

# **DEVELOPMENT INSTITUTIONS MEMBERS OF THE COORDINATION GROUP**



Islamic Development Bank



Abu Dhabi Fund for  
Development



The OPEC Fund for International  
Development



The Saudi Fund for Development



Arab Fund for Economic and  
Social Development



Kuwait Fund for Arab Economic  
Development



Arab Bank for Economic  
Development in Africa

## **STANDARD TENDER DOCUMENTS PROCUREMENT OF GOODS**

**First Edition 2004**



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## **PREFACE**

The Standard Tender Documents contained in this booklet have been approved by the Coordination Group consisting of the Islamic Development Bank, the Abu Dhabi Fund for Development, the OPEC Fund for International Development, the Saudi Fund for Development, the Arab Fund for Economic and Social Development, the Kuwait Fund for Arab Economic Development and the Arab Bank for Economic Development in Africa, hereinafter referred to individually as the "Financing Institution" and collectively as the "Financing Institutions". These Standard Tender Documents are intended for use for the procurement of goods to be financed by one or more of the Financing Institutions and which are required by a borrower from, or a beneficiary of financing by any of the Financing Institutions, such borrowers and beneficiaries hereinafter referred to, for the sake of convenience, as the "borrowers" and individually as the "borrower".

The Standard Tender Documents must be read against the background of the Guidelines for the Procurement of Goods and Works issued by the aforesaid Coordination Group and which must be observed by the borrowers in addition to any other particular requirements of the Financing Institution(s) financing a particular project.

As will be noted, the Standard Tender Documents approved by the Financing Institutions comprise Instructions to Tenderers and Conditions of Contract consisting of General Conditions and Special Conditions which are intended to amplify the General Conditions and to provide for terms and conditions pertaining to the particular procurement transaction. Hence, the blank spaces left in the standard Special Conditions which must be filled in order to have complete Special Conditions for incorporation in the tender documents used for inviting bids. It is assumed that appropriate technical specifications for the kind or kinds of the goods required will also be prepared by the borrower and incorporated in such tender documents. In addition to the standard documents contained in this booklet and mentioned above, the Standard Tender Documents contain in annexes thereto, appearing in the last Section of the booklet, the following specimen forms:

1. Form of Tender and Price Schedule(s) to be submitted by bidders (Annex I).
2. Form of Tender Security (Bank Guarantee) (Annex II).
3. Form of Agreement (Annex III).
4. Form of Performance Security (Annex IV).
5. Form of Advance Payment Guarantee (Annex V).

Though the use of the Standard Tender Documents set forth in this booklet is not mandatory, such use is highly recommended to the borrowers as it will facilitate the speedy processing and approval by the Financing Institution(s) of tender documents presented by the borrowers. The Standard Tender Documents will assist the borrowers in the preparation of tender documents for goods to be financed by one or more of the Financing Institutions, as mentioned earlier, and serve as a check list indicating to the borrowers the subject-matter which must be covered in such tender documents, if they are to be met with approval. Departure from the Standard Tender Documents recommended will be acceptable so long as the subject-matter contained in them is adequately covered in the proposed tender documents and the departure is justifiable on good grounds.

Finally, it remains to state that in recommending these Standard Tender Documents, the Financing Institutions do not accept, whether severally or jointly, any responsibility to any party using the said Documents or entering into a contract based on them, and any responsibility shall rest solely with such party.



## I - INVITATION OF TENDERS

Date: .....

Invitation of Tenders No.: .....

1. *The [name of issuer of invitation] invites sealed tenders from eligible bidders for the supply of [brief description of the required goods and related services].*
2. *The [name of Borrower/ Beneficiary of financing] has [obtained/applied for]\* [a loan/loans/financing] \* from [name of financing institution(s)] for the financing of [name of project] and it is intended that part of the proceeds of the said loan(s)/ financing will be applied towards the costs of the goods and services subject of this Invitation of Tenders.*
3. *Interested eligible bidders may obtain further information about this Invitation of Tenders from, and inspect the tender documents at the office of [name, address and fax number of issuer of the invitation of tenders].*
4. *A complete set of the tender documents may be obtained by interested bidders on submitting a written application to the aforesaid office and upon payment of a nonrefundable fee of [currency and amount of required fee].*
5. *Tenders must be submitted to the above-mentioned office not later than [time] on [date] and must be accompanied by a tender security, in accordance with the Instructions to Tenderers, in the amount of [fixed sum or percentage of amount of tender].*
6. *Tenders will be opened in a session to be held at the office mentioned above and in the presence of representatives of tenderers who wish to attend. This session will take place at [time and date] or such other time and date as may be notified to the tenderers.*

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\*State as appropriate.



## II - INSTRUCTIONS TO TENDERERS

### A. GENERAL

#### 1. Purpose of Tender Invitation

Tenders are invited by .....  
(hereinafter referred to as the Purchaser) for the supply of ..... (the  
Goods) required for ..... Project (the  
Project) and described in the tender documents accompanying these Instructions.

#### 2. Interpretation

The terms used in these Instructions shall have the same meanings assigned to them in Article I (Definitions and Interpretation) of Part I (General Conditions of Contract) of the tender documents, subject to any amendments stated in Part II (Special Conditions of Contract). The words "tender" and "bid" are used here interchangeably and shall have the same meaning and any derivative of either shall have the same meaning as the corresponding derivative of the other.

#### 3. Financing

The Purchaser I the Government of the .....  
(hereinafter referred to as the Beneficiary) has applied for I obtained financing  
from ..... (hereinafter referred to as the financing institution(s))  
for the Project and part of such financing will be applied towards meeting the cost  
of the Goods. However the proceeds of such financing will only be paid by the  
financing institution(s) at the request of the Beneficiary in accordance with the  
loan(s)/ financing agreement(s).

#### 4. Eligibility

- 4.1 . Except as otherwise expressly stated in these Instructions, this invitation to bid is open to all suppliers having the legal capacity to bid and enter into contracts. Bidders shall not at the time of tendering or thereafter be ineligible to bid or subject to boycott under the rules applied by the financing institution(s) referred to in Clause 3 of these Instructions.
- 4.2. Unless the bidders are manufacturers or producers of the type of goods required and will manufacture or produce the Goods, they must be authorized agents or marketing representatives of such manufacturers or producers.
- 4.3. No bidder shall be affiliated or associated with a firm engaged by the Purchasers as consultants for the preparation of designs specifications or other documents for procurement of the Goods.

## **5. Eligibility of Goods and Services**

Goods and incidental services required under the tender documents shall not be produced wholly or partly in any country subject to boycott under the rules applied by the financing institution(s) referred to in Clause 3 of these Instructions.

## **6. Language**

The tender, contract documents, correspondence and other related documents shall be in ..... Language(s).

## **7. Tender Documents**

The tender documents comprise all the following:

- a) Invitation to Tender.
- b) Instructions to Tenderers.
- c) Form of Tender.
- d) Form of Tender Security.
- e) Conditions of Contract:

**Part I:** General Conditions of Contract.

**Part II:** Special Conditions of Contract.

- f) Technical Specifications.
- g) Price Schedule.
- h) Form of Agreement.
- i) Form Of Performance Security.
- j) Form of Bank Guarantee for Advance Payment

The above-mentioned tender documents and other related documents, as may be issued by the Purchaser or agreed with the successful bidder before award of the Contract, shall apply in accordance with the order of precedence stated in the Contract Agreement.

## **8. Receipt of Tender Documents and Contact Person**

The tenderer shall confirm in writing by mail, telex or facsimile transmission receipt of the tender documents and advise the Purchaser of the name, address and facsimile number of the person authorized to receive, on behalf of the prospective tenderer, any further information and instructions by the Purchaser and/or any addenda to the tender documents.

## **9. Costs of Bidding**

The tenderer shall bear all costs associated with the preparation and submission of its tender. The Purchaser shall, under no circumstances, be responsible for such costs.

**10. Single Bids**

No bidder may submit either separately or as a partner in a joint venture more than one bid, except, however, where alternative bids are allowed.

**11. Closing Date for Submittal of Bids**

Bids shall be submitted and delivered by mail, courier service or by the bidder or any agent thereof in person not later than ..... hours on ..... at the address of the Employer stated below:

.....  
.....  
.....  
.....

Any bid received after the closing time stated in this Clause will be rejected and returned unopened to the bidder submitting such bid.

**12. Amendment of Tender Documents**

The Purchaser may, at any time before the closing time for submittal of bids, amend the tender documents by issuing an addendum or addenda in writing to all prospective bidders who obtained the tender documents. Such addendum or addenda shall form part of the tender documents and all prospective bidders shall promptly acknowledge by mail, telex or facsimile transmission the receipt of the same. The time for submittal of bids may be extended as appropriate by the Purchaser to enable prospective bidders to take any addendum into account in the preparation of their bids.

