Article 33.9 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 the CONTRACTOR shall be liable to settle costs and/or damages under the Contract pursuant to Articles 18, 24 and 30 and the PURCHASER (at its option) may decline to proceed to Arbitration for the recovery of damages and may instead institute actions in the courts of competent jurisdiction.

- 33.9 If the CONTRACTOR has defaulted due to any of the cases specified in Article 33.7 and alternative arrangements for delivery are made by the PURCHASER, subject to the rights of the PURCHASER specified in Articles 27 and 30 and the provisions therein, the PURCHASER may at its option 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, the PURCHASER shall, if of the opinion that no financial prejudice to the PURCHASER will result, authorise payment of that amount to the CONTRACTOR.
- 33.10 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 this Contract and by law.

ARTICLE 34

FORCE MAJEURE

34.1 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, lightening, unusual weather or other natural physical disaster. Impossibility in the use of any railway, port, airport, shipping-service or other means of transportation (occurring concurrently and to be proven to the satisfaction of the PURCHASER)
- any accident, fire or explosion
- any strike, lock-out or concerted acts of workmen (except where it is within the power of the party involving the Force Majeure to prevent)
- shortages or unavailability of materials (compounded by the same shortage or unavailability from alternate sources) if beyond the CONTRACTOR's control, to be proven to the satisfaction of the PURCHASER.

34.2 If either party is prevented or delayed in the performance of any of its obligations under this Contract by circumstances of Force Majeure, and if the affected party has given written notice thereof to the other party within ten (10) 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.

34.3 The PURCHASER or the CONTRACTOR (as the case may be) shall be diligent in endeavouring to prevent or remove the cause of Force Majeure. Either party upon receipt of the Notice of Force Majeure under Article 34.2 shall confer promptly with the other and agree upon a course of action to remove or alleviate such cause(s), and shall seek reasonable alternative methods of achieving the same performance objectives under the Contract.

34.4 If by virtue of Article 34.2, either of the parties is excused from the performance or punctual performance of any obligation for a continuous period of six (6) months then the parties shall consult together to seek agreement as to the required action that should be taken in the circumstances and as to the necessary amendments that should be made to the terms of the Contract.

34.5 If by virtue of Article 34.2 either of the parties is excused from the performance or punctual performance of any obligation for a continuous period of nine (9) months for one or more causes and if the consultations referred to in the preceding Article 34.4 have not resulted in mutual agreement (or have not taken place because the parties have been unable to communicate with one another), the parties shall thereupon agree to amend the terms of this Contract by virtue of the prevailing Force Majeure circumstances and shall determine the course of further action. If the parties are unable to reach an agreement to amend the terms of this Contract by virtue of the prevailing and continuous Force Majeure, then the parties shall resort to Arbitration pursuant to Article 37 in the event of a dispute as to any justification for termination.

- 34.6 The PURCHASER acknowledges that any eventual inability on its part to make bona fide payments to the CONTRACTOR under this Contract, shall not be claimed or deemed to constitute Force Majeure. In the event of a dispute as to the bona fide payments due, payments shall be determined by the provisions of Article 19.2 in like manner as suspension of the work, failing which the parties shall have recourse to the provisions of Article 37.
- 34.7 Nothing herein shall in any manner affect the validity of the Contract. Both the PURCHASER and the CONTRACTOR shall be prompt and diligent to remove all causes of interruption or delay in the work, insofar as each is liable to do so.

ARTICLE 35

LANGUAGES GOVERNING THE CONTRACT

- 25.1 The governing language of the Contract shall be _____, and the definitions in such language shall be final in the use and interpretation of the terms of the Contract.
- 35.2 All correspondence, information, literature, data, manuals, etc. required under the Contract shall be in the _____ language.
- 35.3 All expatriates sent by the CONTRACTOR to the Site, and all personnel sent by the PURCHASER for training shall be conversant in the _____ language.

