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United Nations Industrial Development Organization

Third Consultation on the Fertilizer Industry
Sao Paulo, Brazil, 29 September to 4 October 1980

Agenda Item 4(a)

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

Alternative Draft (counter-proposal)*

prepared by

An International Group of Contractors

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80-40876

INTRODUCTION

1. When the Second Draft of the UNIDO Model Form of Cost Reimbursable Contract was presented to the Expert Group Meeting on UNIDO Model Forms of Contract for Fertilizer Plants held in Vienna, Austria from 26-30 November 1979, the following main comments were made:

- (a) The interests of the Purchaser and the Contractor were better balanced than in the previous draft reviewed at the Second Consultation;
- (b) The form of contract was different from the traditional form of Cost Reimbursable or Cost Plus Contract used in industrialized countries and closer to the Semi-Turn-Key Contract;
- (c) The obligations of the Contractor as regards the performance and replacement of equipment was an important matter left over for discussion at the Third Consultation.

2. The Meeting made the following comments as regards the drafting and presentation:

- (a) The contracts were more elaborate than could be comprehended by the intended users;
- (b) The contracts should be more simple and more clear; repetition and extensive cross-referencing should be eliminated and clauses shortened;
- (c) The order of the Articles should be changed to correspond to the plan of implementation; some Articles could be combined;
- (d) Definitions should be more precise and be used more consistently throughout the contract.

3. The Meeting felt that the Cost Reimbursable Contract was more advanced than the Turn-Key Contract and recommended that it should be revised taking into account comments made at the Expert Group Meeting for submission to the Third Consultation.

4. The UNIDO Secretariat prepared a Third Draft for the Third Consultation (ID/WG.318/3) in early February 1980 and an advance copy of this was submitted to the contractor's representatives who attended the Expert Group Meeting inviting their written comments, which it was promised would be submitted to the Third Consultation.

5. This document, which is in the form of an alternative draft or counter-proposal, was submitted to UNIDO in response to this invitation. The UNIDO Secretariat is distributing it as a document for the Consultation in the form it was submitted so that all participants may take this detailed proposal into account when they are asked to approve the Third Draft of the UNIDO Model Form of Cost Reimbursable Contract.

March 1980

INTERNATIONAL PROPOSAL BASED ON THE THIRD DRAFT
OF THE UNIDO MCDEL FORM OF COST REIMBURSABLE CONTRACT
FOR THE CONSTRUCTION OF A FERTILIZER PLANT *

Made by contractors of :

Federal Republic of Germany

France

Japan

United Kingdom

United States of America

* issued for the Third Consultation Meeting of UNIDO
on the Fertilizer Industry.

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THIS CONTRACT is made this _____ (day, date and year)
 _____ and entered into between
 (Legal Name of the PURCHASER _____
 having its registered office 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 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 _____ () metric
 tons of ammonia per day and _____ ()
 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 assistance, erection
 assistance, supervision services during commissioning of the
 ammonia and urea plant facilities;

AND WHEREAS THE CONTRACTOR is willing to undertake such 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 CONVENANTS HEREIN
 CONTAINED, IT IS AGREED BY THE PARTIES HERETO AS FOLLOWS :

INTRODUCTION

Contractor and Purchaser are fully aware of the absolute necessity of active and "bona fide" cooperation to obtain the satisfactory performance of the Plant, meaning that both parties will use their best reasonable efforts to assist the other party in the performance of his obligations and that any problem will be solved as far as possible in efficient friendly and quick manner keeping in mind the essential purpose of the contract which is to obtain timely production of the Plant at full capacity.

ARTICLE 1

DEFINITIONS

- 1.1. The following expressions shall have the meanings assigned to them respectively in this Article.
- 1.2. "The Contract" means this Contract (together with the Annexures and Specifications) entered into between the PURCHASER and the CONTRACTOR together with all of the documents to which reference has been made in the Contract documents, including such modifications amendments (properly made by mutual agreement between the parties) to the documents constituting this Contract.
- In case of any discrepancy between the Contract and the documents referred to in the Contract (including annexures and the amendments made _____), the provisions of the Contract shall prevail at any time.
- 1.3. "The PURCHASER" means the party named as such in this Contract or its successors or permitted assigns.
- 1.4. "The CONTRACTOR" means the party named as such in this Contract, or its successors or permitted assigns.
- 1.5. "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.

- 1.6. "Act of Bankruptcy" has the meaning assigned to it by the statutes prevailing in the Country where the home office of the bankrupt has been registered.
- 1.7. "Approval" shall have the meaning ascribed in Article 39.
- 1.8. The "overall Battery Limits of the Complex" or "Battery Limits of the Complex" shall be defined to mean and include the overall facilities embodying the Plant(s), such facilities being between the points at which raw materials and outside utilities are supplied, and the point(s) where definished products and effluents are removed, as are more clearly specified in Annexure III.
- 1.8.1. 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.
- 1.9. The "Complex" shall mean the ammonia plant, the urea plant, and related utilities and offsites facilities.
- 1.9.1. "Plant" means the installation as defined in this contract, in the Annexures and the Specifications, to be constructed at the Site, and in respect of which the CONTRACTOR's Services are provided; the said Plant shall be defined as a sub-section of the Complex and such Plant shall comprise a technological entity.
- 1.9.2. "Ammonia Plant" shall mean the ammonia plant as described in Annexure VIII.

- 1.9.2.1. "Ammonia Process" shall mean the knowhow, basic engineering and the licence provided by (Name of Licensor) for the design of the Ammonia Plant.
- 1.9.3. "Urea Plant" shall mean the urea plant described in Annexure VIII.
- 1.9.3.1. "Urea Process" shall mean the know-how, basic engineering and the licence provided by (Name of Licensor) for the design of the Urea Plant.
- 1.10. "Confidential Information" shall mean the confidential information defined as such in Article 7.
- 1.11. "The Contract price" means the total of the sums payable by the PURCHASER to the CONTRACTOR under the Contract.
- 1.12. "The CONTRACTOR's Services" means the services to be provided by the CONTRACTOR to the PURCHASER under the Contract
- 1.13. "The CONTRACTOR's Service" means the services to be provided by the CONTRACTOR for the execution of the Contract.
- 1.14. "Critical Items" shall mean all the equipment specifically designated as such in Annexure VIII.
- 1.15. "Days" shall mean calendar days.

- 1.16. "Equipment" shall mean all of the equipment, machinery, materials, 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 of the Complex" shall be deemed to mean the date on which the Complex is finally accepted in accordance with Article 18.
- 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. "Initial Operation" shall mean providing the first feed of the feedstock to the Plant concerned.
- 1.20. "Mechanical Completion" shall mean the time when all mechanical tests as specified under Annexure XX have been satisfactorily completed for each plant.
- 1.21. "Performance Guarantees" shall mean the Guarantees set forth in Article 26.
- 1.22. "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.

- 1.23. "Provisional Acceptance of the Complex" shall be deemed to mean the date when all parts of the Complex have been provisionally accepted pursuant to Article 18.
- 1.24. "The Site" means the area within which the Plant is to be constructed, as specified in Annexure I.
- 1.25. "The end of start-up" shall mean and refer to the date at which the commissioning operations of the Plant(s) have been satisfactorily completed as defined in Annexure XXVI.
- 1.26. "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.
- 1.27. "The Technical Advisor" means, subject to Article 35.4 and to Annexure XXVII (Terms and Conditions of Expert Services), the person(s) or firm(s) appointed by the PURCHASER as his representative with the specified authority to review all work on the PURCHASER's behalf and give such instructions or grant such approvals as may be necessary for the purpose of this Contract.
- 1.28. "Technical Documentation" shall mean the technical documents described in Annexure XV to be supplied by the CONTRACTOR under the Contract.
- 1.29. "Tons" shall refer to metric tons.

1.30. "Utilities" and "Off-Sites" shall mean the facilities described in Annexure VIII.

1.31. "Vendor" shall mean the person from whom the supply of any Equipment or Services is procured by CONTRACTOR, such procurement being with the approval of and on behalf of the PURCHASER.

ARTICLE 2

OBJECT OF THE CONTRACT

- 2.1. The object of the Contract is to settle the Contractor's and Purchaser's obligations relating to the implementation of 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.
- 2.2. The location of the Plant shall be at (Name of Town) in (Country).
- 2.3. The capacity of the Plant shall be () tons per day of Ammonia, and () tons per day of Urea, each designed with a minimum steam factor of () days per calendar year.
- 2.4. The time-schedule(s) required to complete the Complex on time are estimated as follows :
- 2.4.1. Know-how Basic Engineering and the documents related thereto shall be made available to the PURCHASER from () to () months.
- 2.4.2. Complete load drawings of the Complex and specifications for Civil Engineering work shall be made available by the () month.
- 2.4.3. Construction of equipment foundations and Plant Buildings shall start in the () month.

- 2.4.4. FOB delivery of equipment as defined in Incoterms 1953 (with the exception of the critical items) shall commence in the () month and shall end (95 % by value) in the () month.
- 2.4.5. Delivery FOB of critical items of equipment as defined in Incoterms 1953 not to exceed () months.
- 2.4.6. Erection of the Plant shall start in the () month.
- 2.4.7. The Plant shall be mechanically complete in the () month, with a float of months (i.e. () months plus () months float).
- 2.5. 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 () months after the Effective Date of the Contract (Article 8), 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 essential activities connected with the completion of the Project.
- 2.6. 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 required to maintain the print-out and deviations on a monthly or bimonthly basis. The necessary data and information related to progress of Civil Works and erection needed for up-dating of said progress shall be given by the PURCHASER and transmitted by him to the CONTRACTOR at his design Offices in (Town). The critical

Path Network itself shall be changed and modified when significant slippage occurs. Computerized print-out indicating all activities and the float on a monthly or bimonthly basis shall be made available to the PURCHASER by the CONTRACTOR.

