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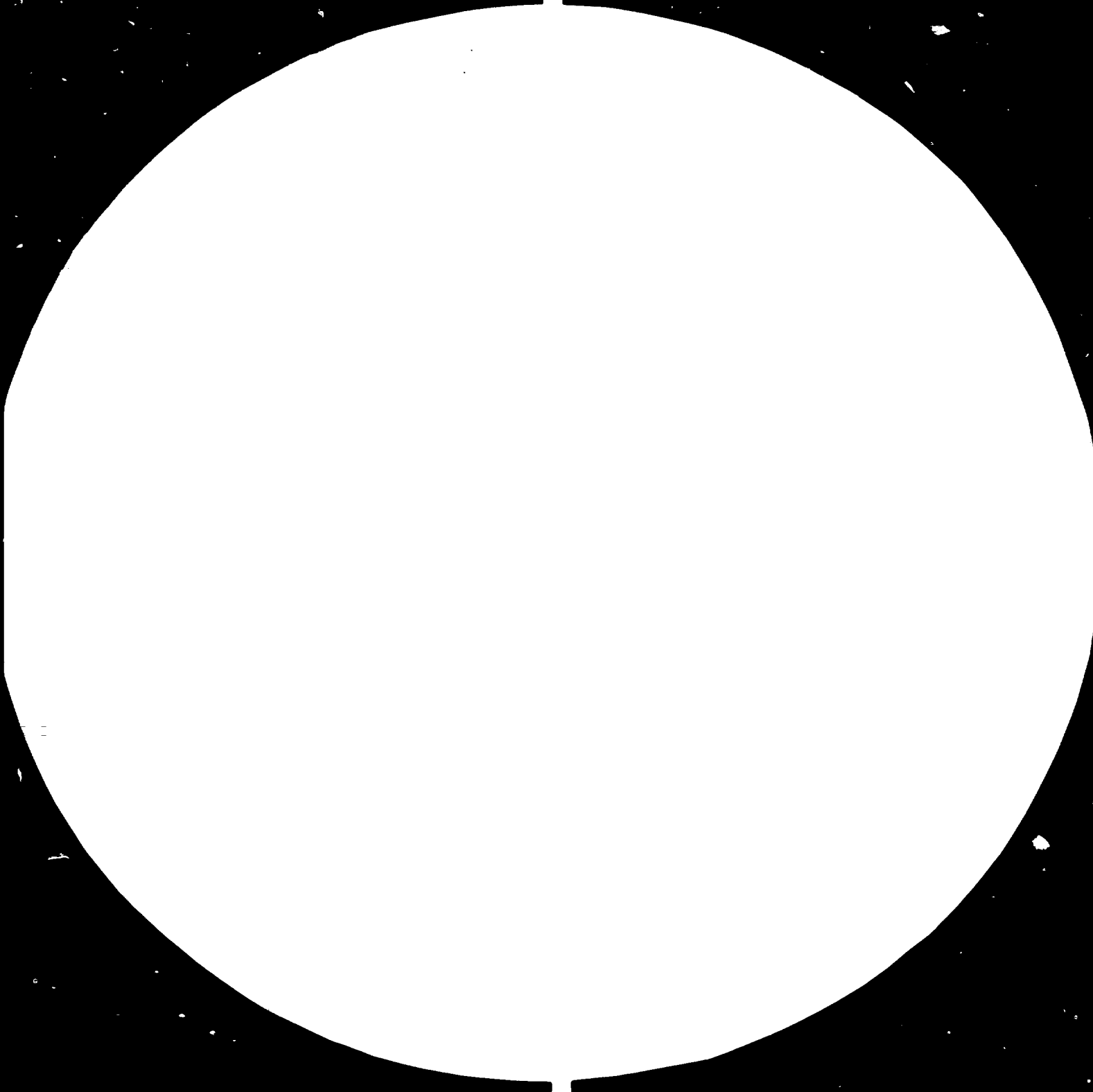
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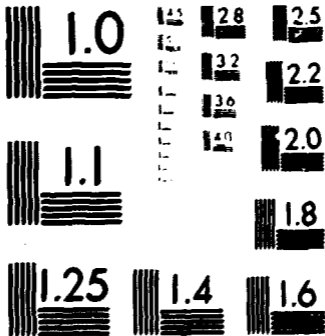
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Third Consultation on the Fertilizer Industry
São Paulo, Brazil, 29 September - 3 October 1980

THIRD DRAFT OF THE UNIDO MODEL FORM OF
COST REIMBURSABLE CONTRACT FOR THE
CONSTRUCTION OF A FERTILIZER PLANT*

by the UNIDO Secretariat

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CONTENTS

	<u>Page</u>
INTRODUCTION	1
LIST OF ARTICLES	2-3
LIST OF TECHNICAL ANNEXURES	4
THE MODEL FORM OF CONTRACT	
PREAMBLE	5
ARTICLES 1-40	6-137

INTRODUCTION

1. The Second Consultation on the Fertilizer Industry in Innsbruck, Austria, 6-10 November 1978, requested the UNIDO Secretariat to prepare a revised draft of the UNIDO Model Form of Cost Reimbursable Contract for the Construction of a Fertilizer Plant for consideration by the Third Consultation in 1980.

2. The preliminary draft (ID/WG.281/12 and Add. 1) was considered by a Working Group at the Second Consultation; subsequently written comments were received from a number of participants at the Consultation and a few other suppliers and purchasers of fertilizer plants.

3. With the benefit of these comments, a Second Draft of the UNIDO Model Form of Cost Reimbursable Contract was prepared for the consideration of the Expert Group Meeting on UNIDO Model Forms of Contract for Fertilizer Plants convened in Vienna from 26-30 November, 1979.

4. This Third Draft was prepared taking into account comments made at the Expert Group Meeting. As suggested, the order of the Articles has been changed to correspond to the plan of implementing the work and some Articles have been combined, thereby reducing the number of Articles from 47 to 40.

5. The Annexures for this contract specific to an ammonia/urea complex will be issued as an addendum to this document. A similar set of Annexures for a phosphoric acid/triple superphosphate fertilizer complex is under preparation.

LIST OF ARTICLES

	Page
1. Definitions	6
2. Object of the Contract and Cost of the Project	11
3. Overall Scope of Work and Division of Responsibility	14
4. Obligations of the CONTRACTOR	20
5. Obligations of the PURCHASER	29
6. Co-operation and Co-ordination between the CONTRACTOR and the PURCHASER	33
7. Proprietary Rights and Licenses, Secrecy and Patents	37
8. Effective Date of Contract	42
9. Assignment of Contract	43
10. Procurement	44
11. Time of Essence	49
12. Delivery and Execution of the Works	50
13. Supervision of Work and Access to Work	54
14. Inspection, Testing and Certification	57
15. Variations, Changes and Additions to Scope of Work	60
16. Training	63
17. Management and Technical Advisory Services	64
18. Completion of Works, Take-Over and Conditions of Acceptance	66
19. Extension of Time	73
20. Contract Price, Terms of Payment, Bonuses and Incentives	75
21. Performance Bond and Bank Guarantees	85
22. Indemnification	86
23. Project Accounting and Audit	87
24. Insurance	89
25. Guarantee of Workmanship and Materials	93
26. Guarantees and Performance Guarantee Tests	95
27. Liquidated Damages	106
28. Warrantees	109

	Page
29. Rectification of Defects and Modifications to the Works	111
30. Liabilities, Set-Off and Waiver	115
31. Taxes and Levies	119
32. Suspension of Work	120
33. Termination or Cancellation of the Contract	122
34. Force Majeure	126
35. Language Governing the Contract	129
36. Applicable Law and Conformity with Local Statutes	130
37. Settlement of Disputes and Arbitration	131
38. General Provisions	134
39. Notices and Approvals	135
40. Disclosures	137

LIST OF TECHNICAL ANNEXURES

- I. Brief description of the works
- II. Basis of design
- III. Battery limits of the plant
- IV. Design criteria
- V. Documents requiring approval of the PURCHASER
- VI. Technical services to be performed by the CONTRACTOR
- VII. Services to be performed by the PURCHASER
- VIII. Process description, equipment to be procured and services
- IX. Catalysts
- X. Spare parts
- XI. Chemicals
- XII. Prequalified vendors for critical items of equipment
- XIII. Exclusions from the scope of delivery
- XIV. Scope of delivery of equipment and materials by the PURCHASER
- XV. Time schedule of implementing each stage of the Contract
- XVI. Quality of products
- XVII. Quality and quantity of effluents; effluents and emission standards
- XVIII. Training of the PURCHASER's personnel
- XIX. Procedures for making changes in the scope of work
- XX. Operating procedures and procedures for guarantee tests
- XXI. Manuals
- XXII. Form of performance bond
- XXIII. Form of bank guarantee
- XXIV. Packing and shipping
- XXV. Storage at site, general and marking instructions
- XXVI. Procurement procedures
- XXVII. Schedule of rates and charges
- XXVIII. Civil engineering specifications
- XXIX. Erection codes and specifications

THIS CONTRACT is made this _____ (day, date and year) _____ and entered into between (Legal Name of the PURCHASER) _____ having its registered office at _____ (Place) _____ with its Principal Place of Business at _____ (Place) _____ and hereinafter referred to as the 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 the CONTRACTOR) _____ having its registered office at _____ (Place) _____ and its Principal Place of Business at _____ (Place) _____ and hereinafter referred to as the CONTRACTOR, which expression shall, unless repugnant to the context or contrary to the meaning thereof, include its successors and permitted assigns of the other part,

WITNESSETH

WHEREAS THE PURCHASER wishes to install at _____ (Plant Site) _____ facilities for the production of _____ (one thousand) metric tons of ammonia per day, and _____ (one thousand seven hundred and twenty-five) metric tons of urea per day;

AND WHEREAS THE PURCHASER wishes to avail of the CONTRACTOR's services with respect to the preparation of basic design and engineering, detailed engineering, procurement of the Works, supervision services during erection and commissioning of the ammonia and urea plant facilities and all of the work as described hereinafter;

AND WHEREAS THE CONTRACTOR is willing to undertake such work and services as hereinafter set out in this Contract;

AND WHEREAS THE PURCHASER AND CONTRACTOR have hereby agreed to enter into this Contract;

AND IN CONSIDERATION OF THE PREMISES AND MUTUAL COVENANTS HEREIN CONTAINED, IT IS 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 jurisdictions 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 Plant) 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 18.11.
- 1.7 "Completion of the Works" shall mean the time when all the Works to be performed by the CONTRACTOR under the Contract have been completed in accordance with the Contract, and the Acceptance Certificate has been issued.
- 1.8 "Confidential Information" shall mean the Confidential Information defined as such in Article 7.5.
- 1.9 "Contract" means this Contract (together with the Annexures and Specifications) entered into between the PURCHASER and the CONTRACTOR for the execution of the works howsoever made, together with all of the documents to which reference has been made in the Contract documents, including such amendments

and/or changes, (properly made from time to time by mutual agreement between the parties) to the documents constituting this Contract.

- 1.10 The "CONTRACTOR" means the party named as such in this Contract or his successors or permitted assigns.
- 1.11 "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.
- 1.12 "Contract Price" means the total amount referred to in Article 20, subject however, to any valid adjustment made through the application of relevant contractual provisions provided for therein or as specifically elsewhere provided for in the Contract.
- 1.13 "The 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.
- 1.14 "Critical Items" shall mean all the equipment specifically designated as such in Annexure VIII.
- 1.15 "Days" shall be calendar days.
- 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) (with the exclusion of materials for civil works) 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 Work(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 rectifications 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.
- 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 constructed at the Site, 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 produced 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 The "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, Initial Operation(s) commenced and the Plant(s) commence(s) the production of specification grade Product(s).
- 1.38 "The Technical Advisor" means the person(s) or firm(s) appointed from time to time by the PURCHASER as his representative with the specified authority to review all work on the PURCHASER's behalf and give such instructions and/or grant such approvals as may be necessary for the purposes of this Contract.
- 1.39 "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.
- 1.40 "Ton(s)" refers to metric tons.
- 1.41 "Utilities" and "Off-Sites" of the Plant" shall mean the facilities defined as such as demarcated and indicated in the general Annexures and the plot plan attached to Annexure VIII.
- 1.42 "Vendor" shall mean the person from whom the supply of any Equipment is procured by CONTRACTOR, such procurement being with the approval of and on behalf of the PURCHASER, or the person(s) from whom direct supply of any Equipment is procured by the PURCHASER.
- 1.43 "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, accomplished and provided by the CONTRACTOR (inclusive of his services under this Contract) but without restricting the generality of the foregoing, includes, according to the content all the relevant particulars specified elsewhere in this Contract.

ARTICLE 2

OBJECT OF THE CONTRACT AND COST OF THE PROJECT
(INCLUDING PROGRAMME AND COST)

- 2.1 The object of the Contract is to establish a modern, reliable, efficient and integrated Complex, suitable to the location, for the production of ammonia and (prilled/uncoated) urea, together with the required utilities, off-sites and other facilities required for the purposes of the Contract. The scope of the Contract covers a Cost-Reimbursable type of Contract, which includes the grant of license and know-how, provision of basic and detailed engineering, to procure all the Plant and equipment and to supply supervisory services for the erection, commissioning and startup of the Plant and to demonstrate the ability of the Plant to continuously produce Ammonia and Urea with the specifications contained in the Contract, at a capacity of (1,000) tons per day of Ammonia and (1,725) tons of Urea per day 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 Contract includes 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 Works at optimum capacity and efficiency.
- 2.4 The time-schedule(s) required to be maintained to complete the Complex on time are estimated as follows and the CONTRACTOR and PURCHASER shall take all the necessary steps to adhere to them. 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.
- 2.4.1 Know-how, Basic Engineering and the documents related thereto shall be made available to

the PURCHASER from 2 to 8 months.

- 2.4.2 Complete load drawings of the Complex and specifications for Civil Engineering work shall be made available by the (6th) month.
- 2.4.3 Construction of equipment foundations and Plant Buildings shall start in the (12th) month.
- 2.4.4 FOB Delivery of equipment (with the exception of the critical items) shall commence in the (14th) month and shall end (95% by value) in the (24th) month.
- 2.4.5 Delivery FOB of critical items of equipment not to exceed (26) months.
- 2.4.6 Erection of the Plant shall start in the (18th) month.
- 2.4.7 The Plant shall be mechanically complete in the (34th) month, with a float of 2 months (i.e. (32) months plus 2 months float).
- 2.4.8 The Plant will be in commercial production by the (36th) month.

2.5 The CONTRACTOR and PURCHASER estimate that the battery limits costs of the project as of the date of the Contract are:

Know-how and Basic Engineering	
Total Engineering	
Procurement, Inspection and Expediting	
Training	
Site Supervision	
Materials, Plant and Machinery FOB/Ex Works	
Freight, Insurance, Clearance, Transport to site	
Civil Engineering (incl. foundations)	
Erection (incl. Erection Equipment)	
Startup and Commissioning	_____
Project Cost	_____
Spare Parts	_____
Total Cost	_____

2.5.1 The parties acknowledge that this estimate shall not constitute a guarantee of project cost, and unless as otherwise provided in the Contract no liability shall attach to either party if this estimate is exceeded.

2.6 The CONTRACTOR acknowledges that the estimate of the cost of all Materials, Plant and Machinery, FOB/ex-works as stated in Article 2.5 is an estimated amount of (Amount) and in consideration thereof shall submit to the PURCHASER within four (4) months of the Effective Date of this Contract, a revised estimate of the FOB cost of all plant and equipment to be procured under this Contract. The estimates shall be broken up by Plants and by sections thereof, to the extent practicable.

2.6.1 In the event that the final cost of all Materials, Plant and Machinery, FOB/ex-works exceeds the amount for Materials, Plant and Machinery, FOB/ex-works contained in Article 2.5 by 10% or more then the CONTRACTOR shall pay to the PURCHASER a penalty of (* Amount) which shall be deducted from the CONTRACTOR's final payment under Article 20.11.3, 20.12.11 and 20.12.12.

2.6.2 In the event that the final cost of all plant and equipment is more than 10% below the original estimate given in Article 2.5 above, the PURCHASER shall pay to the CONTRACTOR a bonus of (* Amount, same as in 2.6.1).

* It is suggested that in this type of cost-reimbursable Contract the amount should be nominal.