**13. Clarification of Tender Documents**

Any prospective bidder may at any time, but not later than 14 days before the closing date for submittal of bids, request in writing clarification of any matter stated in the bidding documents and the Purchaser will respond to such request in writing by circular letter to all prospective bidders who obtained the tender documents, but without identifying the source of the request for clarification.

**B. PREPARATION OF TENDERS**

**14. Forms and Schedules**

The bidder shall use, fill-in and furnish the Form of Tender (shown as Annex I to the Tender Documents), Price Schedule (s), Form of Tender Security and any other forms and schedules contained in the tender documents. The tenderer shall also submit with its bid any information or material required under these Instructions and may, if

necessary, provide additional sheets. Failure to use and fill-in the forms which are mandatory in accordance with the above may result in rejection of the bid. All entries shall either be typed or printed in indelible ink, without interlineations or erasures.

## **15. Bid Prices**

- 15.1. The bidder shall state in the price schedule the unit prices, where applicable, and the total price of its bid.
- 15.2. The unit rates and prices and the total price of the bidder shall be deemed to include all taxes, duties and other levies payable by the bidder in any country. But insofar as the bidder is liable to pay any taxes, duties or levies imposed under the laws of the Purchaser's country, the unit rates and prices and the total price quoted by the bidder shall not be deemed to include such taxes, duties and levies except insofar as they have been in force 28 days before the closing date for submittal of bids.
- 15.3. Prices to be indicated in the price schedule shall be stated in the following manner:
  - (a) For goods to be supplied locally from the Purchaser's country, the price of the Goods shall be stated including all custom duties, sales and other taxes and levies with a breakdown showing the following:
    - (i) the price of the Goods ex-works or factory or ex-warehouse.
    - (ii) taxes, duties and levies including, without limitation, excise taxes, sales taxes and custom duties paid or payable on materials and components for the manufacture or assembly of the Goods the price of which is quoted ex-works (ex-factory) or on previously imported goods quoted ex-warehouse or showroom.
    - (iii) the price for inland transportation, insurance and other local costs incidental to delivery of the Goods, if so required in the tender documents, to their final destination.
    - (iv) the price of other incidental services required in the tender documents in connection with the supply of the Goods.
  - (b) For goods to be supplied from outside the Purchaser's country, the price of the Goods shall be stated CIF, FOB, CFR port of destination, CIP or CPT (named place), as required in accordance with the terms of delivery stated in the tender documents. The following components of the price, if any, shall be identified and stated:
    - (i) the price for inland transportation, insurance and other local costs incidental to delivery of the Goods from the port of entry to their final destination, if so required in the tender documents.

(ii) the price of other incidental services required in the tender documents in connection with supply of the Goods.

15.4. The terms ex-works, CIF, FOB and other abbreviations, referred to in these Instructions or in the tender documents in connection to the terms of delivery of the Goods, shall be interpreted in accordance with and governed by the current edition of Incoterms published by the international Chamber of Commerce.

15.5. The statement of components of the price referred to in Clause 15.3 of these Instructions is solely required for the purpose of comparison of bids.

15.6. Unless otherwise stated in the tender documents, the prices of the Goods quoted by the bidder shall be fixed and not subject to any adjustment.

## **16. Bid Currencies**

16.1. Except as otherwise stated in the tender documents, prices of goods and incidental services, which will be supplied by the bidder from within the country of the Purchaser, shall be quoted in the currency of the Purchaser's country. But the bidder may quote part of its total price in one or more foreign currencies (not exceeding three) if it will procure part of the materials for, or components of, the Goods from outside the Purchaser's country. The bidder shall justify quotation in a combination of local and foreign currencies by reference to the quantities and costs of such imported materials or components of the Goods.

16.2. Unless otherwise stated in the tender documents, prices of the Goods and incidental services to be supplied from outside the Purchaser's country shall be quoted in the currency of the bidder's home country or, if so allowed in the bidding documents, in a currency widely used in international trade. However, the bidder may quote part of its total price in one or more other currencies (not exceeding three) if it will procure part of the materials for, or components of, the Goods from outside its home country. The bidder shall justify quotation in a combination of currencies by references to the quantities of such materials and/or components procured from outside its home country.

## **17. Evidence of Eligibility and Qualifications of the Bidder**

The bidder shall submit with its tender documents establishing, to the satisfaction of the Purchaser, the eligibility and qualifications of the bidder at the time of submission of its bid. Such documents shall include the following:

- (i) An authenticated copy of a recent certificate of its registration in its home country and a certificate from the Chamber of Commerce of that country that it carries on business in the said country.
- (ii) If the bidder will not be the manufacturer or producer of the Goods, evidence that it is an authorized agent or marketing representative of the manufacturer or producer or that it has been specifically authorized by the manufacturer or producer to supply the Goods to the Purchaser.
- (iii) Evidence of financial, technical and production capability of the bidder to perform the Contract.
- (iv) If the bidder does not carry on business in the Purchaser's country, evidence that the bidder is or will be represented by an agent in that country capable of performing the supplier's obligations relating to maintenance, repair and stockpiling of spare parts, as stipulated in the tender documents.

## **18. Confirmation of Eligibility and Compliance of the Goods with the Tender Documents**

- 18.1. The bidder shall state the country or countries of origin of the Goods and incidental services, if any, in order to enable the Purchaser to ascertain compliance with the requirement of eligibility stated in Clause 5 of these Instructions. Documentary evidence, in the form of certificate(s) of origin, confirming such compliance shall be furnished at the time of shipment.
- 18.2. The bidder shall furnish with its bid documentary evidence of conformity of the Goods to the bidding documents. Such evidence may be in the form of literature, drawings and data and shall consist of the following:
  - (i) a detailed description of the essential technical performance characteristics of the Goods.
  - (ii) a list giving full particulars, including available sources and current prices of spare parts, special tools and other items necessary for the proper and continuing functioning of the Goods for    years after commencement of the use thereof or such other period as stated in the tender documents.
  - (iii) a detailed comparison of the technical specifications of the Goods proposed to be supplied by the bidder with the technical specifications stated in the bidding documents, so as to demonstrate conformity of the Goods to the latter technical specifications or otherwise indicate deviations therefrom. For the purpose of such comparison, it should be noted that references in the bidding documents to standards for workmanship, materials or equipment and any brand names or catalogue



numbers are intended to be descriptive only. Alternative standards, brand names and/or catalogue numbers may be accepted by the Purchaser provided it is demonstrated to its satisfaction that they are equal or better than those stated in the tender documents.

## **19. Period of Tender Validity**

Tenderers shall remain bound by their tenders for a period of ..... days from the final closing date for submittal of bids. Any tender stated to be valid for a shorter time may be rejected by the Purchaser.

## **20. Tender Security**

20.1. The tender shall be accompanied by a tender security in the form of a certified cheque or of a bank guarantee issued or endorsed by a bank acceptable to the Purchaser. Such bank guarantee shall be in the form prescribed in the tender documents and shown in Annex II thereto and shall be valid for the same period of the required tender validity.

20.2. Any tender not accompanied by the required tender security will be rejected. The tender security of a joint venture must be in the name of the joint venture partners submitting the tender.

20.3. The tender securities of unsuccessful tenderers will be returned to them within 30 days after the expiration of the period of tender validity.

20.4. The tender security of the successful tenderer will be released promptly after signature of the Agreement and submittal by the said tenderer of the said tender of the performance security required under Article IV of the General Conditions of Contract.

20.5. The tender security of a tenderer shall be forfeited by it:

- (a) If the tenderer withdraws its tender before expiry of the period of tender validity.
- (b) In the case of the successful tenderer, if it fails within the prescribed time limit either to sign the Agreement or furnish the required performance security.

## **21. Signature of Tender**

The tender and copies thereof shall be signed by the tenderer or a person duly authorized on its behalf. Proof of such authorization in the form of a power of attorney shall accompany the tender. All pages of the bid where entries or amendments have been made shall be initialed by the tenderer or on its behalf by a person duly authorized as aforesaid.

## **C. SUBMISSION OF TENDERS**

### **22. Format of Tender**

Tenders shall be submitted in one original comprising all documents listed in Clause 23 of these Instructions, together with the section containing the form of bid and Appendix to the bid and clearly marked "ORIGINAL". In addition the tenderer shall submit ..... copies of the bid each clearly marked "COPY". In case of any discrepancy between the Copies and Original, the Original shall prevail.