ARTICLE 36

APPLICABLE LAWS AND CONFORMITY WITH
LOCAL STATUTES

- 36.1 The laws applicable to the Contract shall be the laws of (neutral country) or the laws of (the land where the Plant Site is located) or as otherwise agreed between the parties in conformity with laws of the country where the Plant is located.
- 36.2 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 schedules under this Contract, the PURCHASER shall either
- 36.2.1 Obtain appropriate exemption(s) from the relevant authorities on the CONTRACTOR's behalf, or
- 36.2.2 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. The increased amount shall be subject to full audit by the PURCHASER in accordance with Article 23.2.
- 36.3 Nothing herein shall in any manner affect the validity of the Contract or derogate from the specified obligations of the CONTRACTOR, and his liabilities under the Contract and law.

ARTICLE 37

SETTLEMENT OF DISPUTES AND ARBITRATION

- 37.1 In the event of any dispute, difference or contention in the interpretation or meaning of any of the Articles to this Contract or reasonable inference therefrom, both parties shall promptly make endeavour to resolve the dispute or differences by mutual discussions and agreement. Should the dispute or differences continue to remain unresolved, both parties may each nominate a person to negotiate and reconcile the dispute or differences to resolve thereby the matter of contention between the parties arising out of the Contract. In the event that these two persons referred to cannot agree, they shall nominate a third neutral person to reconcile the dispute or difference. In case the efforts of the neutral person nominated by the two parties fail to resolve the differences, both parties to the Contract shall proceed to Arbitration as provided for herein.
- 37.2 Pending resolution of any such claim or dispute, the CONTRACTOR shall perform in accordance with the Contract without prejudice to any claim by the CONTRACTOR for additional compensation and/or time to complete the Work if such instructions (are in his opinion) above and beyond the requirements of the Contract.
- 37.3 Notwithstanding the existence of a dispute, the CONTRACTOR and PURCHASER shall continue to carry out their obligations under the Contract, and payment(s) to the CONTRACTOR shall continue to be made in accordance with the Contract that in the appropriate cases qualify for such payment(s).

37.4 Subject to the provisions of this Article, either the PURCHASER or the CONTRACTOR may demand arbitration with respect to any claim, dispute or other matter that has arisen between the parties.

37.4.1 However, no demand for arbitration of any such claim, dispute or other matter shall be made until the later of (a) the date of which the PURCHASER or the CONTRACTOR, as the case may be, has indicated its final position on such claim dispute or matter, or (b) the twentieth (20) day after the CONTRACTOR or PURCHASER, as the case may be, has presented its grievance in written form to the other, and no written reply has been received within twenty (20) days after such presentation of the grievance.

37.4.2 No demand for arbitration shall be made after the ninetieth (90) day following the date on which the PURCHASER has rendered his written final decision in respect of the claim, dispute or other matter as to which arbitration is sought. The PURCHASER shall be obliged to specify that the written decision is in fact the final decision within the meaning of this Subarticle. Failure to demand arbitration within said ninety (90) days period shall result in the PURCHASER's decision being final and binding upon the CONTRACTOR.

37.5 All claims, disputes and other matters in question arising out of, or relating to, this Contract or the breach thereof which cannot be resolved by the parties shall be decided by arbitration in accordance with the terms contained in Annexure _____^{1/} attached hereto. This agreement so to arbitrate shall be enforceable under the prevailing arbitration

^{1/} To be drafted by the UNIDO Secretariat

law. The award rendered by the arbitrator shall be final, and judgements may be entered upon it in any court having jurisdiction thereof.

- 37.6 Notice of the demand for arbitration shall be filed in writing with the other party to the Contract in accordance with the conditions contained in the Annexure referred to in Article 37.5 above. The demand for arbitration shall be made within the period specified in Article 37.4 and in all other cases, within the time specified in Annexure _____, after the claim, dispute or other matter in question has arisen, and in no event shall the demand for arbitration be made after institution of legal or equitable proceedings based on such claim, dispute or other matter in question if it would be barred by the applicable statute of limitations.
- 37.7 The CONTRACTOR shall continue the work and undertake his obligations under the Contract and maintain the progress schedule during any arbitration proceedings, unless otherwise agreed by the PURCHASER in writing.
- 37.8 In the event of Arbitration, the CONTRACTOR and PURCHASER agree that the Arbitrator(s) shall have unrestricted access to the Plant (notwithstanding the secrecy provisions of Articles 7.8 to 7.13 inclusive) for the purpose of the said Arbitration.
- 37.9 Arbitration shall be at (Town) and all proceedings will be in _____ language. The Governing Law shall be in accordance with Article _____.