ARTICLE 3

OVERALL SCOPE OF WORK AND DIVISION OF RESPONSIBILITY

- 3.1 In pursuance of the objectives contained in Article 2, the scope of the work required for the establishment of the Plant, may be described as follows:
- 3.1.1 Establishment of the Design basis of the Plant.
- 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
 - Utility requirements and distribution including the steam system network
 - Plant layout
 - Electric Distribution
 - Effluent and Emission specifications
 - Operation Manuals
 - Maintenance Manuals
- 3.1.3 The detailed engineering for the Plant.
- 3.1.4 Establishment of the list of Plant and equipment and identification of time critical and process critical items.
- 3.1.5 Prequalifying vendors for the supply of Plant and equipment.
- 3.1.6 Procurement of all Plant and equipment and materials for the Plant, and procurement of spare parts and catalysts.
- 3.1.7 Inspection of Plant and equipment during fabrication, on completion, and after packing, and providing certificates of inspection.
- 3.1.8 Providing test certificates for plant and equipment wherever laid down under the laws

of the country of fabrication and/or the laws of (PURCHASER's country).

- 3.1.9 (a) Packing of the Plant in seaworthy/roadworthy packing, marking of the packages, and transport of the Plant and equipment from fabricators works to the point of despatch FOB (FOR) as the case may be.
- (b) Transport of the equipment from point of despatch FOB (or FOR) as the case may be to site, including loading and unloading at harbours and customs clearance and other formalities, if any.
- 3.1.10 Arranging all necessary insurance coverages.
- 3.1.11 Purchasing and Acquiring the land for the Plant.
- 3.1.12 Clearing, levelling and otherwise developing the land.
- 3.1.13 Testing the soil characteristics of the site, and in particular testing the points at which heavy loads are to be expected.
- 3.1.14 Construction of roads within battery limits.
- 3.1.15 (Optional) Construction of railway sidings within the battery limits, and connecting to the national rail network.
- 3.1.16 Arranging for all telephone and other similar facilities for communications from site to other places.
- 3.1.17 Design and construction of all Civil Engineering works within the Plant battery limits including:
 - (a) Design of the works
 - (b) Construction of the works
- 3.1.18 Construction of a housing colony for erection

and startup personnel.

- 3.1.19 Construction of a housing colony for permanent staff and workers for the operation of the Plant.
- 3.1.20 Receipt and Inspection of equipment at site and making claims for insurance or for short supply, if required.
- 3.1.21 Storage of equipment at site prior to erection.
- 3.1.22 Providing all erection equipment, tools and tackle, and procuring all erection materials.
- 3.1.23. Erecting all Plant and equipment.
- 3.1.24 Providing training for Plant Engineers and Plant operators.
- 3.1.25 Testing all erected Plant and equipment individually, by sections and as a complete Plant, and carrying out all pre-commissioning procedures.
- 3.1.26 Supplying feedstock, chemicals and all other material inputs, including outside purchased utilities, necessary for the start-up of the Plant.
- 3.1.27 Commissioning and start-up of the Plant until specification grade products are obtained.
- 3.1.28 Operation of the Plant from start-up until completion of the guarantees for the Plant.
- 3.1.29 Demonstrating the Guarantee Tests.
- 3.1.30 (Optional) Management of the operation of the Plant until Mechanical Completion, in accordance with the provisions of Article 13.2 and management of the operation of the Plant from Mechanical Completion to Provisional Acceptance.

3.1.31 (Optional) Management Assistance following Provisional Acceptance of the Plant until Final Acceptance as specified in Article 17.

3.1.32 (Optional) The Provision of Technical Advisory Services in accordance with terms and conditions to cover those services referred to in Article 17.

3.2 For each of the functions described in the scope of work above and in the context of the obligations of the CONTRACTOR and PURCHASER (as expressed in Articles 4 and 5 and elsewhere in the Contract) and the procedures for co-operation and co-ordination (laid down in Article 6 and elsewhere in the Contract) the division of responsibilities shall be as follows:

3.2.1 The PURCHASER shall be responsible for the work to be undertaken under Articles 3.1.11 to 3.1.16 inclusive, 3.1.17(b), 3.1.18 and 3.1.19. Unless otherwise agreed between CONTRACTOR and PURCHASER the PURCHASER shall also be responsible for the work under Article 3.1.17(a).

3.2.2 The PURCHASER shall also be responsible for the work to be undertaken under Articles 3.1.1, 3.1.9(b), 3.1.20, 3.1.21, 3.1.22 and 3.1.26, however, with the assistance of and/or verification by the CONTRACTOR whenever required as provided for particularly under Articles 4, 5 and 6, or elsewhere in the Contract.

3.2.3 The PURCHASER's personnel working under the supervision and direction of the CONTRACTOR shall undertake the work under Articles 3.1.23, 3.1.25, 3.1.27 and 3.1.28.

3.2.4 The CONTRACTOR shall be responsible for the work to be undertaken under Articles 3.1.2 to 3.1.4 inclusive, 3.1.6, 3.1.7 and 3.1.24. The CONTRACTOR shall be responsible for demonstrating the Guarantee Tests pursuant to Article 3.1.29 (utilizing the personnel of the PURCHASER) and,

until completion of the Guarantee Tests, and for the Supervision of the Erection, Testing, Commissioning and Operation of the Plant, as stated in Articles 3.1.23, 3.1.25, 3.1.27 and 3.1.28.

3.2.5 The PURCHASER and the CONTRACTOR shall be jointly responsible for the functions under Article 3.1.5, and for taking out the Insurance contemplated in Article 3.1.10 in accordance with the obligations stated in Article 24.

3.2.6 The functions under Articles 3.1.8 and 3.1.9(a) shall be the responsibility of the Vendors, but under the supervision of the CONTRACTOR, as to the sufficiency and proper discharge of such responsibilities by the Vendors.

3.2.7^{1/} The Management Assistance and Technical Services contemplated under Articles 3.1.30, 3.1.31 and 3.1.32 shall be embodied in separate agreements to be entered into by PURCHASER and CONTRACTOR. The CONTRACTOR shall execute such an Agreement at the option of the PURCHASER on terms to be mutually established before the completion of the Guarantee Tests.

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 laid down in the Contract and the intent thereof, such

^{1/} This clause is optional.

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. Payments due, if any, will be governed by the provisions of Article 15.

3.4

Except where otherwise not provided for within the terms of Article 15 or elsewhere in this Contract, the PURCHASER and CONTRACTOR may by mutual agreement, amend or change the conditions governing the responsibility or work to be undertaken, without prejudice to the expressed and/or implied obligations as stated in the Contract. All amendments and/or changes to be incorporated in the terms of the Contract shall be made in writing by duly constituted and authorized representatives of the parties herein, and the Contract together with such amendments and 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 specifications in the scope of the work and division of responsibilities (contained in Article 3) are described more particularly in this Article and in Annexure VI, as well as in other relevant parts of this Contract. The CONTRACTOR shall be responsible for all such obligations.
- 4.2 The CONTRACTOR shall, commencing within 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 obligations in Articles 3, 4 and 6 and elsewhere in the Contract and provide such documentation indicated in Annexure XV in order to meet the time schedule laid down 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 to the reasonable satisfaction of the PURCHASER. The execution of the work shall be subject to such variation, changes and additions that may be required to be incorporated in accordance with the provisions of Article 15.
- 4.4 The CONTRACTOR acknowledges that he has reviewed all exploratory work done by or for the PURCHASER and information presented by the drawings and technical specifications and other pertinent documentation and that he has satisfied himself as to the nature, location and suitability of the site for the Complex, the applicable laws, agreements and regulations, the general and local conditions applicable to the CONTRACTOR's work (including in particular: those bearing upon transportation, disposal, handling and storage of materials, water, electrical power, approach roads, and extreme weather conditions or similar physical

conditions at site), the conformation and conditions of the ground and the subsurface, and all other matters which may in any manner affect the CONTRACTOR's work, services, obligations, or the costs thereof to the CONTRACTOR under the Contract. Any failure on the part of the CONTRACTOR to acquaint himself with all the necessary data and information will not relieve him of his responsibilities under the Contract, and in any event shall not be good cause for claims for increases in the payments due to him under the Contract.

4.4.1 By way of exception to 4.4, when subsequent investigations and verifications result in ground and sub-surface conditions being found to be significantly or fundamentally different to that stated in Annexure II and IV, then in such a case the CONTRACTOR shall advise the PURCHASER of such differences and following completion of all such tests the parties shall mutually agree to make such modifications in the design and in the time schedules and payments to the CONTRACTOR, if such is justified.

4.5 The CONTRACTOR shall obtain the know-how and basic engineering for various processes from the Process Licensors as follows:

Ammonia Plant - (name of Licensor(s))
Urea Plant - (name of Licensor(s))
(Others as specified e.g. water treatment)

AND shall design the Plant in conformity with the basic engineering and design criteria of the Process Licensors. Documentation relative to all know-how and basic engineering obtained from the above Licensors shall be provided to the PURCHASER by the CONTRACTOR. The CONTRACTOR also hereby agrees that the documents referred to in this Article 4.5 shall cover and be based upon the latest commercially proven know-how available to the Process Licensors at the time of making such documents available (such documentation to cover the

state-of-the-art of the know-how at the time of the signing of the Contract, or if mutually agreed to, at a later date) and that the 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.

4.6 The CONTRACTOR shall undertake the detailed engineering of the Complex and shall perform the general 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 Complex shall constitute, when assembled, a technological entity, capable of producing the final products of the quality and quantity in accordance with the criteria and Performance Guarantees 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 in accordance with Article 3, and Article 5, so that the Plant can meet the time schedule laid down 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 Annexure II including mandatory national standards. 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 Annexure II 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 the appropriate data in design methods available to the PURCHASER. The CONTRACTOR shall

also take into account all safety rules/regulations normal to industry-practice, and project safety and mandatory regulatory provisions required in (PURCHASER's country), as stated in Annexure II.

- 4.8 Prior to the expiry of (six months) following the Effective Date of Contract, the CONTRACTOR shall confirm to the PURCHASER the appropriate requirements for the supply of outside utilities (such as power, water, maximum hourly quantities, etc.). The requirements for all chemicals and other essential materials required for the start-up of the Plant (and the period thereafter), shall be made known by the CONTRACTOR to the PURCHASER within the period at least (12 months) prior to the Mechanical Completion of the Plant.
- 4.9 The CONTRACTOR shall establish a complete list of equipment, spare parts and materials to be procured under this Contract, and will identify time-critical and process-critical equipment. The special procedure for purchasing critical equipment and spare parts shall be agreed to by the CONTRACTOR and the PURCHASER as specified in the Contract, and procurement shall be expeditiously undertaken by the CONTRACTOR and the PURCHASER to meet the time schedule laid down in Article 2.
- 4.10 The CONTRACTOR and the PURCHASER will jointly pre-qualify Vendors in accordance with Article 10 and Annexure XXVI.
- 4.11 The CONTRACTOR shall advise and assist the PURCHASER during the pre-qualifications of Vendors, and shall give to the PURCHASER appropriate data and information known to the CONTRACTOR on the ability of the Vendors to meet specifications, and their reliability during actual operation of the equipment of different Vendors. If the CONTRACTOR has sound reasons for the exclusion of certain Vendors he may so recommend to the PURCHASER in accordance with Article 10.2.1.

- 4.12 The CONTRACTOR will procure all plant and equipment, material and spare parts on behalf of the PURCHASER in accordance with the Procurement provisions and procedures laid down in the Contract and in Annexure XXVI. Notwithstanding the fact that the ultimate purchase is to be made on the PURCHASER's account, the CONTRACTOR shall be obligated to ensure that all procurement is accomplished so as to enable the Plant to meet the objectives expressed in Article 2, subject to the PURCHASER carrying out his obligations. The procurement shall be carried out by the CONTRACTOR in such manner that the Plant is capable of meeting the Performance Guarantees laid down in Article 26. The CONTRACTOR shall also assist the PURCHASER to obtain remedial action from Vendors (where such is necessary) and the CONTRACTOR's services for any required procurement and/or inspection shall be discharged free of additional costs to the PURCHASER. However, this Article shall not be construed as imposing a liability on the CONTRACTOR for non-fulfillment of the obligations of Vendors. Except where such non-fulfillment is due to incorrect or inappropriate instructions issued by the CONTRACTOR, or to a defect in the Purchase Orders issued to Vendors by the CONTRACTOR, or with his approval.
- 4.13 The limitations as to size and weight of packages are contained in the Annexures to this Contract, and the CONTRACTOR shall design and procure the Plant accordingly. Within the first 4 months of this Contract, the PURCHASER and the CONTRACTOR shall review all transport of equipment from port of entry to site, in accordance with Article 6.
- 4.14 The CONTRACTOR shall undertake the inspection of all equipment and arrange for the issue of all test certificates, and shall be obligated to require the proper carrying out by the Vendors of all packaging and the expediting of necessary transportation FOB to the point of despatch.
- 4.15 The CONTRACTOR shall depute a representative on site to inspect all equipment on receipt at site and to identify along with the PURCHASER's representatives, any shortages and breakages in receipt, and to help the PURCHASER in making claims for Insurance, or against Vendors for damages and/or for shortages. The site

representative shall also advise the PURCHASER on storage at site.

- 4.16 The CONTRACTOR shall, within (4 months) after Effective Date of the Contract provide a list of heavy erection equipment and within eight (8) months a list of all other erection equipment and materials to the PURCHASER. The CONTRACTOR and the PURCHASER shall thereafter obtain the specified equipment in due time.
- 4.17 The CONTRACTOR shall provide an adequate number of supervisory personnel for the erection, mechanical testing, commissioning, startup and initial operation of the Complex. The CONTRACTOR shall also undertake supervisory responsibilities of the PURCHASER's personnel and direct the testing, startup and demonstration of tests in accordance with the requirements of the Contract. The particulars relating to the number and duration of stay of such personnel is contained in Annexure XXVII; however, the adequacy of the requirements shall be reviewed by the CONTRACTOR and the PURCHASER within eight (8) months of the Effective Date of the Contract, and, thereafter, periodically as may be required. The CONTRACTOR shall ensure that all Supervisory personnel are available at the site of work in such manner that the progress of work at site is carried out expeditiously and as far as possible, in accordance with the time schedule contained in Annexure XV and the PURCHASER shall provide all work permits, if they are required, in good time. The CONTRACTOR shall send particulars of such personnel to the PURCHASER at least (4) months before they are required at site.
- 4.18 The CONTRACTOR shall supply all technical documentation required for the implementation of the Project (and in particular the Technical Documentation stated in Annexure XV) within the time schedules contained in Annexure XV and Article 12 and, in other instances, in

sufficient time to meet the requirements of specified schedules. In particular, the CONTRACTOR shall be required to supply all necessary data in good time to enable the PURCHASER to undertake his responsibility for Civil Engineering in accordance with Article 5.12 and 5.13.

- 4.19 The CONTRACTOR shall provide training to the PURCHASER's personnel in accordance with Article 16 and Annexure XVIII. The CONTRACTOR shall ensure that the number and level of training (to be arranged and supervised by the CONTRACTOR within and/or outside the country in accordance with Article 16) of the PURCHASER's personnel is adequate for the smooth operation and maintenance of the Plant in peak condition. The PURCHASER will ensure that the personnel sent for training meet the educational standards laid down in Annexure XVIII.
- 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 laid down in the Contract.
- 4.21 The CONTRACTOR shall commence the Guarantee Tests of the Ammonia Plant and of the Urea Plant within (90) days after the startup of the respective Plant, but in any event not later than 6 months after mechanical completion of the respective Plants, provided that the PURCHASER has carried out his obligation to supply feedstock, outside utilities, chemicals and other agreed materials, and has provided the agreed number of operating and maintenance staff as well as an agreed complement of spare parts. The CONTRACTOR shall be allowed to extend this period and repeat guarantee tests in accordance with Article 26.10 of the Contract.
- 4.21.1 The extension of time granted to the CONTRACTOR shall be governed in accordance with the provisions of Article 29.
- 4.22 For a period of 12 months following provisional acceptance of the Plant, the CONTRACTOR shall be responsible for any necessary correction of the Plant within the scope of the CONTRACTOR's services (free of any additional costs to the PURCHASER) 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 design/equipment classification/process(es)/procurement/inspection which were not apparent or recognizable at the time when the CONTRACTOR demonstrated the Guarantee Tests. The responsibility of the CONTRACTOR specified in this Article shall apply mutatis mutandis to any other obligations to be fulfilled under the terms of this Contract.