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 following know-how and basic engineering :
- 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 for the Plant, and procurement of spare parts.

- 3.1.7. Inspection of plant and equipment in fabrication shops, 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/road-worthy packing, marking of the packages, and transport of the Plant and equipment from fabricators works to the point of despatch FCB (or 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, pursuant to Incoterms 1953.
- 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 Civil Engineering works.
 - (b) Construction of the Civil Engineering works.
- 3.1.18. Construction of a housing colony for erection and start-up 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.
- 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 from mechanical completion to Provisional Acceptance.
- 3.1.27. Operation of the Plant as of Initial Operation until Provisional Acceptance.

3.1.28. Demonstration of the Guarantee Tests.

3.1.29. Management Assistance for operation of the Plant for 12 months after completion of guarantees. (Optional).

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. 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. The CONTRACTOR whenever required as provided for particularly under Articles 4, 5 and 6, will assist the PURCHASER under Article 3.1.20.

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

3.2.4. The CONTRACTOR shall be responsible for the services 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 have the responsibility to give to the personnel of the PURCHASER the instructions necessary for the fulfilment of the Guarantee Tests pursuant to Article 3.1.28.

- 3.2.5. The PURCHASER and the CONTRACTOR shall be responsible as stated under Articles, 4, 5 and 24 for the functions under Article 3.1.5. and for taking out the Insurances contemplated in Article 3.1.10.
- 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 contemplated under Article 3.1.29. shall be embodied in a separate agreement 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 agreed before the completion of the Guarantee Tests.
- 3.3. In the event that any services of the type necessary for the successful implementation of this Contract is not particularly mentioned in the Scope of Services above, but becomes necessary to ensure the successful engineering of the Plant according to the specifications laid down in the Contract, such activity shall also become part of this Contract as if the same had been originally included in the Scope of Services. The PURCHASER and the CONTRACTOR shall mutually agree on the quantum of Services to be undertaken by each party in such an eventuality. The relating consequences on contractual Price, time schedule and/or guarantee shall be governed by the provision of Article 15.

1 - This clause is optional.

ARTICLE 4OBLIGATIONS OF THE CONTRACTOR

- 4.1. The overall obligations of the CONTRACTOR pursuant to this Contract, and for specifications in the scope of the Services and division of responsibilities (contained in Article 3) are described more particularly in this Article and in Annexure VI. The CONTRACTOR shall be responsible for all such obligations provided that the PURCHASER has fulfilled his corresponding obligations.
- 4.2. The CONTRACTOR shall, commencing within () 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 provide such documentation indicated in Annexure XV.
- 4.3. The CONTRACTOR shall execute the services listed in the Contract in accordance with good engineering practice and pursuant to specifications and basic design stipulated in the Contract and in its Annexures. The execution of the services shall be subject to such variations, 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 considered and will respect the laws and regulations applicable to the CONTRACTOR's services at the date of invitation to bid.

- 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)

and shall design the Plant in conformity with the basic engineering and design criteria of the Process Licensors. Documentation relative to know-how and basic engineering obtained from the above Licensors and necessary to operate the Plant shall be provided to the PURCHASER by the CONTRACTOR. The CONTRACTOR also hereby agree 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 date of invitation to bid available 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 date of invitation to bid.

- 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 performance figures contained in this Contract.

4.6.2. The design services undertaken shall obligate the CONTRACTOR to place at the disposal of the PURCHASER all data and documentation required by the latter to carry out his obligations in accordance with Article 3, and Article 5.

- 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. 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 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, if possible, use such improved methods or codes in the design of the Plant and where required, shall make these appropriate data in design methods available to the PURCHASER. In such case CONTRACTOR shall be entitled to claim for additional cost and/or time - delays and/or guarantees' modification pursuant to Article 15. The CONTRACTOR shall also take into account all safety rules/regulations normal to industry-practice, and project safety regulatory provisions required in (PURCHASER's country), as stated in Annexure II.
- 4.8. Prior to the expiry of () 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 until Provisional Acceptance, shall be made known by the CONTRACTOR to the PURCHASER within the period at least () prior to the Mechanical Completion of the Plant.
- 4.9. The CONTRACTOR shall establish a complete list of equipment to be procured under this Contract, and will identify time-critical and process-critical equipment.

The special procedures 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.

- 4.10. The CONTRACTOR and the PURCHASER will agree on Vendors to be prequalified in accordance with Article 10 and Annexure XXVI.
- 4.11. The CONTRACTOR 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. The CONTRACTOR has the right to exclude any Vendor who, according to his experience is unable to provide the required work or services.
- 4.12. The CONTRACTOR will procure all equipment, 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 obligate except as provided in sub-article 10.2.6. to see that all procurement is accomplished so as to enable the Plant to meet the objectives expressed in Article 2, subject to the PURCHASER and/or third Parties carrying out their 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 at the cost of the PURCHASER. However, this Article shall not be construed as imposing a liability on the CONTRACTOR for non-fulfilment of the obligations of Vendors.

- 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.
- 4.14. The CONTRACTOR shall undertake the inspection of all equipment and arrange for the issue of all test certificates, and shall require the proper carrying out by the Vendors of all packaging and the expediting of necessary transportation FOB (or FOR).
- 4.15. The CONTRACTOR shall deputise 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 () after effective date of the Contract suggest a list of heavy erection equipment and within () a list of all other erection equipment and materials to the PURCHASER.
- 4.17. The CONTRACTOR shall provide an adequate number of assistance personnel for the erection and of supervisory personnel for the mechanical testing, commissioning and operation until Provisional Acceptance of each Plant. CONTRACTOR's personnel shall be responsible for its instructions but not for the application of the same by the PURCHASER's personnel. 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 agreed upon by the CONTRACTOR and the PURCHASER within () months of

the Effective Date of the Contract, and, thereafter, periodically as may be required. The CONTRACTOR shall ensure that all necessary Supervisory personnel are available at the Site in such manner that the progress of work at Site is properly carried out and the PURCHASER shall provide in good time all work permits, if they are required. The CONTRACTOR shall send particulars of such personnel to the PURCHASER at least () months before they are required at Site.

- 4.18. The CONTRACTOR shall supply the Technical Documentation stated in Annexure XV within the time schedules contained in Annexure XV. 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 Articles 5.12. and 5.13.
- 4.19. The CONTRACTOR shall provide training to the PURCHASER's personnel in accordance with Article 16. The CONTRACTOR shall ensure that the number of the PURCHASER's personnel trained and level of training (to be arranged and supervised by the CONTRACTOR within and/or outside the country of the PURCHASER) of the PURCHASER's personnel is adequate for the smooth operation and maintenance of the Plant in peak condition. The PURCHASER will ensure that the personnel sent for training meet the educational standards laid down in Annexure XVIII and that the personnel trained by CONTRACTOR is available when required for start-up and operation of the Plant.
- 4.20. The CONTRACTOR shall supervise 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 supervise the Guarantee Tests of the Ammonia Plant and of the Urea Plant within () days after the start-up of the respective plant, but in any event not later than () months after mechanical completion of the respective plants, provided that the PURCHASER has carried out his obligations, especially to supply feedstock, outside utilities, chemicals and other agreed materials, and has provided the agreed number of operating and maintenance staff and kept the equipment in good condition. The CONTRACTOR shall be allowed to extend this period and repeat guarantee tests in accordance with Article 26.10. of the Contract.
- 4.22. The CONTRACTOR shall see that the detailed design and material specifications for civil works submitted by the PURCHASER for the CONTRACTOR's check pursuant to Annexure VI, are in accordance with the specifications and drawings supplied by the CONTRACTOR.
- 4.23. Without prejudice to the Provisions of this Contract, the CONTRACTOR shall agree to grant an option to the PURCHASER for the execution of a separate Agreement providing for Technical Advisory Services to be provided by the CONTRACTOR to the PURCHASER upon mutually acceptable terms. Such an Agreement shall become effective immediately following Provisional Acceptance of the Plant and shall have a duration of not less than ____ () years. For the purposes of this Contract, the rights and obligations envisaged in such an Agreement for Technical Advisory Services shall be considered to be wholly separate and distinct from the liabilities and the responsibilities contained in this Contract. The terms of such Agreement shall include (but shall not be restricted to) any one and/or other of the following matters :
- 4.23.1. Provision of senior advisory personnel to conduct half-yearly review of plant and efficiency of its operations.
- 4.23.2. Recommendations as to improvement of plant operations.

- 4.23.3. Provision of answers to technical queries related to plant operations.
- 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).
- 4.26. The CONTRACTOR shall pursuant to Annexure VI 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 office at (location of offices in CONTRACTOR's country).
- 4.27. Within () of the Provisional Acceptance of the Plant, the CONTRACTOR shall prepare a set of "as-built" drawings or their equivalent which have been executed by the CONTRACTOR for the Plant.
- 4.28. At the option of the PURCHASER, the CONTRACTOR shall enter into a separate agreement with the PURCHASER (as provided in Article 3.2.7.) to manage the Plant, or to assist the PURCHASER to manage the Plant, as the PURCHASER may desire, for a period of () months after completion of the Guarantee Tests, on terms mutually agreed when the option is exercised.

