

General Terms and Conditions
for the Procurement of Plant on a Turnkey Basis

swisslog

Table of Content

1. SUBJECT MATTER OF CONTRACT AND PROJECT INFORMATION	3
2. DEFINITIONS AND INTERPRETATIONS	4
2.1 Definitions	4
2.2 Interpretation	6
2.3 General Terms and Conditions of the Supplier	6
2.4 Severability, Amendments and Changes to the Contract	6
3. WORK	6
3.1 Work	6
3.2 Prevailing Circumstances	6
3.3 Full Responsibility for the Work	6
3.4 Origin of Plant	6
3.5 Commencement, Progress and Completion	7
3.6 Erection, Commissioning and Training	7
3.7 Provision of Spare Parts, Special Tools and Consumables and After Sales Services	7
4. STAFF AND PROJECT ORGANISATION	8
4.1 Supplier's Staff and Representatives	8
4.2 Scheduling	8
4.3 Monitoring	8
4.4 Inspection and Quality Assurance	8
4.5 Co-operation with Others	9
4.6 Contact with the Authorities and the Owner	9
5. PROVISIONS PERTAINING TO THE EXECUTION OF THE WORK	9
5.1 Standards of Execution	9
5.2 Design	9
5.3 Compliance with the Applicable Law, Design Codes	9
5.4 Submission and Approval of Documents	9
5.5 Subcontracts	10
5.6 Tests and Rights to Information, Defects before Work Take Over	10
5.7 Packing, Delivery and Transportation to Site	10
5.8 Archiving of Work Related Documents	11
5.9 Permits and Visas	11
5.10 Supplier Reminder	11
5.11 Duty of Care	11
6. WARRANTY	11
6.1 Warranties	11
6.2 Defects Liability Period	12
6.3 Interruption of Operation, Extension of Defects Liability Period	12
6.4 Defects Liability Period for Repaired or Replaced Parts	12
6.5 Defects Liability Period for Spare Parts	12
6.6 Latent Defects	12
6.7 Not applicable	12
6.8 Duty to Report Defects	12
6.9 Subcontractor Warranties	12
6.10 Waiver of Mechanic Liens	12
7. PRICE BASIS	12
7.1 Price Basis	12
7.2 Additional Supplies and Services	13
7.3 Price Break-Down / Option for Spare Parts	13
7.4 Tax Reimbursements and Custom Duties	13
8. TERMS OF PAYMENT	13
8.1 Terms of Payment	13
8.2 Intentionally Omitted	14
8.3 Performance Bond, Security Instrument	14
8.4 Additional Provisions Governing Payments	14
9. WORK TAKE OVER AND ACCEPTANCE; RISK OF LOSS AND TRANSFER OF TITLE	14
9.1 Work Take Over	14
9.2 Use before Work Take Over	14
9.3 Work Acceptance	14
9.4 Delay in Achieving Milestones, Submission of Documentation, Substantial Completion and/or Work Take Over Attributable to Supplier	15
9.5 Delay in Substantial Completion and/or Work Take Over Caused by Purchaser	15
9.6 Risk of Loss	15
9.7 Transfer of Title	15

10. CHANGES IN THE WORK	15
10.1 Supplier's Changes	15
10.2 Purchaser's Changes	15
10.3 Remeasure is not a Change.....	15
11. SUPPLIER CLAIM	15
12. REMEDIES	16
12.1 Supplier's Performance Obligation.....	16
12.2 Remedies	16
12.3 Liquidated Damages	17
13. LIABILITIES AND INDEMNITIES	17
13.1 Third Party Claims	17
13.2 Tax Indemnity.....	17
13.3 Breach of Warranties.....	17
13.4 Limitation of Liability	17
13.5 Waiver of Liability for Indirect and Consequential Damages.....	17
13.6 Exclusions to Limitation of Liability.....	17
14. INSURANCE	18
14.1 Supplier Furnished Insurance	18
14.2 Additional Insurance	18
14.3 Insurance during Erection and Commissioning.....	18
14.4 Duties of the Supplier in Case of Damage or Loss	18
14.5 Supplier's Liability.....	18
14.6 Provisions of Policies; Renewals	18
15. FORCE MAJEURE	18
15.1 Excused by Force Majeure.....	18
15.2 Definition of Force Majeure	19
15.3 Information and Mitigation of Force Majeure.....	19
15.4 Termination for Force Majeure	19
16. ASSIGNMENT	19
17. CONFIDENTIALITY, EXCHANGE OF PROPRIETARY INFORMATION	19
18. SUSPENSION	20
18.1 Right to Suspend.....	20
18.2 Supplier's Obligation during Suspension	20
18.3 Supplier's Waiver of Right to Suspend for Dispute	20
19. TERMINATION FOR BREACH OR CONVENIENCE	20
19.1 Termination for Breach.....	20
19.2 Termination for Convenience	21
20. DISPUTES	21
20.1 Dispute Resolution Procedure.....	21
20.2 Mediation Rules and Venue	21
20.3 Adjudication Rules and Venue	22
20.4 Arbitration Rules and Venue	22
21. ENTIRE AGREEMENT, INDEPENDENT SUPPLIER	22
22. WAIVER	22
23. NOTICES	22
23.1 Language of Notices	22
23.2 Delivery of Notices	22
24. GOVERNING LAW AND CONTRACT LANGUAGE	22

List of Appendices

APPENDIX A	A1: Bank Guarantee (Specimen)	23
	A2: Acceptable Text of a Letter of Credit	24
APPENDIX B	B1: Partial Release and Waiver Specimen Form	25
	B2: Final Release and Waiver Specimen Form	26
APPENDIX C	Not-to-Exceed Termination and/or Cancellation Schedule (Cost Curve)	27
APPENDIX D	Certificate of Compliance	28
APPENDIX E	Special Guarantees and Remedies applicable thereto	if applicable, attached to the Purchase Order

1. SUBJECT MATTER OF CONTRACT AND PROJECT INFORMATION

The subject matter of the Contract concerns the design, engineering, procurement, manufacture, delivery, erection, commissioning, testing, guarantee and warranty of the Plant on a turnkey basis; such Plant to be incorporated into the W&D Center being built at the Site. The Plant must be compatible with other plant and equipment being supplied by the Purchaser for the W&D Center.

All contractual documents must be complied with including any Purchaser issued special terms and conditions setting forth certain project specific terms and conditions. The various contract documents are to be taken as mutually explanatory of one another. If there is an ambiguity or discrepancy in the documents, the Purchaser shall issue any necessary clarification or instruction to the Supplier and the priority of documents shall be as set forth in Purchase Order.

2. DEFINITIONS AND INTERPRETATIONS

2.1 Definitions

The following defined terms, when used in the Contract and/or in communications between the parties relating to the Contract, shall have the following meanings:

“Applicable Law” shall mean each applicable national, federal, state, provincial, county, municipal or local law, statute, legislation, including statutory instrument, regulation, ordinance, by-law or any rule, code, license, order, consent, permit, authorization or other approval having the force of law, and/or any treaty (including any supranational law such as a law of the European Union, or any law relating to international transports, etc.) and/or any judgement, decree, injunction, or order of any court or arbitral tribunal applicable at the location of the Site and/or any country where the Work, or part thereof, is being performed.

Further, Applicable Law shall include all laws, acts and amendments relating to fair labor standards, non-discrimination, equal opportunity, environmental protection and any other further act or decree, aiming at good, fair and ethical business conduct.

“Change Order” shall have the meaning given to it in Clause 10 (Changes in the Work) hereof.

“CIF”, **“CPT”** or similar C-terms shall mean, subject to the further provisions of the entire Contract, delivery of the Plant in accordance with terms and conditions contained in the Incoterms, provided however that the Purchaser may specify contract of carriage and named place of delivery. CIF, etc. shall include Supplier's provision for/of:

- (i) packing, marking and shipping in accordance with the Purchaser's shipping, packing and marking instructions including a detailed and complete bill of material/parts list as part of the packing list and pre-shipment inspection effected and approved by the Purchaser, and if applicable, by the relevant third party inspection company;
- (ii) Purchaser required documentation, in particular the authenticated certificate of origin (i.e. NAFTA Certificate or GSP Declaration or EUR1 Certificate, etc.); and
- (iii) packed Plant loaded, lashed and secured, at the Contractor's risk and cost onto Forwarder's transport.

“Contract” shall mean the Purchase Order and all documents described therein as belonging to the Contract and shall include Change Orders and amendments thereto.

“Contract Price” shall mean the total sum set forth in the Purchase Order to be paid by the Purchaser to the Supplier for the due and timely execution of the Work.