ARTICLE 38

GENERAL PROVISIONS

- 38.1 This Contract supersedes all communications, negotiations, and agreements, either written or oral, relating to the Work and made prior to the date of this Contract.
- 38.2 The express covenants and agreements herein contained and made by the PURCHASER and the CONTRACTOR are and shall be the only covenants and agreements upon which any rights against the PURCHASER or the CONTRACTOR are to be founded.
- 38.3 The provisions of the Articles of this Contract and the contents of the Technical Annexures shall be complementary to each other, but in the event of any conflict, the provisions of the Articles shall prevail.
- 38.4 The invalidity of a portion of this Contract shall not affect the validity of the remainder of the Contract unless such remaining portion should be thereby rendered meaningless or impracticable.
- 38.5 Article headings appearing herein are included for convenience only and shall not be deemed to be a part of this Contract.
- 38.6 Protection of Work and Documents
- 38.6.1 If any document or information given or disclosed to the CONTRACTOR is given a security rating the CONTRACTOR will take all measures directed by the PURCHASER to ensure the maintenance of the security rating.
- 38.7 Sales Territory
- 38.7.1 The PURCHASER shall have the right to sell the products and intermediates in the international markets without any restriction imposed by the CONTRACTOR.

ARTICLE 39

NOTICES AND APPROVAL

39.1 Notices to be given to or served upon either party under the Contract shall be deemed to have been properly served in the following circumstances:

39.1.1 Provided that:

39.1.1.1 Any notice to be given to the CONTRACTOR is to be conveyed by registered airmail post, or left at the address stated below, followed thereafter by the transmission of the same notice by cable or telex with a copy to be delivered to the CONTRACTOR's office at (Town).
(CONTRACTOR's address, cable address and telex number) (Marked for the attention of (Designation)).

39.1.1.2 In the case of a notice to be served on the PURCHASER it is to be sent by registered airmail post to or left at the address stated below, followed thereafter by the transmission of the same notice by cable or telex.
(PURCHASER's address, cable address and telex number) (Marked for the attention of (Designation)).

39.1.1.3 In the case of a notice or information to be sent to the Technical Advisor by the CONTRACTOR, or to be sent by the Technical Advisor to the CONTRACTOR, such notice shall be delivered to the respective Site offices at (Town).