ARTICLE 5OBLIGATIONS 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 free of charge and in due time 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 examine the information and data for the design basis so specified, and shall advise the PURCHASER on the eventual inconsistencies of the information and data provided. The PURCHASER's responsibility 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 agree on Vendors to be prequalified in accordance with Article 10 and Annexure XXVI.
- 5.4. The PURCHASER shall be responsible for making in due time 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 forwarding 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 or on any other fulfilment of his obligations shall entitle the CONTRACTOR to claim for the application of Article 15 if such delay is detrimental to the Work realisation or to the time schedules contained in Annexure XV.
- 5.6. The PURCHASER shall be responsible for the transportation of equipment from the port of despatch (FOB) to the entry port (CIF 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 and in any event 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 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 adequate and necessary soil tests. The CONTRACTOR shall however indicate the points at which heavy loads are to be expected.
- 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. The PURCHASER shall be responsible for the design of all civil engineering works. For this purpose, the CONTRACTOR shall ensure the timely supply of all information necessary to undertake the design of the Civil Engineering in accordance with Annexure VII.
- 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, with the assistance of the CONTRACTOR's personnel.
- 5.15. The PURCHASER shall obtain in due time 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 execution of the Contract inclusive of import licences, visas for CONTRACTOR's personnel, entry permits, etc...
- 5.16. The PURCHASER's personnel at Site shall carry out all testing, 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 feedstock, outside utilities, chemicals and other materials required as of Initial Operation for operation and maintenance of the Plant. The feedstocks shall be in accordance with the specifications contained in this Contract. In the event of any deviation, the parties shall determine the technical changes required. Such technical change shall constitute the basis for a change order under Article 15.
- 5.18. Throughout the period from the beginning of the mechanical test of equipment till the date of acceptance of the Plant, the PURCHASER shall provide operations and maintenance personnel for operation and maintenance 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.
- 5.19. The PURCHASER shall provide the CONTRACTOR and its personnel deputised to Site with such facilities as are detailed in Annexure XXVII.
- 5.20. The PURCHASER shall be responsible for making all payments to the CONTRACTOR in accordance with the provisions of this Contract.
- 5.21. The PURCHASER shall be responsible for taking out and keeping in force the various Insurance policies which are his responsibility under Article 24 (and as specified herein).
- 5.22. The PURCHASER shall pursuant to Annexure VII provide the CONTRACTOR free of charge : sufficient office space and facilities, secretarial and typing services and telephone and telex facilities for the CONTRACTOR's personnel assigned to the PURCHASER's office or to Site.

ARTICLE 6CO-OPERATION AND CO-ORDINATION BETWEEN
CONTRACTOR AND PURCHASER

- 6.1. The Parties to this Contract hereby agree to co-operate, implement and fulfil their obligations as stipulated in the Contract. The Parties through their designated representatives will meet periodically according to a pre-determined schedule or when necessary, to examine the progress of work, costs that have been incurred and mutually agree to resolve outstanding issues between the Parties. Minutes of meetings shall be recorded and circulated for confirmation and necessary action.
- 6.2. The PURCHASER and the CONTRACTOR each shall appoint a Project Manager 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 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 () 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 lay-out of each Plant, Off-sites and Utilities within the plant location and sites shall be finalized at such meetings.
- 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. The CONTRACTOR shall begin issuing the necessary enquiries to the pre-qualified vendors for the remaining Equipment immediately following completion of the relevant engineering.
- 6.8. Within () months from the Effective Date of the Contract, a meeting shall be held at the PURCHASER's Offices at (Town) between the CONTRACTOR and the PURCHASER to discuss 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 procurements, 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 as provided in Article 15.

- 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 acting in the name and on behalf of the PURCHASER at the offices of the CONTRACTOR at (Town) who shall have the power to examine and approve bid specifications, examine bid comparisons, approve and place orders for equipment.
- 6.11. The CONTRACTOR's 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 or to the Vendors.
- 6.12. Throughout the period of the Contract, the PURCHASER shall have the right to inspect the CONTRACTOR's Services.
- 6.13. The PURCHASER, if he so desires, shall have the right to assign up to a maximum of () of his 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 the necessary documentation calculations, except the process calculations, on the detailed design of the Plant and the Procurement Documentation to the Engineers of the PURCHASER. All costs in connection with these Engineers including travel and stay shall be borne by the PURCHASER.

ARTICLE 7PROPRIETARY RIGHTS AND LICENCES,
SECURITY AND PATENTS

- 7.1. The CONTRACTOR hereby affirms that it has obtained the right(s) to grant, and hereby does grant to the PURCHASER irrevocable, non exclusive, non transferable licenses for use in the operation of the Plant, all processes mentioned in Article 4 and in particular, the Ammonia Process and the Urea Process.
- 7.2. The CONTRACTOR shall ensure 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. The CONTRACTOR also hereby undertakes to make available to the PURCHASER the latest know how and techniques available to the Process Licensors and to the CONTRACTOR at the date of presentation of the CONTRACTOR's tender.
- 7.3. The CONTRACTOR shall ensure that the Process Licensors and the CONTRACTOR shall make available to the PURCHASER under conditions to be negotiated and for a period of five (5) years from the Effective Date of the Contract :
- 7.3.1. Any technological developments and improvements in operating techniques, preventive maintenance and safety measures applicable to the Plant that may become licensable by the Process Licensors within the same period. The PURCHASER will also make available to the Process Licensor any improvements in operation techniques which the PURCHASER shall have made in the same period.

- 7.3.2. Rights to use proprietary processes developed or acquired by the CONTRACTOR including patented processes which could result in significant improvement (s) in the capacity, reliability and efficiency of the Plant, and quality of the products.
- 7.4. For the purpose of this Article, the grant to the PURCHASER of the right to use the processes referred to in Article 27.1. shall not be interpreted to mean a passing to the PURCHASER of proprietary rights and title to the processes.
- 7.5. After Final Acceptance of the Complex all rights and obligations of the CONTRACTOR will be transferred to the PURCHASER.
- 7.6. 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 (whather 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 written approval of the CONTRACTOR divulge such confidential information available to a third party.
- 7.7. The PURCHASER shall not use the confidential information for any purpose other than for operating, using, repairing and maintaining the Plant or part of such. Similarly, the CONTRACTOR will not use or divulge any technical data or confidential information and drawings or technical documents given by the PURCHASER, his representative or Technical Advisor, to the CONTRACTOR except for the purpose strictly connected with the Contract.
- 7.8. The Articles 7.6. and 7.7. shall not apply to such confidential information for which it is proved with written evidence that :
- 7.8.1. it is, or becomes a part of the public domain, without any fault of the PURCHASER or of the CONTRACTOR.

- 7.8.2. it is already known to one Party or his representatives, before its transmission to the other Party.
- 7.8.3. the Party who received it, did not actually get it afterwards from a third Party who acquired it directly or indirectly from the Party who originally released it.
- 7.9. The PURCHASER and CONTRACTOR hereby agree that the aforementioned obligations of this Article subject to Article 7.10. below, shall not be affected by a termination or cancellation of this Contract under Article 33 herein.
- 7.10. The PURCHASER's obligations pursuant to the provision of Sub-articles 7.6., 7.7., 7.8. and 7.9. and the CONTRACTOR's obligations pursuant to the provision of Sub-article 7.7. shall be valid for a period of () years from the Effective Date of the Contract.
- 7.11. The CONTRACTOR will cover the PURCHASER against any action for infringement undertaken by a third party holding a patent in the land where the Plant site is located issued before the date of signature of the contract, action for infringement which could result from the use by the CONTRACTOR of process licenses, during the execution of the contract.
- 7.12. In case of claim or action against the PURCHASER about this matter, the later shall advise the CONTRACTOR immediatly who will uphold the rights hereby granted or will give the PURCHASER all means and assistance for that.
- 7.13. On his side, the PURCHASER undertakes to prevail himself during the action brought against him of any and all possible appeal and abstain himself from negotiating an amicable arrangement with the opposite party without a previous written agreement from the CONTRACTOR.

- 7.14. The liability of the CONTRACTOR will be relieved in the event of the Plant or part of it has been modified by the PURCHASER without prior written agreement of the CONTRACTOR or is not operated by the PURCHASER under conditions given by the CONTRACTOR and in accordance with its instructions.

ARTICLE 8EFFECTIVE DATE OF CONTRACT

- 8.1. The Contract shall become effective upon the formal execution (signing) by the duly authorised officers of the PURCHASER and CONTRACTOR properly witnessed and sealed and when 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.
- 8.1.2. Approval if required of the Government of () where the CONTRACTOR resides and has his principal place of business, such approval to be obtained by the CONTRACTOR.
- 8.1.3. The remittance of the advance payment by the PURCHASER as provided under Article 21.2. of the Contract.
- 8.1.4. The Provision by the CONTRACTOR of the Bank Guarantee as provided under Article 21.1. of the Contract.
- 8.1.5. Opening by the PURCHASER of the Letters of Credit according to form attached in Annexure XXXI and as stipulated in Article 11.18.
- 8.1.6. Receipt by the CONTRACTOR of the Guarantee of the () Ministry of Finance relating to the payment of the PURCHASER's contractual obligations according to form attached in Annexure XXXII.
- 8.1.7. Receipt by the CONTRACTOR of the Transfer Authorization of () for all amounts due pursuant to the CONTRACT according to form attached in Annexure XXXII.

- 8.2. In case the conditions of Articles 8.1. to 8.1.7. hereabove are not fulfilled within () days following the date of signature of the Contract, the Contract execution time shall be increased accordingly and the Contract Price modified to take into account variations of economic conditions in CONTRACTOR's and PURCHASER's country during the delayed period from the date of signature of the Contract to the actual Effective Date of the Contract.
- 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".
- 8.4. The Effective Date of the Contract shall be the date upon which the last of the requirements stated in Articles 8.1.1. to 8.1.7. has been fulfilled.