### **23. Contents of Tender**

The tender shall, in accordance with the requirements stated in the tender documents, comprise the following:

- (a) The tender form and completed Price Schedule,
- (b) The tender security,
- (c) Documentary evidence confirming eligibility of the Bidder and the Goods,
- (d) The completed schedules of supplementary information,
- (e) All information on any subcontract envisaged.

### **24. Sealing and Marking of Tenders**

- 24.1. The tenderer shall put and seal the Original and each Copy of its tender in separate envelopes marked "ORIGINAL" and "COPY". The envelopes shall then be put in an outer envelope which shall be sealed. All such envelopes shall be addressed to the Purchaser at his address stated in Clause 11 of these Instructions, bear the name and identification number of the Project or Contract and a warning that they shall not be opened before the date for opening of bids.
- 24.2. The inner envelopes shall state the name and address of the tenderer for returning the tender to it in case it is not received at or before the closing time for submittal of bids.

### **25. Modification, Substitution or Withdrawal of Tenders**

The tenderer may modify, substitute or withdraw its tender by written notice to the Purchaser before the closing time for submittal of bids. Such modification, substitution or withdrawal shall be contained in a sealed envelope marked as "Modification", "Substitution" or "Withdrawal of Tender". No modification, substitution or withdrawal of a tender will be accepted after the closing time for submittal of bids.

## **D. BID OPENING AND EVALUATION**

### **26. Bid Opening**

- 26.1. Bids will be opened by the Purchaser in a session to which all bidders will be invited, the time and place being stated in the invitation addressed to the tenderers. Each bidder may attend in person, or designate an authorized representative to attend on its behalf, and shall sign a register of attendance.
- 26.2. Envelopes marked "Withdrawal" or "Substitution" will be opened first and the name of the bidder submitting the same shall be announced. Bids for which notice of withdrawal thereof or substitution therefor was duly received before the closing time for submittal of bids will not be opened.
- 26.3. The remaining bids, will then be opened and the Purchaser will announce the bidders' names, the bid prices, including any alternative bid prices, the presence (or absence) of tender security and any such other details as the Purchaser may consider appropriate. The envelopes marked "Modifications" will then be opened and their content read out in appropriate detail.
- 26.4. The Purchaser will prepare minutes of the tender opening session, including the information announced during the session. Such minutes are for the administrative purposes of the Purchaser and the bidders shall not be entitled to receive copies thereof.

### **27. Confidentiality of Process of Evaluation of Bids**

All information concerning the examination, clarification and evaluation of bids and the recommendation for award are confidential and will not be disclosed to bidders or to any person not officially concerned with such process until award to the successful bidder. Any attempt by any bidder to influence the process of evaluation of bids or award will lead to the rejection of its bid.

### **28. Clarification of Bids**

The Purchaser may request any bidder to clarify any matter in its bid, including the breakdown of its unit rates. Such request will be made in writing, but no bidder will be allowed to make, through any clarification given by it, any change in the price or substance of its bid.

### **29. Determination of Responsiveness of Bids**

- 29.1. Prior to the detailed evaluation of bids the Purchaser will examine each tender to determine whether it: (a) meets the eligibility criteria set forth in Clauses 4 and 5 of these instructions, (b) has been properly signed, (c) is accompanied by the required bid security, (d) is valid for the period required and, (e) is substantially responsive to the requirements of the tender documents. For this latter purpose, a substantially responsive tender is one which conforms to all terms, conditions and

specifications stated in the tender documents without any material deviation or reservation. A material deviation or reservation is one which: (i) affects in a substantial way the price, scope, quality, performance or the required timing of execution and completion of the works, or (ii) limits in any substantial way, inconsistent with the tender documents, the rights of the Purchaser or obligations of the tenderer, and (iii) whose rectification would unfairly affect the competitive position of the tenderers who have presented substantially responsive bids.

29.2. If a tender is found not to be substantially responsive, it may not subsequently be made responsive by correction or withdrawal of the non-conforming deviation or reservation and it will be rejected by the Purchaser.

### **30. Correction of Errors**

30.1. The tenders determined to be substantially responsive will be checked by the Purchaser for any arithmetical errors. The Purchaser shall have the right to correct such errors using the following method:

- (a) Where there is a discrepancy between the amounts stated in figures and the amount stated in words, the latter shall govern.
- (b) Where there is an error in any amount resulting from the multiplication of a unit rate for an item by the quantity thereof, the unit rate shall govern and the product of the multiplication shall be corrected accordingly, unless in the opinion of the Purchaser there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total stated will govern and the unit rate will be corrected accordingly.
- (c) The total tender price will be recalculated on the basis of correction of errors in the manner stated in paragraph (b) above, or if there are no such errors by correcting any errors in the summation of the prices for the various line items in the Price Schedule(s). The total price arrived at after either of these corrections shall be deemed to be the correct total price of the tender, unless the total price stated in the tender is lower than the corrected total tender price, in which case the former shall be deemed as the correct tender price and the tenderer shall be deemed to have offered a discount to be applied pro rata to the prices of all items in the schedule of prices.

- 30.2. The correction and adjustment of the tender prices and total tender price resulting from the application of the methods for correction stated above shall be binding on the tenderer and if the tenderer does not accept the corrected amount of its bid, it shall forfeit its tender security.

## **E. EVALUATION AND COMPARISON OF TENDERS**

### **31. The Bids to be Evaluated:**

Only bids determined to be substantially responsive will be evaluated and compared with one another by the Purchaser.

### **32. Currency of Evaluation**

For the purpose of evaluation and comparison of the bids, all bid prices will be converted to the currency of the Purchaser's country at the selling rates of exchange published on the day of opening of bids by the Central Bank or an institution performing the functions of a central bank in the purchaser's country.

### **33. Determining the Lowest Evaluated Bid**

33.1. For evaluation of the bids, the Purchaser will determine the evaluated bid price for each bid by adjusting the bid price, as determined in accordance with Clauses 30 and 32 of these Instructions, as follows:

- (a) excluding provisional sums.
- (b) making an appropriate adjustment on sound technical and/or financial grounds for any quantifiable acceptable deviations or reservations or alternative offers.
- (c) making an allowance in financial terms for completion time or times, which are different, if allowed, from those stated in the tender documents.
- (d) taking into account the cost of mandatory spare parts and services incidental to the supply of goods, if such services are required.
- (e) taking into account the availability in the Purchaser's country of spare parts and after-sales services for any equipment to be supplied by the bidder.
- (f) taking into account the projected operating and maintenance costs during the life of any equipment to be supplied by the bidder as well as the performance and productivity of such equipment.
- (g) applying any other criteria stated in the bidding documents.

33.2. The estimated effect of price adjustment provisions in the Conditions of Contract over the period of execution of the Contract shall be disregarded in the evaluation of bids.

### **34. Preference for Certain Bidders**

34.1. The Purchaser will grant a margin of preference in the comparison of bids for goods manufactured or produced in the Purchaser's country and/or in the country of member countries of the financing institution(s)<sup>1</sup>, provided the following conditions are satisfied:

- (i) the cost of the goods net of taxes and duties, includes a value added in one of the countries referred to above of not less than 20% of the exfactory bid price of the goods.
- (ii) the bidder is owned or beneficially owned to the extent of not less than 50% by nationals of that country.

34.2. The margin or preference to be accorded to the bidder eligible therefore will not exceed the amount of custom duties and other import taxes or the CIF or CIP price (or equivalent) on the basis of the lowest evaluated bid or 15% of such price, whichever is lower.

## **F. AWARD OF CONTRACT**

### **35. Award**

Subject to Clause 36 and to the application of Clause 34 of these Instructions, the Purchaser will award the Contract to the successful bidder satisfying the requirements of qualifications under Clause 17 of these Instructions and whose bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest evaluated bid as determined in accordance with Clause 33 of these Instructions.

### **36. Annulment of Tender Procedure**

The Purchaser reserves the right to accept or reject any tender or to annul the tendering process and reject all tenders at any time prior to the award of the Contract, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the Purchaser's action.

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(1) If the Goods are wholly or partly financed by the Arab Bank for Economic Development in Africa, insert after the word "institution(s)" the expression "and any African Country."

### **37. Notification of Award**

- 37.1. Prior to expiration of the period of validity of bids, as such period may be extended with the agreement of the successful bidder, the Purchaser will notify the successful bidder in writing by registered letter or by cable, telex or facsimile, that its bid has been accepted. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") shall specify the sum which the Purchaser will pay to the Supplier in consideration of the supply of the Goods, the remedying of any defects therein as prescribed by the Contract and the provision of any incidental services required in the tender documents (such sum hereinafter and in the Conditions of Contract called "the Contract Price").
- 37.2. Pending signature and entry into force of the Contract, the notification of award will constitute a contract between the Purchaser and the successful bidder.