“Defect” shall mean any defect, deficiency, failure, lack of conformity, deviation, omission, shortcoming or error of any type or kind in any part of the Work and/or the Plant including:

- (i) in design, materials, manufacture or workmanship of the Plant;

- (ii) in any documentation, drawings, manuals, instructions; recommendations, advisory notes and the like supplied by the Supplier;
- (iii) in any aspect of the training provided by the Supplier;
- (iv) an increase in costs of operation or maintenance of the Plant, unless solely attributable to the improper manner in which the Plant is operated and/or maintained by the Purchaser and/or the Owner;
- (v) a reduction of availability or reliability of the Plant, unless solely attributable to the improper manner in which the Plant is operated and/or maintained by the Purchaser and/or the Owner;
- (vi) a violation of Applicable Law or Design Code;
- (vii) a health and/or safety hazard;
- (viii) any authority failing to issue, withdrawing or threatening to withdraw any license, permit or consent to build, operate or maintain the Plant; and/or
- (ix) an infringement, or alleged infringement of any proprietary or other right of a third party.

“Defects Liability Period” shall mean the period set forth in Clause 6.2 (Defects Liability Period), which shall commence at the date of Work Take Over, as such period might be extended pursuant to Clause 6.3 (Interruption of Operation) and Clause 6.4 (Defects Liability Period for Repaired or Replaced Parts).

“Design Codes” shall mean any and all codes and standards applicable to the Work (including those required to be adhered to in order to obtain any necessary license and/or certificate), such as, but not limited to, those listed in the Technical Specifications.

“DDU” or **“DDP”** shall, subject to the further provisions of the entire Contract, refer to those trade terms as the same are defined in the Incoterms.

If the Plant is to be delivered DDP to the destination country, the Supplier agrees that the Purchaser or the Owner shall not be a party to the importation of the Plant or any part thereof, that the transaction(s) represented by the Purchase Order will be consummated after importation and that the Supplier shall neither cause nor permit the Purchaser's or the Owner's name to be shown as "importer of record" on any customs declaration. The Supplier also confirms that it has non-resident importation rights, if necessary, into the destination country with the knowledge of the necessary import laws.

“Documentation” shall mean all specifications, data sheets, plans, drawings, manuals and other information and documents required in connection with the Work, including without limitation all such information and documentation set forth and/or listed in the Contract.

“Effective Date” shall mean the earlier of the date when the Purchase Order becomes effective, or the Notice to Proceed date.

“Execution Specifications” shall mean the Supplier's provided and by Purchaser approved document describing the Plant including all calculations, drawings and other information incorporated by reference thereto.

“Final Acceptance” shall mean the date upon which the Owner issues a Final Acceptance Certificate.

“Final Acceptance Certificate” or **“FAC”** shall mean the certificate to be issued by the Owner, stating it has finally accepted the W&D Center.

“Force Majeure” shall have the meaning given to it in Clause 15.2 (Definition of Force Majeure).

“Good Industry Practice” shall mean the exercise of the degree of skill, care, diligence and prudence which would reasonably and ordinarily be expected from a skilled, experienced and competent supplier carrying out the Work or any part thereof under the same or similar circumstances, having regard, inter alia, to the terms and conditions pertaining to design, engineering, procurement, manufacture, supply, erection, commissioning, testing, guarantee, warranty, safety, durability, economy, expediency, reliability, O&M of the Work and/or Plant, as set forth in the Contract.

“**GT&C**” shall mean these General Terms & Conditions (GT&C) for the Procurement of Plant on a Turnkey Basis.

“**Incoterms**” shall mean the terms of trade set forth in Incoterms 2000, issued by the ICC International Chamber of Commerce, Paris and valid as of January 1, 2000, provided however, to the extent that such Incoterms are expressly modified herein, such modified terms shall apply.

“**Latent Defect**” shall mean a Defect, which could not have been discovered by an examination made with ordinary care prior to the expiration of the Defects Liability Period or any extension thereto pursuant to Clause 6.3 (Interruption of Operation, Extension of Defects Liability Period).

“**Latent Defects Liability Period**” shall mean the period as set forth in Clause 6.6 (Latent Defects).

“**Liquidated Damages**” shall have the meaning given to it in Clause 12.3 (Liquidated Damages).

“**Milestone**” or “**MS**” shall mean the completion of a specified activity, the completion of a certain percentage and/or part of the Work and/or the occurrence of an event identified as such in the time schedule or in any other document of the Contract, as the case may be. Where the context so requires, Milestone shall also refer to those dates when the Purchaser may claim Liquidated Damages from the Supplier for Supplier’s failure to complete a specified activity, and/or part of the Work and/or to ensure the occurrence of an event by a stipulated date.

“**NTP**” or “**Notice to Proceed**” shall mean a written notice issued by the Purchaser requiring the Supplier to commence the Work.

“**O&M**” means operation and maintenance of the Plant.

“**Owner**” means the company or consortium purchasing the W&D Center pursuant to the terms of the Prime Contract and shall include the Owner’s representatives, legal successors and assigns, Owner’s engineer and where tests must be conducted or approvals or consents must be sought and obtained in relation to the W&D Center and/or the Work, shall include any authority or other party participating in the test, approval and/or consent process.

“**Plant**” shall mean the equipment, structures and enclosures, machinery, systems, apparatus, instruments, materials, articles, computer hardware and software and items of all kinds for permanent incorporation into the W&D Center and spare parts and Special Tools, manuals and other documentation, to be provided by the Supplier under the Contract.

“**Prime Contract**” shall mean the contract between the Purchaser and Owner for the supply of the W&D Center or alternatively between the Purchaser, as subcontractor, and a party that has entered into an Engineering, Procurement and Construction Contract with the Owner of the W&D Center.

“**Provisional Acceptance**” shall mean the acceptance of the W&D Center by the Owner as confirmed by the issue of a Provisional Acceptance Certificate.

“**Provisional Acceptance Certificate**” or “**PAC**” shall mean the certificate to be issued by the Owner, certifying that it has provisionally accepted the W&D Center.

“**PRPC**” shall mean the Projects Related Purchasing Conditions and named in the Contract or any Contract document to the same effect which outlines the project and sets forth the project specific requirements (as the case may be, in the Purchase Order).

“**Punch List**” or “**Open Point List**” or “**Snag List**” shall mean a list of items of incomplete or defective Work, which are minor in nature.

“**Punch List Items**” or “**Open Point**” or “**Snag Item**” shall mean the items of minor Work or remedial work listed in the Punch List.

“**Purchase Order**” shall mean the document of that name issued by the Purchaser, by which the Purchaser awards the Work to the Supplier thereby causing the Contract to come into force or alternatively, any other instrument of contract of the same effect.

“**Purchaser**” shall mean the company designated as such on the cover page of the Purchase Order, including the Purchaser’s representatives, successors and permitted assigns.

“**Site**” shall mean the place or places provided by the Owner where the W&D Center is to be erected.

“**Special Tools**” shall mean those tools which are not freely available in a large tool shop and shall include tools manufactured by the Supplier or its supplier specifically for the purpose of performing erection, maintenance and repair work on the Plant and any hard- and software tools necessary to optimize, modify, trouble shoot and repair the Plant controls.

“**Subcontract**” shall mean a contract entered into between the Supplier and a Subcontractor for part of the Work.

“**Subcontractor**” shall mean any person (including a legal person or partnership) having a direct contract with the Supplier for part of the Work set forth in the Contract, and legal successors in title of such persons, but shall not include any assignee of the Subcontractor (unless the prior, written consent of Purchaser to such assignment has been obtained).

“**Substantial Completion**” shall mean that the Plant has been supplied, installed, inspected, dimensionally verified, commissioned on a stand alone basis, and is ready for safe and reliable use or service as intended and/or, if applicable, ready for final commissioning and performance testing in conjunction with other parts of the W&D Center in accordance with the terms of the Contract in order to achieving Provisional Acceptance.

“**Supplier**” shall mean the person (including a legal person, partnership or consortium) supplying equipment and services to the Purchaser pursuant to the Contract. Supplier shall be synonymous with seller, vendor or contractor.

“**Supplier’s Equipment**” shall mean all machinery, tools, apparatus, equipment, utilities and facilities and other things of whatever nature required for the execution and completion of the Work and the remedying of any defects, but does not include Plant, materials or other things intended, on a permanent basis, to form or forming part of the Plant.

“**Supplier’s Representative**” shall have the meaning given to it in Clause 4.1 (Supplier’s Staff and Representatives).

“**Technical Specifications**” shall mean the requirement specification attached to and available at the Effective Date and all of the documentation (including later the Execution Specification and other documentation provided by the Supplier, if accepted expressly in writing by the Purchaser) relating to the Work including such items as (i) the performance specification of the Plant, (ii) the details of how the Work shall be executed, (iii) the master time schedule for the execution of the Work and (iv) the testing procedures and performance guarantee measuring and evaluation criteria.

“**Test on Completion**” shall mean the tests to be conducted prior to Final Acceptance, including (i) the performance tests to verify whether the Plant and W&D Center related performance guarantees have been met and (ii) the tests to verify compliance with Applicable Law and the Design Codes.

“**Warehouse & Distribution Center**” or “**W&D Center**” shall mean the facility or plant being designed and built under the Prime Contract.

“**Warranty**” or “**Warranties**” shall refer to those warranties set forth in Clause 6.1 (Warranties) hereof and/or elsewhere in the Contract.