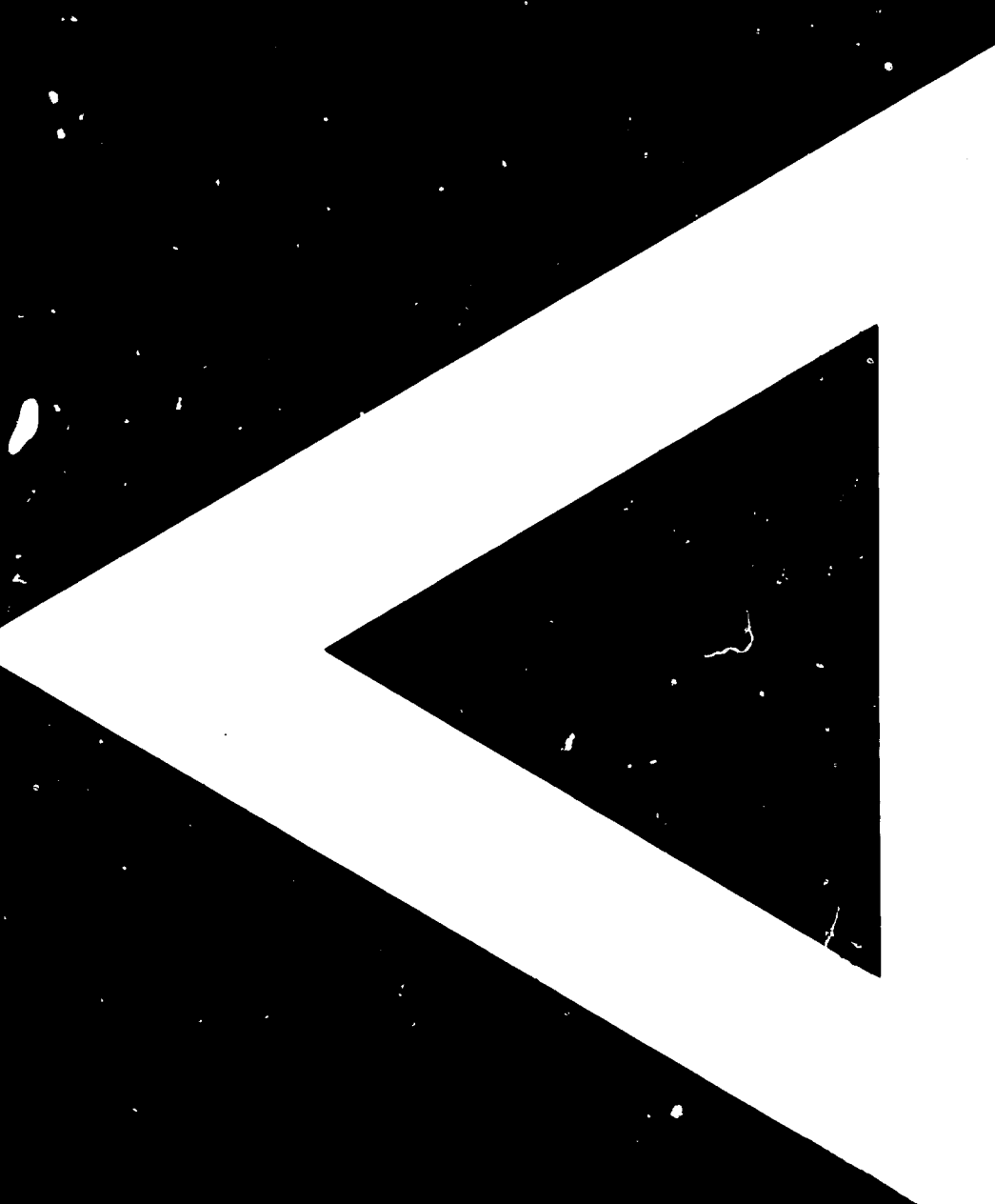
- 39.1.2 When any such notice is sent by registered mail post it shall be deemed to have been duly served following the expiration of ten (10) days following the date of posting and in proving such service it shall be sufficient to show that the letter containing the notice was properly addressed and conveyed to the postal authorities for transmission as registered airmail.
- 39.2 Either party may, by notice to the other party in writing, change its postal address, cable address or telex address for receiving and/or forwarding such notices.
- 39.3 For the purposes of this Contract "Approval" shall be deemed to mean approval in writing. Decisions requiring approval shall also be deemed to encompass modifications or rejections, all of which shall be in writing. Any and all approval(s) which amend, modify or vary the Contract and/or involve an increase in payment(s) shall be forwarded in like manner as the procedure specified for the notices under this Article.