ARTICLE 9ASSIGNMENT OF CONTRACT

- 9.1. From its effective date, this Contract shall be valid and be binding upon the parties hereto and their and each of their executors, administrators, curators, successors and assigns, collectively and individually, but insofar only as such assigns are duly consented to by the other party under this Contract.
- 9.2. This Contract may not be assigned except for the benefit of financial or insurance authorities by one party without the written consent of the other party.
- 9.3. The CONTRACTOR should have the right to subcontract any part of the work in accordance with normal practice provided that he accepts full responsibility opposite the PURCHASER.
- 9.4. The CONTRACTOR shall ensure that every Sub-CONTRACTOR shall comply with all terms and conditions of this Contract, mutatis mutandis.

ARTICLE 10PROCUREMENT

- 10.1. The CONTRACTOR shall make his best endeavours to meet the time schedules provided hereunder for providing procurement assistance to the PURCHASER for acquisition of the Equipment.
- 10.2. The CONTRACTOR shall supply to the PURCHASER the following services in connection with the procurement of the Equipment, 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 () and a maximum of () Vendors shall be pre-qualified, unless otherwise mutually agreed between the PURCHASER and the CONTRACTOR. Vendors may be excluded from prequalification by the CONTRACTOR for good and sufficient reasons. List of prequalified Vendors must be issued () months after effective date of the Contract.
- 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 deputized for this purpose in accordance with Article 6.10. for relevant approval, and shall issue the same to the Vendors in the manner agreed to in the Procurement Protocol.
- 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 () from the Effective Date of the Contract for critical items, and at least () 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 () from the date 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).
- 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. In case the PURCHASER is purchasing the equipment from the selected Vendor subject to the reservations, the obligations of the CONTRACTOR shall be modified according to the specific changes notified by 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. These purchase orders shall be signed by the PURCHASER within () days following their transmission by the CONTRACTOR. Any delay in PURCHASER's approval and/or signature pursuant to paragraph 10.2.5. and 10.2.7. shall automatically entitle CONTRACTOR for the consequential extension of time pursuant to Article 19 hereinafter.

- 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 () weeks advance notice of the date when the Equipment 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 to be issued to the Vendors, in connection with the design of the Plant and the fulfilment of guarantees as specified in Article 26, and other contractual requirements specified in this Contract.
- 10.5. All procurement data including bid specifications, bid tabulations and evaluations, issued by the CONTRACTOR under the Contract shall remain the property of the CONTRACTOR.
- 10.6. The CONTRACTOR shall endeavour to complete the bid tabulations of Critical Items within () months from the date of issuing of list of prequalified Vendors.
- 10.7. The CONTRACTOR shall endeavour within () months from the Date of issuing of list of prequalified Vendors, to 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 95% (by value) of the remaining Equipment within () months from the date of issuing of list of prequalified Vendors.

- 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 imported in (country), specifying in each case that the Equipment 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. Spare parts shall be procured by the CONTRACTOR on behalf of the PURCHASER according to Annexure XXVIII which stated procedures and remuneration of the CONTRACTOR.

48.

ARTICLE 11

TIME OF ESSENCE

Deleted.

in accordance with the opinion of the CNUDCI (UNCITRAL).

49.

ARTICLE 12

DELIVERY AND EXECUTION OF THE WORKS

Deleted.

ARTICLE 13SUPERVISION 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.
- 13.2. In addition, should the PURCHASER so desire, he shall have the option to call upon the CONTRACTOR to manage the 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 assisting erection and pre-commissioning and for supervision of operations of the Plant as of Initial Operations to Provisional Acceptance, in accordance with the requirements of Article 4.
CONTRACTOR's personnel shall be responsible for its instructions but not for the application of the same by the PURCHASER's personnel.
- 13.4. The CONTRACTOR and the PURCHASER and any person(s) authorized by either of them at all times have access to the Complex. The CONTRACTOR shall use its best endeavours to obtain 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 authorised 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.
- 13.7. The CONTRACTOR shall be entitled to visit the Plant(s) in operation, 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 () weeks notice to the PURCHASER for such visits, permission for which shall not unreasonably be withheld by the PURCHASER.
- 13.7.1. Subject to the rights of the CONTRACTOR stated in Article 7, where in the opinion of the PURCHASER, it is necessary that third parties, provided that such parties are not direct or indirect competitors of the CONTRACTOR and shall not disrupt and/or increase the activities or obligations of the CONTRACTOR, be sent to check the work of the CONTRACTOR, the CONTRACTOR shall 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.
- 13.7.2. If the sending on the work and/or the site thereof, of a third party under Sub-article 13.7.1. involves delays and/or entails expenses incurred by the CONTRACTOR, the PURCHASER shall pay to the CONTRACTOR these expenses and the contractual time schedule shall be adjusted accordingly.

ARTICLE 14INSPECTION, TESTING AND CERTIFICATION

- 14.1. The CONTRACTOR shall be responsible for the inspection and shall cause to test and certify all equipment, according to Annexure XXIX during manufacture and prior to despatch.
- 14.2. (a) Following the issue of Purchase Order(s) the CONTRACTOR shall carry out (in accordance with standard procedures) the inspection and shall cause to test and certify as per relevant codes given in the specifications at the shops of Vendors during manufacture and before despatching.
- (b) During progressive inspection of equipment fabrication the CONTRACTOR shall take all reasonable measures in order 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.
- (c) 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. (a) When the equipment is ready for final inspection the CONTRACTOR shall take all reasonable measures in order that the Purchase Order(s) have been correctly complied as specified.
- (b) The CONTRACTOR will issue a Certificate of Inspection in respect of each item of Equipment, before despatch, and shall send copies of such Certificates to the PURCHASER, and Certificates of tests carried out in connection with issue of such Certificates of Inspection.
- 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 co-ordinate and monitor the delivery of all equipment efficiently in order that the Vendors maintain the delivery terms, conditions, and procedures contained in the Purchase Orders.
- 14.6. (a) The CONTRACTOR shall take all necessary measures in order that the Vendors arrange in a timely manner all proper export licences, if necessary, to export the equipment to (country).
- (b) The PURCHASER shall obtain in due time, the necessary import licences, permits and shall provide for shipping arrangements for the equipment 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 () days in advance to allow the Vendors to make the necessary arrangements for loading the consignment on the ship.

14.7. 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 notified accordingly.

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

ARTICLE 15VARIATIONS, CHANGES AND ADDITIONS
TO SCOPE OF WORK

The CONTRACTOR shall be entitled to claim for additional cost and/or time delays and/or guarantees when a modification, change or variation occurs in the event of any of the following :

- 15.1. Any modification addition or deletion to the contract documents (as defined in Article 1.2.), unless the PURCHASER specifically demonstrates that it does not affect the CONTRACTOR's services.
- 15.2. Any written request by the PURCHASER which causes a modification to any drawing, specification and document, purchase order or to the CONTRACTOR services or to the work, unless the elements already accomplished were not originally accomplished in accordance with the contract.
- 15.3. Any additional engineering studies requested in writing by the PURCHASER, including those which are not followed by execution.
- 15.4. Any entire or partial suspension in the execution of the contract or termination of the contract.
- 15.5. Any alteration in the laws and rules existing on the date of issue of the invitation to bid, which modifies the contract execution time and/or the CONTRACTOR's costs and/or guarantees and/or responsibilities.
- 15.6. Any unforeseen occurrence or circumstance of force majeure as describe in Article 34.
- 15.7. Any encounter of physical condition or artificial obstruction which has not been stipulated in the Annexures.

- 15.8. Any modification in the CONTRACTOR's services and/or the work proposed by one of the Parties accepted by the other Party, and ratified by both Parties.
- 15.9. Any non-observance by the PURCHASER of its obligations stipulated by the contract.
- 15.10. Any deletion in the CONTRACTOR's services that is the elimination of any portion of the CONTRACTOR's services specified in the contract which the PURCHASER may request the CONTRACTOR not to perform.
- 15.11. Whenever the provisions of this Article are applicable the CONTRACTOR shall prepare and submit to the PURCHASER a detailed cost and/or execution time estimate of the modification to the CONTRACTOR' services. The PURCHASER shall within () days agree or disagree on the adjustment proposed by the CONTRACTOR. If the PURCHASER agrees on the cost, execution time and guarantees proposed by the CONTRACTOR, the cost shall be added to the overall price of the change and be either added to or subtracted from the Contract price, as the case may be, and the Contract execution time and the guarantees shall be modified accordingly. If the Parties cannot agree only on the cost adjustment as proposed by the CONTRACTOR, the PURCHASER shall have the right to request CONTRACTOR to execute it on a reimbursable cost basis. If the change to the CONTRACTOR's services affects the fulfilment of guarantees and execution time, the parties have to agree on such modification. If PURCHASER does not agree to said change, the cost to CONTRACTOR of preparing the quotation shall be reimbursed by PURCHASER. The CONTRACTOR may at any time introduce improvements or modification to the design without PURCHASER's approval as far as these variations do not affect adversely price or delay or performance of Plants. The execution of the change shall not start before its ratification by both Parties. Revision of execution time shall be supported with reference to the critical path schedule. Payment conditions of a change to the Contract price shall be in accordance with the contractual payment schedule.

15.12. Except as specifically provided in this Article, any change to the CONTRACTOR's services and/or to the work shall be governed by all the other provisions of the contract.