“**Warranty Periods**” shall mean the period during which any Warranty for Defects or Latent Defects is applicable.

“**Work**” shall mean the Plant, all other material, tools, equipment and other things to be supplied, and all other work and services set forth in or to be reasonably inferred from the Contract. “Work” shall include any changes to the Work made pursuant to Clause 10 (Changes in the Work).

“**Work Acceptance**” shall have the meaning given to in Clause 9.3 (Work Acceptance).

“Work Take Over” shall have the meaning given to it in Clause 9.1 (Work Take Over).

“Work Take Over Certificate” shall mean the certificate of that name issued by the Purchaser, certifying that it has accepted the Work.

2.2 Interpretation

- (i) Words importing persons or parties shall include firms, corporations and any organization having legal capacity.
- (ii) Words importing the singular also include the plural and vice versa where the context requires. Words importing one gender also include other genders.
- (iii) All periods are relating to calendar periods.
- (iv) Wherever provision is made for the giving or issue of any notice, instruction, consent, approval, certificate or determination by any person, unless otherwise specified, such communication shall be in writing and shall not be unreasonably withheld or delayed. Wherever provision is made for a communication to be “written” or “in writing”, this shall include any hand-written, typewritten or printed communication and/or any agreed systems of electronic transmission.
- (v) References to the word “include” or “including” are to be construed without limitation.
- (vi) The table of contents and the headings to each Clause, Section Appendix, Schedule and the like have been inserted for convenience of reference only and shall not in any manner affect the construction, meaning or effect of anything herein contained, nor govern the rights, obligations or liabilities of the parties hereto.

2.3 General Terms and Conditions of the Supplier

In no event shall Supplier’s general terms and conditions or other terms of whatever kind or description apply (whether the same are in addition to or in lieu of any provision set forth herein or elsewhere in the Contract), unless the Purchaser shall have expressly agreed thereto in writing, by initialing each such Supplier’s general terms and conditions or other terms. For the avoidance of doubt, such express agreement shall not be presumed merely from the fact that the Purchaser has failed to comment on the same at the time that such terms and conditions are received. In particular, the Supplier hereby acknowledges that, should the Supplier, at the time it signs the Purchase Order, appendage or make reference to any additional terms and conditions (should said Purchase Order have previously been signed by the Purchaser) such additional terms and conditions shall only apply to the limited extent that the Purchaser within seven (7) days of receipt of the same expressly accepts the same in writing and then only to the extent of such acceptance.

2.4 Severability, Amendments and Changes to the Contract

If at any time any provision of the Contract is, or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, this shall not affect or impair the legality, validity or enforceability of any other provision of the Contract. Should a provision prove to be illegal, invalid or unenforceable, the parties shall replace the same with another provision that, from a legal, technical and economic perspective, is as approximate as possible to the illegal, invalid or unenforceable provision.

Matters that are not expressly settled in the Contract are to be settled in conformity with the general principles on which the Contract is based or, in absence of such principles, in conformity with the governing law of the Contract.

No amendment or modification to the Contract shall be valid, unless evidenced in writing and signed by the duly authorized representatives of each party, provided however, a Change Order or any Purchaser’s request to alter, amend, add or omit any part of the Work shall be deemed binding on the Supplier if the Supplier fails to comment on the same, in writing, within seven (7) days of the date of receipt of such Change Order or Purchaser’s request to alter, amend, add or omit any part of the Work.

3. WORK

3.1 Work

The Supplier shall perform the Work in its entirety in a proper manner, at the times set forth in the Contract. Save where the Contract expressly provides otherwise, the cost of performing the Work shall be borne exclusively by the Supplier. The Work is described in the Technical Specifications, herein, and in other parts of the Contract. The Work shall be wholly in accordance with the Contract, of satisfactory quality and fit for the purposes for which it is intended. The Work shall include any work, supply and/or service, which is necessary to satisfy Contract or arises from any obligation of the Supplier set forth in the Contract. Further, the Work shall include any and all works, supplies and/or services which, while not being mentioned in the Contract, are to be reasonably inferred therefrom, including anything necessary for the stability or completion or the safe, reliable efficient operation of the Work and/or Plant in accordance with Applicable Law and the Design Codes.

3.2 Prevailing Circumstances

The Supplier represents and warrants that it has acquainted itself with all facts, data, documents, circumstances, requirements, impediments (if any) and considerations relevant to the Work and the Supplier’s performance of its obligations as set forth in the Contract and has fixed its prices, agreed the time schedule and agreed the terms of the Contract accordingly.

In particular, the Supplier represents and warrants that:

- (i) it has carefully considered the manner of the execution of the Work, it has acquainted itself with all permitting and other legal requirements relevant to the Work and Plant, it has familiarized itself with the condition of and all circumstances affecting the Site (including the location and size of that portion of the Site upon which the Work will be performed, the availability, suitability and location of any utilities or facilities at, or near the Site, and the location, suitability, availability and size of any laydown and/or storage area), the means of transport available, the availability and cost of labor and with prevailing labor practices and the general labor situation as it might pertain to the Work or part thereof; and
- (ii) it has or will have, when needed, all technical, project management, etc. and material, manufacturing, equipment and financial means necessary for the proper, timely performance of the Contract, including all personnel and labor needed to perform the Work including the Warranty obligations.

3.3 Full Responsibility for the Work

The Supplier shall be responsible for its own interpretation of any documentation and information received and gathered by it. In particular, no document or information obtained by the Supplier from the Purchaser in connection with the Contract shall in any way release the Supplier from its obligation to review any such document and information and independently verify the same and furthermore to obtain any additional information and data from the Purchaser or from other sources, where appropriate, in order to ensure prompt and proper execution of the Work.

Any participation, by the Purchaser in planning or designing of the Plant or any parts thereof, in selecting or processing of any document, information, data, drawing, material, equipment, plant and/or software, in selecting any Subcontractor, in any review or granting an approval, will not release the Supplier from its obligation to perform the Work and supply the Plant in accordance with the terms of the Contract.

3.4 Origin of Plant

The Supplier shall manufacture, procure and deliver the Work and/or Plant from the agreed places of origin to satisfy any applicable treaty or financing obligation which the Purchaser may have to adhere to and to avoid any export or import control violation. The Supplier shall, at the time of delivery, declare the origin of the Plant and provide the

certificate of origin before dispatching any part of the Work from the factory of the Supplier.

3.5 Commencement, Progress and Completion

The Supplier shall commence the Work on the Effective Date. Thereafter, it shall proceed diligently and in a professional manner with the Work in accordance with the approved schedule. The Supplier shall attain each of the Milestones by the respective Milestone date.

3.6 Erection, Commissioning and Training

a) Erection and Commissioning

The Work shall, except to the extent expressly excluded in the Contract, include all pertinent related Work at Site required for the civil works, storage, erection, commissioning, testing and trial operation of the Plant. The Supplier shall co-ordinate the performance of any such services with the Purchaser's Site management, taking into account the conditions prevailing on the Site.

The Supplier shall supply all Supplier's Equipment and Special Tools of whatever kind, commissioning spares and consumables required for these services as needed to achieve the contractual delivery dates, irrespective of whether parts, consumables and Special Tools are lost, stolen, damaged or otherwise found to be defective during construction, erection, commissioning and/or testing. Special Tools required for O&M shall remain at Site and be transferred into the property of the Purchaser.

For the avoidance of doubt, Special Tools shall include all items required to work on the instrumentation and the control equipment and, if computerized programmable control or so called smart transmitters are provided, all software and source codes to install, set-up, configure and trouble shoot the controls and transmitters provided with the Plant. The Supplier shall provide, as part of the Contract Price, all licenses, including software licenses, required to allow the Owner to operate, maintain and repair the Plant in the manner intended, such licenses to be assignable, royalty free and with an unrestricted term. All spare parts, Special Tools and consumables shall become the property of the Purchaser.

The Supplier shall appropriately and continually supervise its personnel during the performance of the Work, both at its place of business and at Site.

Notwithstanding the foregoing, at Purchaser's discretion, the related Work at Site required such as civil works, storage, erection, commissioning, testing and trial operation of the Plant may be performed and executed by staff of the Purchaser, if required under the supervision of the Supplier. The Supplier shall provide the erection, installation and commissioning procedures and the related method statements, where required by the Applicable Law the CDM documentation in accordance with applicable Construction (Design and Management) Regulations / Health and Safety at Work regulations. If special devices or appliances are required for erection and/or commissioning, the Supplier shall provide these items as part of the Supplier's Equipment. The Supplier shall co-ordinate the performance of any such services with the Purchaser, taking into account the conditions prevailing on Site. Any such work to be performed and executed by staff of the Purchaser shall be subject to a Change Order.

b) O&M Training

The related Work at Site shall include the training of the W&D Center's O&M personnel. The standard of training shall be such that the O&M personnel shall be able to operate and maintain the Plant without further assistance from the Supplier. The training shall include theoretical and on the job training and such training shall be sufficiently advanced at the date of commencement of the commissioning so as to allow the O&M personnel to participate in the commissioning of the Plant and the Supplier shall supervise and be responsible for such personnel.

c) Completion of related Work at Site

It is understood that the related Work at Site shall include the performance of the services set forth in Section 3.6 a), completion of the training set forth in Section 3.6 b), supply of all documentation including the O&M Manuals in the language at Site and anything else which must be supplied hereunder, removal from Site of all Supplier's Equipment, debris and/or other items not forming part of the Plant and/or Work and finally cleaning up, leaving and vacating of the Site in a safe and orderly condition.