- 4.23 The CONTRACTOR shall ensure that the detailed design and material specifications for civil works submitted by the PURCHASER for the CONTRACTOR's review, are in accordance with the specifications and drawings supplied by the CONTRACTOR generally (inclusive of all pipe areas and supports and those exposed to corrosive agents/environments).
- 4.24 Throughout the performance of the work the CONTRACTOR shall ensure that it, its employees, agents and invitees and its sub-contractors, their employees, agents, invitees while upon the job site, comply with all applicable laws, rules and regulations. The CONTRACTOR shall at all times maintain good order among his employees and shall not employ on the works any person unfit, undesirable, or anyone not skilled in the work assigned to him.
- 4.25 The CONTRACTOR shall be responsible for taking out and keeping in force the various Insurance policies which are his responsibility under Article 24, (and as specified therein), and shall in any event carry such corporate Insurance policies consistent with its activities as a Contractor.
- 4.26 The CONTRACTOR shall provide the PURCHASER with sufficient office space and facilities, secretarial and typing services and reasonable telephone and telex facilities for the representatives of the PURCHASER assigned to the CONTRACTOR's offices at (location of offices in PURCHASER's country).

- 4.27 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 concerned, including (without limitation) evidence that the CONTRACTOR is a properly organized legal entity duly entitled to perform this Contract in accordance with all legal requirements, of governing charter and by-laws, and of its governing board of directors, as the case may be.
- 4.28 Within (6 months) of the Mechanical Completion of the Plant, the CONTRACTOR shall prepare a set of "as-built" drawings or their equivalent for the Plant, under his supervision. The PURCHASER shall provide the necessary drafting office facilities and personnel.

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 more particularly defined herein and as elsewhere expressed in the Contract. The PURCHASER shall carry out his obligations so as to enable the CONTRACTOR to meet the time schedule contained in Annexure XV.
- 5.2 The PURCHASER undertakes to supply the information and data required as a basis for the design contained in Annexures II and IV. The CONTRACTOR shall be obliged to examine the information and data for the design basis so specified, and shall expeditiously advise the PURCHASER on the adequacy and relevance of the information and data provided. The PURCHASER's responsibility (if any) for information or data furnished by it or for any representations made or expressed by any of its officers or agents prior to the date of this Contract shall be valid only when such data, information or representation is expressed in this Contract.
- 5.3 The PURCHASER and CONTRACTOR shall jointly pre-qualify Vendors in accordance with Article 10 and Annexure XXVI, and the PURCHASER shall comply with the Procurement provisions contained in Article 10.
- 5.4 The PURCHASER shall be responsible for making all payments to Vendors of equipment, in accordance with the Procurement Purchase Orders issued to them in the name of the PURCHASER, and on the advice of the CONTRACTOR.
- 5.5 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 ——— 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. The PURCHASER acknowledges that delays on approvals of purchase orders or payments to Vendors (when due) could be detrimental to the time schedules contained in Annexure XV.

- 5.6 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.
- 5.7 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.
- 5.8 The PURCHASER shall be responsible for all matters connected with obtaining and developing the land.
- 5.9 The PURCHASER shall secure and make available for development within three months from the agreement on the lay-out and plot plan, 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.
- 5.10 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 supervise such work relating to load tests, evaluate the results and shall convey its consent as to the adequacy of the load bearing and soil tests. However, in the event of the CONTRACTOR's disagreement with the results of such tests, then, the PURCHASER and CONTRACTOR shall determine the future course of action. The PURCHASER will give at least (45) days notice to the CONTRACTOR of the date on which such tests are to be commenced.
- 5.11 The PURCHASER shall be responsible for the timely design and construction of all road, rail and other communication within the battery limits and offsite(s).

- 5.12 Except where otherwise agreed between PURCHASER and CONTRACTOR, the PURCHASER shall be responsible for the design of all civil engineering works. For this purpose, the CONTRACTOR shall ensure the timely supply of the line drawings, machinery and piping lay-out, load data, and all other information necessary to undertake the design of the Civil Engineering in accordance with Article 4.23.
- 5.13 The PURCHASER shall be responsible for the construction of all Civil Engineering works.
- 5.14 The Plant shall be erected by the PURCHASER or by such other party/ parties appointed by the PURCHASER, (from a list of prequalified parties mutually agreed between the CONTRACTOR and the PURCHASER), under the direct supervision of the CONTRACTOR's personnel.
- 5.15 The PURCHASER shall obtain and make available to the CONTRACTOR all necessary permits/approvals and/or licences from local authorities and/or Government as may be necessary for the timely execution of the Contract inclusive of import licences, visas for CONTRACTOR's personnel, entry permits, work permits etc.
- 5.16 The PURCHASER's personnel at site shall carry out all testing and start-up and operation of the Plant until the completion of the Guarantee Tests, under the supervision of the CONTRACTOR.
- 5.17 The PURCHASER shall provide feedstocks, outside utilities, chemicals and other materials required for the start-up, operation and maintenance of the Plant, unless otherwise specifically stated to be the responsibility of the CONTRACTOR in the Contract.
- The CONTRACTOR shall be obligated to advise the PURCHASER of the requirements for the supply of outside utilities, chemicals, and other materials in accordance with the requirements of Article 4.8.
- 5.17.1 The feedstocks shall be in accordance with the specifications contained in this Contract or with such deviations as have been specified in this Contract. In the event of broader deviations, the parties shall determine the technical changes required, if any and this may constitute the basis for a change order under Article 15.

- 5.18 The PURCHASER shall provide free of charge, operations and maintenance personnel for the start-up and operation of the Plant under the supervision of the CONTRACTOR throughout the period from the beginning of the mechanical test of equipment till the date of Provisional Acceptance of the Plant, in adequate numbers and competence commensurate with the requirements of manning, which requirements are to be developed by the CONTRACTOR in the form of a Manpower and Qualification Chart which is to be agreed by the PURCHASER.
- 5.19 The PURCHASER shall provide the CONTRACTOR and its personnel deputed to site with such facilities as are detailed in Annexure XXVII.
- 5.20 The PURCHASER shall make all payments to the CONTRACTOR in accordance with the provisions of this Contract.
- 5.21 The PURCHASER shall take out and maintain the insurance policies which are his specific responsibility as defined in Article 24.
- 5.22 The PURCHASER will provide the CONTRACTOR free of charge: office space, secretarial facilities and typing services for the CONTRACTOR's personnel assigned to the PURCHASER's office or to site.

ARTICLE 6

CO-OPERATION AND CO-ORDINATION BETWEEN THE
CONTRACTOR AND THE PURCHASER

- 6.1 The Parties to this Contract hereby agree to co-operate, implement and execute the work as stipulated in the Contract. The Parties through their designated representatives will meet regularly according to a pre-determined schedule to take stock of the progress of work, costs that have been incurred and mutually agree to expedite/economise the work and resolve outstanding issues between the Parties.
- 6.2 The PURCHASER and the CONTRACTOR each shall appoint a Project Manager who shall co-ordinate and monitor the work under this Contract on behalf of the PURCHASER and CONTRACTOR respectively within the scope of the authority entrusted to each of them.
- 6.3 All notices, instructions and decisions on meetings shall be given in writing. Minutes of meetings shall be recorded and circulated for confirmation and necessary action. Minutes of meetings between CONTRACTOR's and PURCHASER's representatives held at site, or in the offices of PURCHASER or CONTRACTOR shall after recording and confirmation have the same effect as notices in writing.
- 6.4 The CONTRACTOR shall submit drawings, equipment specifications, and other documents required for approval or distribution to the PURCHASER under this Contract within the time limits specified in Annexure XV. The PURCHASER shall return such drawings, specifications and documents within the period specified in Article 5.5 and Article 10.
- 6.5 Within 30 days from the Effective Date of the Contract a meeting shall be held in (Country) between the CONTRACTOR and the PURCHASER and, if necessary with the Technical Advisor present to discuss all matters of common interest, including but not restricted to the

finalization of co-ordination 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.

- 6.6 The CONTRACTOR shall immediately thereafter prepare the necessary documents for placing orders for the critical items (time critical and process critical items) as identified in Annexure XII.
- 6.7 Immediately after the enquiries for Critical items are issued, the CONTRACTOR shall begin issuing the necessary enquiries to the pre-qualified vendors for the remaining Equipment and Spare Parts, expeditiously and in any event immediately following completion of the relevant engineering.
- 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 utility units, time schedule, project cost and production cost optimization, local procurement, training programme and other items of common interest shall also be discussed. The CONTRACTOR shall take into account in its design any changes suggested by the PURCHASER and/or the Technical Adviser, which are acceptable technically to the CONTRACTOR; and the CONTRACTOR shall advise the PURCHASER of any changes in the overall price, guarantees and/or project schedule, arising from such changes.
- 6.9 The design services to be undertaken by the CONTRACTOR shall be entirely undertaken from his offices at (agreed places) and the prior approval of the PURCHASER shall be required to carry out any part of the work at other offices.
- 6.10 The PURCHASER shall post an engineer with suitable powers at the offices of the CONTRACTOR at (Town)

who shall have the right to examine and approve bid specifications, examine bid comparisons (with approval from the competent authority), approve and place orders for equipment and spare parts. The PURCHASER and CONTRACTOR shall agree at the meeting contemplated in Article 6.8, the quantum of services, and office personnel to be provided by the CONTRACTOR to the PURCHASER's engineers appointed to CONTRACTOR's offices under this Article and Article 6.14.

- 6.11 The CONTRACTOR shall open an office at site, for which an agreed amount of space shall be provided by the PURCHASER. This office shall be managed within the jurisdiction of the Construction Manager of the CONTRACTOR, who shall be responsible for all liaison with the PURCHASER and for the supervision of erection. This office shall be opened in good time for checking the progress of civil works and before any of the equipment arrives at Site. For the purpose of co-ordination, the CONTRACTOR's Construction Manager at Site shall liaise with the Senior Site Representative of the PURCHASER. The PURCHASER and CONTRACTOR shall agree at the time of the meeting contemplated under Article 6.8, the quantum of services and office personnel which shall be provided by the PURCHASER at its cost, for the office of CONTRACTOR at Site.
- 6.12 The CONTRACTOR's Construction Supervision personnel at Site shall also assist in checking the Equipment received, survey any damages incurred and assist the PURCHASER in submitting claims to the insurers.
- 6.13 Throughout the period of the Contract, the PURCHASER shall have the right to inspect the CONTRACTOR's work.
- 6.14 The PURCHASER, if he so desires, shall have the right to assign up to a maximum of (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 e't.c. on the detailed design of the Plant and the Procurement

Documentation 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, SECRECY 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 lifetime 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 together with copies of all documents 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 at the signing of the Contract and to the CONTRACTOR at the time of design.
- 7.2.1 In circumstances where the CONTRACTOR is unable or unwilling to make available to the PURCHASER the necessary process know-how and related information, the PURCHASER shall be free to approach the Process Licensor(s) directly.
- 7.2.2 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 to the PURCHASER for a period of (8 or 10) years from the Effective Date of the Contract:

- 7.3.1 Free of charge 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.
- 7.3.3 The CONTRACTOR shall be required to undertake of its own accord the obligations set forth in Article 7.3.1 and Article 7.3.2 for the period specified in Article 7.3. The PURCHASER shall be under no obligation to monitor the technological developments and other items referred to in Article 7.3.1 to be entitled to the benefits flowing by virtue of this Article.
- 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 7.13) the PURCHASER determines that modifications of the Plant(s) are required to be made (which in its 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 the CONTRACTOR or otherwise) in accordance with this Contract, all of which is hereinafter referred to as "confidential information". 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, through no fault of the PURCHASER;
 - 7.9.2 which is already known to the PURCHASER, his representatives or Technical Advisor, before the agreement as to confidentiality was given under Article 7.8.

- 7.10 The PURCHASER shall not utilise 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 information and drawings or technical documents given by the PURCHASER, his representatives or Technical Advisor, 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 knowledge, 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 obligations contained in this Article subject to Article 7.13 below, shall not be affected by a Termination and/or Cancellation of this Contract under Article 33 herein.
- 7.13 Except when otherwise agreed, the PURCHASER's obligations pursuant to the provisions of Subarticles 7.8, 7.9 and 7.10 shall be valid for a period of (8 or 10) 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 for patent infringement (referred to in Article 22.1) of which it has knowledge. The CONTRACTOR shall have sole charge and direction of the defence and disposal of such suit of 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 its own cost to the Plant 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 liability arising out of patent infringement and/or matters arising out of secrecy and/or proprietary information referred to in Article 7.8 and/or 7.13 in accordance with the requirements of Article 22.1.
- 7.18 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 authorized officers of the PURCHASER and CONTRACTOR properly witnessed and sealed and in accordance with the applicable law. The Effective Date of the Contract shall be the date upon which the last of the following requirements has been fulfilled:
- 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 21.2.
- 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 insure 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 Neither the whole nor any part of the work may be sub-contracted by the CONTRACTOR without the written consent of the PURCHASER.
- 9.5 The CONTRACTOR shall ensure that every sub-contracting by the CONTRACTOR shall comply with all terms and conditions of this CONTRACT, mutatis mutandis.

ARTICLE 10

PROCUREMENT

- 10.1 It is understood and agreed that the timely procurement of the equipment and spare parts is essential to the implementation of the Contract and accordingly the CONTRACTOR shall make every attempt to meet the time schedules provided hereunder for providing procurement assistance to the PURCHASER for acquisition of the Equipment and Spare Parts.
- 10.2 The CONTRACTOR shall supply to the PURCHASER the following services in connection with the procurement of the Equipment and Spare Parts, in accordance with Annexure VIII and XXVI:
- 10.2.1 The PURCHASER and the CONTRACTOR shall pre-qualify Vendors in accordance with the procedure laid down in Annexure XXVI. A minimum of three (3) and a maximum of eight (8) Vendors shall be pre-qualified, unless otherwise agreed between the PURCHASER and the CONTRACTOR. Vendors may be recommended for exclusion from pre-qualification by the CONTRACTOR for good and sufficient reasons.
- 10.2.2 The CONTRACTOR shall prepare the bid document on the basis of the technical specifications prepared by him and submit the same to the PURCHASER or his engineer deputised for this purpose in accordance with Article 6.10 for relevant approval, with a copy being sent to the Technical Advisor and shall issue the same to the Vendors in the manner agreed to in the Procurement Protocol. All goods to be supplied by Vendors 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. The bid documents shall specify that the plant and equipment to

be purchased is "brand new".

- 10.2.3 The CONTRACTOR shall send the bid documents on behalf of the PURCHASER to the respective Vendors listed in the Vendors list (which list shall be agreed upon between the Parties within thirty (30) days from the Effective Date of the Contract for critical items, and at least one month prior to the issue of tenders for other items).
- 10.2.4 The CONTRACTOR shall use its best endeavours to obtain from the Vendors a minimum of three (3) competitive offers, except for the Critical Items as indicated in Annexures VIII and XII.
- 10.2.5 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 the relevant final selection. The PURCHASER's final selection of the Vendor shall be communicated to the CONTRACTOR within twenty (20) days from the date of receipt of the CONTRACTOR's submission of the bid tabulation. The PURCHASER shall endeavour to preclude the selection of Vendors who are unacceptable to the CONTRACTOR. The CONTRACTOR shall, however, substantiate the reasons for such unacceptability (if any) so as to enable the PURCHASER to re-evaluate the choice of such Vendor(s). The CONTRACTOR agrees and acknowledges that, notwithstanding anything to the contrary expressed, the terms of guarantee provisions and such other criteria established by this Contract shall not be prejudiced as a result of any difference arising between the PURCHASER and the CONTRACTOR as regards the final selection of the Vendor(s), provided, however, that the

CONTRACTOR has the right to request for modifications to the Performance Guarantee requirements of the Contract reasonably commensurate with the circumstances.

10.2.6 In case the PURCHASER intends to select a Vendor to supply equipment which is not acceptable to the CONTRACTOR, the CONTRACTOR shall indicate the specific changes in his guarantees or other obligations, if any, which would result from such purchase. The PURCHASER shall thereafter still have the choice of purchasing the equipment from the selected Vendor subject to the reservations of, and modifications of the obligations of the CONTRACTOR.

10.2.7 After the selection of the Vendor(s) by the PURCHASER, the CONTRACTOR shall prepare for the PURCHASER's signature the relevant purchase orders on the PURCHASER's letter-head with proper terms and conditions in such purchase orders.