ARTICLE 16TRAINING

- 16.1. The CONTRACTOR shall provide training for the PURCHASER's personnel both at Site and at plants outside (PURCHASER's country).
- 16.2. Training facilities to be provided by the CONTRACTOR are detailed in Annexure XVIII.
- 16.3. The PURCHASER and the CONTRACTOR shall agree at the first Co-ordination Meeting contemplated under Article 6.5, on the time, place and details to be prepared for the training of the PURCHASER's personnel. The CONTRACTOR is in a position to provide training to the designated PURCHASER's personnel for the periods contemplated in Annexure XVIII at a plant or plants, using the Processes of the Licensors identified in Article 4.5.

ARTICLE 17

MANAGEMENT AND TECHNICAL ADVISORY SERVICES

Deleted.

ARTICLE 18COMPLETION OF WORKS, TAKE-OVER
AND CONDITIONS OF ACCEPTANCE

- 18.1. The different sections or parts of the Plant shall be considered to have been mechanically completed when the provisions of Annexure XX and Articles 18.3. to 18.4. have been met. Then, the CONTRACTOR shall prepare a Mechanical Completion Report which shall be signed without delay by both Parties.
- 18.2. After mechanical completion of the Plant, each Plant will be precommissioned, tested in accordance with Article 18.4 and Annexure XX, and will, as soon as possible thereafter be brought into operation.
- 18.3. As soon as any individual Plant is substantially complete and ready for inspection, the PURCHASER shall so notify the CONTRACTOR.
- 18.4. The pre-commissioning of the Plants and each section of the Utilities and Off-Sites shall consist of the carrying out of such operations and the making of such tests as are listed in Annexure XX and as may be agreed to establish the correct mechanical functioning of the Plants. When all such operations and tests have been fully and satisfactorily completed, the Mechanical Completion of the Plant and the state of readiness for commissioning of the Plants or sections or Utilities and Off-Sites concerned shall be deemed to be achieved.
- 18.5. The operations and tests referred to in 18.4 shall be carried out by the PURCHASER's personnel and undertaken with the assistance of the CONTRACTOR's personnel.

- 18.6. If during the course of the tests mentioned above, any defect(s) or malfunction(s) are apparent in the Vendor's equipment, the CONTRACTOR shall immediately advise the PURCHASER as to such actions that should be taken immediately to facilitate the replacement of the defective equipment or defective parts by the Vendor(s) in the shortest possible time, and the CONTRACTOR shall assist the PURCHASER in undertaking whatever action as may be necessary in the circumstances.
- 18.7. The start up period will begin as soon as the raw materials will be introduced in each plant and the end of such start up period shall take place as soon as all sections of the Plants are in a satisfactory operating state, and specification grade Ammonia and Urea are being produced, the Plant shall be deemed to have been started up.
- 18.8. The CONTRACTOR will thereafter technically supervise the PURCHASER's personnel in order to demonstrate that the Plant is capable of achieving all the guarantee requirements in accordance with the provisions of Article 26.
- 18.9. Subject to the provisions of Articles 14 and 18, the Plant shall be deemed to have been provisionally accepted when the Plant is capable of meeting its Performance Guarantees as laid down in Article 26.
- 18.10. The CONTRACTOR shall technically supervise during the start up period the commissioning of the Plant, and the demonstration that the Plant is capable of meeting the Guarantees specified in the Contract. This supervision is meant to signify that the CONTRACTOR's personnel shall only be responsible for its instructions but not for the application of the same by the PURCHASER's personnel.

- 18.11. The provisions governing for acceptance shall be as follows :
- 18.11.1. Any certificate or Report related to test shall be dated from the effective date of completion of the said test.
- 18.11.2. 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.
- 18.11.3. When the CONTRACTOR has provided all documents listed in Annexure XV to the PURCHASER.
- 18.11.4. When the Performance Guarantee Tests laid down in Article 26 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.
- 18.12. The Provisional Acceptance of the Plant or of any specified section by the PURCHASER shall not affect the obligations of the CONTRACTOR to remedy to the reserves stated in the Provisional Acceptance Certificate.
- 18.13. The Complex shall be deemed as finally accepted when all the reservations stated in Article 18.12. have been satisfactorily complied with and at the latest within () months from the effective date of the Contract. The PURCHASER shall issue without delay the corresponding Final Acceptance Certificate.

ARTICLE 19EXTENSION OF TIME

19.1. (a) If by reasons of occurrences or events of any one and/or other of the following factors which are beyond the CONTRACTOR's control such as :

- (1) Vandalism or malicious damage; or
- (2) non fulfilment by the PURCHASER of its obligations;
- (3) Failure on the part of the Vendors or other contractors of the PURCHASER affecting the contractual time schedule; or
- (4) Additional work, improvements in design and other circumstances mentioned in Article 15 hereinafter and which had been previously agreed upon;
- (5) Temporary suspension of work pursuant to Article 32 hereinafter,

which cause delay or affect specific services or work to be undertaken pursuant to this Contract at the CONTRACTOR's offices, Vendors shops or plant site, the CONTRACTOR shall within () days of the date he becomes aware of such occurrence specified above, make written request to the PURCHASER for an extension of time for completion of services or work or any portion of it. Should the PURCHASER be unable to prove such claim(s) isn't valid, he shall grant such extension in time which shall reasonably compensate the loss of time of the CONTRACTOR. The CONTRACTOR's claims for such extension shall be without prejudice to its rights and the CONTRACTOR shall be free of liabilities on account of any delay in the completion of specific activities affected by the above-mentioned occurrences. The CONTRACTOR shall also extend at PURCHASER's cost the period of validity of the Bank Guarantee(s) and Performance Bond(s) commensurate with the period of extension granted by the PURCHASER.

- 19.1.(b) In the event that the PURCHASER and CONTRACTOR agree that the CONTRACTOR is to undertake and/or complete such additional services which require(s) such extension of time to be given to the CONTRACTOR, the conditions for such extension shall be mutually agreed, and in the relevant case shall be embodied in the appropriate documents within the terms of Article 15.
- 19.2. 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 rectifications(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 for reasons attributable to the CONTRACTOR shall in no way absolve him of the liabilities for the period of delay and/or the application of Articles 27 and 30 as the case may be except as provided otherwise in this Contract.
- 19.3. The CONTRACTOR's obligation to execute the engineering rectifications pursuant to 26.2. shall be limited to () 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 CONTRACTOR or the period spent in the replacement of equipment (if any such replacement is required from Vendors) shall not be counted in computing the said (months) period.
- 19.4. If the PURCHASER's opinion it is in the public interest, the PURCHASER may either :

- (a) on his 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 and mutually agree 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 whatsoever 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 and the CONTRACTOR specifically mutually agree by written notice.

19.5. For the purposes of this Article "period of delay" means the period commencing on the date fixed for completion of the work and ending on the day immediately preceding the day on which the work is completed but excluding therefrom any day within a period of extension granted under Article 19.4. above, if on any such day, the causes agreed to be beyond the control of the CONTRACTOR delayed completion of the work.

ARTICLE 20CONTRACT PRICE, TERMS OF PAYMENT, BONUSES AND INCENTIVES

- 20.1 The PURCHASER will pay to the CONTRACTOR, as consideration for the execution of the Contract, the amounts mentioned in this Article. The overall price for the Contract is divided into :
- 20.1.1. An Engineering Lump Sum being the sum of :
- (Amount)
- for the items detailed in Articles 20.2. to 20.4.
- 20.1.2. A price of a reimbursable nature estimated at
- (Amount)
- for the items detailed in Articles 20.8. to 20.11.
- 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.
- For the supply of procurement, inspection and expediting services referred to in Articles 10 and 14 of the Contract :
- (Amount)

20.4. For providing training and training facilities referred to in Annexure XVIII of the Contract :

(Amount)

20.5. All the prices contained in Article 20.2. to 20.4. above are fixed that is to say not subject to escalation however, if the period for the performance of the engineering services of the Contractor exceed () months for reasons not attributable to Contractor, then Contractor shall be compensated for escalation of prices by a sum equivalent to () % per month of the value of all delayed services such compensation shall be made by Bank transfer within () days of invoice dates notwithstanding to Article 15.

20.6. IT BEING EXPRESSLY AGREED that the total of the amounts specified in Articles 20.2. to 20.4. above shall operate only to such extent as not conflicting with the Engineering Lum Sum price specified under Article 20.1.1.

20.7. The prices given in this Article are payable on the dates due in the Contract in the currencies mentioned above and at the following rates :

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20.8. For the provision of expatriate personnel assigned in (country of plant site) for the performance of services referred to in Article 13, the Contractor shall be paid in accordance with Article 20.9. and 20.11. below and the Annexure XXVII for the cost incurred.

- 20.9. 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.
- 20.10. The daily rates contained in Annexure XXVII shall be related to a normal working week of () hours with, at least, one day included as a holiday. In the event of any overtime for expatriate staff 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.
- 20.11. The estimated cost of CONTRACTOR's services contained in Article 20.8. to 20.10. inclusive, and Annexure XXVII is (Amount) in foreign exchange and (Amount) local currency. In addition to the payments due under Articles 20.9. and 20.10. above, the Purchaser shall provide free of charge to the CONTRACTOR's personnel travel facilities, and facilities at site in accordance with Annexure XXVII.
- 20.12. The payments due to the CONTRACTOR under Article 20.2. above shall be made in accordance with the following :
- a) (50 % Amount) as an advance payment.
 - b) (45 % Amount) on receipt by the PURCHASER of all documents contained under Article 3.1.2. and 4.5.
 - c) (5 % Amount) on completion of the successful guarantee tests of the Plant.