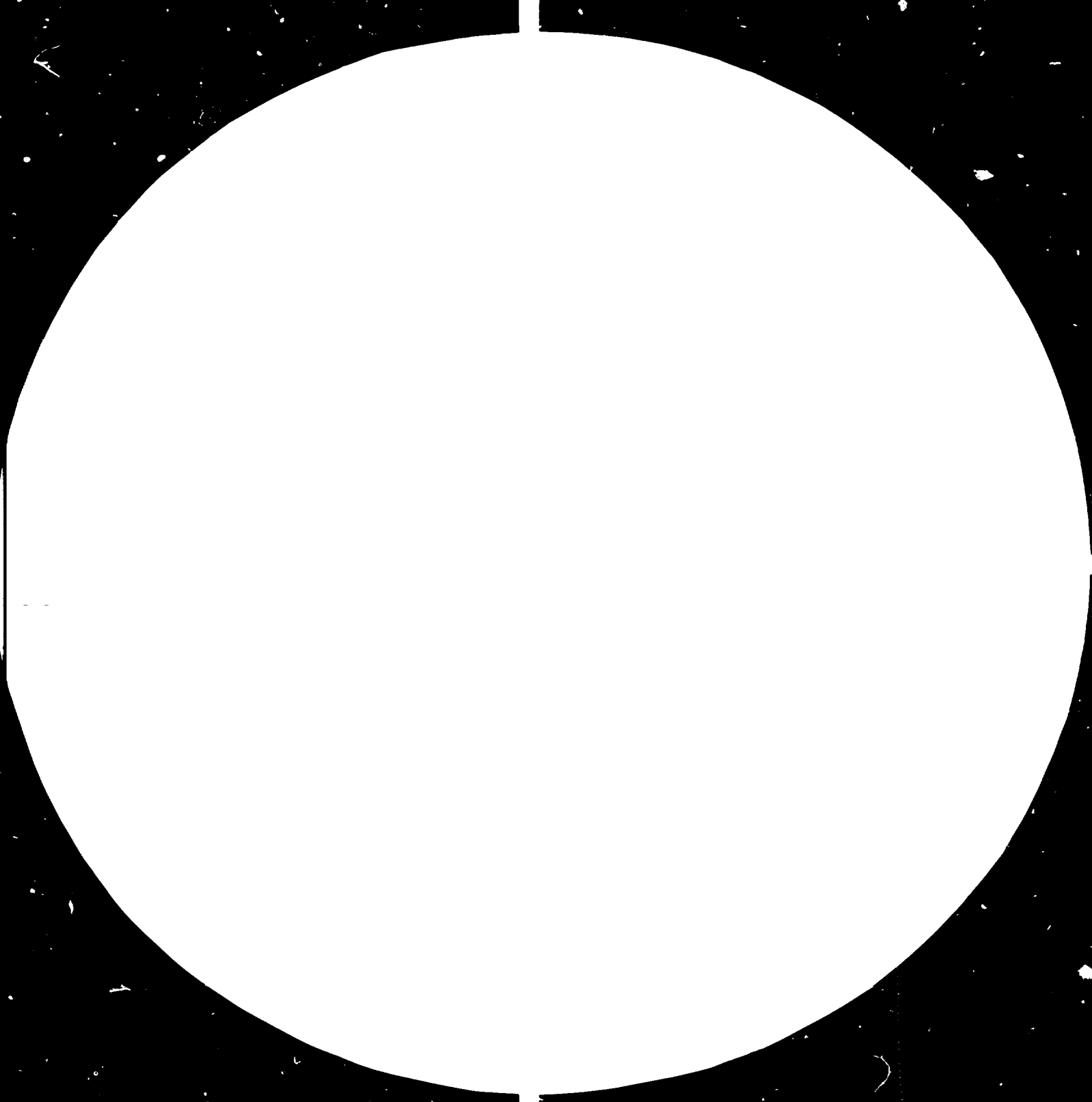
ARTICLE 40

DISCLOSURES

- 40.1 The CONTRACTOR shall not solicit, request or tolerate any commission, fee, discount or other payments whenever he is acting on behalf of the PURCHASER with respect to any procurement and/or services relating to the acquisition of spare parts or otherwise from any Vendor. Should the CONTRACTOR receive any such payment (whether directly or indirectly) the CONTRACTOR shall forthwith disclose and reimburse the same without any deduction whatsoever to the PURCHASER.
- 40.2 The CONTRACTOR shall not pay fees, discount or other commissions in relation to the award to him of this Contract. If any agent's fees are payable to agents in (PURCHASER's country) by virtue of legal agency agreement(s) made before the award of this Contract, then the CONTRACTOR shall (before the award of this Contract) make full disclosure to the PURCHASER the name of the agent and quantum of fees that were or are to be paid.









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FIRST DRAFT OF THE UNIDO MODEL FORM OF
THE SEMI-TURNKEY CONTRACT FOR
THE CONSTRUCTION OF A
FERTILIZER PLANT

by
the UNIDO secretariat

Corrigendum

Page 5, line 14

For party read part

Page 14, 8th line from the bottom

For Ann read Annex

Page 51

Lines 7 and 8 from the bottom should read
list and the availability of the
equipment with the vendor

Page 86

Line 5 should read
examination of the Plants or sections or Utilities and