3.7 Provision of Spare Parts, Special Tools and Consumables and After Sales Services

a) Spare Parts, Consumables and Special Tools

The Supplier shall:

- (i) select, propose, design - and in a timely manner deliver, where the Purchaser places an specific order therefor - spare parts, consumables and Special Tools of the proper quality and quantity to achieve the availability and reliability set forth in the Contract. In absence of any provision governing availability and reliability, the mean time for performance of maintenance work, including replacement of wear and spare parts shall not be longer than twenty-four hours (24 h); and
- (ii) in addition to any spare parts, consumables and Special Tools, which the Purchaser might agree to buy pursuant to the terms of the Purchase Order, provide within three (3) months after the date of the Purchase Order an updated detailed list of recommended spare parts, consumables and Special Tools sufficient to allow for five (5) years of Plant operation under the specified operating conditions. Such list shall include itemized firm and fixed prices, valid for three (3) years from Work Take Over, and delivery periods. The list, issued on the Purchaser's form, shall be comprehensive in every respect and in particular shall cover the main equipment, machinery, apparatus, initiators, control and supervision instrumentation, electronics, motor controls, any electrical or other installations and the computer system. Once finalized, said list shall be incorporated into the Contract.

The Purchaser may at any time before the third anniversary of the date Work Take Over purchase some or all of the listed items at the price and subject to the terms of the Contract. The Supplier shall deliver such parts within the period set for in its aforementioned offer. Furthermore, and without detracting from the foregoing, for a period of not less than fifteen (15) years as from the date of Work Acceptance, the Supplier hereby undertakes that it shall make available or cause to be made available, as and when required, on reasonable commercial conditions, all spare parts, consumables and Special Tools required for the purpose of maintaining or repairing the Plant.

For the avoidance of doubt, spare parts and tools shall include any and all hardware and software relating to computers, whether such items are required to keep the Plant operational or to diagnose and trouble shoot or up-grade and refurbish the Plant.

b) Subcontractors

The Supplier will ensure, that Subcontractors comply, mutatis mutandis with the terms of this Clause.

c) Procurement from other Sources

Nothing in this Clause shall compel the Purchaser to buy any spare parts, consumables and/or Special Tools from the Supplier or its Subcontractors.

d) Provision of After Sales Services

The Supplier shall have an adequate "After Sales Service Organization", which shall be dedicated to assisting in maintaining a high availability and reliability of the Plant and/or the W&D Center by specialized staff, in particular trouble shooting experts, and spare parts, tools, consumable materials, etc.

In absence of any specific provisions set out in the Contract

concerning said organization, the Supplier represents and warrants that its "After Sales Service Organization" shall be available between the hours of 8 a.m. and 5 p.m. from Monday to Friday (other than on bank holidays) at the service center location nominated by the Supplier. The Supplier shall designate a telephone and facsimile number, which might be contacted.

The Supplier further warrants that within twenty-four (24) hours of a request by the Purchaser or the Owner, it shall have an appropriate expert and/ or specialist ready to travel to the Site or other designated destination.

The Supplier shall immediately upon receipt of the Purchaser's request send to Site an appropriate number of expert(s) and/or specialist(s) to support the operation, trouble shooting and repair. The expert(s) and/or specialist(s) shall be charged at the rate set out in the Purchase Order save where the expert and/or specialist is required to remedy Defects in the Work and/or Plant, in which case such expert and/or specialist shall be supplied free of charge. The Supplier expressly waives any requirement that a separate Change Order or an additional purchase order be issued by the Purchaser, prior to the dispatch of any expert and/or specialist to the Site, provided however, the Purchaser shall issue a separate Change Order or an additional purchase order in a timely manner in those cases where the Supplier is entitled to compensation for such expert and/or specialist. Any dispute concerning the cost of such support shall be settled amicably or in accordance with Clause 20 (Disputes).

e) Long Term Services Contract

The Purchaser may purchase from the Supplier, at its discretion latest four (4) months before Work Take Over, a service package for operation, maintenance and repair, as the case may be. In order to enable the Purchaser to evaluate and to decide in relation to such option, the Supplier shall indicate the terms and conditions including the prices for such services and period as requested by the Purchaser.

4. STAFF AND PROJECT ORGANISATION

4.1 Supplier's Staff and Representatives

The Supplier shall use properly qualified, experienced and otherwise suitable personnel to perform the Work. Whenever required by Applicable Law, the Supplier agrees to employ, either directly or through Subcontractors, licensed personnel to perform engineering, design, architectural or other services in relation to the Work.

Unless the Supplier's Representatives (head-office representative, Site representative, manufacturing representative and the after sales service representative) are named in the Contract, the Supplier shall, within fourteen (14) days of the Effective Date, submit to the Purchaser for consent the name and particulars of the persons at the head-office, places of manufacturing, at Site and at the after sales service center the Supplier proposes to appoint. The Supplier shall not revoke the appointment of the Supplier's Representatives without the prior consent of the Purchaser.

The Supplier's Representatives shall have full authority to represent, act on behalf of, and bind the Supplier in relation to all matters set forth in the Contract. All notices, information and other communications given by the Supplier to the Purchaser shall be submitted by the Supplier's Representatives and the Purchaser may give notices, directions, instructions, information and other communications to the Supplier by giving the same to the Supplier's Representatives.

4.2 Scheduling

For the purpose of implementing project control, the Supplier shall, within ten (10) days after the Effective Date submit to the Purchaser, for the Purchaser's review and approval, a detailed time schedule for the performance of the Work, clearly showing the critical path of the Work. Such time schedule shall show the Milestones as well as all essential activities, as applicable during planning, design and

engineering, procurement, manufacturing, inspection, testing, preparation for dispatch, transport and erection, commissioning and final testing activities and shall demonstrate that all Milestones will be achieved on time and that Work Take Over shall occur on the agreed date. In general, no activity times in such time schedule shall be more than three (3) weeks in length, longer duration activities shall be broken down into their component activities of shorter duration to satisfy this requirement.

If, at any time, the Supplier's actual progress falls behind the Original Time Schedule or it becomes apparent that it will fall behind the Original Time Schedule, the Supplier shall promptly submit to the Purchaser a revised time schedule taking into account the prevailing circumstances. The Supplier shall at the same time notify the Purchaser of the steps being taken to expedite progress, so as to achieve completion of the Work on time. Irrespective of the cause of delay, the Supplier shall do its utmost to make good any delay to the agreed time schedule. Measures for expediting progress shall include, without limitation, the use of additional manpower and material, shift work, and working on weekends and on public holidays. In the event of any license or permit by governmental authorities being required for such measures, the Supplier shall obtain such license or permit. The costs incurred in relation to such measures shall be borne by the Supplier, unless the Purchaser has caused such delay.

If any change in the time schedule is considered necessary by the Purchaser, regardless of who is responsible for such change, the Purchaser shall be entitled to adjust all contractually relevant dates, such as dates for payments, Liquidated Damages and commencement of the Warranty Periods. Such adjustments shall be governed by Clause 10 (Changes in the Work), or Clause 15 (Force Majeure).

4.3 Monitoring

The Purchaser and/or the Owner shall be afforded unfettered access to the Work at Site and reasonable access to the Supplier's and Subcontractors' factories and/or other facilities, as the case may be. If the circumstances warrant it, the Purchaser and/or Owner may maintain a continuous presence at such factories and/or facilities to observe performance of the Work, including any inspections and tests, provided however, such monitoring shall not interfere with the Work and the Purchaser and/or Owner's representatives shall comply with all reasonable safety and factory security regulations communicated by the Supplier or its Subcontractors.

4.4 Inspection and Quality Assurance

- a) The Supplier shall implement an appropriate and recognized quality assurance program no later than the date of commencement of the Work and shall satisfy the Purchaser by means of appropriate documentation, processes, inspections, tests and other quality management measures that the Work and any part thereof conforms to the requirements of the Contract, the Design Codes and the Applicable Law.
- b) All Plant furnished and Work performed shall be properly inspected by Supplier at its expense, and shall at all times be subject to quality surveillance and quality audit by Purchaser, or its authorized representatives who, upon reasonable notice, shall be afforded full and free access to the shops, factories or other places of business of Supplier and its lower-tier suppliers and Subcontractors for such quality surveillance or audit. The Supplier and its Subcontractors shall make available all necessary facilities for the performance of the monitoring activities by the Purchaser's and/or Owner's representatives.