- 20.13. The payments due under Articles 20.3. and 20.4. above shall be paid (subject to Article 20.14.) as follows :
- a) 15 % as an advance payment.
 - b) 75 % as follows (dates and amounts to be negotiated).
 - c) 5 % on Mechanical Completion of the Plant.
 - d) 5 % on Provisional Acceptance of the Plant.
- 20.14. The amount(s) due under Article 20.4. shall be payable as follows :
- a) 15 % as an advance payment,
 - b) 65 % during training as specified in Annexure XVIII,
 - c) 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 20.12 (a), 20.13 (a), and 20.14 (a), shall be made by direct remittance in accordance with Article 21.1.
- 20.16. For the purpose of making the other payments, under Articles 20.12., 20.13. and 20.14., the PURCHASER shall establish in favour of the CONTRACTOR at a specified bank in the CONTRACTOR's country the necessary divisible and irrevocable Letters of Credit according to the form attached in Annexure XXXI.
- 20.17. The payments under the Letters of Credit referred to in Article 20.16. shall be made only upon the fulfilment of the conditions set forth in the Annexure XXXI.
- 20.18. Upon the mechanical completion of the Plant(s), the CONTRACTOR shall have the option to draw upon the Letters of Credit opened in accordance with Article 20.16. above to the extent that the payment is due under Article 20.12 (c) and 20.13 (d). In such an eventuality the CONTRACTOR shall provide Bank Guarantees 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 () months after the final shipment FOB of machinery for the Plant, or () months after the Effective Date of the Contract, whichever is earlier, the CONTRACTOR shall be entitled to the payments due under Articles 20.12 (c), 20.13 (c), 20.14 (b), in like manner as if the Plant had been mechanically completed and under Articles 20.13 (d), 20.14 (c) within 30 days after presenting :
- An invoice in triplicate signed by an Authorized Officer of the CONTRACTOR,
 - An affidavit executed by the CONTRACTOR stating that for reasons not attributable to the CONTRACTOR the mechanical completion of the Plant has not been accomplished, or the Plant has not been started up as the case may be.
- 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 or 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.
- 20.21. The payments of the amounts due or reimbursable to the CONTRACTOR for services and/or expenses specified in Articles 20.8. to 20.11. including daily rate and overtime of the CONTRACTOR's expatriate personnel shall be effected as follows :

- 20.21.1. The PURCHASER shall establish with the specified Bank and according to form attached in Annexure XXXI, the necessary divisible irrevocable Letters of Credit in favour of the CONTRACTOR for an amount to be mutually negotiated between the parties. These Letters of Credit shall be established () month before the commencement of services by the CONTRACTOR pursuant to Articles 20.8. to 20.11. and provisions for payment shall be made in the manner detailed hereunder. In case these Letters of Credit are not opened at this date, the CONTRACTOR has the right to terminate the Contract according to Article 33.
- 20.21.2. Payments for daily rates and/or overtime of the CONTRACTOR's expatriate personnel as provided in Article 20.9. and Annexure XXVII shall be effected upon presentation to the PURCHASER of :
- 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.
 - The PURCHASER shall within () days following the date of receipt sign the time-logs.
- 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 in accordance with contractual payment schedule accompanied with invoices certified by the CONTRACTOR that the expenses specified therein relate to such work undertaken pursuant to Article 15.
- 20.23. The living allowances detailed in Annexure XXVII for the expatriate personnel at site, shall be payable in local currency directly to the CONTRACTOR 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 for the justifiable expenses defined in the Contract and Annexure XXVII incurred within (country) shall be made directly by the PURCHASER to the CONTRACTOR at site within 30 days of the claim duly supported by the relevant receipts.
- 20.25. Each price mentioned by this Contract includes and covers all patent royalties and all taxes, rates charges and assessments of any kind whatsoever (whether Federal, Provincial or Municipal, and whether or not in the nature of excise taxes/duties, customs tariffs, sales taxes, land taxes, licence fees or otherwise) outside the PURCHASER's country pertinent to the material sold to the PURCHASER directly by the CONTRACTOR, if any, and/or to the performance of the work and Contractor services and all other costs and charges whatsoever relevant to such material and/or to such performance of the work and CONTRACTOR's services.
- 20.26. 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) which, if any, shall be directly paid by the PURCHASER.
- 20.27. To avoid any delay in payment by PURCHASER at dates mentioned in the present Contract, the CONTRACTOR shall present at least () days prior to contractual scheduled dates the relevant invoices.
- 20.28. Any delay in the payment at the date specified in the Contract or the payment of the modifications mentioned in Article 15 shall render the PURCHASER liable to pay interests starting from the date when the payments are due until the date when the payments are made. The rate applicable to the interest for such delay in payment shall be the average monthly rate in effect on the daily interbank monetary market of (Town) plus ()% per annum. The interest for delay in payment shall be paid to CONTRACTOR within () days from date of sending the related invoice.

20.29. The penalties to be paid by the CONTRACTOR pursuant to Article 27 will be established by the PURCHASER in the corresponding penalties invoices within () days following the Provisional acceptance of the Complex and the CONTRACTOR shall pay the said invoice within () days from receipt.

20.30. In the event that the CONTRACTOR fully accomplishes its services under Article 3 and demonstrates the Guarantees given in Article 26 during a period of less than () 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 services :

()% of the price under Article 20.1.1.

Payments under this Article shall be made at the date of final acceptance of the Plant.

ARTICLE 21BANK GUARANTEES

- 21.1. In consideration of the advance payments 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) to secure such advance payments and secure fulfilment of its obligation under the present Contract. The Bank Guarantee shall be for an amount equivalent to the sum total of the advance payments required to be made by the PURCHASER pursuant to Articles 20.12 (a), 20.13 (a) and 20.14 (a). 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 20.12, 20.13 and 20.14 and the Bank Guarantee shall be completely released upon satisfactory Mechanical Completion of the Complex.
- 21.2. 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 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.

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ARTICLE 22

INDEMNIFICATION

Deleted.

ARTICLE 23PROJECT ACCOUNTING AND AUDIT

- 23.1.(a) The CONTRACTOR shall keep adequate books of accounts and time logs in accordance with the form and procedure to be mutually agreed upon with regard to purchases made on behalf of the PURCHASER up to the provisional acceptance of the Plant, in accordance with good accounting practice.
- 23.1.(b) The PURCHASER shall at all times have access to the relevant records of the CONTRACTOR in relation to the 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, for each Plant and each section thereof.
- 23.3. The PURCHASER shall in addition to the provisions of Article 23.1.(a) 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.

ARTICLE 24INSURANCE

- 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).
- 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 take out and maintain in force the professional indemnity insurance referred to in Article 24.6.
- 24.2. Within () days after obtainment of each of such policies, as contemplated by 24.1.1. above, the CONTRACTOR shall deposit a certificate of its Professional Indemnity Insurance referred to in Article 24.1.2.
- 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.

24.4.1. Should the CONTRACTOR without grounds fail to take out and/or keep in force any of the insurances contemplated by 24.1. within the scope of his responsibility, 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.
- (b) hold the CONTRACTOR liable in the same manner and degree as if the CONTRACTOR were the insurance underwriter of the involved policy.

24.4.2. Should the PURCHASER without grounds fail to take out and/or keep in force any of the insurances contemplated by 24.1. within the scope of his responsibility, then the CONTRACTOR may at the CONTRACTOR'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 CONTRACTOR shall immediately constitute a debt due from the PURCHASER to the CONTRACTOR.
- (b) hold the PURCHASER liable in the same manner and degree as if the PURCHASER were the insurance underwriter of the involved policy.

24.5. The Insurance Policies referred to in Article 24.1. required to be taken out by either one or the other of the parties¹ shall be as follows :

1 - The PURCHASER and CONTRACTOR will choose which of these 4 policies to take out.

- 24.5.1. "Construction All Risks" (C.A.R.) Policy or "Erection All Risks" (E.A.R.) policy (inclusive of third party cover) in the name of the PURCHASER, CONTRACTOR, Vendors and Sub-Contractors to insure the Complex under construction, including all plant, equipment and materials incidental thereto, while at the Site from the beginning of work until Final Acceptance. Specific insurances for Bodily Injury and Personal Liability Insurance, and endorsements for such items as elevator and hoist liability, shoring, blasting, excavating may also be included.
- 24.5.2. "Marine Insurance" or "Cargo Insurance Policies" to cover the transit of goods ex-works from the Vendor's workshops to the Site. (This may or may not include War Risks insurance, as agreed by the PURCHASER and the CONTRACTOR).
- 24.5.3. Insurance Liability to cover for the use of Automobiles, Trucks, Aircraft, Launches, Tugs, Barges, etc...
- 24.5.4. Liability insurance for payments under Workmens' Compensation Acts, as required under applicable legislation.
- 24.6. The CONTRACTOR shall be responsible for the taking out of the following policies :
 - 24.6.1. Professional Indemnity Insurance up to () for the duration of the Contract.
 - 24.6.2. Accident Insurance for CONTRACTOR's personnel at Site.
 - 24.6.3. Insurance for CONTRACTOR's transport (e.g. Automobiles) of which CONTRACTOR is the owner.
 - 24.6.4. All other insurances (as may be agreed to be taken out by the PURCHASER or the CONTRACTOR).