### **38. Signature of Contract**

The successful bidder shall, on such date as notified to it by the Purchaser, sign the Agreement (in the form shown in Annex III) constituting the Contract for the supply of the Goods and any incidental services required in the tender documents.

### **39. Furnishing of Performance Security**

Within 30 days of receipt of the Letter of Acceptance or notification of contract award, the successful bidder shall furnish the Purchaser with a Performance Security in accordance with the General Conditions of Contract, being in conformity with the form prescribed for this purpose in the tender documents (Annex IV).

### **40. Failure to Sign Contract or Furnish Performance Security**

Failure of the successful bidder to comply with the requirements of Clause 38 and/or Clause 39 of these Instructions shall constitute a breach of contract and cause for annulment of the award, forfeiture of the bid security, and any such other remedy the Purchaser may take under the Contract. The Purchaser may also resort to awarding the Contract to the next ranked bidder or call for new bids.





**III - GENERAL CONDITIONS OF CONTRACT**  
**ARTICLE-I**  
**DEFINITIONS & INTERPRETATION**

1-1 In the Contract, unless the context otherwise requires, the following terms shall have the meaning assigned to each of them hereunder:

- (a) "Goods" means any equipment, machinery, merchandise or material to be supplied under the Contract and includes any accessories or spare parts required thereunder.
- (b) "Supplier" means the person, firm, company or entity supplying the Goods.
- (c) "Purchaser" means the entity or organization purchasing the Goods and stated in the Special Conditions.
- (d) "Contract" or "Agreement" means the agreement entered into between the Supplier and the Purchaser for the supply of the Goods including all documents listed therein as constituting part thereof.
- (e) "Contract Price" means the price of the Goods required to be paid by the Purchaser to the Supplier pursuant to the Contract.
- (f) "General Conditions" means the General Conditions of Contract provided for herein.
- (g) "Special Conditions" means the Special Conditions of Contract provided for in Part II of the Conditions of Contract.
- (h) "Specifications" means specifications of the Goods as shown in the Bidding Documents.
- (i) "The Services" means such ancillary services as transportation and insurance of the Goods, as provided for in the Contract, as well as incidental services to the supply of the Goods, as may be required under the Contract, such as installation and commissioning, provision of technical assistance, training and other services.

1-2 In the Contract, unless the context otherwise requires, words denoting the singular include the plural and vice-versa, and references in any document constituting part of the Contract to articles, clauses or sections are references to articles, clauses or sections of that document, while reference to a specified Appendix or Annex is a reference to that Appendix or Annex of the Contract.

**ARTICLE-II**  
**APPLICATION OF THE GENERAL CONDITIONS,**  
**CONTRACT DOCUMENTS**

2-1 The Contract Documents shall be as defined in the Contract Agreement and shall be taken as mutually explanatory of one another. In case of ambiguity or discrepancy, the Contract Documents shall prevail in the order specified in the Contract Agreement.

- 2-2 The Contract Documents constitute the entire agreement between the parties and shall supersede any previous correspondence between the parties not specifically incorporated in the Contract Documents.

### **ARTICLE-III**

#### **THE SUPPLIER TO INFORM HIMSELF FULLY**

The Supplier shall be deemed to have examined the General Conditions, Special Conditions, Specifications, Appendices, Drawings and other Contract Documents and to have investigated and taken into account any conditions relevant to local conditions within the Purchaser's country that may affect the Supplier's performance of its obligations under the Contract.

### **ARTICLE-IV**

#### **PERFORMANCE SECURITY**

- 4-1 Within 30 (thirty) days after the Supplier's receipt of notification of award of the Contract in the form of Letter of Acceptance, the Supplier shall furnish a performance security to the Purchaser in an amount equivalent to 10% of the Contract Price. The performance security shall cover the Warranty Period specified in the Special Conditions.
- 4-2 The performance security shall be denominated in the currency of the Contract or in another freely convertible currency acceptable to the Purchaser, and shall be in one of the following forms and issued by a bank acceptable to the Purchase:
- (a) An unconditional and irrevocable bank guarantee in the form provided in Annex-IV hereto.
  - (b) A standby letter of credit, the amount of which shall be payable to the Purchaser on the presentation of a simple statement that the Supplier has failed to carry out its obligations under the Contract.
- 4-3 The performance security shall be discharged by the Purchaser not later than 30 (thirty) days following the date of fulfillment of the Supplier's obligations under the Contract including the Warranty obligations of the Supplier stated in Article XVIII hereof as supplemented by the Special Conditions.

### **ARTICLE-V**

#### **PATENTS**

The Supplier warrants that the Goods and any materials used in their manufacturing shall not be such as to cause the Purchaser to become liable for any infringement of any patent, registered design, trademark, proprietary know-how or copyright or anything

analogous or similar and the Supplier shall indemnify and hold harmless the Purchaser against any liability (howsoever arising or described) that may be incurred by the Purchaser as a result of the breach by the Supplier of the terms of this provision.

## **ARTICLE-VI**

### **TIME SCHEDULE FOR DELIVERY**

The Supplier shall, prior to the signing of the Contract Agreement, provide to the Purchaser for approval a time schedule for delivery of the Goods which shall be within the time specified in the Bid and according to the specific requirements (if any) stated in the Special Conditions or in any of the Contract Documents. The approved time schedule shall be binding upon signing of the Contract Agreement.

## **ARTICLE-VII**

### **INSPECTION AND TESTING BEFORE SHIPMENT**

- 7-1 The Purchaser or its designated agent or representative, shall be entitled at all reasonable times during manufacture, storage and packing of the Goods to inspect and examine them and to witness, at the Purchaser's own cost, tests on the Supplier's premises of the materials, workmanship and performance of the Goods or any component part thereof, and if part of the Goods is being manufactured on other premises, the Supplier shall obtain for the Purchaser permission to inspect, examine and witness tests as if the Goods were being manufactured on the Supplier's premises. Such inspection, examination or testing shall not release the Supplier from any obligation under the Contract.
- 7-2 The Supplier shall give the Purchaser not less than twenty-one (21) days notice in writing of the date on, and the place at which any Goods will be ready for testing and the Purchaser shall give the Supplier ten (10) days notice in writing of its intention to attend the tests. If the Purchaser fails to attend at the place so named on the date the Supplier has stated in its notice, the Supplier may proceed with the tests and the Purchaser shall be deemed to have waived its right to attend. The Supplier shall forthwith forward to the Purchaser duly certified copies of the test reports.
- 7-3 Where the Specifications provide for tests on the premises of the Supplier or of any Sub-Supplier, the Supplier, except insofar as otherwise specified in the Contract, shall provide free of charge such adequate office space, reasonable facilities, labour, materials, electricity, fuel, stores, apparatus and instruments as may be required for carrying out such tests efficiently.

- 7-4 As and when the Purchaser is satisfied that the Goods or any part thereof shall have passed the tests referred to in this Article which it has attended, the Purchaser shall issue to the Supplier a Shop Inspection Certificate to that effect within seven (7) days after the tests have been performed.
- 7-5 In case the Purchaser is not attending any shop test of which it was given due notice, the Supplier may issue the certificate after the part or parts of the Goods subject of such notice shall have successfully passed the tests, and it shall submit such certificate to the Purchaser via special courier service or by facsimile. If within ten (10) days after receipt of such certificate by the Purchaser, no objection has been made by the Purchaser, this certificate shall be deemed to have been accepted by the Purchaser.
- 7-6 If after inspecting, examining, or testing the Goods or any part thereof the Purchaser shall decide that such Goods or any part thereof are defective, it may require the Supplier to rectify the defects or replace the defective parts of the Goods.

## **ARTICLE-VIII PACKING**

- 8-1 The Supplier shall provide such packing of the Goods as is required in the Special Conditions or in any of the Contract Documents.
- 8-2 Without prejudice to the generality of Section 8-1 hereof:
- (a) The final packing shall be such that the weight and dimensions of packages are within reasonable limits in order to facilitate handling, storage and transportation.
  - (b) Each crate, case box, package or bundle shall have labels and/or tags made from strong waterproof material and marked in indelible and non-fading ink, securely attached thereto. These labels or tags shall indicate at least the name of the manufacturer, the type of Goods or components and the quantity it contains so that it can be easily checked upon delivery. A packing list shall be included in each crate or box.
  - (c) Each package delivered under the Contract shall be consecutively numbered and shall also be marked with a code number or other identification to be approved by the Purchaser so that various components of the Goods which are shipped disassembled and which may not be interchangeable can be identified, collected and stored at site together. Additional information and/or colour codings that may reasonably be required by the Purchaser to facilitate identification, shipment to stores or site handling and storage will also be provided.