4.5 Co-operation with Others

The Supplier acknowledges that it shall, at no time, have exclusive possession of the Site or any part thereof. At all times when at Site, the Supplier shall fully co-operate with other contractors, suppliers, parties and persons engaged in work (including the Purchaser if it is executing work at Site), such co-operation to include scheduling Work

at Site so as to avoid conflicts with other contractors, suppliers, parties and/or persons and work being performed or to be performed by such contractors, suppliers, parties and persons. In dealing with any such contractors, suppliers, parties and/or persons, the Supplier shall at all times safeguard the interests of the Purchaser.

4.6 Contact with the Authorities and the Owner

Any correspondence or negotiations by the Supplier with a governmental authority, the Owner, or their agents shall only be carried out after consultation with, and approval by the Purchaser.

5. PROVISIONS PERTAINING TO THE EXECUTION OF THE WORK

5.1 Standards of Execution

The Supplier shall design, engineer, manufacture, supply, erect, install, commission and test the Plant and each part thereof and carry out the Work in accordance with the requirements of the Contract:

- (i) with all the skill and care to be expected of an appropriately qualified and experienced supplier with experience in carrying out works of a similar type, nature and complexity;
- (ii) using appropriate up-to-date designs, specifications and workmanship in accordance with methods, techniques, practices, codes and standards comparable to those utilized or adhered to by other internationally experienced suppliers at the time of performance of the Work; and
- (iii) with all the resources as are required to perform the Work in a proper and timely manner;

so that the Plant and the Work comply or will comply at the date of Work Take Over with the Contract.

5.2 Design

Unless otherwise specified, the Supplier shall design the Plant to have a design life of not less than fifteen (15) years.

Notwithstanding the foregoing, the design life for the computers and control equipment and the incorporated software and diagnostics (hardware and software) shall be twelve (12) years from the Effective Date and, if such hardware and/or software needs to be replaced after expiry of the Warranty Period, but before the expiration of the twelve (12) year period, the Supplier shall grant an equitable discount on the replacement hardware and software.

The design shall take full account of the requirement that the Plant forms a part of the W&D Center and shall allow for remote and automatic start-up, even after a power failure or other type of reasonably foreseeable occurrence having regard to the type and use of the Plant.

5.3 Compliance with the Applicable Law, Design Codes

a) Compliance

The Plant and the Work shall comply with Applicable Law, where the W&D Center is located and with relevant Design Codes.

When performing a part of the Work in a country, other than where the Site is located, the Supplier shall manufacture and produce all parts of the Work in accordance with and otherwise comply with Applicable Law at these locations.

Further, the Supplier and its Subcontractors shall transport the Plant or any part thereof accompanied by completed Material Safety Data Sheets and mandated labeling information. They shall comply with regulations governing the packaging, marking, shipping and documentation of hazardous material including those specified pursuant to 49 CFR, IMO and IATA.

If any change of Applicable Law or Design Code occurs after the Effective Date, such that the Plant must be modified, the Supplier shall notify the Purchaser of the need for such modification and if the Purchaser requests that the new Applicable Law or Design Code be

complied with, the Purchaser shall grant to the Supplier an appropriate Change Order in accordance with the terms of Clause 10 (Changes in the Work), hereof.

b) Unclear Laws and Codes

In the event that any Applicable Law or Design Code is unclear, incomplete or contradictory, the Supplier shall immediately give written notice thereof to the Purchaser. After due consideration, the Purchaser will decide how such ambiguity, lacuna or contradiction is to be dealt with and inform the Supplier accordingly, provided however, in such a circumstance the Supplier shall not be entitled to a Change Order.

c) Licenses

The Supplier shall obtain, at its own risk and cost, all licenses, authorizations, formalities, registrations, permits and certificates required for the Work, including any licenses needed to:

- (i) export and import or for transit of the Plant or any part thereof through any country or State on its way to the Site; and
- (ii) use software, patents, trade marks and other intellectual property related thereto.

Such licenses, permits or certificates shall also include any authorization to manufacture, produce, certify and execute the related Work at Site, but shall not include any permit or licenses required to erect, install and operate the Plant, which shall be obtained by the Purchaser or the Owner.

d) Certification Tests

The Supplier shall bear costs related to the testing and verification of the Plant. Such costs shall include, but not be limited to, the costs of preliminary tests and tests on material as well as acceptance procedures and shall further include the cost of preparing, reviewing and submitting any documentation necessary for such tests. The Supplier shall also pay the cost of the Special Tools and instruments required to certify the Plant, any sums charged by an agency or institute participating in such tests or acceptance procedures, the cost of any production or other licenses and/or quality assurance programs, and the cost of its personnel participating in such tests.

If the tests have to be repeated because the Plant, or any part thereof does not pass a test due to circumstances for which the Purchaser and/or the Owner is not responsible, the Supplier shall bear all costs associated with the repetition of said tests.

5.4 Submission and Approval of Documents

a) Approval of Documents

The Supplier shall submit to the Purchaser for review and approval (where necessary) any documents, drawings, calculations, technical data, logic diagrams, bills of loading, certificates of origin, progress reports, quality confirmation certificates and other documents of a similar sort which the Purchaser requires to be submitted for such review and approval, as the case may be. All such documents shall, at the time of initial submission, be sufficiently detailed to permit proper review and shall be submitted on, or before the dates/times set forth in the Contract.

All drawings shall show the definite location and dimensions of all connecting parts of the Plant to adjoining equipment and structures. The drawings shall be completed and submitted to the Purchaser in a timely manner, allowing sufficient time for review and any alterations which might be necessary, and the provision by the Purchaser of any preliminary work, such as openings for cables and the like, which must be undertaken prior to the commencement of the Work at the Site.

The Supplier shall provide any and all details of its process instrumentation and electrical and/or electronic equipment to allow the Purchaser to design, develop software and/or build and test any electrical supply and the instrumentation and control equipment interfacing with the Plant.

Any approval of the Purchaser or waiver thereof shall not relieve the

Supplier from its responsibility to ensure that the Plant conforms in all respects with the requirements of the Contract, nor shall such approval or waiver thereof prejudice any claim, right or privilege which the Purchaser may have under the Contract and/or in relation to any Defect.

The Supplier shall review drawings made available by the Purchaser in order to ensure that all details are adequate for the purposes of the Work and to avoid any delay or that the design otherwise may affect the performance of the Work. Any potential problems shall be immediately notified to the Purchaser.

b) Provision of Documents to the Work

The Supplier shall provide to the Purchaser any and all drawings, calculations, general plans, certificates, quality assurance records, etc. and the spare parts, Special Tools and consumable lists and other documents pertinent to the Work in accordance with the Contract.

The documentation shall be prepared and submitted in digital form in the software format specified by the Purchaser and in paper, in superior quality to allow easy reproduction. Where required such documents shall contain the Purchaser's specified drawing head. The documents shall be in such language specified by the Purchaser and measurements in the International System of Units (SI) and become the property of the Purchaser.

The Supplier shall request the ultimate format in which the O&M Manuals shall be provided and unless otherwise stated in the Contract, the Supplier shall provide one (1) set of the final issue of the O&M Manuals in both digital and paper form in the language at Site, at latest four (4) weeks prior to the Substantial Completion date. This should be preceded by a preliminary issue, two (2) copies by arrangement with the equipment engineer, for review and comment.

5.5 Subcontracts

The Supplier shall not subcontract the whole or any significant part of the Work. To the extent that the Supplier is unclear as to whether work to be undertaken by a Subcontractor falls within the ambit of this Clause, it shall seek and obtain the Purchaser's opinion and act in accordance with said opinion.

The Supplier shall be liable at all times for the acts or omissions, performance or failure to perform of its Subcontractors of any tier.

5.6 Tests and Rights to Information, Defects before Work Take Over

The Supplier shall notify the Purchaser in writing and in due time (having full regard to any requirement that the Owner or others might be entitled to participate in any such testing) of the date and place of any and all tests of conformity, compliance, acceptance and/or performance to be performed in relation to the Plant or any parts thereof, and shall for such purpose submit to the Purchaser any documents relating to such tests.

Any approval of a test by the Purchaser, inspection or waiver thereof shall not relieve the Supplier from its responsibility to ensure that the Plant conforms in all respects with the requirements of the Contract, nor shall such approval, test, inspection or waiver thereof prejudice any claim, right or privilege which the Purchaser may have in relation to any Defect.

The Purchaser may instruct the Supplier to promptly remedy a Defect (irrespective of whether the Purchaser has previously accepted the same through oversight or otherwise) in the Plant or part thereof and/or non-conforming Work found during tests and shall have no obligation to pay for such Plant or the Work, until such Defect in and/or non-conforming Work is remedied. Alternatively, if the project so requires, the Purchaser may remedy or have remedied such Defect and charge the cost of so doing to the Supplier.