- 24.7. Unless otherwise specified, the policies not referred to in Article 24.6. above will be taken out by the PURCHASER.
- 24.8. Notwithstanding any other provision of the Contract, for any risk covered in the hereabove mentioned policies, the PURCHASER waives all rights against CONTRACTOR unless such policies are not maintained in full force for a reason solely attributable to the CONTRACTOR.
- 24.9. The PURCHASER waives any rights, including its insurers rights of subrogation, against the CONTRACTOR and/or the Sub-Contractor and releases them for any damage to the PURCHASER's existing properties caused by the negligence or otherwise of the CONTRACTOR and/or the Sub-Contractor.

ARTICLE 25

GUARANTEE OF WORKMANSHIP AND MATERIALS

- 25.1. The CONTRACTOR shall specify in all Purchase Orders to Vendors the correct materials to be used and where required the fabrication procedures to be complied with.
- 25.2. The CONTRACTOR shall take all reasonable measures to endeavour 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) to the satisfaction of, the PURCHASER.

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 raw materials and utilities are available continuously as per Annexure II that local conditions are consistent with this said Annexure II and that the equipment has been purchased in accordance with the CONTRACTOR's recommendations, the Plant(s) have been properly erected and operated in accordance with general accepted practice and the CONTRACTOR's technical directions and instructions, and that such test runs are conducted in accordance with the conditions set forth herein. For the purpose 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 () tons per day ammonia and () tons per day urea provided that the CO₂ production of the Ammonia Plant is sufficient.
- 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 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 reasonable continuous operation.
- 26.2.5. The Utilities and Off-Sites shall be adequate for the sustained and reasonable 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 Penalties Guarantees as follows :
- 26.3.1. Absolute guarantees shall be deemed to cover the quality of ammonia and urea.
- 26.3.2. The penalties guarantees shall be deemed to cover :
- (a) the capacity of the Ammonia Plant,
 - (b) the capacity of the Urea Plant,
 - (c) the quality of effluents and emissions,

- (d) 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,
 - (e) the capacity and 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 () days as given in the test procedure below.
- 26.4. "Penaltiable Guarantees" shall be defined as those Guarantees which if not met may be compensate by the payment of liquidated damages as specified in Article 27.
- 26.5. Absolute Guarantees for individual Plants shall be as given hereunder.
- 26.5.1. Ammonia Plant The quality of the ammonia as per Annexure XVI, are as analysed in accordance with international methods contained therein.
- 26.5.2. Urea Plant The quality of the urea shall conform to the criteria expressed in Annexure XVI.
- 26.6. Penaltiable guarantees for individual Plants shall be as expressed in Annexure XXX.

26.7. Performance Guarantee Test Procedures

Guarantee tests will be performed according to Annexure XX.

26.7.1. Ammonia Plant

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

- 26.7.1.1. A sustained continuous test under normal operating conditions in order to demonstrate the capability for continuous steady operation and capacity of the Ammonia Plant, together with the capability to produce specification grade ammonia and carbon dioxide, to be followed immediately by
- 26.7.1.2. An uninterrupted continuous test under normal operating conditions, in which, the operation of the Ammonia Plant à 100% capacity, and the consumption of raw materials and utilities, will be demonstrated, while producing specification grade ammonia.

26.7.2. Urea Plant

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

- 26.7.2.1. A sustained continuous test under normal operating conditions in order to demonstrate the capability for continuous steady operation and capacity of the Urea Plant together with the capability to produce urea of specification grade, to be followed immediately by
- 26.7.2.2. A 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.

- 26.7.4. If the Ammonia and Urea Plants have satisfactorily complied their test runs, the relevant utilities will be considered demonstrated too.
- 26.8. The procedures to be followed for the execution of the Guarantee Tests and the instrument tolerances shall be agreed upon between the parties () months before the commencement of the above tests.
- 26.9. The Performance Guarantee tests of the Plants shall be run under the supervision of the CONTRACTOR's personnel but all tests and 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 37 shall apply.
- 26.9.1. The period of the test-runs so that their preparations are stated in Annexure XX.
- 26.9.2. The CONTRACTOR shall have the right to have the Plant(s) operated in accordance with its requirements to perform the test(s), and the PURCHASER's personnel shall work under the technical instructions of the CONTRACTOR.
- 26.10. If Performance Test(s) is interrupted due to reasons not attributable to the CONTRACTOR, the Plant(s) shall be started again as soon as possible and when the Plant(s) have reached again 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.

- 26.11. After completion of any Performance Test, the CONTRACTOR shall prepare a Performance Test Report which should be signed by the CONTRACTOR and submitted to the PURCHASER for approval.
- 26.11.1. If the said Report is satisfactory, the PURCHASER shall issue within ten (10) days from receipt of the CONTRACTOR's Report an Acceptance Certificate dated of the last day of the rest run period. In case of non-acceptance the PURCHASER shall justify in written form within () days his valable reasons to the CONTRACTOR Site Representative.
- 26.11.2. In the event of the PURCHASER failing to issue the Acceptance Certificate or to inform the CONTRACTOR as provided in Article 26.11.1. 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.
- 26.12. (a) 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 not attributable to the CONTRACTOR the first Guarantee Test cannot be carried out within () months from the last shipment of machinery, or within () months from the Effective Date of the Contract whichever comes earlier. In such event the Bank Guarantee shall expire automatically and the Plant shall be automatically deemed to be final accepted.
- (b) If for reasons not attributable to the PURCHASER, the guarantee tests could not be made within the period stipulated in Article 26.12.(a) above, the CONTRACTOR shall on the request of the PURCHASER send personnel to site to start-up the plant and to undertake operation of the Plant on terms to be agreed between PURCHASER and CONTRACTOR.

ARTICLE 27LIQUIDATED 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 26, and as detailed elsewhere in the Contract, as follows :

27.1.1. Where any delay is caused by any act or omission on the part of the CONTRACTOR in the delivery of the technical documents subject to liquidated damages as stipulated in Annexure XV and subject to the respect by the PURCHASER of its obligations particularly these defined in Article 5.5. the agreed liquidated damages shall be as follows :

(a) For each full 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.

(b) For delay in the submission of bid tabulation as per Articles 10.7. and 10.8., the agreed liquidated damages shall be (amount) per full week of delay in the submission of the required documents calculated from the CONTRACTOR having received Vendor's bids to a maximum of (amount) under this Article.

27.1.2. For unfulfilment of the performance guarantees listed in Article 26.3.2. liquidated damages of () % of the price mentioned in Article 20.1.1. stated in Annexure XXX.

27.2. In the event that the Absolute Guarantee has been successfully demonstrated and proved, but the Penaltiable Guarantees are not met for reasons of CONTRACTOR's default, the CONTRACTOR shall have the option of either executing the engineering for the modifications, additions and changes to the Plant(s), or to pay by way of agreed liquidated damages.

27.3. Should the CONTRACTOR be unable to fulfill the absolute Guarantees he will provide corrective engineering services until said Guarantees are obtained and subject to the provision of Article 30.1. without any expense to the PURCHASER.

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 other items being supplied by the CONTRACTOR, if any.
- 28.2. In inviting bids for the equipment, the CONTRACTOR shall check 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 supplied by Vendors, if any deficiency, inadequacy, or defects are noticed within the period of warranty granted by the Vendor.
- 28.3. The mechanical guarantees and warranties given directly by the Vendors to the PURCHASER shall be valid for a maximum period of () months from the date of shipment. While undertaking the obligations for the preparation, issuance and administration of the Purchase Orders, the CONTRACTOR shall use its best endeavours to check that the shipment(s) of equipment are properly phased. The CONTRACTOR shall be required to assist the PURCHASER in all the purchase dealings with the Vendors in accordance with the terms of this Contract.

28.4. 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. The remuneration for such an intervention of the CONTRACTOR shall be determined on case by case basis.

ARTICLE 29RECTIFICATION 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 services, or specifications, instructions and inspections, or for whatever reason falling within the CONTRACTOR's services, the CONTRACTOR is unable to demonstrate the Absolute Guarantee pursuant to Article 18, the CONTRACTOR shall carry out the engineering services which in the CONTRACTOR's professional judgement 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. This shall be the exclusive remedy for any deficient work.
- 29.2. If the CONTRACTOR shall refuse to take the necessary measures to ensure the elimination of the defects and/or faults within a one month notice, then the PURCHASER may take such remedial steps to carry out the engineering, procurement, inspection and assistance in the erection of the new equipment to rectify the defects and the cost of such remedial services steps taken by the PURCHASER shall be to the CONTRACTOR's account.

29.3. If any defect is found during inspection (before despatch) of equipment, machinery or materials of Vendor(s) or during erection at the site of the Plant, the CONTRACTOR shall immediately advise the PURCHASER as to what action should be taken to have the Vendor(s) replace defective equipment, defective parts, or inadequate material in the shortest 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 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, within the shortest time, including the air freighting of the equipment or parts etc... at Vendor's cost.

29.4. PURCHASER hereby waives any and all governmental indemnity and defenses based thereupon.

ARTICLE 30

LIABILITIES, SET-OFF AND WAIVER

- 30.1. The overall financial liability, whether founded on Contract, negligence or otherwise, of the CONTRACTOR arising out of or in connection with the realisation of the Contract shall not exceed () % of the firm price stated in Article 20.1.1.
- 30.2. 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, commissioning and during guarantee tests except in the limits of the Insurance Policies subscribed and in this last case where such loss or damage has occurred due to the negligence, errors, omissions or instructions attributable to the CONTRACTOR and where such loss or damage, whatsoever, has been reimbursed to CONTRACTOR by Insurance Company.
- 30.3. The CONTRACTOR shall not be liable, in any event, whether under the Contract, negligence, or otherwise for loss of anticipated profits, or for any consequential loss or damage arising from any cause.