10.3 The CONTRACTOR shall prepare monthly forecasts of deliveries specifying details of proposed consignments, approximate tonnages, dimensions and other relevant information, and furnish the same to the PURCHASER and/or his shipping agent(s) with six (6) weeks advance notice of the date when the Equipment and/or Spare Parts shall be ready for despatch from the respective Vendor's shop.

10.4 The CONTRACTOR shall be responsible for the preparation, adequacy and accuracy of the bid specifications and Purchase Orders to be issued to the Vendors, in connection with the equipment to be procured, the design of the Plant and the fulfilment of guarantees as specified in this Contract.

10.5 All procurement data including bid specifications, bid tabulations and evaluations, issued by the CONTRACTOR under the Contract shall be the property of the PURCHASER.

- 10.6 Notwithstanding anything provided herein for the procurement of Equipment and Spare Parts, the CONTRACTOR shall complete the bid tabulations of Critical Items within four (4) months from the Effective Date.
- 10.7 The CONTRACTOR shall within twelve (12) months from the Effective Date of the Contract issue tenders, obtain quotations and make final bid tabulations with regard to the sources and supply of (95%) (by value) of the equipment itemised with item numbers as required under Annexure VIII.
- 10.8 The CONTRACTOR shall make every endeavour to make final bid tabulations with regard to the sources and supply of the remaining Equipment within fourteen (14) months from the Effective Date of the Contract.
- 10.9 The CONTRACTOR shall cause the Vendors to provide the PURCHASER with sufficient copies of the invoices, packing lists and such other documents as may be required to have the Equipment and Spare Parts imported in (country), specifying in each case that the Equipment and Spare Parts are to form part of a complete fertilizer plant.
- 10.10 The CONTRACTOR shall use his best endeavours to obtain appropriate mechanical guarantees from the Vendors in accordance with Article 28.
- 10.11 In the event that any equipment has to be replaced, repaired or any additional equipment is to be ordered, as required by the provisions of Article 29, the CONTRACTOR shall, without additional cost to the PURCHASER, procure all such equipment in accordance with the procedure laid down in this Article 10, (or as otherwise agreed with the PURCHASER) or, if the equipment is to be repaired shall make suitable recommendations to the PURCHASER for repairs to the equipment, and if services for such repairs are required from third parties, shall draw up

specifications for such services by way of Purchase Orders to be issued by the PURCHASER. The costs for such repairs, replacement or additions to the equipment shall be paid in accordance with Article 15 and 29, and the CONTRACTOR shall be responsible for all rectifications, in accordance with Article 29.

ARTICLE 11

TIME OF ESSENCE

- 11.1 The PURCHASER and CONTRACTOR agree that time is of the essence in this Contract. Both parties agree that every endeavour shall be made to meet the target dates set forth in the Contract (and as detailed in Annexure XV).
- 11.2 It is agreed that the timely supply of the equipment and spare parts is of the essence of the Contract and accordingly the CONTRACTOR shall take all necessary steps to meet the time schedule provided in this Contract for procurement by the CONTRACTOR of the equipment and spare parts. The CONTRACTOR shall be obliged to take such necessary precautions that are reasonably necessary to ensure that the sources of supply are in conformity with the requirements of the time schedule and shall in anticipation of any shortfall in the supply of such equipment and spare parts (for whatever reason) undertake steps to resource from alternate 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 obligated to recommend remedial measures to overcome delays.

ARTICLE 12

DELIVERY AND EXECUTION OF THE WORKS

12.1 Delivery of Documents

- 12.1.1 The CONTRACTOR shall ensure delivery to the PURCHASER of copies of all the know-how, basic engineering and licensing documents, received by him from the Plant Licensors, within 30 days of receipt of such documents pursuant to the requirements of Article 4.5. The CONTRACTOR shall, in any case ensure that all basic know-how documents required by him for carrying out his engineering functions, shall be available to him within the 4th month of the Effective Date of the Contract, and copies are sent to the PURCHASER by the 5th month after Effective Date.
- 12.1.2 The CONTRACTOR shall provide to the PURCHASER all the documents designated as "Technical Documentation" in Annexure XV on the specified dates. The provisions of Article 27.1 shall apply in the event of late delivery of "penalizable documents" detailed in Annexure XV.
- 12.1.3 The CONTRACTOR shall supply to the PURCHASER, the complete Manuals for the operation and maintenance of the plant, as specified in further detail in Annexure XXI. All Manuals shall be supplied to the PURCHASER at least 6 months before Mechanical Completion of the Plant, and the Operating Manual and Manual for Analytical Procedures shall be supplied one year before Mechanical Completion in order to train the necessary operating personnel at site.

12.2 Procurement Services

- 12.2.1 The CONTRACTOR shall draw up and issue all the Procurement Bid specifications to the vendors, for all Process Equipment (excluding electricals, pipings, valves and instrumentation) by (--- th) month and in any event

not later than (— th) month after Effective Date of the Contract.

- 12.2.2 Subject to the PURCHASER giving approvals in time, the CONTRACTOR shall issue Purchase Orders for all process equipment (excluding electricals, piping, valves and instruments) by (— th) month, and at least 95% by value of the Plant and Equipment in any event not later than (— th) month after Effective Date of the Contract, and for all critical items by 6th month after Effective Date of the Contract.

12.3 Training Services

- 12.3.1 The CONTRACTOR shall draw up a programme for on-site training of the PURCHASER'S personnel in accordance with Article 16 and submit it to the PURCHASER by (— th) month after Effective Date for discussions and approval by the PURCHASER.
- 12.3.2 The CONTRACTOR and PURCHASER shall commence on-site training by the (— th) month from the Effective Date of the Contract.
- 12.3.3 The CONTRACTOR shall commence the Training overseas of the PURCHASER'S personnel as laid down in Article 16 and Annexure XVIII on the (— th) month after Effective Date of the Contract, and shall complete the training by the (— th) month.

12.4 Supervision of Erection

- 12.4.1 The CONTRACTOR shall make available to PURCHASER the supervisory personnel to be deputed to site in accordance with Annexure XXVII, Clause 4.1 (or as may be otherwise agreed under Clause 5.2 of that Annexure) and shall thereafter depute personnel to site to conform with the requirements of Annexure XXVII, within 30 days of the PURCHASER requesting the deputation of any particular person to site.

- 12.4.2 The CONTRACTOR and PURCHASER acknowledge that the number and category of personnel to be deputed to site referred to in Annexure XXVII is tentative. Whenever additional personnel are required at site, the CONTRACTOR shall depute such additional personnel, when requested by the PURCHASER.

12.5 Inspection Reports

- 12.5.1 The CONTRACTOR shall promptly make available to the PURCHASER copies of all Inspection Reports prepared by him, during manufacture by Vendors and/or on completion of any sub-contract by Vendor(s). Where such reports are in a language other than the () language, the CONTRACTOR shall supply a translation in the () language.
- 12.5.2 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.

12.6 Start-up, Commissioning and Testing

- 12.6.1 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.
- 12.6.2 All Supervisory, Start-up and Commissioning Personnel of the CONTRACTOR shall be despatched to site, at least 8 weeks before start-up, in accordance with Annexure XXVII.
- 12.6.3 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.
- 12.6.4 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.

12.7 Time Schedule

- 12.7.1 The target date for different elements of the construction and completion of the Plant are given in the bar chart attached to Annexure XV. It is agreed that within (2) months after the Effective Date of the Contract (Article 13), the CONTRACTOR shall prepare a Critical Path Network, generally conforming to the bar chart attached, which shall be discussed between the PURCHASER and CONTRACTOR and shall be mutually approved, and which shall list all activities connected with the completion of the Project.
- 12.7.2 The Critical Path Network shall be computerized by the CONTRACTOR and at the first design meeting contemplated under Article 6.5, the methodology shall be laid down to obtain the necessary inputs to maintain the print-cut and deviations on a monthly basis. The Critical Path Network itself shall be changed and modified as soon as slippage exceeds 10%. Computerized print-outs indicating all activities and the float on a monthly basis shall be made available to the PURCHASER by the CONTRACTOR.

ARTICLE 13

SUPERVISION OF WORK AND ACCESS TO WORK

- 13.1 The Services to be provided by the CONTRACTOR to the PURCHASER for the supervision of work at site or otherwise, is contained in the relevant provisions of Article 4 and as elsewhere expressed in the Contract.
- 13.2 In addition, should the PURCHASER so desire, he shall have the option to call upon the CONTRACTOR to manage the Construction, Erection and Commissioning operations at site, on behalf of the PURCHASER. However, this shall be the subject of a separate Assistance Agreement for Project Management during Construction, to be entered into between PURCHASER and CONTRACTOR on terms and conditions to be mutually agreed and incorporated in that Agreement.
- 13.3 The CONTRACTOR shall provide an adequate number of suitably qualified and experienced personnel for supervision of load tests (in accordance with Article 5.10), erection, pre-commissioning and start-up of the Plant in accordance with the requirements of Article 4 and as otherwise specified in the Contract.
- 13.4 The CONTRACTOR and the PURCHASER and any person(s) authorized by either of them shall at all times have access to the Complex, to all workshops and places where work is being undertaken or where materials, manufactured articles and machinery are being obtained for the Complex. The CONTRACTOR shall afford every facility for access to any place where work is being undertaken by him under this Contract and shall give every assistance in obtaining the right for such access from Vendors in connection with the execution of the work.
- 13.5 The PURCHASER shall afford every facility and assistance in or for obtaining the right of access to such information, site, workshops or persons within its country as is required in connection with this Contract.

- 13.6 The CONTRACTOR and his authorized personnel shall have free access to the plant site, storage yards, fabrication shops, utilities and Laboratories, which are set up or intended for use for establishing the plants under the Contract. The PURCHASER shall provide necessary assistance in obtaining permission from his Government in accordance with Article 5.15.
- 13.7 The CONTRACTOR shall be entitled to visit the Plant(s) in operation for a period of (3) years from the date of provisional acceptance of the Plant to examine them as to operating results, to take measurements required for establishing exact operating data to demonstrate the Plant(s) to his potential customers. The CONTRACTOR shall give four (4) weeks notice to the PURCHASER for such visits, permission for which shall not unreasonably be withheld by the PURCHASER.
- 13.7.1 Where, in the opinion of the Technical Advisor, it is necessary that third parties (whether additional contractors or otherwise) provided that such parties are not direct competitors of the CONTRACTOR, be sent to check the work of the CONTRACTOR, the CONTRACTOR shall to the satisfaction of the Technical Advisor, allow them access to the work and/or the site thereof and shall co-operate with them in the carrying out of their duties and obligations. The foregoing shall not prejudice the rights of the CONTRACTOR relative to the terms of Article 7, and the third parties shall not disrupt the activities or obligations of the CONTRACTOR.
- 13.7.2 If the sending on to the work and/or the site thereof of a third party under Subarticle 13.7.1 does not arise from any non-fulfilment of the CONTRACTOR's obligations and, in addition, could not have been reasonably foreseen or anticipated by the CONTRACTOR when entering into this Contract, and, if proven

to the reasonable satisfaction of the PURCHASER, the CONTRACTOR has incurred expense in complying with Subarticle 13.7.2 in respect of such third party, the PURCHASER (if the CONTRACTOR has given written notice of the CONTRACTOR's claim before the expiration of thirty days from the sending on to the work and/or site thereof of the third party or third parties involved) shall pay to the CONTRACTOR the necessary cost of any services provided by the CONTRACTOR.

ARTICLE 14

INSPECTION, TESTING AND CERTIFICATION

- 14.1 The CONTRACTOR shall be responsible for the inspection, testing and certification of all equipment, materials, spare parts and other items during manufacture and prior to despatch.
- 14.2 The CONTRACTOR shall inspect the equipment and obtain certification at all stages of work by sub-contractors, and on completion of the orders.
- 14.2.1 Following the issue of Purchase Order(s) the CONTRACTOR shall carry out (in accordance with standard procedures) the inspection and testing, as per relevant codes given in the specifications at the shops of Vendors during manufacture and before despatching.
- 14.2.2 During progressive inspection of equipment fabrication the CONTRACTOR shall take all necessary measures to ensure that the Vendors or their employees strictly follow fabrication instructions and codes specified by the CONTRACTOR, and that the quality of workmanship meets acceptable levels to enable the production of equipment and other items in accordance with the qualitative and quantitative standards expressed in the Contract.
- 14.2.3 The CONTRACTOR shall also require Vendors to provide the necessary test certificates and all other documents required by the Inspecting Authorities in the country of manufacture or as may be required by the PURCHASER in consideration of the regulations in force in (country) and/or as provided for in the specifications.
- 14.3 The CONTRACTOR shall issue certificates of inspection for all sub-contracts.
- 14.3.1 When the equipment, machinery or material is ready for final inspection the CONTRACTOR shall take all reasonable measures to ensure that the Purchase Order(s) have been complied with correctly as specified.

- 14.3.2 The CONTRACTOR will issue a Certificate of Inspection in respect of each item of Plant and Equipment, before despatch, and shall send copies of such Certificates to the PURCHASER, and Certificates of tests carried out in connection with issue of such Certificates of Inspection.
- 14.4 Wherever required by the PURCHASER, the CONTRACTOR shall associate the PURCHASER or his representatives with such inspection, and initiate and follow-through with co-ordination for joint inspections.
- 14.5 The CONTRACTOR shall expedite, co-ordinate and monitor the delivery of all plant and equipment efficiently to ensure that the Vendors maintain the delivery terms, conditions, and procedures contained in the Purchase Orders.
- 14.6 The CONTRACTOR shall take all necessary measures to ensure that the Vendors arrange in a timely manner all proper export licences, if necessary, to export the equipment and spare parts to (country).
- 14.7 The PURCHASER shall obtain the necessary import licences, permits and shall provide for shipping arrangements for the equipment and spare parts of foreign origin. The PURCHASER or his shipping agent shall advise the CONTRACTOR or the Vendor(s) as the case may be of the name of the ship and the loading dates fourteen (14) days in advance to allow the Vendors to make the necessary arrangements for loading the consignment on the ship.
- 14.8 Should the PURCHASER so require, the CONTRACTOR shall recommend a shipping agent to the PURCHASER for despatch of the Equipment, spare parts and materials as the case may be to (name of country).
- 14.9 In the event that the CONTRACTOR during shop inspection anticipates delays in delivery of any equipment, the CONTRACTOR shall promptly notify the PURCHASER and shall suggest measures to overcome delays. In the event that the delays appear inevitable, the CONTRACTOR shall anticipate the quantum of such delays, and inform the PURCHASER, so that the Critical Path Network may be modified accordingly, and the CONTRACTOR shall undertake such remedial steps as may be practical, in the circumstances, to alleviate the difficulties that would be caused by the delays.

- 14.10 The PURCHASER shall be responsible for the clearance of the equipment, spare parts and technical documentation at (name of port) and/or at other entry point(s) into (country) and for internal despatch to Site.

ARTICLE 15

VARIATIONS, CHANGES AND ADDITIONS TO SCOPE OF WORK

- 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 obligated 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 obligation under this Contract, the PURCHASER shall, (subject to negotiations as to the cost and extent of such services and effect on the time schedule, if any) agree to pay for such services in accordance with payment terms and time schedules to be mutually agreed.
- 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, the Technical Advisor 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 proceed 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 Technical Advisor. The decision of the Technical Advisor 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 of the Works. If the CONTRACTOR is of the opinion that such variation is necessary to correct any defect in the Works 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 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 such justification as may be deemed necessary. The CONTRACTOR and PURCHASER will thereafter meet and discuss the implications of such variations, and the responsibility for additional costs, if any.

- 15.5 Changes or variations pursuant to this Article shall not justify extra costs to the PURCHASER if such changes or variations are as a result of changes in design performed by the CONTRACTOR as a result of detailed engineering, or due to changes suggested by the CONTRACTOR in accordance with Article 29.1
- 15.6 Upon receiving a change 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 15 and 30.
- 15.7 If the changes requested by the PURCHASER or CONTRACTOR are due solely to defects, omissions or errors in the design which could alter considerably the amount of work already within the scope of obligations of the CONTRACTOR or his Sub-Contractor(s), the PURCHASER shall not be liable to pay any additional costs. The CONTRACTOR acknowledges that there shall be no entitlement for any claims for any increases in the amount of work undertaken or to be undertaken for rectification of design and/or other errors, mistakes, omissions and lack of accuracy, in undertaking its obligations herein.