- (d) In addition to labels and markings indicated above, all packages, cases or boxes shall be clearly and boldly marked on two opposite sides and on the top as follows:

CONSIGNEE (The Purchaser)

DESTINATION

CONTRACT NUMBER

NAME OF SUPPLIER

WEIGHT AND DIMENSIONS

SERIAL NUMBER

CODE NUMBER

## **ARTICLE-IX**

### **DELIVERY AND DOCUMENTS**

- 9-1 Delivery of the Goods shall be made by the Supplier in accordance with the terms specified by the Purchaser in its Schedule of Requirements and the Special Conditions.
- 9-2 For the purposes of the Contract, "FOB", "CIF", and "CIP" and other trade terms used to describe the obligations of the parties shall have the meanings assigned to them by the current edition of the International Rules for the Interpretation of the Trade Terms published by the International Chamber of Commerce, commonly known as INCOTERMS.
- 9-3 Shipping documents to be provided by the Supplier shall be as stipulated in the Special Conditions.

## **ARTICLE-X**

### **INSURANCE**

Where the Goods are to be supplied under the Contract on CIF, CIP or C&I basis, the Goods shall be fully insured by the Supplier in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in an amount equal to that, and in the manner, stipulated in the Special Conditions.

## **ARTICLE-XI**

### **TRANSPORTATION**

- 11-1 Where the Goods are required to be supplied FOB, transportation of the Goods up to the vessel receiving the Goods shall be arranged and paid for by the Supplier.

11-2 Without prejudice to the provisions of Section 11-1 hereof, the responsibility for arranging transportation of the Goods and the costs thereof shall depend upon the basis on which the Goods are to be delivered. In all cases the responsibilities of either party shall be governed by the INCOTERMS.

11-3 In all cases, transportation of the Goods after delivery shall be the responsibility of the Purchaser.

## **ARTICLE-XII**

### **INCIDENTAL SERVICES AND SPARE PARTS**

12-1 The Supplier shall provide such incidental services as specified in the Special Conditions.

12-2 The Supplier shall provide such spare parts as are required in the Special Conditions. The Supplier also undertakes to provide, on the request of the Purchaser, spare parts necessary for the operation and proper functioning of the Goods. Such undertaking shall be valid and binding for the period indicated in the Special Conditions.

## **ARTICLE-XIII**

### **CHANGE ORDERS - VARIATIONS**

The Purchaser shall be entitled to:

- (a) Increase or decrease the quantity of the Goods or any item or items thereof within the limit of the percentage stated in the Special Conditions, and the Contract Price shall be increased or decreased accordingly by applying the unit price stated in the Contract for the Goods or item thereof subject of increase or decrease in quantity pursuant to this provision.
- (b) Make any change or modification in the designs, specifications and/or schedule of delivery of the Goods under the contract. However in case of such modification or in case of a variation in the quantity of the Goods or any item thereof exceeding the percentage stated in the Special Conditions, the Supplier and the Purchaser shall negotiate in good faith and agree on an increase or decrease in the Contract Price, as may be reasonable in the circumstances, and shall agree on the manner of payment of any agreed increase.

## **ARTICLE-XIV**

### **BASIS AND PAYMENT OF CONTRACT PRICE**

14-1 Unless otherwise stipulated in the Special Conditions, the Contract Price shall be fixed and not subject to revision.

- 14-2 Payment of the Contract Price shall be made in the manner stated in the Special Conditions.
- 14-3 Should the Supplier require an advance payment, such advance payment, not exceeding 20% of the Contract Price, may be made upon the submission of an invoice and a Bank Guarantee in the form provided in Annex-V hereto.
- 14-4 Requests for payment shall be in writing and shall include all documents required under the Contract and satisfy all conditions prescribed therein.

## **ARTICLE -XV**

### **ASSIGNMENT**

The Supplier shall not assign or transfer any of its rights or obligations under the Contract without the written consent of the Purchaser.

## **ARTICLE-XVI**

### **EXTENSION OF TIME FOR PERFORMANCE OF THE SUPPLIER'S OBLIGATIONS**

- 16-1 The Supplier shall guarantee and strictly comply with the delivery dates and time limits set forth in the Contract, which shall be deemed of the essence of the Contract. In the event of any delay arising in any phase of performance by the Supplier of his obligations under the Contract, the Supplier shall promptly give notice to the Purchaser of the delay or expected delay with the reasons therefore, not later than seven (7) days after the occurrence of the alleged cause of delay. The Supplier shall at all times use its best efforts to act with diligence to cure any such delay.
- 16-2 If the Supplier shall deem that any delay justifies an extension of time in accordance with the provisions hereof, it shall submit a request in writing to the Purchaser for extension of time for its performance under the Contract. The Purchaser will grant the Supplier such extension of time if the Purchaser is satisfied, after substantiation of the Supplier's written request therefor, that:-
- (i) such delay in the Supplier's performance was due to unforeseeable causes beyond the Supplier's control or caused by a Force Majeure event, as defined in Article XIX hereof; and
  - (ii) the Supplier has, from the occurrence of the event causing such delay, used its best efforts to cure any delay of the Supplier's performance resulting therefrom. Any extension of time granted by the Purchaser in accordance with the provisions of this Article shall be notified to the Supplier in writing and shall be for that period of time which the Purchaser deems justified and reasonable under the circumstances.

## **ARTICLE-XVII**

### **LIQUIDATED DAMAGES**

- 17-1 To the extent that the time for performance of the Supplier's obligations under the Contract has not been extended in accordance with the provisions of Section 16-2 hereof and subject to the provisions of Article XIX hereof, should the Supplier fail to perform any of its obligations under the Contract, and in particular its obligation to effect the shipment of any item of the Goods by the time or times specified in the Delivery Schedule, the Purchaser shall have the right to deduct from the Contract Price or demand and receive from the Supplier, as liquidated damages for delay for every week or part of a week of delay after the date scheduled for performance or delivery according to the Delivery Schedule, the amount specified in the Special Conditions.
- 17-2 The total liability of the Supplier for liquidated damages under the Contract shall be limited to ten per cent (10%) of the Contract Price.
- 17-3 If the Purchaser shall demand the payment of any of the liquidated damages specified herein, the Supplier shall pay to the Purchaser the said liquidated damages by means of telegraphic or telex transfer remittance within thirty (30) days after receipt by the Supplier of the Purchaser's invoice.
- 17-4 The payment of liquidated damages pursuant to this Article shall be without prejudice to any other right or remedy that the Purchaser may be entitled to under the Contract or by law.

## **ARTICLE-XVIII**

### **WARRANTY**

- 18-1 The Supplier warrants that the Goods are new, unused and are manufactured in accordance with the current state of the art. The Supplier also warrants that the Goods and any part thereof, whether manufactured by the Supplier or procured from a sub-supplier shall be free from any defect in design, materials or workmanship.
- 18-2 The warranty stated herein shall remain .valid for the period specified in the Special Conditions (the Warranty Period). The Warranty Period shall start after the Goods have been delivered to the final destination indicated in the Contract.
- 18-3 If at any time within the Warranty Period, the Purchaser alleges the existence of a defect in the Goods the particulars of such defect shall be promptly notified to the Supplier who shall be afforded a reasonable opportunity for inspection of the same.



- 18-4 Promptly upon receipt of such notice the Supplier shall either remedy, repair or replace the Goods.
- 18-5 The Warranty Period shall be extended by any period during which the Goods shall have been inoperative by reason of any defect therein or omission on the part of the Supplier. Further, in the event that any part or parts are replaced in accordance with this Article (either by the Supplier or by its sub-supplier(s)), the Warranty Period for such part or parts shall be extended for a further period, which shall be the greater of six calendar months from the date of the replacement of such part or parts, or the unexpired portion of the Warranty Period. A similar extension to the initially extended Warranty Period shall occur if the replacement part or parts need to be replaced again during the initially extended Warranty Period.
- 18-6 The Purchaser, or any of its duly authorized representatives, shall promptly notify the Supplier by telex/telegram or facsimile of the discovery of any defect for which a claim is to be made under this Article. Such notice shall include full particulars as to the nature of the defect and the extent of such defect which at the date of the notice is apparent. The Supplier shall have no obligation under the Warranty for any defects discovered during the Warranty Period, unless notice of such defects is received by the Supplier no later than thirty calendar days after the expiry of the Warranty Period. The Supplier shall have no obligation with respect to defects discovered after the expiration of the Warranty Period, as such period may be extended pursuant to Article 18-5 hereof.
- 18-7 The Supplier shall remedy at its expense any defect against which the Goods or any part thereof is warranted under this Article by making all necessary repairs and replacements at its expense in his Plant or such other place as directed by the Purchaser. If the Supplier delays or fails to remedy the defect within 21 days of sending the notice to it, the Purchaser or its authorized representatives shall in their discretion cause the necessary repairs or replacements to be made elsewhere for the account of the Supplier, provided, however, that the Purchaser shall have used reasonable endeavours to mitigate the cost of such repairs or replacement. For the avoidance of doubt, the Supplier shall reimburse the Purchaser for all costs reasonably incurred by the Purchaser in effecting repairs at any place other than the Supplier's Plant.
- 18-8 The Supplier shall guarantee all repairs and replacements effected to the Goods other than by the Supplier during the Warranty Period, provided that the Purchaser shall have given the Supplier reasonable notice to enable the Supplier to attend to and/or supervise or direct such repairs or replacements. For the avoidance of doubt, it is agreed that if the Supplier fails to attend to or supervise such repairs, after having been given notice, it shall nonetheless guarantee any and all such repairs or replacements that are effected to the Goods.