ARTICLE 31TAXES AND LEVIES

31.1. The PURCHASER shall pay directly all taxes, saving bonds, stamps rights or dues of any nature present and/or future, if any, which could be imposed in (PURCHASER's Country) on the CONTRACTOR, Licensors, Vendors and/or Sub-Contractors and on their personnel as a result of their activities in relation with the Contract.

31.2. In particular, all sums which will be paid to the CONTRACTOR, Licensors, Vendors and/or Sub-Contractors and/or their personnel in relation with the supervision on Site or other mission, will be exempt from all taxes, income taxes and saving bonds included, dues or rights of any nature imposed in (PURCHASER's Country).

All such taxes and dues will be borne by the PURCHASER.

ARTICLE 32SUSPENSION 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 () days thereafter. The PURCHASER shall bear any and all consequences resulting from such a suspension.
- 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. The PURCHASER shall issue a Change pursuant to Article 15 and reimburse CONTRACTOR for the additional expenses that CONTRACTOR could justify to have incurred on account of such suspension, such as but not limited to CONTRACTOR's home office employees whose retention on Work during the period of suspension is necessary, CONTRACTOR's field employees provided their retention at Site during the period of suspension is necessary, other items related to the suspended Work, such as repatriation of CONTRACTOR's field employees not retained at Site and shall agree on a revision of time schedule to take account of the delay that CONTRACTOR has borne because of such suspension.

- 32.5. The PURCHASER may at any time, cancel the suspension notice for all or any part of suspended Work by giving notice to CONTRACTOR specifying the part of Work to be resumed and the effective date of such resumption. CONTRACTOR shall as soon as possible resume the suspended Work on receipt of such notice.
- 32.6. If suspension exceeds ninety (90) calendar days, from the effective date of the suspension, the CONTRACTOR shall be entitled to give notice to the PURCHASER requiring the withdrawal of the suspension notice. After 10 calendar days have elapsed since receipt by the PURCHASER of such CONTRACTOR's notice and unless a mutual agreement be reached within this period of time, the CONTRACTOR shall have the right to terminate the part of the Contract corresponding to the suspended part of Work or terminate the CONTRACT under the applicable provisions or Article 33.

ARTICLE 33TERMINATION OR CANCELLATION OF THE CONTRACT

- 33.1. 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 33.1 above cease all operations forthwith.
- 33.3. If the Contract is terminated pursuant to Article 32.6 or 33.1, the CONTRACTOR shall be entitled to obtain a change, pursuant to Article 15, relating to the remaining payments under the Contract for said part of Work accomplished by it, up to the effective date of said Termination, including all consequences of its irrevocable commitments, additional expenses due to interferences between terminated and unterminated Work and any costs damages cancellation charges which have been properly incurred by the CONTRACTOR directly on account of termination under this clause. For any termination notified by the PURCHASER as hereabove specified the CONTRACTOR shall in addition receive a termination fee of an amount corresponding to 5 % of the non executed services at the termination date. If termination was decided by the PURCHASER or CONTRACTOR for reasons of Force Majeure, as defined in Article 34, the Parties shall mutually agree on how to indemnify the CONTRACTOR for the consequences of its commitments.
- 33.4. In the event that the CONTRACTOR and the PURCHASER are unable to agree upon the amount of payments then the parties shall referred to Arbitration as provided for in Article 37.
- 33.5. In the event of 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 the total payments mentioned in Article 20.2, the PURCHASER shall directly meet the Process Licensor in order to reach a mutual agreement.
- 33.5.2. The PURCHASER shall be entitled to all detailed engineering documents, calculations and computer print-outs 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 (as detailed in Annexure VI and in particular to the technical documentation specified in Annexure XV), up to the date of termination.
- 33.6. In the event of termination of this Contract pursuant to this Article, the Complex shall be automatically deemed accepted and the PURCHASER shall issue a Final Acceptance Certificate without delay. This Final Acceptance Certificate shall not affect the obligations of the CONTRACTOR under subarticle 38.5 and the obligations of the PURCHASER under 38.3 which shall be performed within thirty (30) days following the date of receipt of the notice mentioned under subarticle 38.2.

33.7. In any of the following cases :

33.7.1. where the CONTRACTOR has made deliberate inexcusable transgression of its contractual obligations or of any portion thereof and the PURCHASER has given notice thereof to the CONTRACTOR and has by such notice required the CONTRACTOR to put an end to such default or delay, and such default or delay continues for a period of (_____) after such notice was given ;

33.7.2. where the CONTRACTOR has become insolvent ;

33.7.3. where the CONTRACTOR has committed an act of bankruptcy ;

33.7.4. where the CONTRACTOR has failed to make proper disclosures as referred to in Article 40 ;

the PURCHASER may, without any other authorization but subject to the fulfilment of any and all of its obligations, 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.

33.8. 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 be entitled to payments then due and payable but not paid and the CONTRACTOR shall be liable to settle extra costs incurred by the PURCHASER to complete the Contract as may be adjudicated by Arbitration pursuant to Article 37.

33.9. 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.

33.10. Should the Contract be cancelled for any cause whatsoever it shall be without prejudice to the rights of the Parties accrued under the Contract up to and including the date of cancellation.

ARTICLE 34FORCE 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 increases 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.

Force Majeure may include, but shall not be limited to 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 ;
- any accident, fire or explosion ;
- any strike, lock-out or concerted acts of workmen ;
- shortages or unavailability of materials (compounded by the same shortage or inavailability from alternate sources).

34.2 If either party is prevented or delayed in the performance of any of its obligations under this Contract, except PURCHASER's obligation to pay, by circumstances of Force Majeure, and if the affected or obligated party has given written notice thereof to the other party within ten (10) days of the date, if not hindered or delayed by Force Majeure, it will be aware of this circumstance, 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 obligations as from the date of such notice for so long as may be justified.

34.3 Either party upon receipt of the Notice of Force Majeure under Article 34.2 shall confer as soon as possible 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, and on the other party upon the relevant consequences on the Contract Price and on the Contract execution time.

34.4. If the duration of the circumstance of Force Majeure exceeds (6) six months, the Parties shall meet together again to examine the possibility of continuing to carry out the contract. If an agreement cannot be reached upon, the Parties shall have the right to terminate all or part of the contract ; in that case the CONTRACTOR shall be indemnified for the consequences of such termination as set forth in Article 33.3.

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 correspondance, information, literature, data, manuals, etc. required under the Contract shall be in the same language as hereabove.
- 35.3. All expatriates sent by the CONTRACTOR to the Site, and all personnel sent by the PURCHASER for training shall be fluent in the hereabove language.

ARTICLE 36

APPLICABLE LAWS AND CONFORMITY WITH
LOCAL STATUTES

36.1. The law applicable to the Contract shall be

36.2.(a) 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 or changed after the date of issue of the invitation to bid, which are proven to have adverse effect on the CONTRACTOR's obligations, scope of work, prices and/or time schedule under this Contract, the PURCHASER shall either

- obtain appropriate exemption(s) from the relevant authorities on the CONTRACTOR's behalf, or
- negotiate with the CONTRACTOR for appropriate change(s) in the scope of the work to be performed under the Contract, together with such resulting changes in prices and/or time schedule.

36.2.(b) Nothing herein shall in any manner affect the validity of the Contract or derogate from the specified obligations of the CONTRACTOR.

ARTICLE 37

SETTLEMENT OF DISPUTES AND ARBITRATION

- 37.1. In the event of any dispute, difference or contention in the interpretation or meaning of any of the Articles to this Contract or reasonable inference therefrom, both parties shall promptly make endeavour to resolve the dispute or difference by mutual agreement.
- 37.2. 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 this Contract.
- 37.3. Both Parties intend to use their best efforts to settle any dispute between each other by negotiations in good faith as set forth in Article 37.
- 37.4. In the event any dispute arising in connection with the Contract cannot be solved by mutual agreement, within 30 days after the CONTRACTOR or PURCHASER, as the case may be, has presented its grievance in written form to the other, it shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or several arbitrators designated according to said Rules. The arbitration shall take place in (town) (country).

ARTICLE 38GENERAL PROVISIONS

38.1. Entirety of the Contract and Implied Obligations.

This Contract supersedes all communications, negotiations, and agreements, either written or oral, relating to the work and made prior to the date of signature of this Contract, and the express covenants and agreements herein contained and made by the PURCHASER or 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 ; 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 of this Contract shall prevail.

38.2. Protection of Work and Documents.

If any document or information given or disclosed to the CONTRACTOR is given a security rating the CONTRACTOR will take all necessary measures to ensure the maintenance of the security rating.

38.3. Sales Territory.

The PURCHASER shall have the right to sell the products and intermediates in the international market without any restriction imposed by the CONTRACTOR.

38.4. PURCHASER will have the right to delegate a part of duties on a Technical Advisor selected in the list included in Annexure (). Other companies or individuals can be chosen as Technical Advisor by the PURCHASER after agreement given by the CONTRACTOR.

ARTICLE 39NOTICES 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. (a) Any notice to be given to the CONTRACTOR is to be conveyed by registered air mail 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)).
- (b) In the case of a notice to be served on the PURCHASER it is to be sent by registered air mail 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)).
- (c) 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 the response time is computed from 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 air mail.

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 approvals shall be forwarded in like manner as the procedure specified for the notices under this Article.



ARTICLE 40

DISCLOSURES

- 40.1. The PURCHASER shall not disclose any "confidential information" defined in Article 7.6. obtained from the CONTRACTOR to a third party without the prior written approval of the CONTRACTOR.
- 40.2. 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.
- 40.3. 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 the name of the agent and quantum of fees that were or are to be paid.