5.7 Packing, Delivery and Transportation to Site

Irrespective of whether the transportation is provided by the Supplier

or the Purchaser, the Supplier shall adhere to the shipping, packing and marking, and the material handling instructions provided by the Purchaser. The Supplier shall promptly and correctly provide all information, documents, quality records, confirmations, declarations and certificates of origin, and the like before transportation of the Plant or part thereof to the Site.

Where the Purchaser has not undertaken in writing to organize the transportation of the Plant to the Site, the Supplier shall be under an obligation to organize and pay for such transport to Site. The Supplier shall only enter into contracts of carriage with reliable, solvent transport undertakings. The contract of carriage shall provide that the Plant will be transported using the most direct, secure route. If, for any reason, there is a risk that the Plant will arrive late as compared to the dates fixed by the Contract, the Supplier shall promptly notify the Purchaser accordingly and recommend any means of accelerating the transportation, including transport by air. In the event that the Purchaser has caused the delay, it shall bear the cost of accelerated transportation if it orders the Supplier to transport the Plant by means of accelerated transport and, in all other cases, the Supplier shall bear the cost of accelerated transportation.

The Supplier shall not transport the Plant (or part thereof) or any Supplier's Equipment to the Site without having first obtained a written authorization for such delivery from the Purchaser. As a condition precedent to obtaining the written authorization, the Supplier shall be under a duty to demonstrate that the Work, performed at the Supplier's and/or its Subcontractors' facilities, accords with the requirements of the Contract, is without Defect and has been completed to the extent possible. Notwithstanding the foregoing, should it become apparent, upon delivery of the Work at Site, that the Work was defective when it left the Supplier's facility, the Supplier shall be deemed to have met the delivery Milestone as from the date when such Defects have been remedied.

At least twenty-eight (28) days or such other longer period fixed in the Purchase Order, the Supplier shall submit to the Purchaser the pre-notice advising the shipping details, such as, but not limited to the number of crates, the size, volumes and weights and the certificate of origin. At least seven (7) days before shipment, the Supplier shall advise the date when the Purchaser may attend the pre-shipment inspection. One day before shipment, the Supplier shall submit to the Purchaser the packing list in the Purchaser's format and all documents required for the transport of the Plant to the Site.

5.8 Archiving of Work Related Documents

The Supplier shall, in accordance with the Contract, submit to the Purchaser the required documents. Where these are not submitted in a digital form, such shall be in a clean manner ready to be microfilmed.

The Supplier shall keep all relevant product data and documents for the longer of ten (10) years after the date of Work Take Over, or as required by Applicable Law. Six (6) months prior to the expiration of the aforementioned period, the Supplier shall contact the Purchaser and, either offer the data and documents to the Purchaser, or alternatively agree to archive the same for a further period of not less than five (5) years.

5.9 Permits and Visas

The Supplier shall obtain, in a timely manner, all permits, licenses, visas and approvals necessary to allow its personnel to execute the Work at Site in accordance with the time schedule.

5.10 Supplier Reminder

Should the Purchaser fail to take any decision, give consent or approval or perform any other duty in a timely manner such that the Supplier's timely or proper performance is thereby jeopardized, the Supplier shall remind the Purchaser in writing to promptly take said decision, give consent or approval or perform the duty. Such reminder shall be given in a timely manner, provided however, should the Supplier fail to do so, it shall waive any claim based on Purchaser's

omission to act.

5.11 Duty of Care

To the extent that the Purchaser provides services to, or on behalf of the Supplier, whether at Site or elsewhere, it shall in relation to the same owe the Supplier a duty of care in relation to said services. Where the Purchaser provides services to the Supplier at cost, the Purchaser's liability for the same shall be limited to the amount charged for the particular service.

6. WARRANTY

6.1 Warranties

Each of the undertakings given in Sections 6.1 a) to e) is referred to in the singular as a "Warranty" and collectively all are referred to as "Warranties". The Supplier warrants as follows:

a) Work/Plant Related Warranties

- (i) as time is of the essence, the Work shall be performed in a timely manner and each Milestone shall be met;
- (ii) the Plant shall be of satisfactory quality and fit for purpose, ready for safe and reliable operation as of the Substantial Completion date and the date of Work Take Over and shall meet and achieve the dimensions indicated on the drawings within the tolerances given thereto or if no tolerances are indicated, within tolerances reasonably used in the industry;
- (iii) the Work shall comply with Applicable Law and the Design Codes in effect on the date of Work Take Over;
- (iv) the Work shall be new and of the quality and kind as specified in the Contract as of the Substantial Completion date;
- (v) it shall apply the materials specified in the drawings and procedures used and that the testing of their quality is according to Good Industry Practices, and where the Plant is operating under severe conditions including deep-freeze area and high outside-inside temperature differences, the Warranties shall not be diminished;
- (vi) the Plant shall meet noise standards applicable in relation to the way of working of the staff in the W&D Center;
- (vii) the Plant will not emit any toxic substances (vapor, fumes or dusts, etc.) or otherwise contaminate goods stored or handled in the W&D Center during the intended use by way of evaporation, aging, corrosion, splatter, leakage, flaking, abrasion or otherwise; and
- (viii) it shall only use properly qualified, experienced and otherwise suitable personnel to perform the Work and the Work shall be performed in all respects in accordance with the Contract.

b) Plant Performance Warranties

the Plant shall achieve all performance guarantees set forth in the Contract;

c) Work and Plant Defect Warranty

the Work and Plant shall be free from Defects prior to, and/or Latent Defects during the validity of the Warranty Periods;

d) Defects in Title, Liens and Industrial Property Rights

- (i) Purchaser shall enjoy good title to all equipment and materials comprising the Work and Plant;
- (ii) that no Supplier or Subcontractors' liens, claims for compensation, security interests, mechanics liens and encumbrances shall at any time attach to the Work and/or the Plant and/or any other property belonging to the Purchaser or the Owner; and
- (iii) that the Plant or any material, design or other works or information provided by or on behalf of the Supplier does not infringe any patent, copyright, registered design, trade mark, trade name, trade secret or any other industrial property right of a third party;

e) General Warranties

- (i) it shall not, through an act or omission, cause the Purchaser to incur any liability to the Owner or any other third party;

- (ii) it shall not, through an act or omission, cause any third party claim for personal injury, death or property damage to be brought against the Purchaser;
- (iii) all representations made by it were true and complete when made and remain true and complete until the end of the Warranty Periods; and
- (iv) it will perform any other obligation set forth in the Contract in accordance with its terms.

The parties agree that the Purchaser might notify the Supplier of and demand the remedy of any Defect at any time during the Defects Liability Period and the Supplier shall not be entitled to assert as a defense that the Defect was in existence at the date of Work Take Over or Purchaser's failure to give notice at any time prior to the day on which the Defects Liability Period ended time-bars a Purchaser claim hereunder or alternatively constitutes an acceptance of the Defect by the Purchaser or alternatively constitutes a waiver of the Purchaser's rights hereunder.

To the extent that a breach of Warranty is discovered prior to the end of the relevant period, but remedial work is conducted after the end of the period, the Purchaser shall have a period of three (3) months after completion of the remedial work to verify its compliance with the terms of the Contract.

To the extent a breach of any Warranty set forth in Section a) to e) is discovered and reported to the Supplier not later than three (3) months after the end of the relevant periods, the Purchaser shall be entitled to assert any remedy set forth herein, or if the limitation period at law is longer then at any time prior to the end of such limitation period.

Should upon delivery of the Work it be discovered that a Warranty set forth in Section a) to e) has been breached, delivery shall be deemed to occur as from the moment when the breach of warranty is cured and the Purchaser shall retain any right to claim damages as provided for in the Contract up to that point in time.

6.2 Defects Liability Period

Subject to the terms of Clause 6.4 (Defects Liability Period for Repaired or Replaced Parts), the Defects Liability Period shall be twenty-four (24) months commencing on the date of Work Take Over; plus any extension pursuant to the Contract, if any.

The aforementioned period shall apply in relation to the Warranties set forth in Sections 6.1 a) (ii) to (viii), b) and c) of Clause 6.1 (Warranties).

The Supplier warrants that it shall at all times during the Warranty Periods maintain a service capability to provide competent oral or written advice to the Purchaser and/or Owner within twenty-four (24) hours of a Defect being reported to the Supplier and to dispatch a properly qualified and equipped team capable of undertaking the appropriate fault finding and remedial work within forty-eight (48) hours after being notified of a Defect.

6.3 Interruption of Operation, Extension of Defects Liability Period

If during the Defects Liability Period, the Plant or part thereof must be shutdown or operation curtailed due to a Defect, then the Defects Liability Period for the Plant shall be extended by a period of time equal to the sum of (i) the length of such shutdown or operation curtailment and (ii) the period required to remedy the Defect and return the Plant or part thereof to service.

6.4 Defects Liability Period for Repaired or Replaced Parts

Subject to Clause 6.3 (Interruption of Operation, Extension of Defects Liability Period) above, the Defects Liability Period shall start afresh in relation to that part of the Plant which has been subject to the remedy once the Defect has been remedied, such remedy has been accepted by the Purchaser and the Plant or part thereof has been returned to service.