- 15.8 Upon receiving a change 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 provisions of this Article 15 and Article 30.
- 15.9 In the event of any increase in the CONTRACTOR's work deriving from any statutory or legislative action or orders in council in (PURCHASER's Country), promulgated after the signing of the Contract, the PURCHASER shall pay to the CONTRACTOR additional fees in accordance with Articles 15.2 and 15.3 above.
- 15.10 The PURCHASER and CONTRACTOR estimate that an amount of (Amount and Currency) may be required for variations, changes and additions as provided by this Article and/or for any further specialized equipment which may be required by the PURCHASER. The PURCHASER shall be obliged to make the necessary arrangements for obtaining the amount(s). However, the extent, necessity and requirement for the expenditure of such amount(s) shall be at the sole discretion of the PURCHASER.

ARTICLE 16

TRAINING

- 15.1 The PURCHASER and CONTRACTOR agree that the adequate training of the PURCHASER's personnel is a necessary condition for the fulfillment 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 Articles 4 and 16.3.
- 16.3 Training facilities to be provided by the CONTRACTOR shall be as detailed in Annexure XVIII.
- 16.4 The PURCHASER and the CONTRACTOR shall agree at the first Co-ordination Meeting contemplated under Article 6.5 the time, place and details to be prepared as a basis for the training of the PURCHASER's personnel. The CONTRACTOR warrants that he is in a position to provide training to the PURCHASER's personnel for the periods contemplated in Article XVIII at a plant or plants, using the Processes of the Licensors identified in Article 4.5 which have commenced production in the five years immediately preceding the Effective Date of this Contract.
- 16.5 The PURCHASER shall undertake to supply personnel for training with qualifications and experience recommended by the CONTRACTOR, and agreed to by the PURCHASER.

ARTICLE 17

MANAGEMENT AND TECHNICAL ADVISORY SERVICES

- 17.1 At the option of the PURCHASER, 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 of the Plant.
- 17.1.1 The PURCHASER and CONTRACTOR shall agree, within 30 days of Commercial Production of both the Ammonia and Urea Plants, on the number and type of personnel to be supplied by the CONTRACTOR for Management or Management Assistance during this period of twelve (12) months, and the quantum of fees and mode of payment to be made to the CONTRACTOR and his staff at site.
- 17.1.2 If at the expiry of the period of twelve (12) months contemplated under Article 17.1 above, the PURCHASER wishes to retain an agreed number of the Management Personnel already at site for a further period not exceeding eighteen (18) months, the CONTRACTOR shall make such personnel available to the PURCHASER on terms and conditions to be mutually agreed.
- 17.2 Following Provisional Acceptance of the Plant, the CONTRACTOR shall 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 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 before 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/or other of the following matters:

- 17.2.1 provision of senior advisory personnel to conduct half-yearly review of plant and efficiency of its operations;
- 17.2.2 recommendations as to improvement of plant operations;
- 17.2.3 provision of answers to technical queries related to plant operations.

ARTICLE 13

COMPLETION OF WORKS, TAKE-OVER AND CONDITIONS OF ACCEPTANCE

- 18.1 The CONTRACTOR shall execute the work diligently and shall adhere strictly to the requirements for expeditious completion of the Works, notwithstanding the contractual time-schedules provided herein.
- 18.2 The Work(s) and/or sections and/or parts thereof shall be considered to have been completed when the requirements of Articles 18.3 to 18.10 have been satisfied, but subject to the other provisions of this Article 18. However, notwithstanding the foregoing, the Work(s) or sections and/or any parts thereof shall not be deemed to have been completed if subsequent events necessitate rectification and/or modifications to the Work(s), sections and/or parts thereof, whether occurring before or after Provisional Acceptance.
- 18.3 As soon as any Plant or any part thereof is substantially complete, it shall be inspected by the PURCHASER and CONTRACTOR before any tests are carried out.
- 18.4 Upon satisfactory inspection of the equipment and/or section of a Plant, the CONTRACTOR and the PURCHASER shall sign the Construction Completion Report stating that the Plant or part thereof has been inspected and is substantially complete and that any procedures for demonstrating the Mechanical Guarantees prior to the plant being put into operation may safely be carried out. (Such Construction Completion Report may include a note of any minor items which can be completed after Start-Up). The signing of the Construction Completion Report by the PURCHASER shall not be deemed to constitute an acknowledgement or confirmation or agreement as to the suitability or fitness of the equipment and/or section or a Plant for the purposes intended.
- 18.5 If on inspection of the Plant or part thereof, any part is found incomplete or incapable of being mechanically tested, the Plant shall thereafter be completed by the PURCHASER's personnel under the direction and supervision of the CONTRACTOR's personnel.

- 18.6 When all the items of equipment in a Plant or any of the sections of the Off-Sites and Utilities are ready and have been completed pursuant to this Contract (viz. erected, installed and initially tested), the CONTRACTOR and PURCHASER shall review the procedures for the pre-agreed tests for the demonstration of the Mechanical Completion of the Plant to be undertaken in accordance with Annexure XX (or otherwise) and the detailed procedures therewith.
- 18.7 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 XI to establish the correct mechanical functioning of the Plants. When all such operations and tests have been fully and satisfactorily individually or collectively completed in the Ammonia Plant, the Urea Plant and all parts of the Utilities and the Off-Sites and the Mechanical Completion of the Works has been achieved, the CONTRACTOR shall 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 or Utilities and Off-Sites concerned shall be deemed to be achieved. The considerations applying to the signing of the Mechanical Completion Report by the PURCHASER shall be similar and in like manner to the signing of the Construction Completion Report by the PURCHASER pursuant to Article 18.4 and the PURCHASER shall not be deemed to have made any acknowledgement, or conformation or agreement thereby.
- 18.8 The operations and tests referred to in Articles 18.6 and 18.7 above shall be carried out by the PURCHASER's personnel under the direction and supervision of the CONTRACTOR's personnel.
- 18.9 If any defects are found during the tests mentioned above in Articles 18.6 and 18.7, these shall be promptly rectified by the PURCHASER's personnel under the direction of the CONTRACTOR's supervisory personnel, and the Mechanical Tests shall then be repeated, in accordance with Article

18.6.

- 18.10. Upon Mechanical Completion of any Plant and testing of each plant in accordance with Article 15.7 and Annexure XX, as soon as possible thereafter, the relevant Plant shall be started-up.
- 18.11 When all sections of the Plants are in a satisfactory operating state, and specification grade Ammonia and Urea are in a 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.
- 18.12 The CONTRACTOR shall, thereafter demonstrate that the Plant(s) is capable of achieving all the Guarantee Tests and requirements specified in Article 26 and as elsewhere expressed in the Contract.
- 18.13 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 as contained in Article 18.14 below subject however to the exercise of the rights of the PURCHASER (if necessary) pursuant to Article 28.
- 18.14 The issue of the Provisional Certificate shall be made when all of the following have been satisfactorily discharged, together with full compliance by the CONTRACTOR of all other Contractual terms,:
- 18.14.1 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.
- 18.14.2 When the CONTRACTOR has provided all documents listed in Annexure XV to the PURCHASER.
- 18.14.3 When all pre-commissioning tests have been satisfactorily completed, and the Mechanical Completion has been successfully proved to the satisfaction of the PURCHASER who has then

approved the Mechanical Completion Report for the entire Complex, the CONTRACTOR shall prepare the "Mechanical Completion Report" in accordance with Article 15.8 for signatures by both parties to the Contract following joint examination of the Plant. The "Mechanical Completion Report" shall signify the acceptance of the mechanical completion stage of the Works, and the readiness of the Plant for commissioning.

18.14.4 When the Performance Guarantee Tests laid down in Article 26 in accordance with criteria laid down in Articles 26.3 to 26.7 inclusive, the methodology laid down in Article 26.8 and procedures laid down in Articles 26.9, 26.10, 26.11 to 26.13 and sub-clauses thereof shall have been successfully demonstrated, completed, 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.

18.14.4.1 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)/ Works, and the completion of the obligations of the CONTRACTOR with respect to the Guarantee Tests stated in Article 19 shall be deemed to have been fulfilled.

18.14.4.2 If for any reason the Guarantee Test performance is not accepted by the PURCHASER, or is accepted subject to certain conditions for rectification of defects and the CONTRACTOR has then rectified the defects and demonstrated Performance Guarantee Tests to the satisfaction of the PURCHASER, the Plant shall be deemed to have been accepted. During the period when the defective sections of the completed Plant/Works can be

operated to give commercial production, then the same may be operated by the PURCHASER provided that this is done without interfering with the efforts of the CONTRACTOR for the rectification of defects or in the performance of its obligations under the Contract.

- 18.15 The CONTRACTOR's work at Site shall be deemed to have been completed only when the CONTRACTOR shall have received the Provisional Acceptance Certificate from the PURCHASER pursuant to Article 18.14 herein as qualified by the provisions of Article 18.13.
- 18.16 The Provisional Acceptance of the Plant 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 (expressedly or impliedly) under the terms of this Contract, and shall not be construed as evidence that any portions of the Work(s), part(s), section(s), and/or material(s) thereof are complete.
- 18.17 If for reasons attributable to the CONTRACTOR (whether directly or indirectly), the CONTRACTOR is unable to demonstrate any or all of the Guarantee Tests and/or Performance Requirements referred to in Article 18.12 above pursuant to Articles 18 and 26 (or for any one or other of the reasons referred to in Article 18.18 below), the provisions of Articles 29.1, 29.2, 29.3 and 29.4 shall apply.
- 18.18 The CONTRACTOR shall in any event be responsible for providing the necessary engineering and supervision and where required under the contract, supplying equipment to complete the plant in any one of the following circumstances namely:
- 18.18.1 If Guarantees and/or Performance Guarantee Tests and/or any of the tests or pre-commissioning 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 18.17.
- 18.18.2 If the Plant(s) and/or parts or sections thereof, and/or Process(es) are found to be incapable or

insufficient due to the reasons, inter alia,
referred to in Article 4.3;

18.18.3 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, and such modification work shall be accomplished
in a diligent and bona fide manner to the reasonable satisfaction
of the PURCHASER. 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
19, subject however to the provisions of Article 29.

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.

18.19 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 wholly operate the Plant
upon the issue of the Certificate of Provisional Acceptance.
Thereafter, the PURCHASER shall be responsible for the
management, operation and maintenance of the Work(s), and shall
take out and carry such insurances as may be deemed necessary.

18.20 The PURCHASER shall issue a Final Acceptance Certificate when
all Conditions specified in this Article and all the provisions
of the Contract have been fulfilled. Subject to the completion
of any and all work more particularly referred to in this
Article and Article 29 and as elsewhere required under the terms
of the Contract, the PURCHASER shall issue the Final Certificate
within twelve (12) months after Provisional Acceptance, unless
during the intervening period referred to in Article 4.22 the
Plant has shown defects requiring modifications in accordance
with Article 29. In such case the PURCHASER shall issue a

Final Acceptance Certificate when all the defects have been removed.

- 18.21 In the event that the PURCHASER, in his sole discretion, considers that, at the end of twelve (12) months after Final Acceptance, only minor defects remain to be corrected, he may release payments due to the CONTRACTOR after deducting his estimate of the cost of removing such defects.

ARTICLE 19

EXTENSION 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 Article 18.18, 29.10 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 shall be established on a quantum meruit basis. Provided however, that in the circumstances envisaged by Article 32 that the supervision 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.
- 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.
- 19.5 If in the PURCHASER's opinion it is in the public interest, the PURCHASER may either:
- (a) on his own initiative; or
 - (b) on the application of the CONTRACTOR made before the day fixed for completion of the work or before any new date for completion fixed under this Subarticle; extend the time for completion of the work,
- PROVIDED ALWAYS**
- (i) that the PURCHASER shall consult with the CONTRACTOR to determine what additional time and extra costs, if any, may be authorized to the CONTRACTOR;
 - (ii) that any extension of time granted as aforesaid to the CONTRACTOR shall be without prejudice to any rights or remedies of the PURCHASER under this Contract, should the CONTRACTOR fail to accomplish work within the extended time so granted and accepted;
 - (iii) that in any event 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.

ARTICLE 20

CONTRACT PRICE, TERMS OF PAYMENT, BONUSES AND INCENTIVES

20.1 The PURCHASER will pay to the CONTRACTOR, as consideration for the execution of the Contract (and subject always to Article 20.2 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 20.5.

A price of a reimbursable nature estimated at

(Amount)

for the items detailed in Articles 20.7 to 20.9.

20.1.1 Insofar as these presents constitute a Cost-Reimbursable Contract (which contain prices fixed and firm) 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 20.2 to 20.5 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 Prices 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 this Contract 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 work, 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.

20.1.3 The Price mentioned in Article 20.1 above shall (for the purposes of convenience) be divided into the categorized amounts stated in each of Articles 20.2 to 20.5 below and 20.7 to 20.9 respectively to facilitate the identification of payments required to be made when due at progressive stages.

20.2 For granting of the Licences and supply of basic engineering for the Plants referred to in Article 7 of the Contract:

For the Ammonia Process (Amount)
For the Urea Process (Amount)

20.3 For the supply of engineering referred to in Articles 3 and 4 of the Contract:
(Amount)

20.4 For the supply of procurement, inspection and expediting services referred to in Articles 10 and 14 of the Contract:
(Amount)

20.5 For providing training and training facilities referred to in Article 16 and Annexure XVIII of the Contract:
(Amount)

20.6 All the prices contained in Article 20.2 to 20.5 above are firm for the duration of the Contract, and any extension(s) thereof, and shall not be escalated in any manner.

- 20.7 The CONTRACTOR shall be paid in accordance with Article 20.8 to 20.10 below and Annexure XXVII, for the cost incurred for the provision of expatriate personnel for management assistance and supervisory services in (country of site of Plant) for erection, the commissioning, and startup of Plant, and for conducting guarantee tests, and for supervisory services at site during the period between the provisional and final acceptance.
- 20.8 The PURCHASER will pay to the CONTRACTOR daily rates in accordance with the schedule of charges as contained in Annexure XXVII, for each calendar day of absence from the (respective) normal place of work in (country) of the specified expatriate personnel supplied by the CONTRACTOR.
- 20.9 The daily rates contained in Annexure XXVII 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 charges at the rates contained in Annexure XXVII.
- 20.10 The total estimated cost of CONTRACTOR's services contained in Article 20.7 to 20.9 inclusive, and Annexure XXVII is (Amount) in foreign exchange and (Amount) local currency. In addition to the payments due under Articles 20.8 and 20.9 above, the CONTRACTOR's personnel will be provided travel facilities, and facilities at site in accordance with Annexure XXVII.
- 20.11 The payments due to the CONTRACTOR under Article 20.2 above shall be made in accordance with the following:

- 20.11.1 (25% Amount) as an advance payment.
 - 20.11.2 (50% Amount) on receipt by the PURCHASER of all the documents contained under Article 3.1.2 and 4.5.
 - 20.11.3 (25% Amount) on completion of the guarantee tests of the Plant, and issuance of a Provisional Acceptance certificate by the PURCHASER.
- 20.12 The payments due under Article 20.3 and 20.4 above shall be paid (subject to Article 20.13) as follows:
- 20.12.1 15% as an advance payment.
 - 20.12.2 10% upon the completion of the meetings required under Article 6.5 and 6.8, and upon the issue of Purchase Orders for all critical items as required by Article 12.2.2.
 - 20.12.3 15% on the issue of bid specifications for all Process Equipment (excluding electricals, piping, valves and instrumentation), as required by Article 12.2.1.
 - 20.12.4 10% on the issue of Purchase Orders for all Process Equipment, in accordance with Article 12.2.2.
 - 20.12.5 10% on the issue of Purchase Orders for 95% (by value) of all equipment, in accordance with Article 12.2.2.
 - 20.12.6 5% on the issue of Inspection Certificates for 50% (by value) of the equipment.
 - 20.12.7 5% on the shipment f.o.b. of 50% (by value) of the equipment.
 - 20.12.8 5% on the issue of Inspection Certificates for 95% (by value) of the equipment.
 - 20.12.9 5% on the shipment f.o.b. of 95% (by value) of the equipment.
 - 20.12.10 7% on the mechanical completion of the plant.
 - 20.12.11 10% on issue of Provisional Acceptance Certificate of the plant.
 - 20.12.12 3% on Final Acceptance of the Plant.