## **ARTICLE-XIX**

### **FORCE MAJEURE**

- 19-1 In the event of any delay brought about by war, hostilities, blockade, revolution, insurrection, mobilization, civil commotion, act of the public enemy, strikes, lock-outs, plagues or other epidemics, quarantines, earthquakes, accidents, fire (not caused by negligence of the Supplier, its servants or agents), storm damage or any identical or similar event affecting the Supplier's performance of its obligations under the Contract in general, and the delivery of the Goods in accordance with the Delivery Schedule of the Goods in particular, the Supplier shall be allowed such extension of time as may be agreed with the Purchaser subject, expressly to a detailed written application for such extension being lodged with the Purchaser within ten working days of the occurrence of such Force Majeure.
- 19-2 The Supplier shall not be entitled to extension of time, under this Article or Section 16-2, for the delivery of the Goods or the performance of any other obligation of the Supplier under the Contract, unless:
- (i) the Supplier has duly given the notices provided for in Section 16-1 and in 19-1 above; and
  - (ii) the delay has not in any way been caused or contributed to by any error, neglect or default of the Supplier or any its directors, servants or agents; and
  - (iii) the Supplier has taken all reasonable steps to avoid or mitigate the delay whether before or after the occurrence of the event causing the delay.
- 19-3 The Purchaser shall be entitled to dispute the occurrence of any event of Force Majeure or the duration thereof or whether any event constitutes an event of Force Majeure as defined above or whether the occurrence of such event of Force Majeure actually delays the delivery of the Goods or the performance of any other obligation of the Supplier thereby entitling the Supplier to any extension of time as set out above or the duration of such extension of time requested.
- 19-4 In the event that the Purchaser exercises any of its rights under Section 19-3 above and, if an agreement cannot be reached between the Supplier and the Purchaser on the matter, such matter shall be referred to arbitration in accordance with Article XXV hereof.
- 19-5 At all times, the onus shall be on the Supplier to establish the facts entitling it to rely on this Article and in particular, without prejudice to the generality of the foregoing, that the requirements set out in Paragraphs (i), (ii) and (iii) of Section 19-2 hereof have been satisfied.

19-6 If a Force Majeure event occurs and its effect continues for a period of 90 days, either party may give to the other notice of termination of the contract which shall take effect 14 days after the giving thereof. If, at the end of the 14 - day period, the effect of the force majeure continues, the Contract shall terminate.

## **ARTICLE-XX**

### **DEFAULT AND TERMINATION**

20-1 Subject to the provisions of Articles XVI and XIX hereof, in the event:

- (a) the Supplier fails to provide the Performance Security in accordance with Article IV hereof; or
- (b) the Supplier fails to deliver the Goods or any part thereof within the Time Schedule of Delivery specified in the Contract; or
- (c) the Supplier, having delivered part of the Goods, fails or refuses to remedy any defect brought to its notice by the Purchaser; or
- (d) the Supplier shall have otherwise defaulted in the performance of any of its obligations under the Contract;

the Purchaser may, by 30 (thirty) days' notice, terminate the Contract. The Contract shall be deemed terminated if the default is not remedied before the expiry of the 30 (thirty) days.

20-2 If the Purchaser fails to pay to the Supplier any amount due to the Supplier within 60 (sixty) days of the request for payment, and such amount or any part thereof is not contested by the Purchaser within 30 (thirty) days of the receipt of the request, the Supplier may, by a written notice of 30 (thirty) days (after the expiry of the initial 60 days period), terminate the Contract. The Contract shall be deemed terminated if the Purchaser fails to remedy the default before the expiry of the 30 (thirty) days notice.

20-3 If the Supplier shall have become voluntarily or involuntarily dissolved, or become bankrupt or insolvent (howsoever such bankruptcy or insolvency may be evidenced) or shall have taken steps to compound with its creditors, or proceedings are commenced for its voluntary or involuntary winding-up, or if the Supplier shall carry on its business under a receiver for the benefit of its creditors or any of them, the Contract shall thereupon be terminated without any notice, court proceedings or other legal procedure of any kind, all of which are hereby expressly waived.

20-4 In the event that the Contract is terminated pursuant to any of the above provisions of this Article or if the Contract is terminated under the provisions of Article 19-6 hereof, the Supplier shall be entitled, insofar as the price of any part of the Goods delivered or Services executed is not covered by payments made prior to the date of termination, to such price at the rates and prices stated in the Contract. Subject to the foregoing, the Supplier shall also be entitled to:

- (a) the price of any part of the Goods ordered by the Purchaser, which have been shipped to the Purchaser or of which the Purchaser is legally liable to accept delivery, such Goods becoming the property of the Purchaser upon payment therefore by the Purchaser;
- (b) the price of any part of the Goods ordered by the Purchaser which are ready for shipment to the Purchaser, where manufacture and assembly of the same, whether by the Supplier or by a sub-supplier thereof, is complete, provided that such part of the Goods becomes the property of the Purchaser, upon payment therefore by the Purchaser;

Provided that the Supplier shall not be entitled to payment under (a) and (b) above unless and until the Purchaser shall have received such part of the Goods at the final destination and accepted the same.

20-5 Notwithstanding anything contained in this Article or in any of the Contract Documents, if the Contract is terminated as a result of the default of the Supplier, the Purchaser shall be entitled to purchase all, or any part of the Goods not supplied by the Supplier and obtain any of the Services not executed by the Supplier, from another source as the Purchaser may, in its sole discretion, decide and shall be entitled to deduct from the payments due to the Supplier or claim and recover from the Supplier any cost the Purchaser has incurred over and above the amount of the Contract Price and also to recover, by way of deduction from the amounts due to the Supplier or otherwise, the amount of any damages or loss suffered by the Purchaser as a result of the default of the Supplier in carrying out its obligations.

## **ARTICLE-XXI**

### **NON-WAIVER**

21-1 Failure of or delay by either party to exercise any rights or remedies provided for herein or by law or to properly notify the other party in the event of breach, shall not release the other party from any of its obligations under the Contract (including warranties in the case of the Supplier) and shall not be deemed a waiver of any right of that party to insist upon strict performance of the Contract or as a waiver of any rights or remedies which that party may have under the Contract and shall not be deemed as acquiescence in any subsequent default in the performance of the terms and conditions of the Contract.

21-2 The shipping or delivery by the Supplier or receiving or acceptance of or payment by the Purchaser for the Goods or for any designs or drawings therefor shall not be deemed a waiver of any rights in respect of any prior failure by the Supplier to comply with any of the provisions of the contract. No purported oral modifications to the Contract by the Purchaser shall operate as a waiver of any of the terms thereof.

## **ARTICLE-XXII**

### **LANGUAGE - NOTICES**

- 22-1 Any document, order, request or communication to either party shall be in writing in the language or one of the languages specified in the Special Conditions. Should any document be in a language other than the above, certified translation of the same in the language or one of the languages specified in the Special Conditions shall be provided.
- 22-2 Any notice or request to be given or to be made by any party to the other under the Contract or in connection therewith may be given by telex, facsimile or letter. Such notice or request shall be deemed to have been duly given when it shall be delivered by hand, mail, telex or facsimile to the other party at its address specified in the Contract or any other address as that party may designate by notice to the other.

## **ARTICLE-XXIII**

### **APPLICABLE LAW**

The Contract shall be subject to and shall be construed in accordance with the laws for the time being in force in the country of the Purchaser.