6.5 Defects Liability Period for Spare Parts

The Defects Liability Period for spare parts and Special Tools shall be two (2) years commencing on the date such spare part and/or Special Tool is accepted by the Purchaser.

6.6 Latent Defects

Subject to Section 12.2 b) (Supplier's Obligation to Remedy), the Supplier shall remedy any Latent Defect that manifests itself during the period that the law of the country or state of the Site provides for Latent Defects Liability.

6.7 Not applicable

6.8 Duty to Report Defects

The Supplier shall be under a strict duty to promptly notify the Purchaser, and at the Purchaser's request, the Owner of any Defect and/or other deficiency in the Plant of which it becomes aware either as a consequence of the Work, or experience gained with similar plants, or otherwise. The Supplier acknowledges that the Purchaser is likely to suffer significant loss or damage should the Supplier fail to perform strictly in accordance with the terms of this Section and therefore any breach of this Section shall constitute gross negligence.

By issue of a Certificate of Compliance in conformity with Appendix D, the Supplier shall warrant and represent that, on the earlier of the delivery of the Plant to the Site or the Work Take Over or prior to the acceptance of any certificate from the Purchaser and/or the Owner and except in relation to such matters that have been notified to or by the Purchaser and/or the Owner in writing, that there are no Defects in the Plant.

6.9 Subcontractor Warranties

The Supplier shall use reasonable endeavors to obtain, from Subcontractors work and services, plant, systems, equipment and other material with warranties on terms at least as favorable as those that it is granting to the Purchaser pursuant to this Clause 6 (Warranty) and/or other provisions of the Contract.

6.10 Waiver of Mechanic Liens

To the fullest extent permissible by law, the Supplier hereby waives for itself, its successors in interest and assigns, and Supplier shall ensure that all subcontractors of any tier, and their successors in interest and assigns waive any right of lien that it and/or they may have in relation to the Work, Plant or any part thereof, Purchaser's or Owner's property and/or any part thereof as a result of the furnishing of equipment, materials, plant, labor and/or services whether in relation to the Contract or any other contract or subcontract. The Supplier shall promptly execute and deliver Appendix B and any additional documentation, as may be required by law to validate the waiver undertaking set forth herein and shall take all other steps necessary, at its own cost, to validate the waiver undertaking given on behalf of its subcontractors of any tier.

The Supplier shall promptly discharge any lien which is attached to Work, Plant or any part thereof, Purchaser's or Owner's property and/or any part thereof and shall indemnify the Purchaser against any and all costs, losses and/or damages arising out of or related to such lien.

7. PRICE BASIS

7.1 Price Basis

Unless the Contract expressly provides otherwise, the Contract Price shall constitute the Supplier's sole entitlement to compensation for its performance of the Contract and for the avoidance of doubt the Contract Price shall include compensation for design, engineering, procurement, manufacture, delivery, construction, erection, assembly, commissioning, testing, the provision of performance guarantees and warranties set forth in the Contract, and the provision of any other equipment, facility, material, plant, utility or service more specifically

described in or to be inferred from the Contract and/or for performing any and all obligations set forth herein.

The Contract Price shall be fixed and firm. The price for the related Work at Site shall be offered in the currency of the country of the Site. A Contract Price breakdown shall be submitted according to the requirements of the Purchaser.

The Contract Price includes delivery of the Work "DDU or DDP Site" as set forth in the Purchase Order for Work being procured from Suppliers resident abroad and "CIF or CPT Site" from Suppliers resident in the country of the Purchaser.

Where "DDP Site" is applicable, the Supplier shall promptly pay (or cause its Subcontractors or suppliers to pay or shall immediately indemnify the Purchaser if the Purchaser is called upon to pay the same) all customs duties and other import taxes imposed in relation to the Plant or any part thereof, or any Supplier's Equipment or the Work or part thereof including components, equipment, materials, machinery and/or plant or parts comprising the Work or part thereof.

In the absence of any agreement to the contrary, the Purchaser shall insure the Plant and parts thereof, for the benefit of the Supplier, while at Site against the normal risks encountered for the full replacement value of the Plant.

If certain related services at Site have been expressly excluded by the Purchaser from the Contract Price and it has been agreed in writing that in relation to the provision of the same by the Supplier daily rates or a lump sum price shall apply, such rates or lump sum price shall be deemed to include all air and other travel tickets, food and accommodation costs, ancillary costs, Special Tools and Supplier's Equipment, and all present or future taxes, dues, duties, tariffs, fees and other charges or levies of a similar nature, imposed by any federal, state, regional, municipal or other taxing authority, on or in relation to the provision of such services (including visa and work permits).

7.2 Additional Supplies and Services

The Supplier shall not be entitled to additional compensation for any additional supplies or services provided by it, its Subcontractors or suppliers, unless, in advance, an agreement in writing has been reached thereupon. Such agreement shall be made in accordance with Clause 10 (Changes in the Work).

7.3 Price Break-Down / Option for Spare Parts

The Supplier shall break-down the Contract Price and present it for following parts of the Work comprising the entire Contract Price:

- (i) The Plant including all Work connected to it or which can reasonably be inferred therefor, until the Plant is ready for delivery from Supplier's factory, including any Spare Parts, Special Tools and consumables included in the delivery;
- (ii) Documentation and consumables and surplus material for the erection, commissioning and testing of the Plant (included in the price of the Plant as mentioned in (i) above);
- (iii) Packing and transportation;
- (iv) Taxes, duties and fees;
- (v) Insurances;
- (vi) Related Work at Site;
- (vii) Spare Parts and consumables for operation (optional delivery); and
- (viii) Special Tools for maintenance (optional delivery).

The Contract Price break-down shall, where required, be further detailed and broken down to satisfy the requirements of export and import, insurance and customs clearance.

The prices and conditions for the recommended spare parts, tools and consumables according to the lists in the Contract shall be fixed and firm for a period of three (3) years after the date of Work Take Over and may be ordered by the Purchaser pursuant to the terms of Section 3.7 a) (Provision of Spare Parts, Tools and Consumables)

hereof.

7.4 Tax Reimbursements and Custom Duties

a) Taxes

The Supplier shall pay and shall, upon submission of satisfactory proof, be reimbursed by the Purchaser for:

- (i) all sales, use, and excise taxes on goods and services and if applicable, value added taxes that are part of the Work or the W&D Center and levied on Supplier's invoices to the Purchaser; and
- (ii) without regard to the transfer of title, any tax imposed as a result of possession or use of any item of equipment or material at Site prior to Work Take Over.

The Supplier shall pay and not be reimbursed by the Purchaser for any other applicable taxes including, but not limited to, occupational, excise, unemployment, federal insurance contributions tax, income taxes, customs and duties, fees, levies, etc.

b) Excluded Taxes

If elsewhere in the Contract it is expressly agreed in writing that certain taxes or duties have not been included in the Contract Price, the Supplier shall pay the same and shall be reimbursed for said taxes after Purchaser's receipt of an appropriate invoice. Notwithstanding the foregoing, the Supplier shall make every reasonable, legally available effort to reduce the amount of taxes or duties, which the Purchaser must reimburse. Further, each party will offer the other party reasonable, lawful co-operation, if requested, in support of a party's effort to take advantage of any tax/duty optimization scheme or tax/duty exemption scheme, including in relation to sales tax and customs or import duties.

8. TERMS OF PAYMENT

8.1 Terms of Payment

The Contract Price shall be paid in installments as set forth below, provided however, each such payment shall only be due to the extent that the relevant Milestone or Work has been achieved or has been performed.

5 % (five per cent) of the Contract Price shall be due at the Effective Date. This shall be deemed achieved upon the Supplier's presentation of copies of the following:

- (i) Supplier's unconditional acknowledgement and acceptance of the Purchase Order;
- (ii) Supplier's submission of the original of the performance bond according to Clause 8.3;
- (iii) Supplier's submission of all documents due at the Effective Date as set forth herein and in the document submittal schedule; and
- (iv) Supplier's confirmation that the relevant insurance policies have been obtained.

40 % (forty per cent) of the Contract Price shall be due at time when the main erection material is delivered to Site. This shall be deemed achieved upon the Supplier's presentation of copies of the following:

- (i) shipping documents demonstrating that the main erection material has been delivered, which documents shall include material data safety sheets;
- (ii) if applicable according to the PRPC, certificates of origin;
- (iii) the quality assurance records and as-built documentation for the Plant as delivered from Supplier's works, including a certificate pursuant to Clause 6.8 (Duty to Report Defects);
- (iv) if applicable according to the PRPC, Partial Release and Waiver of Liens;
- (v) the erection instructions including the relevant method statements and where applicable, all related CDM documentation in accordance with the Construction (Design and Management) Regulations;

- (vi) the commissioning instructions including the relevant method statements and where applicable, all related CDM documentation in accordance with the Construction (Design and Management) Regulations;
- (vii) the training documentation;
- (viii) the preliminary O&M Manuals; and
- (ix) a Purchaser's written confirmation accepting each of the above documents.