- 20.13 All the payments due onwards in time pursuant to Article 20.12.2 to 20.12.9 both inclusive above shall be payable only if the "penalizable" documents (so identified in Annexure XV) due on or before the last date of payment (in each case) have been supplied by the CONTRACTOR to the PURCHASER, and (where appropriate) the CONTRACTOR'S expatriate supervisory staff are ready and available on site for erection and commissioning duties. In the event of documents or bid tabulations being supplied late, the payment will be made after deduction of liquidated damage due to PURCHASER under the provisions of Article 27.
- 20.14 The amount(s) due under Article 20.5 shall be payable as follows:
- 20.14.1 15% upon agreement of the programme of training.
- 20.14.2 65% pro rata during training as specified in Annexure XVIII.
- 20.14.3 25% on completion of the overseas training of the PURCHASER'S personnel, in accordance with Annexure XVIII.
- 20.15 The advance payments due from the PURCHASER to the CONTRACTOR pursuant to Articles 20.11.1 and 20.12.1 shall be made by direct remittance by the PURCHASER to a bank designated by the CONTRACTOR upon the satisfactory fulfillment by the CONTRACTOR of his obligations as stated in the provisions of Article 21.1 and 21.2.
- 20.16 For the purpose of making the other payments, under Articles 20.11 and 20.12, the PURCHASER shall establish in favour of the CONTRACTOR at a specified bank in (the CONTRACTOR'S country or as agreed otherwise) irrevocable Letters of Credit providing for payments in accordance with the schedule laid down in Articles 20.11 and 20.12 in conjunction with the certificates in accordance with Article 20.17.
- 20.17 The payments under the Letters of Credit referred to in Article 20.16 shall be made only upon the fulfilment of the following:

- 20.17.1 For payments under Article 20.11.2 a Certificate from the PURCHASER shall be presented stating that the documents under Article 4.5 above have been received.
- 20.17.2 For payments under Article 20.14.1 a Certificate from the PURCHASER shall be presented stating that the Overseas Training Programme (envisaged in Annexure XVIII) has been agreed.
- 20.17.3 For payments under Article 20.14.2 Certificates from the PURCHASER that the percentage of the training programme for which pro rata payment is claimed has been completed.
- 20.17.4 For payments under Article 20.14.3 a Certificate from the PURCHASER that the training programme has been completed.
- 20.17.5 Payments under Article 20.12.2 to 20.12.9 shall be made when each of the following have occurred, as also that specified in Article 20.13:
- 20.17.5.1 A Certificate from the CONTRACTOR countersigned by the PURCHASER that the relevant work has been completed and the payment is due.
- 20.17.5.2 When a certificate issued by the PURCHASER is presented stating that the "penalizable" documents due on or before the date of payment have been received by the PURCHASER; and
- 20.17.5.3 A certificate issued by the PURCHASER is presented, stating that any expatriate personnel due for erection/start-up before the date of payment, have arrived at site.

- 20.17.6 Payment under Article 20.12.10 shall be made on the issuance by the PURCHASER of a Certificate of Mechanical Completion of the Plant in accordance with Article 18.
- 20.17.7 The payments under Articles 20.11.3 and 20.12.11 as reduced by such deductions (if any) due under Article 27 shall be made upon presentation of the Certificate of Provisional Acceptance duly signed by the PURCHASER.
- 20.17.8 The payment under Article 20.12.12 shall be made on the presentation of the Certificate of Final Acceptance by the PURCHASER but subject to any deductions due to PURCHASER for rectification in accordance with Article 30.
- 20.17.9 The Certificates referred to in this Article 20.17 respectively shall not be unreasonably withheld by the PURCHASER.
- 20.17.10 In the event of any dispute as to the eligibility of payments, the PURCHASER shall pay the uncontested part of the payment, but without prejudice to his rights of recovery.
- 20.18 Upon the mechanical completion of the Plant(s), the CONTRACTOR shall have the option to draw upon the Letter of Credit opened in accordance with Article 20.16 above to the extent that the payment is due under Article 20.11.3, 20.12.11 and 20.12.12 amounting to (Amount). In such an eventuality the CONTRACTOR shall provide a Bank Guarantee in accordance with Article 21.3.
- 20.19 In the event that, for reasons not attributable to the CONTRACTOR, the Plant has not been erected or that the Plant has been erected, but not started up within the (30) months after the final shipment f.c.b. of machinery for the Plant, or 60 months after the Effective Date of the Contract, whichever is earlier, the CONTRACTOR shall be entitled to the payments due under Articles 20.12.10 (in like manner as if the Plant had been mechanically completed), 20.11.3, 20.12.11 and 20.12.12 and within sixty (60) days (but subject to the provisions of Article 20.20) after presenting:

- 20.19.1 An invoice in triplicate signed by an Authorized Officer of the CONTRACTOR.
- 20.19.2 An affidavit executed by the CONTRACTOR stating that for reasons not attributable to the CONTRACTOR the mechanical completion for the Plant has not been accomplished, or the Plant has not been started up as the case may be.
- 20.19.3 Proof as to the issue of a Bank Guarantee in the form specified in Annexure XXIII for the proper amount (as specified in Article 20.20 below).
- 20.19.4 Proof that he has advised the PURCHASER of his claim in accordance with Article 20.20 together with presentation of the bank guarantee commensurate with the payment claimed.
- 20.20 Should the CONTRACTOR wish to invoke his rights for payment of the amount under Article 20.19 he shall promptly inform the PURCHASER by telegram and by letter, of his claim. Should the PURCHASER dispute such claim, the CONTRACTOR shall nevertheless be entitled to draw upon the payments due under Article 20.19 against presentation of the documents stated therein together with a Bank Guarantee (for amount(s) equivalent to payments under the relevant Articles) in the form given in Annexure XXIII. The Bank Guarantee shall be valid for 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 3 months after the Award of the Arbitrator.
- 20.21 The payments of the amounts due or reimbursable to the CONTRACTOR for services and/or expenses specified in Articles 20.7 to 20.10 shall be effected as follows:
- 20.21.1 The PURCHASER shall establish with the 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 month before the

commencement of services by the CONTRACTOR pursuant to Articles 20.7 to 20.9 and provisions for payment shall be made in the manner detailed hereunder.

20.21.2 Payments for daily rates and/or overtime of the CONTRACTOR'S expatriate personnel as provided in Article 20.8 and Annexure XXVII shall be effected out of the said relevant Letter of Credit upon presentation to the PURCHASER of:

20.21.2.1 Monthly invoice 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.

20.21.2.2 The PURCHASER shall promptly sign the time-logs after verification.

20.22 Payments for reimbursement of expenses due to work undertaken pursuant to the terms of Article 15 shall be effected upon presentation of: The authorized change order together with the PURCHASER'S certification that payment under the said change order is due, accompanied with invoices certified by the CONTRACTOR that the expenses specified therein relate to such work undertaken pursuant to the terms of Article 15.

20.23 The living allowances detailed in Annexure XXVII, Clause 5 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.

20.24 The payment 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 30 days of the claim duly supported by the relevant receipts.

- 20.25 Any and all Bank Guarantees to be provided by the CONTRACTOR pursuant to the Contract shall be encashable by the PURCHASER in (state 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.
- 20.26 Should the CONTRACTOR so desire, the Letter of Credit to be established under Article 20.16 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.
- 20.27 The CONTRACTOR hereby agrees to perform the work in well-planned and expeditious manner so that the completion of the work at various stages and that of the whole works is achieved according to the time schedule given in Article 2 and detailed in Annexure XV of this Contract. In the event that the CONTRACTOR fully accomplishes the work under Article 3 and demonstrates the Guarantees given in Article 21 during a period of less than thirty-six (36) months after the Effective Date of the Contract, the CONTRACTOR shall be entitled to receive Bonus as hereunder specified for each complete week of saved time in terms of the completion of the works:
- 20.27.1 (1) % of fixed fees under Article 20.3, 20.4
- 20.27.2 (1) % of fees under Articles 15.4 and 20.8 actually paid during the duration of the Contract.

Payments under this Article 20.27 shall (subject to Article 4.22) be made within twelve (12) months of Provisional Acceptance of the Plant provided no defects appear in the Plant and/or equipment during this period affecting its capacity, performances and/or operations.

ARTICLE 21

PERFORMANCE BOND AND BANK GUARANTEE

- 21.1 Upon the execution of the Contract, the CONTRACTOR shall provide to the PURCHASER, a Performance Bond guaranteed by an approved Bank and/or Bonding Institution 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 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 in favour of the PURCHASER in the Form provided in Annexure XXIII, guaranteed by (Name of Bank) and confirmed in (PURCHASER's country) to secure such advance payments. The Bank Guarantee shall be for an amount equivalent to the sum total of the advance payment required to be made by the PURCHASER pursuant to Articles 20.11.1 and 20.12.1. 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 shall be reduced on a progressive basis commensurate with performance of the CONTRACTOR as measured by such payments made under Articles 20.11 and 20.12 and the Bank Guarantee shall be completely released upon satisfactory Mechanical Completion of the Complex.
- 21.3 Upon Mechanical Completion of the Plant, and provided the CONTRACTOR elects to exercise his option under Article 20.18, 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 20.18 from the (Name of Bank) and confirmed by a BANK in (COUNTRY OF PURCHASER) in the form given in Annexure XXIII. This Bank Guarantee shall remain valid and in force up to the date of the Provisional Acceptance of the Plant, or any extension(s) thereof.

ARTICLE 22

INDEMNIFICATION

22.1 Subject only to Article 22.2 below, the CONTRACTOR shall indemnify and hold harmless the PURCHASER and anyone directly or indirectly employed by it 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 activities of the CONTRACTOR under or 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 7.8 and 7.13 during and after Completion of the Work(s) 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 its 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. For the purpose of Article 22.1 above, "activities" includes an act improperly carried out, an omission to carry out an act and a delay in carrying out an act.

ARTICLE 23

PROJECT ACCOUNTING AND AUDIT

- 23.1 The CONTRACTOR shall keep adequate books of accounts and time logs in accordance with the form and procedure required by the PURCHASER with regard to purchases made on behalf of the PURCHASER up to a period of two years following the final acceptance of the plant, in accordance with good accounting practice.
- 23.1.1 The PURCHASER shall at all time have access to the relevant records of the CONTRACTOR in relation to the purchases made by the CONTRACTOR and with regard to orders placed by the CONTRACTOR on behalf of the PURCHASER.
- 23.2 The CONTRACTOR shall submit to the PURCHASER bi-monthly statements of procurement undertaken under this Contract, along with the cumulative total to date, and the total estimated procurement price, for each Plant and each section thereof. Such statements shall reach the PURCHASER within fifteen (15) days after the requisition involving the procurement formality has been completed in each case.
- 23.3 The CONTRACTOR shall monthly review and promptly advise the PURCHASER of any variations which he may foresee in the estimates made by him under Article 2.5 above, and shall discuss the reasons for all such variations with the PURCHASER in (PURCHASER's country) should the PURCHASER so desire.
- 23.4 The PURCHASER shall (in addition to the provisions of Article 23.1.1) have the right to audit all time logs of the CONTRACTOR, if any prices or part of any prices under the provisions of Article 20 are based on time-charges.
- 23.5 The CONTRACTOR and the PURCHASER (as the case may be) shall keep accurate records of the costs referred to in Article 29.

23.6 The PURCHASER or any Auditor nominated by the PURCHASER, or its Government, shall have the right to audit all payments made on behalf of the PURCHASER by the CONTRACTOR under the Contract, and to audit all or any Purchase Orders issued in connection with this Contract, and/or shall receive from the CONTRACTOR any other financial data and information in regard to the transactions between the PURCHASER and the CONTRACTOR and with Vendors pursuant to this Contract.

ARTICLE 24

INSURANCE

24.1 Without restricting in any manner the generality of any other provision of the Contract, and in particular any such provision as pertaining to the liability or responsibility of the CONTRACTOR, 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 that the PURCHASER and CONTRACTOR may agree upon and/or required by law):

24.1.1 The CONTRACTOR and/or the PURCHASER, as the case may be, shall take out and keep in force the Insurance Policies enumerated in Article 24.5 for such period(s) of time as may be necessary under the Contract.

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, is to contain such specific terms and conditions, if any, as stipulated or contemplated in these Subarticles 24.1.1 and 24.1.2.

24.2 Within thirty (30) days after obtainment of each of such policies, as contemplated by 24.1 above, the CONTRACTOR shall deposit originals of each of such policies with the PURCHASER 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, whenever required from time to time by the PURCHASER, submit to the PURCHASER adequate proof that the insurance(s) contemplated by 24.1 above being his responsibility, as the case may be, remain in force.
- 24.4 Should the CONTRACTOR fail to take out and/or keep in force the insurances contemplated by this Article within the scope of his responsibility, together with any other insurances to be taken out by the CONTRACTOR agreed between the PURCHASER and the CONTRACTOR, then the PURCHASER may at the PURCHASER's option either:
- (a) 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 or superseding 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;
 - (b) 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 either one or the other of the parties shall be as follows:
- 24.5.1 "Construction All Risks" (C.A.R.) liability or "Erection All Risks" (E.A.R.) policy (inclusive of third party cover) in the name of the PURCHASER and CONTRACTOR to insure the project under construction, including all plant, equipment and materials incidental thereto, while at the site from the start of work until final acceptance by the PURCHASER. Endorsements to the policy shall include coverage for E.A.R., "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) and endorsements for such items as elevator and hoist liability, shoring, blasting, excavating may 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 providing extended cover to that already provided by the C.A.R./E.A.R. policy.
- 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 to the site of the Plant. (This may or may not include War Risks insurance, as agreed by the PURCHASER and the CONTRACTOR).
- 24.5.6 Insurance Liability cover for the use of Automobiles, Trucks, Aircraft, Launches, Tugs, Barges, etc.
- 24.5.7 Liability insurance for payments under Workmans' Compensation Acts, as required under applicable legislation.

*24.6 To the extent not covered by the above policies and provided such policy is available, the PURCHASER and the CONTRACTOR shall

* This Article uses the wording suggested by the First Working Group on Contracts and Insurance for Fertilizer Plants convened by UNIDO at Vienna, 14-17 February 1980. See Report of the Meeting, paragraph 50. ID/WG.269/2 Rev.1

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 shall attach to the PURCHASER or the CONTRACTOR purely by reason of payment of the premium for such a policy.