## **ARTICLE-XXIV**

### **TAXES**

- 24-1 Any taxes, dues, fees, stamp duties or any other levies in the country of the Supplier or any other place outside the country of the Purchaser shall be borne by the Supplier.
- 24-2 Any taxes, dues, fees, stamp duties or any other levies in the country of the Purchaser for the importation of the Goods or in relation to any matter relating to the Contract, other than income tax imposed on the personnel of the Supplier providing incidental services required by the Contract, shall be borne by the Purchaser.

## **ARTICLE-XXV**

### **SETTLEMENT OF DISPUTES**

Any dispute between the parties to the Contract and any claim by either party against the other arising from the Contract and which could not be settled amicably by the parties within 60 (sixty) days from the date of notice by either party to the other, shall be submitted to [the court of competent jurisdiction in the Purchaser's country/arbitration by an Arbitral Tribunal as provided for in the Special Conditions]\*.

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(\*) State as appropriate.



## IV - SPECIAL CONDITIONS OF CONTRACT

### 1. General

The Special Conditions of Contract herein stated shall supplement the General Conditions of Contract. Wherever there is a conflict, these Special Conditions shall prevail over the General Conditions.

### 2. Definitions

The Purchaser is

### 3. Performance Security

The performance security shall be equal to 10% of the total Contract Price and shall be valid for period of .....

### 4. Inspection and Testing

The inspection and testing required by the Purchaser shall be carried out according to the following procedure:

.....  
.....  
.....  
.....

### 5. Delivery and Documents

- i) The Supplier shall, upon shipment, notify the Purchaser by cable, telex or facsimile of the full details of the shipment including description and quantity of goods, the liner or vessel, the bill of lading number and date of shipment, port of loading and port of delivery.
- ii) The Supplier shall promptly forward the following documents to the Purchaser:

- Original of negotiable, clear, on board bill of lading and a non-negotiable copy of the bill of lading.
- 4 copies of the packing list indicating contents.
- Insurance certificate.
- Inspection and/or testing certificate issued by the authorized inspection agency.
- Certificate of origin.

The document mentioned above shall be received by the Purchaser at least one week prior to the arrival of the Goods.

## **6. Schedule of Delivery**

The delivery of Goods shall be according to the following Schedule of Requirements:

.....  
.....  
.....

## **7. Insurance**

The comprehensive insurance, referred to under Article X of the General Conditions of Contract shall be equal to 110% of the "CIF/CIP" value of the goods on "all risks" basis, including war risks and strikes.

## **8. Contract Price**

The Contract Price shall not be subject to any revision or adjustment unless explicitly stated herein.

## **9. Payment of Contract Price**

i) The method and terms of payment of the Contract Price to the Supplier shall be as follows:

- a) .....
- b) .....
- c) .....
- d) .....

ii) The currency or currencies in which payment is to be made to the Supplier under this Contract shall be in accordance with the Contract Price currency which has been quoted in the Supplier's tender, including other currencies which the Supplier shall have indicated in its bid as required by him, unless otherwise stated herein .

iii) Unless payments are to be made by letter of credit, payments shall be effected by the Purchaser within a period not exceeding .... days of receiving the Supplier's invoice and other documents required under Section 5 (ii) hereof, except for any advance payment required which shall be made within the aforesaid period against the Supplier's invoice and the bank guarantee provided for in Section 14.3 of the General Conditions.



## **10. Change Orders and Variations**

The change orders and variations referred to under Article XIII of the General Conditions may take any one or more of the following forms:

- i) Amendment of design or specifications of certain components which are required to be specially designed or manufactured for the Purchaser.
- ii) The method of shipment or packing.
- iii) Increase or decrease of quantities limited to .....% of the original quantities of goods specified in the Contract.
- iv) Place of delivery.

## **11. Subcontracting**

The Supplier shall notify the Purchaser in writing of any subcontract it intends to conclude for manufacturing or supplying part(s) of the Goods. Such notification, in its original tender or later, shall not relieve the Supplier from any liability or obligation under the Contract. The total amount of subcontracts shall not exceed .....% of the Contract Price.

## **12. Packing**

The Supplier shall provide packing that shall be sufficient to withstand rough handling during loading, transport or storage. Further specific requirements of packing shall be as follows:

.....  
.....  
.....  
.....

## **13. Transportation**

- i) If Goods are required to be supplied on CIF or C&F price basis, transport of the Goods shall be arranged and paid for by the Supplier up to the destination specified in the Contract.
- ii) If Goods are required to be supplied on FOB price basis, the Supplier shall arrange and pay for transport of the Goods up to and including loading of the Goods on board the vessel.

iii) Other requirements of transportation of the Goods are as follows:

.....  
.....  
.....

#### **14. Spare Parts**

The Supplier shall carry sufficient ex-stock supply of consumable (fast- moving) spare parts required for operation for a period of not less than ..... Other spare parts shall be supplied as promptly as possible, but in any case within six months of placement of order and establishment of a letter of credit.

#### **15. Incidental Services**

The incidental services required under Section 12.1 of the General Conditions are

- (i).....
- (ii).....
- (iii).....

#### **16. Change Orders - Variations**

The percentage specified for the purpose of Article XIII of the General Conditions is .....% of the quantity of the Goods or an item of the Goods, as the case maybe.

#### **17. Liquidated Damages**

The liquidated damages payable under Article XVII of the General Conditions shall be ..... (state currency and amount) for each week of delay.

#### **18. Warranty Period**

The warranty period under Section 18.2 of the General Conditions shall be .....

#### **19. Language(s) of the Contract**

The .....language(s) is/are designated for the purpose of Section 22.1 of the General Conditions. In case the Contract is made in more than one language and in case of divergence between the texts in different languages, the text in the .....language shall prevail.

## 20. Notices

The following addresses are designated for the purpose of Section 22.2 of the General Conditions.

For the Purchaser:

Mailing Address:

.....  
.....  
.....  
.....

Telex:.....

Fax:.....

E-mail:.....

For the Supplier:

Mailing Address:

.....  
.....  
.....  
.....

Telex:.....

Fax:.....

E-mail:.....

## 21. Settlement of Disputes

The formation of the Arbitral Tribunal and the rules relating to arbitration for settlement of disputes pursuant to Article XXV of the General Conditions shall be in accordance with the following:

.....  
.....  
.....  
.....  
.....  
.....



## **V- TECHNICAL SPECIFICATIONS\***

If required, text of Technical Specifications to be inserted in the Tender Documents by the Purchaser are as follows:

---

(\*) Reference could be given to some standard specifications with a statement that other national or international standards of equal or better quality will also be accepted.



**ANNEX I**  
**FORM OF TENDER AND PRICE SCHEDULE(S)**

Date: .....

Invitation of Tenders No.: .....

To: *[Name of the Purchaser]*  
*[Address of The Purchaser ]*

Dear Sirs

**Subject: Invitation of Tenders No. ....**

Having examined the tender documents *[insert including Addenda Nos..... and .....if any]* we, the undersigned, offer to supply and deliver *[insert description of the goods]* and to provide *[insert description of the services]*, all in conformity with the said tender documents for the sum *[total amount of the tender in figures and words]* or such other amount as determined in accordance with the schedule(s) of prices attached herewith and forming part of this Tender.

We undertake, if our Tender is accepted, to provide and deliver the goods and services in accordance with the schedule of delivery stated in the tender documents.

We undertake, if our Tender is accepted, to provide a bank guarantee in an amount equivalent to ..... percent of the contract price for the due performance of the Contract, such bank guarantee being in accordance with the requirements stated in the tender documents and the form prescribed therein.

We agree to abide by this Tender for a period of .....days from the closing date for the submittal of tenders, and this Tender shall remain valid and binding upon us for the said duration and may be accepted by you at any time before expiry of the period stated.

Until a formal contract is prepared and executed, this Tender and your written acceptance thereof shall constitute a binding contract between us.

We confirm that we recognize that you are not bound to accept the lowest or any other bid received by you.

Yours truly,

*[Name of Tenderer]*  
By: *[Signature of Authorized Representative]*  
*[Name of Authorized Representative]*  
*[Designation/Capacity]*

**A) Price Schedule For Domestic Goods or Goods of Foreign  
Origin Located Within The Purchaser's Country**

(To be completed by Domestic Bidders)

Name of Bidder .....

	2	3	4	5	6	7	8	9
Item	Description	Country of Origin	Quantity	Unit Price Ex-Factory ex-warehouse ex-showroom off-the-shelf	Domestic Value added in the manufacturing cost as percentage of the ex-factory price	Total Price Per Unit (col. 4 x 5)	Unit cost of inland delivery to final destination	Sales and other taxes payable if contract is awarded

Signature of Bidder .....



**B) Price Schedule For Goods to be Imported\***  
(To be completed by Foreign Suppliers or their Local Agents)

Name of Bidder .....