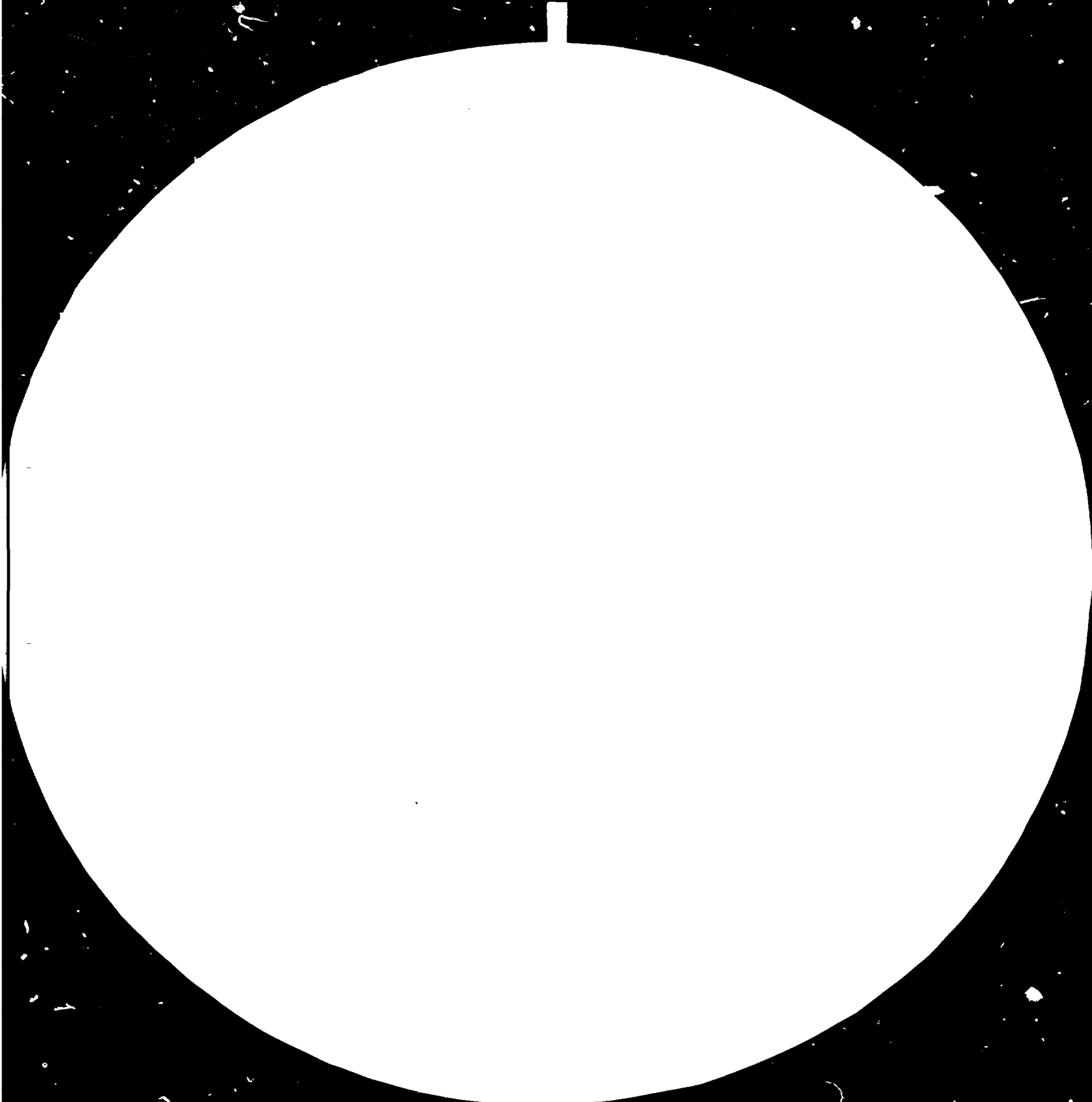
- 24.7 The CONTRACTOR shall be responsible for the taking out of the following policies:
- 24.7.1 Professional Indemnity Insurance (Item 24.5.4 above).
 - 24.7.2 Accident Insurance for CONTRACTOR's personnel at site.
 - 24.7.3 Insurance for CONTRACT's transport (e.g. Automobiles) of which CONTRACTOR is the owner.
 - 24.7.4 Any other insurance to be taken out by the CONTRACTOR (as may be agreed by the PURCHASER and the CONTRACTOR).
 - 24.7.5 All policies taken out by the CONTRACTOR except Professional Indemnity Insurance shall be jointly in the name of the CONTRACTOR and the PURCHASER; (in particular cases e.g. when there is a Faculty Design endorsement to the E.A.R. policy, insurance companies may insist on the policy being taken out jointly in the name of the CONTRACTOR and PURCHASER); in all other cases, all policies shall be in the name of the PURCHASER.
- 24.8 Unless otherwise specified, the other policies referred to in Article 24.5 above will be taken out by the PURCHASER.

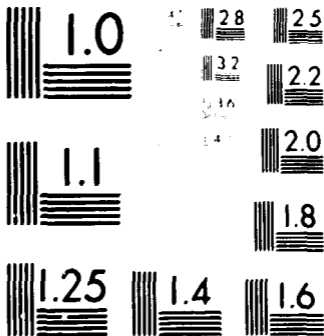
ARTICLE 25

GUARANTEE OF WORKMANSHIP AND MATERIALS

- 25.1 The CONTRACTOR shall be responsible for ensuring through the Purchase Orders issued to Vendors and by inspection that the quality of the materials and workmanship of the Plant and Equipment for the Works and unless as otherwise specifically provided, all plant, equipment, materials, apparatus, articles, instruments and all other goods required to be procured by the CONTRACTOR under this Contract shall be new and of the most suitable grade for the purposes intended, to the Contract and design specifications, the standards and regulations detailed in Annexures II, IV, XXVI and XXVII, and (whenever applicable) the domestic standards and regulations of the PURCHASER's country.
- 25.2 The CONTRACTOR shall undertake adequate inspection so as to ensure that the quality of materials and workmanship throughout the manufacture of equipment, machinery and other items, sub-contracted to the Vendors completely conform to the specifications issued by the CONTRACTOR. The supplier's certificates for the materials shall satisfy the minimum regulations (physical and chemical) specified by the CONTRACTOR, and random testing of materials shall have been done by Vendor or his agents (approved by the CONTRACTOR) under the supervision of, and to the satisfaction of, the CONTRACTOR.
- 25.3 The CONTRACTOR or his representatives shall at all times have the right to inspect and spot check all work being undertaken at site and to arrange for any testing of samples to ensure their suitability with design requirements.

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MICROCOPY RESOLUTION TEST CHART

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- 25.4 The standards and codes to be used for the Plant(s) are given in Annexure II. The CONTRACTOR shall utilize these standards (or where applicable mandatory national standards) and/or superior standards if known to CONTRACTOR (as required by the provisions of Article 4.7) for the design and procurement of all plant and equipment. 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 PURCHASER being given prior notice.
- 25.5 In the case of a dispute arising on any matter concerning the acceptability or qualitative level of standards or Code(s) the onus shall be on 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 Plants shall be capable of meeting the requirement of normal operation, capacity, quality of products and consumption of raw materials and utilities, all of which are hereby guaranteed by the CONTRACTOR, and which shall be proven and demonstrated by test runs as laid down in this Article provided that the equipment has been purchased in accordance with the CONTRACTOR's recommendations, 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. The PURCHASER shall comply with the provisions of Articles 5.17 and 5.18. For the purposes of the Guarantee Tests, 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.
- 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 Penaltiible 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 and emissions.
 - 26.3.1.5 The adequacy of the Utilities and Off-sites and sufficiency of carbon dioxide to meet the capacity of the Ammonia and Urea Plants when operating together.
 - 26.3.2 The Penaltiible 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 "Penalizable Guarantees" shall be defined as those Guarantees which if not met may be compounded by the payment of Liquidated Damages as specified in Article 27, provided, however, that if the consumption of raw materials exceeds (3%) or that the overall guaranteed consumption cost (see Article 27.2.4) exceeds (5%), 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 as 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% 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 and satisfied accordingly, then the Absolute Guarantees shall be 95% of these figures as provided).

26.6.1.2 The quality of the ammonia shall be as per Annexure XVI, as analyzed in accordance with international methods contained therein.

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% 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% of these figures as provided).

26.6.2.2 The quality of the urea shall conform to the specifications 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% of the capacity of ammonia and urea respectively, and provided the CONTRACTOR agrees to pay the Liquidated Damages stated in Article 27.1.3. The Absolute Guarantees shall only be deemed to have been met if the CONTRACTOR has paid such Liquidated Damages due under Article 27 and as elsewhere provided in this Contract.

26.6.4 The provisions of Article 29.1 shall apply mutatis mutandis in lieu of the payment of Liquidated Damages under Article 26.6.3, and the CONTRACTOR shall modify the Plant accordingly.

26.7 Penalties Guarantees for individual Plants shall be as expressed below:

26.7.1 Ammonia Plant

26.7.1.1 The Penalties 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		
- HP Steam	Metric tons	
- LP Steam	Metric tons	
- Purge Gas	Millions of Kcal	
- Boiler Feeding Water Preheating	Millions of Kcal	
- Condensates	Metric tons	

26.7.2 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	
- Condensate	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 (minimum 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% of capacity of the Ammonia Plant, together with the capability to produce specification grade ammonia and carbon dioxide, to be 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% 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% capacity of the Ammonia Plant shall be (10,000) metric tons of 99.8% Product, and shall be corrected for any increase in strength. For consumption of the raw materials and utilities the test period will 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 (minimum 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% of the Urea Plant together with the capability to produce urea of specification grade, to be followed immediately by
- 26.8.2.2 A ten (10) day uninterrupted continuous test under normal operating conditions in which the operation of the Urea Plant at 100% capacity, and the consumption of raw materials and utilities will be demonstrated while producing specification grade urea. The tests for capacity and quality shall 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% capacity of Urea Plant shall be (17,250) metric tons of 46.3% N. Product, and shall be corrected for any increase in strength.
- 26.8.3 The ten (10) day Guarantee Test(s) of the Plant(s) shall run immediately after the successful completion of the relevant twenty (20) days test(s).
- 26.8.4 Within the ten (10) days period specified above under Article 26.8.1.2 and 26.8.2.2 (unless as otherwise agreed) the Ammonia and Urea Plants will be run at capacity for (three (3)) days to demonstrate that all services are adequate for the operation of the Ammonia and Urea Plants, and utilities together.

- 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/} 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 shall be taken jointly by the PURCHASER and the CONTRACTOR and in the event of a dispute relating to the Tests, the provisions of Article 45 shall apply.
- 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 under Article 5.17. Subject to the provisions of Article 26.10.2 this (ninety (90)) day period shall be extended if the Plant(s) are unable to operate normally due to no fault of the CONTRACTOR, and in the event of failure of this Test the CONTRACTOR shall be permitted not more than two other tests to be run within the twelve (12) months after start-up, extended by any period that the tests cannot be run for reasons beyond the control of the CONTRACTOR, or for replacement of equipment in accordance with Article 29.1.1.
- 26.10.2 If, for reasons ascribable to mistake(s) and/or error(s) in processing and/or detailed engineering or other services provided or performed by the CONTRACTOR and/or mistake(s) and/or error(s) in the CONTRACTOR's specifications and instructions the CONTRACTOR is not able to perform the test(s) within twelve (12) months, then the provisions of Article 24 shall apply accordingly.

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

- 26.10.3 The CONTRACTOR shall have the right to have the Plant(s) operated in accordance with its requirements during the period permitted for the CONTRACTOR to perform the test(s), and the PURCHASER's personnel shall work under the technical instructions 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 of the CONTRACTOR not completing his Performance Tests of the Plant(s) for reasons attributable to the CONTRACTOR within six (6) months after Start-up of the Plant(s), the PURCHASER shall have the right to stop all local payments to expatriate personnel, and, whenever required by the PURCHASER the CONTRACTOR shall extend the validity of the relevant Bank Guarantee, provided that the period during which the Plant(s) cannot be operated normally by the CONTRACTOR (for reasons not attributable to the CONTRACTOR) or the period spent in the replacement of any equipment (if any replacement is required under the Contract) shall not be counted in computing the said six (6) month period.
- 26.12 If the ten (10) days capacity Performance Test(s) is 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 already in fact been operated for a minimum of a five (5) day period continuously without interruption.
- 26.13 After completion of any Performance Test (which the CONTRACTOR believes to be a successful test) the CONTRACTOR shall prepare a Performance Test Report which should be signed by the CONTRACTOR and submitted to the PURCHASER for approval.

- 26.13.1 If the said Report is satisfactory, the PURCHASER shall issue within ten (10) 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 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 Acceptance of the Plant for which the Performance Test was conducted shall be deemed to have taken place on the date the test was successfully completed.
- 26.14 In the event of guarantees not being fulfilled due to no fault of the CONTRACTOR.
- 26.14.1 All obligations of the CONTRACTOR with respect to guarantees mentioned in this Contract shall be deemed to have been fulfilled and the Plants accepted, if, for reasons clearly not attributable to the CONTRACTOR the first Guarantee Test cannot be carried out within (thirty (30)) months from the last shipment of machinery, or within (sixty (60)) months from the Effective Date of the Contract whichever comes earlier. In such event the Bank Guarantee shall expire automatically and the payment of the final instalment of the monies due, if any, shall be made to the CONTRACTOR as provided in Article 20.
- 26.14.2 If for no fault of the PURCHASER, the Guarantee Tests could not be made within the period stipulated in Article 26.14.1 above, the CONTRACTOR shall on the request of the PURCHASER send personnel to Site to start-up the Plant and to undertake Tests on the Plant. The PURCHASER shall pay additional fees and travel expenses on terms to be agreed between PURCHASER and CONTRACTOR.

26.15 The Acceptance of the Plants under Articles 26.13 and 26.14 and the issue of Certificates thereof shall be considered to be provisional, until issue of the Final Acceptance Certificate. The issue of these Provisional Acceptance Certificates shall, however entitle the CONTRACTOR to receive payments due on completion of Guarantees and Acceptance of the Plant, as provided in Article 20.

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 Articles 10 and 19, and as detailed elsewhere in the Contract, as follows:
- 27.1.1 Except where any delay is caused by any act or omission on the part of the PURCHASER for the delay in the delivery of the technical documents stipulated in Annexure XV the agreed Penalties 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 the submission of bid tabulation as per Article 10 the agreed Liquidated Damages shall be (amount) per week of delay in the submission of the required documents to a maximum of (amount) under this Article.
- 27.1.3 For non-fulfillment of Absolute Guarantees at 100% capacity but subject to fulfillment of Absolute Guarantees at 95% of capacity, a penalty of 1% of the total project cost (give amount) as stated in Article 2.5 for each 1% of lower production than of the 100% capacity of urea.
- 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 executing modifications, additions and changes to the Plant(s), in which case the provisions of Articles 27.2.5 and 29 shall apply, or to pay by way of agreed Liquidated Damages, in consideration of any and all claims in connection with the non-fulfillment of the guaranteed consumption cost, (but subject to the provisions of Article 26.5), the following:

- 27.2.1 For the Ammonia Plant: for each full 0.5% (zero point five percent) exceeding the daily guaranteed cost of manufacture 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% (zero point five percent) exceeding the daily guaranteed cost of manufacture as given in Article 27.2.4 below an amount of _____ up to a maximum of _____.
- 27.2.3 By virtue of the above payments being made the obligations of the CONTRACTOR in connection with the performance of such guarantees shall be considered as fulfilled and the Plant(s) as accepted, subject however to the provisions of Article 26.5.
- 27.2.4 The daily guaranteed cost of manufacture shall be computed by calculating the guaranteed daily cost of inputs of raw materials and utilities minus the guaranteed output of utilities, according to the costs given below for each item, and multiplying by the guaranteed daily capacity of each Plant, to obtain the daily guaranteed net cost of raw materials and utilities.

Natural Gas	(Value) per million Kcal.
HP Steam	(Value) per ton
MP Steam	(Value) per ton
LP Steam	(Value) per ton
Cooling Water	(Value) per m ³
Boiler Feed Water	(Value) per m ³
Purge Gas of Ammonia Plant	(Value) per million Kcal.
Condensate	(Value) per ton
Ammonia	(Value) per metric ton

- 27.2.5 The duration of the CONTRACTOR's option to execute the modifications, additions and/or changes referred to in Article 27.2 and to carry out new guarantee tests shall be limited to twelve (12) months from the date of Start-up of the Plant(s), extended by such time for repair and/or replacement of equipment as provided in Article 29.1.1.
- 27.3 Should the CONTRACTOR be unable or unwilling to fulfill the Absolute Guarantees within the twelve (12) months after Start-up, extended by such time for repair and/or replacement of equipment as provided in Article 29.1.1 then, subject to Article 29.1, the PURCHASER shall have the right to recover the full costs necessary to correct the Plant and to engage such parties as the PURCHASER may deem fit in his sole discretion to ensure that the Absolute Guarantees are met. In the event of disagreement the amount of such costs shall be assessed by an international competent authority mutually acceptable to the CONTRACTOR and the PURCHASER, or failing agreement, as appointed by Arbitration. The assessment made shall be final and binding upon the CONTRACTOR and PURCHASER.
- 27.4 If the CONTRACTOR should fail to discharge fully his Contractual obligations within the limits of time guaranteed in the Contract and within the authorized extension(s) of time (governed by Article 29) he shall in addition to the Liquidated Damages stated to be payable (if any) be liable for fundamental breach of Contract.
- 27.5 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 the Work(s) or from any other of his obligations and liabilities under the Contract.

ARTICLE 28

WARRANTIES

- 28.1 The CONTRACTOR shall assume responsibility for the quality duration and effect of the warranties and guarantees provided for those portions of the equipment and/or machinery and/or spare parts and/or other items being supplied by the CONTRACTOR, if any.
- 28.2 In inviting bids for the equipment, machinery and materials the CONTRACTOR shall ensure that adequate warranties for mechanical soundness and guarantees for performance are given to the PURCHASER by the successful vendor. The PURCHASER acknowledges that the equipment purchased from the Vendors is not warranted by the CONTRACTOR. However, the CONTRACTOR shall assist the PURCHASER in obtaining and enforcing warranties and guarantees to ensure satisfactory performance of the equipment and/or machinery supplied by Vendors, if when (a) issuing the Purchase Order(s), (b) during inspection of the equipment, (c) on completion and during test running in Vendor's shops (if any), (d) at the time of taking delivery of the equipment, or machinery and (e) operating the Plant; any deficiency, inadequacy, or defects are noticed within the period of warranty.
- 28.3 The mechanical guarantees and warranties from Vendors shall be valid for a minimum period of twelve (12) months after start-up of the Plant or for a period of not less than thirty (30) months from the date of shipment, whichever is earlier. While undertaking the obligations for the preparation, issuance and administration of the Purchase Orders, the CONTRACTOR shall use its best endeavours to ensure that the shipment(s) of equipment are properly phased (and not undertaken sooner than necessary) to make certain that the guarantees especially attaching to principal equipment do not expire before the forty-eighth (48th) months from the Effective Date. The CONTRACTOR shall be required to assist the PURCHASER in all the dealings with the Vendors in accordance with the terms of this Contract.

If any of the Vendors' supplies are found defective, the CONTRACTOR shall assist the PURCHASER in requiring the Vendors to promptly undertake the necessary corrective measures and, if required, to ensure that the Vendors substitute or replace the defective equipment, machinery, spare parts or materials within the shortest possible time.

ARTICLE 29

RECTIFICATION OF DEFECTS AND MODIFICATIONS TO THE WORKS

29.1 In the event that due to mistakes, negligence or errors in the processes and/or in the detailed engineering performed by the CONTRACTOR and/or in the CONTRACTOR's procurement, or specifications, instructions and inspections, or for whatever reason falling within the CONTRACTOR's obligations, the CONTRACTOR is unable to demonstrate the Absolute Guarantees pursuant to Article 14. 25, 26 and this Article, the CONTRACTOR shall proceed to effect the rectifications, modifications, additions and/or changes which in the CONTRACTOR's professional judgment are necessary to eliminate the defects and/or faults and thereby to achieve the specified guarantees. The CONTRACTOR shall provide free of charge to the PURCHASER all the engineering, drawings, procurement inspection and other services as well as supervision services connected with the above work. In the event that the PURCHASER performs any and all of the rectifications and other work referred to above (in accordance with the CONTRACTOR's advice and as agreed within a specified period of time), the CONTRACTOR shall reimburse to the PURCHASER such costs as are incurred by the PURCHASER. In addition, the CONTRACTOR shall pay for the cost of equipment delivered to site and all other associated costs, should a substitution, replacement or addition of equipment be necessary, or shall reimburse such costs to the PURCHASER if such payments have been made by the PURCHASER.

29.1.1 The CONTRACTOR shall be allowed to conduct up to two (2) additional Guarantee Tests as required within a period of twelve (12) months from the date of startup; if the necessity for the modifications, additions and changes should have arisen, the period during which

the Plant(s) cannot be operated normally by the CONTRACTOR or the period spent in excess of ten (10) months in the replacement of equipment (if any such replacement is required under the Contract) shall not be counted in computing the said twelve (12) months period.

- 29.2 Where in pursuance of this Article, any defective equipment is removed and replaced with new equipment, then the CONTRACTOR shall ensure directly or through Vendors as the case may be, that the defects liability period shall begin to run anew in relation to such replaced equipment and it shall be subject to the same criteria for take-over test(s) (as was the removed equipment), or, where no such test would have been required to have been carried out, on the date when the replaced equipment is actually first put into satisfactory use.
- 29.3 If the CONTRACTOR shall neglect or refuse to take the necessary measures to ensure the elimination of the defects and/or faults within a reasonable time, then the PURCHASER may take such remedial steps to carry out the engineering, procurement, inspection and supervision of erection of new equipment or undertake repair and/or replacement of used equipment to rectify the defects and correct all associated problems, and the cost of such remedial steps taken by the PURCHASER shall be to the CONTRACTOR's account, and/or may be recovered in any manner at the discretion of the PURCHASER.
- 29.4 In the event that the CONTRACTOR does not comply with Article 30.1 or the PURCHASER does not agree to further extend any periods requested by the CONTRACTOR for such modifications, additions, and/or changes, the PURCHASER shall have the right to terminate the Contract and shall have the right to have recourse to all legal and equitable remedies, including the option to proceed to Arbitration and/or for the assessment of compensatory payments to the PURCHASER in consideration of the circumstances. The liability of the CONTRACTOR to meet the Absolute Guarantees shall remain notwithstanding and

shall not be qualified, limited or restricted by any other provisions of the Contract, excluding consequential loss liability. The PURCHASER and the CONTRACTOR agree that, if necessary, in the event of arbitration, the Arbitrator(s) shall have access to the Plants, notwithstanding anything contained in Article 7 in order to assess damages for the CONTRACTOR's failure to meet his guarantee obligations.

- 29.5 The CONTRACTOR or the PURCHASER, as the case may be, shall in every case keep such contemporary and accurate records of the costs of making good any defect(s) in pursuance of this Contract and as may be reasonably required and, each party shall be entitled to receive copies of relevant documents.
- 29.6 Should the CONTRACTOR discover any discrepancy or mistake in his process, engineering, instructions, specifications, inspections or procurement, or errors or omissions as the case may be which require rectification(s) to be undertaken to correct the defects pursuant to Article 29, the CONTRACTOR and the PURCHASER shall meet and agree to such extension in time to be allowed the CONTRACTOR for the rectification of defects and corrective engineering. The extension in time thus allowed to the CONTRACTOR shall in no way absolve him of the liabilities for the period of delay and/or the application of Article 27 and this Article, as the case may be, except as provided otherwise in this Contract.
- 29.7 The CONTRACTOR's obligation to rectify defects and to take corrective steps shall continue unabated even if the period of extension granted by 29.6 is exhausted, and the CONTRACTOR shall continue his endeavours at his own cost to rectify the defects and take corrective measures provided the PURCHASER agrees to allow such further extension(s) in time (in writing), as requested by the CONTRACTOR. The obligation of the CONTRACTOR herein shall not end until the Absolute Guarantees of the Plants are successfully demonstrated.
- 29.8 The CONTRACTOR's obligations to execute the rectifications pursuant to 29.6 shall be limited to twelve (12) months from the date of start-up of the Plant(s), however the period

during which the Plant(s) cannot be operated normally due to any default on the part of the PURCHASER or the period in excess of ten (10) months spent in the replacement of equipment (if any such replacement is required from Vendors) shall not be counted in computing the said twelve (12 months) period.

- 29.9 If any defect is found during inspection (before despatch) of equipment, machinery or materials of Vendor, or during erection or pre-commissioning tests at the site of the Plant, the CONTRACTOR shall immediately advise the PURCHASER as to what action should be taken to have the Vendors replace defective equipment, defective parts, or inadequate material in the shortest possible time. The CONTRACTOR shall assist the PURCHASER in facilitating any action which may be necessary in such circumstances. If any defect is found in the Vendor's equipment, machinery, spare parts or materials within the period when the guarantee is valid, the CONTRACTOR shall assist the PURCHASER in immediately undertaking the necessary measures to have the Vendor(s) replace the defective equipment, material, machinery or spare parts within the shortest possible time, including the air freighting of the equipment or parts etc. at Vendor's cost.
- 29.10 The provisions of Articles 28 and 30 shall apply mutatis mutandis as regards the liabilities and obligations of the parties herein, in the circumstances envisaged in Articles 29.7 and 29.9.
- 29.11 The CONTRACTOR shall assume complete responsibility for any failure of the equipment, materials or poor workmanship due to improper: engineering, basic design, procurement specifications, or improper inspection; and the CONTRACTOR shall be liable to take the necessary corrective measures under this Article 29 and shall be subject to the liabilities of Articles 27 and 30.

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 fulfill 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 fulfillment of the guarantee requirements, and performance guarantee tests; for adequacy and sufficiency of inspections, and, shall be responsible for necessary modifications and rectifications to the Plant(s), and/or sections thereof, pursuant to Article 29 and shall be accountable for the completion of the work-scope and objects of the Contract as expressly specified.
- 30.3 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, startup 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 Project Cost, or, (state amount) whichever is the greater, with the exception of the CONTRACTOR's unlimited liability for rectification or modifications for the fulfillment of Absolute Guarantees, 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 24 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 Right of Set-Off

30.9.1 In the event that the PURCHASER considers that it possesses a claim against the CONTRACTOR under, arising out of, or in any way connected with, this Contract, the PURCHASER may at any time (whether before or after the completion of the work under this Contract and whether such completion is effected by the CONTRACTOR, the PURCHASER or another person) calculate the amount of the damage or loss upon which such claim is based and (without restricting any right of set-off or counter-claim given or implied by law) may set-off against any amount then or to be subsequently payable to the CONTRACTOR under this Contract, any sum deemed by the PURCHASER to be payable to the PURCHASER by the CONTRACTOR pursuant to any such above-mentioned claim, and, without restricting the generality of the foregoing, the PURCHASER may deduct from any sum otherwise then or to be subsequently payable or repayable to the CONTRACTOR under any provision of this Contract (including inter alia Articles 11, 12, 28, 29 and 40) any sum so deemed payable or retainable to or by the PURCHASER by virtue of any other provisions of this Contract or by virtue of the right of set-off or counterclaim, whether as conferred by this Article or otherwise. Should the PURCHASER exercise any such right of set-off as envisaged herein, the PURCHASER shall specifically notify the CONTRACTOR in writing that the said right is being exercised IT BEING EXPRESSLY AGREED that no letter or other communication by the PURCHASER shall constitute such notification to the CONTRACTOR unless the said letter or other communication so stipulates. At any time up to sixty (60) days after the receipt of the notification contemplated above the CONTRACTOR may institute proceedings in a Court of competent jurisdiction to establish that the damage or loss as calculated by the

PURCHASER did not in whole or in part constitute a valid legal claim against the CONTRACTOR but after the expiry of the said sixty (60) days the CONTRACTOR shall be deemed to have acknowledged the validity, both as regards quantum and otherwise, of the aforesaid claim of the PURCHASER exceed the amount or value of the set-off nothing herein shall be construed as a bar to the right of the PURCHASER to adopt any other legal measures available against the CONTRACTOR for the amount of such excess.

30.10 Waiver

30.10.1 Notwithstanding anything contained elsewhere in this Contract no waiver or estoppel (if any) arising against a right or remedy of the PURCHASER, on any occasion shall be deemed operative against such right or remedy if the relevant factual circumstances continue in existence beyond the date upon which such waiver or estoppel first arose or if these occur, subsequent to the said date, factual circumstances (whether or not similar to those first mentioned above) upon or against which the PURCHASER right or remedy would normally be invocable.

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 above, 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, license fee 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 imposts 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 or part of the work, either for a specified or unspecified period by communicating notice to that effect to the CONTRACTOR. If the period is unspecified, the PURCHASER shall specify the period of suspension within forty-five (45) days thereafter.
- 32.2 The CONTRACTOR, upon receiving notice of the PURCHASER's requirement pursuant to Article 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 in accordance with an extension of time granted by the PURCHASER reasonably commensurate with the period during which the execution of the Work or part of the Work was suspended and payments due upon Suspension of Work in the relevant case shall be determined in accordance with Article 19.2.
- 32.5 If the period of suspension is more than ninety (90) days and if, upon the expiration of the period of suspension, the PURCHASER and the CONTRACTOR agree that the execution of the Contract be fulfilled by the CONTRACTOR, the CONTRACTOR shall resume operations and fulfill the Contract in accordance with the terms and conditions of this Contract, subject to any amendments that may be required by virtue of the suspension of work under this Article 32, and CONTRACTOR's entitlement as to costs (if any) as provided for in Article 19.2.

- 32.6 If the period of suspension exceeds one hundred and eighty (180) days and if the PURCHASER requests the CONTRACTOR to recommence the work upon amended terms (to be agreed mutually) and the PURCHASER and CONTRACTOR are unable to reach agreement on the completion of the Contract by the CONTRACTOR, or the CONTRACTOR is unwilling in any event to undertake further work, the parties shall resort to Arbitration pursuant to Article 37.
- 32.7 Nothing herein shall affect the validity of the Contract. Both the PURCHASER and CONTRACTOR shall make bona fide endeavours to resume the work as expeditiously as possible.
- 32.8 Payments if any made under this Article shall be governed by the provisions of Article 19.2.

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 34) then the PURCHASER may at any time by giving notice in writing to that effect terminate this Contract.
- 33.2 The CONTRACTOR will upon receipt of a notice pursuant to Article 33.5 below cease all operations forthwith.
- 33.3 If the Contract is terminated pursuant to Article 33.1 or where payments are due to the CONTRACTOR under Articles 34.5 and 34.6, the PURCHASER will pay to the CONTRACTOR an amount equal to the greater of:
- 33.3.1 the cost of the Works already 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 to pay 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 payable to the CONTRACTOR up to the date of Termination, provided the CONTRACTOR had, in fact, fulfilled its obligations to such date, without prejudice to PURCHASER-rights as expressly provided for in the Contract.
- 33.4 In the event that the CONTRACTOR and the PURCHASER are unable to agree upon the amount of payments then the parties shall 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 20.2 (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

Licensors the documentation for know-how and basic engineering (unless already supplied by the CONTRACTOR; to the extent that the PURCHASER has made payments to the CONTRACTOR pursuant to Article 20.2, 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 all detailed engineering documents, calculations, computer print-outs and other materials related thereto as completed up to the date of the Termination.
- 33.5.3 The PURCHASER shall be provided all procurement documentation 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.
- 33.5.4 The PURCHASER shall be given all inspection reports, reports on visits to Vendor's factories and copies of test certificates received from Vendors up to the date of Termination.
- 33.5.5 The PURCHASER shall be entitled to all completed or incomplete documentation pertaining to work and services to be provided by the CONTRACTOR pursuant to Article 4 (including that detailed in Annexure VI and in particular to the technical documentation specified in Annexure XV).
- 33.5.6 In circumstances where Article 33 applies, the PURCHASER shall have the right to establish direct contractual arrangements with the Process Licensors as provided in Article 7.2.2.
- 33.6 Nothing herein shall invalidate the rights of the PURCHASER as to 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, 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 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 made default in the completion of the Works, or any portion thereof;

33.7.3 where the CONTRACTOR has become insolvent;

33.7.4 where the CONTRACTOR has committed an act of bankruptcy;

33.7.5 where the CONTRACTOR has abandoned the work.

33.8 Where this Contract or any portion or portions thereof has or have been taken out of the CONTRACTOR's hands under Subarticle 33.7, the CONTRACTOR shall not, except as provided in Subarticle 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 and the PURCHASER (at his option) may decline to proceed to Arbitration and may instead institute actions as may be appropriate in the Courts of competent jurisdiction.

33.9 Where this Contract, or any portion or portions thereof has or have been taken out of the CONTRACTOR's hands under Article 33.7 and is subsequently completed by the PURCHASER, the PURCHASER shall determine the amount, if any, of retention monies and progress claims of the CONTRACTOR unpaid at the time of taking the work out of the CONTRACTOR's hands that, in the PURCHASER's opinion, are not required by the PURCHASER for the purposes of the Contract and subject to any actions already instituted or

proposed to be commenced in Courts or under arbitration, the PURCHASER shall, if 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 law except the obligation to complete physically the execution of such portion of the Contract as has been taken out of the CONTRACTOR's hands.

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, lightning, 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), or shall seek alternative methods of achieving the 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 Subarticle 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 Force Majeure, then the Contract shall be deemed to be terminated pursuant to Article 33 above. Either

party may resort to Arbitration pursuant to Article 37 in the event of a dispute as to the facts justifying 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 Article 33.3 in like manner as termination of work, failing which either party shall have recourse to the provisions of Article 37. 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

LANGUAGE GOVERNING THE CONTRACT

- 35.1 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 schedule 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 Article 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 difference 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.
- 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 on 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 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 days after such presentation of the grievance.

37.4.2 No demand for arbitration shall be made after the ninetieth (90th) 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 Sub-Article. Failure to demand arbitration within the 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 outof, 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 ____ * attached hereto. This agreement so to arbitrate shall be enforceable under the prevailing arbitration law. The award rendered by the arbitrator shall be final, and judgments may be entered upon it in any court having jurisdiction thereof.

* To be drafted by the UNIDO secretariat.

- 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 provision of Article 7.3 to 7.13 inclusive) for the purpose of the said Arbitration.
- 37.9 Arbitration shall be in (town) and all proceedings will be in _____ language. The Governing Law shall be in accordance with Article 36.

ARTICLE 36

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 market without any restriction imposed by the CONTRACTOR.

ARTICLE 39

NOTICES AND APPROVALS

39.1 Any notice to be given to or served upon either party under this 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 seven (7) days following the date of posting and in proving such services it shall be sufficient to show that the letter containing the

notice was properly addressed and conveyed to the postal authorities for transmission by 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 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 of this Contract to the CONTRACTOR. 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 of the name of the agent and quantum of fees that were or are to be paid.