1	2	3	4	5	6	7	8
Item	Description	Country of Origin	Quantity	Unit Price FOB Port of Loading (Specify Port)	Unit Price CIF Port of Entry (Specify Port)	Total CIF Price Per Item (col. 4x6)	Unit cost of inland delivery to final destination

Signature of Bidder .....

(\*) This specimen schedule should be modified as appropriate to take into account the actual terms of delivery.



**ANNEX II**  
**FORM OF TENDER SECURITY**  
**(BANK GUARANTEE)**

Whereas *[name of tenderer]* (hereinafter called the Tenderer) has submitted a tender dated .....for the supply of *[description of the goods]* and provision of services consisting of *[description of the services]* (said tender hereinafter called the Tender).

Whereas, in accordance with the Instructions to Tenderers, the Tender must be accompanied by a tender security.

NOW, THEREFORE, We *[name of bank]*, having our registered office at *[address of bank]*, (hereinafter called the Bank) hereby undertake and bind ourselves, our successors and assigns, to pay to *[Name of the Purchaser]* (hereinafter referred to as the Purchaser) the sum of *[amount in figures and words]* upon the following conditions:

1. If, after the closing date for the submittal of tenders and during the period of validity of the Tender specified by the Tenderer on the Form of Tender, the Tenderer withdraws the Tender; or
2. If the Tenderer, having been notified by the Purchaser during the period of validity of the Tender of the acceptance thereof:
  - (a) fails or refuses to execute the Form of Agreement in accordance with Instructions to Tenderers; or
  - (b) *fails* or refuses to furnish the Performance Security in accordance with the Instructions to Tenderers,

We undertake to pay to the Purchaser the above-mentioned amount upon receipt of its first written demand, without the Purchaser having to substantiate its demand, provided that the Purchaser states in its demand that the amount claimed therein is due to the Purchaser owing to the occurrence of one or both of the above conditions and specifies the condition or conditions which have occurred.

This Guarantee shall remain in force up to and including the date falling thirty (30) days after the period of validity of the Tender, as such period may be extended with the agreement of the Tenderer, notice of which extension(s) is hereby waived by the Bank. Any demand in respect of this Guarantee shall be presented to the Bank not later than the above date.

Done in *[name of city]* on the .....day of *[month]* of *[year]*.

*[Signature(s) on behalf of the Bank]*  
*[Name(s) of Authorized Representative(s)]*  
*[Designation(s)]*  
*[Seal of the Bank]*



## ANNEX III

### FORM OF AGREEMENT

This Agreement made the [ ] day of *[month]* of *[year]*, between *[name of the Purchaser]* of *[country of the Purchaser]* (hereinafter called the "Purchaser") of the one part, and *[name of the Supplier]* of *[city and country of the Supplier]* (hereinafter called the "Supplier") of the other part.

Whereas the Purchaser invited bids for the provision of certain goods and ancillary services, viz., *[brief description of the goods and the services]*, as such goods and services are more fully described in the documents incorporated by reference herein (said goods and services hereinafter referred to as the Goods" and "the Services", respectively).

Whereas the Purchaser has accepted a bid by the Supplier for the supply of the Goods and provision of the Services, such bid being in the sum of *[Contract Price in figures and words]* (hereinafter referred to as the "Contract Price").

NOW, THEREFORE, the parties hereto have agreed as follows:

1. In this Agreement, and unless otherwise required by the context, words and expressions shall have the same meaning as are respectively assigned to them in the Conditions of Contract.
2. The following documents (hereinafter referred to, together with this Agreement, as the "Contract Documents") shall be deemed to form and be read and construed as part of this Agreement, viz:
  - (a) Letter of Acceptance (Notification of Award by the Purchaser);
  - (b) Form of Tender and the Price Schedule(s) Submitted by the Bidder;
  - (c) Special Conditions of Contract;
  - (d) General Conditions of Contract;
  - (e) The Technical Specifications;
  - (f) *[State other relevant document(s), if any]*.
3. In case of conflict between any provision of this Agreement and a provision in any other document forming part of the Contract Documents, the provisions of this Agreement shall prevail. Subject to the foregoing, the Contract Documents shall take precedence in the order in which they appear in the preceding Clause 2 of this Agreement.

4. In consideration of the payments to be made by the Purchaser to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Purchaser to provide the Goods and the Services and to remedy any defects therein in conformity in all respects with the provisions of the Contract.
5. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the Goods and the Services and the remedying of any defects therein the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto, acting through their representatives thereunto duly authorized, have caused this Agreement to be signed in their respective names and delivered in *[place of signature]* in .....originals, all to the same and one effect, on the day and year first above written.

*[Name of the Purchaser]*

*[Name of the Supplier]*

By: *[Signature of authorized  
representative of the Purchaser]*

By: *[Signature of authorized  
representative of the Supplier]*

*[Name and designation of  
representative of the Purchased]*

*[Name and designation of  
representative of the Supplier]*

In the presence of:

*[Name of witness] ..... [Name of witness] .....*  
*[Signature of witness] ..... [Signature of witness] .....*

**ANNEX IV**  
**FORM OF PERFORMANCE SECURITY**

Name & address of the Guarantor Bank

To:

..... (the "Purchaser")

.....

.....

.....

Dear Sirs:

Since you have awarded our client ..... (the "Supplier")  
a Contract for the supply of ..... (the "Contract"),  
we ..... Bank (the "Guarantor"), waiving all  
objections and defences under the aforesaid Contract, hereby irrevocably and  
unconditionally guarantee the payment to you on your first written demand the sum  
of

US\$.....(.....)

being 10% (Ten per cent) of the value of the said Contract and accordingly, covenant and  
agree as follows:

- (A) On the Supplier's failure to fulfill any of the conditions of the Contract as determined  
by you in your absolute judgment, the Guarantor shall forthwith, and notwithstanding  
any objection by the Supplier, pay to you the above - mentioned amount or any part  
thereof as you shall demand, by transfer to an account in your name at such bank as  
you shall stipulate or in such other manner as shall be acceptable to you;
- (B) Any payment made hereunder shall be made free and clear of, and without deduction  
for or on account of, any present or future taxes, levies, imposts, duties, charges, fees,  
deductions or withholdings of any nature whatsoever and by whosoever imposed;

(C) The covenants herein contained constitute unconditional and in-evocable direct obligations of the Guarantor. No alteration in the terms of the Contract or in the extent or nature of the work to be performed thereunder and no allowance of time by you or other forbearance or concession or any other act or omission by you which but for this provision might exonerate or discharge the Supplier, shall in any way release the Guarantor from any liability hereunder.

(C) This guarantee shall remain valid and in full force and effect up to .....  
.....by which time any claim hereunder must be received by the Guarantor.

(D) This guarantee is governed by and shall be construed in accordance with the laws of ..... (the Purchaser's country).

Yours faithfully,  
(For and on behalf of the Guarantor)



**ANNEX V**  
**FORM OF ADVANCE PAYMENT GUARANTEE**

Name & address of the Guarantor Bank

To:

.....(the "Purchaser")  
.....  
.....  
.....

Dear Sirs:

Since you have awarded our client .....(the "Supplier")  
a Contract for the supply of ..... (the "Contract")  
and since under the said Contract, an amount of .....is payable by you to  
the Supplier as an advance payment representing ..... % of the value of the  
Contract, we ..... Bank (the "Guarantor"), waiving all  
objections and defences under the aforesaid Contract, hereby irrevocably and  
unconditionally guarantee the payment to you on your first written demand the sum  
of ..... being .....% (..... per cent) of  
the value of the said Contract and accordingly, covenant and agree as follows:

- A) On your first written demand to the Guarantor that the above-mentioned sum of  
..... or any part thereof as you shall demand, shall be paid to you, the  
Guarantor shall forthwith and notwithstanding any objection by the Supplier pay to  
you the said amount or any part thereof as you shall demand by transfer to an account  
in your name at such bank as you shall stipulate or in such other manner as shall be  
acceptable to you;
- (B) Any payment made hereunder shall be made free and clear of and without deduction  
for or on account of any present or future taxes, levies, imposts, duties, charges, fees,  
deductions or withholdings of any nature whatsoever and by whosoever imposed;

- (C) The covenants herein contained constitute unconditional and irrevocable direct of obligations of the Guarantor. No alteration in the terms of the Contract or in the extent or nature of the work to be performed thereunder shall, in any way, release the Guarantor from any liability hereunder;
- (D) This guarantee shall remain valid and in full force and effect up to .....  
.....by which time any claim hereunder must be received  
by the Guarantor;
- (E) This guarantee is governed by and shall be construed in accordance with the laws of ..... (the Purchaser's country).

Yours faithfully,  
(For and on behalf of the Guarantor)