35 % (thirty-five per cent) of the Contract Price shall be due at Substantial Completion. This shall be deemed achieved upon the Supplier's presentation of copies of the following:

- (i) a Substantial Completion certificate signed by the Purchaser;
- (ii) if applicable according to the PRPC, Partial Release and Waiver of Liens;
- (iii) the Purchaser's written confirmation of acceptance of final edition of the O&M Manuals;
- (iv) the Purchaser's written confirmation of acceptance of the spare parts, Special Tools and consumables (i.e. receipt of all loose items) if applicable;
- (v) the appropriate, additional quality assurance records (quality control documentation) relating to the Work performed on the Site; and
- (vi) the as-built documentation for the Plant, including a certificate pursuant to Clause 6.8 (Duty to Report Defects) attesting that the Plant is free of Defects.

20 % (twenty per cent) of the Contract Price shall be due upon Work Take Over and clearance of all Punch List Items. This shall be deemed achieved upon the Supplier's presentation of copies of the following:

- (i) the Work Take Over Certificate executed by the Purchaser;
- (ii) if applicable according to the PRPC, Final Release of Material and Waiver of Liens; and
- (iii) the Purchaser's written confirmation of clearance of all Punch-List Items.

8.2 Intentionally Omitted

8.3 Performance Bond, Security Instrument

The Supplier shall cause a first class bank, reasonably acceptable to the Purchaser, to issue an irrevocable, unconditional bank guarantee or standby letter of credit to serve as a performance bond in the amount of twenty percent (20 %) of the Contract Price, the text of which shall be substantially similar to that set forth in Appendix A hereof which shall not expire earlier than sixty (60) days after the expiry date of the Defects Liability Period. If the expiry date of the Defects Liability Period is postponed for any reason, the Supplier shall cause the issuing bank to extend the validity of the performance bond for a period, such that it shall not expire earlier than sixty (60) days after the actual expiry date of the Defects Liability Period. The costs of issuing and maintaining the performance bond shall be borne by the Supplier.

8.4 Additional Provisions Governing Payments

- a) The Purchaser shall be under no obligation to make any payment to the Supplier if the Supplier is in breach of contract and for so long as any and all such breaches continue.
- b) Due payments shall be made within ninety (90) days after receipt of Supplier's invoice, accompanied by the relevant documentation, into the bank account nominated by the Supplier, which payment shall discharge the Purchaser's payment obligation. The Purchaser, at its own discretion, may elect to pay within thirty (30) days and be entitled to a discount of three per cent (3%) on the invoice amount.
- c) Any late payment due to a party pursuant to the terms of the Contract shall attract interest at a rate of 2 % (two per cent) above the then applicable 1-month LIBOR with monthly

compounding using the ACT/360 method. For the avoidance of doubt, should the Purchaser wrongfully withhold a payment, the Supplier, by way of a sole and exclusive remedy, shall be entitled to interest at the rate set forth herein.

- d) Payments for the Work shall not be deemed to constitute an acceptance of the Work or a waiver of any of the Purchaser's rights under the Contract.

9. WORK TAKE OVER AND ACCEPTANCE; RISK OF LOSS AND TRANSFER OF TITLE

9.1 Work Take Over

Work Take Over shall occur when all of the following have occurred and have been verified by the Purchaser:

- (i) the Supplier has provided the Purchaser with a certificate of Compliance in accordance with Clause 6.8 (Duty to Report Defects) attesting that the Plant is free of Defects and is fully compliant with the Contract and in particular with Applicable Law and Design Codes;
- (ii) if applicable according to the PRPC, the Supplier has provided the Purchaser with the Partial Release & Waiver of Liens;
- (iii) the Plant shall have achieved Substantial Completion, and thereafter successfully completed all final commissioning and performance tests in conjunction with other parts of the W&D Center, and if applicable, passes the Test on Completion;
- (iv) the Owner issued the PAC;
- (v) the Plant shall be free of any Defect, except for minor Punch List Items;
- (vi) all items forming part of the Work, such as but not limited to spare parts, Special Tools, consumables and the like, have been delivered to the Purchaser;
- (vii) all documents of any kind required as part of the Work shall have been delivered to and accepted by the Purchaser;
- (viii) the Supplier shall have returned to the Purchaser any tools, instruments and spare parts belonging to or made available by the Purchaser;
- (ix) the Supplier shall have removed all Supplier's Equipment and its personal belongings and the like, from Site and left the Site in a clean, safe and workmanlike condition; and
- (x) the Supplier shall have performed all other obligations set forth in the Contract, which are conditions precedent to Work Take Over.

The Supplier acknowledges that Work Take Over shall only occur when each of the aforementioned conditions precedent have been fulfilled in total and have been verified by the Purchaser.

Upon successful performance of the matters set forth above in accordance with the terms of Contract, the Purchaser shall issue a Work Take Over Certificate.

9.2 Use before Work Take Over

The Purchaser shall be entitled to examine the Plant at any time. Further, the Purchaser shall perform the Test on Completion and shall be entitled to conduct any subsequent inspections it may wish to perform before issuing the Work Take Over Certificate. Work Take Over shall not be deemed to occur by virtue of the fact that the Purchaser takes control of the Plant or any part thereof for the purposes of preliminary operation, inspection and/or Test on Completion.

The Purchaser shall have the right to use the Plant or any part thereof prior to the Work Take Over of the Plant or any part thereof. The Purchaser shall bear the costs of making good any damage to such parts due to improper use thereof by the Purchaser or the Owner and for normal wear and tear. "Improper use" in this context shall mean any use expressly prohibited by the Technical Specifications and/or the Operation and Maintenance Manuals and/or any use that could not reasonably have been foreseen having regard to the description of the Plant and/or the use to which similar types of plant are generally

put. If the Operation and Maintenance Manuals are not available in their final form, the Purchaser may request the Supplier to supervise such use of the Plant or any part thereof prior to the Work Take Over and during such supervision the Supplier shall be liable for any damage caused to the Plant other than that caused by the Purchaser's gross negligence. "Normal wear and tear" in this context shall mean, that such wear and tear does not result in breach of warranties and/or Good Industry Practice.

9.3 Work Acceptance

Work Acceptance shall occur when all of the following have been properly performed and/or are achieved in accordance with the terms of the Contract and to the Purchaser's satisfaction:

- (i) the Owner shall have issued the FAC;
- (ii) if applicable according to the PRPC, the Supplier has provided the Purchaser with the Final Release & Waiver of Liens;
- (iii) all Punch List Items shall have been remedied and accepted by the Purchaser;
- (iv) all items forming part of the Work, such as but not limited to spare parts, tools, consumables and the like, have been delivered to the Purchaser; and
- (v) the Supplier shall have performed all other obligations set forth in the Contract, which are conditions precedent to Work Acceptance.

Notwithstanding anything to the contrary contained elsewhere in the Contract or by operation of law, the Supplier acknowledges that all of the aforementioned are conditions precedent to Work Acceptance, provided however that Work Acceptance is not deemed conclusive in the face of Latent Defect, fraud, recklessness or gross negligence or willful or intentional breach of Contract.

9.4 Delay in Achieving Milestones, Submission of Documentation, Substantial Completion and/or Work Take Over Attributable to Supplier

If a Milestone, and/or the submission of documents, and/or Substantial Completion and/or Work Take Over is delayed, for any reason for which the Purchaser and/or the Owner is not responsible and such delay is not excused under the Contract, in each case where, pursuant to the terms of the Contract, the non-achievement of the date in question is coupled to the payment of Liquidated Damages, the Supplier shall pay Liquidated Damages pursuant to Clause 12.3 (Liquidated Damages).

9.5 Delay in Substantial Completion and/or Work Take Over Caused by Purchaser

If Substantial Completion and/or Work Take Over is delayed, by either the Purchaser or the Owner, and the Plant is ready to be taken over, then the Purchaser may request the Supplier to preserve the Plant and the Supplier shall do so at its own risk, provided however, the Purchaser shall reimburse all direct, reasonable, documented costs incurred by the Supplier in preserving the Plant in a proper, workmanlike fashion and in accordance with Good Industry Practice. Reimbursement of such direct, reasonable costs shall constitute the sole remedy available to the Supplier and the entire liability of the Purchaser to the Supplier arising out of or relating to such delay.

9.6 Risk of Loss

The risk of loss of or damage to Plant shall pass from the Supplier to the Purchaser at the date of Work Take Over. If any part of the Plant is damaged prior to the date of Work Take Over, the Supplier shall promptly replace the same at no extra cost to the Purchaser. If any consumables, Special Tools, spare or replacement parts are provided at any later time, the risk of loss or damage shall pass to the Purchaser in relation to such consumables, Special Tools, spare or replacement parts upon the Purchaser's acceptance of the same after they have been delivered to Site.

9.7 Transfer of Title

Title to the Work or any part thereof (which shall include Work in progress) shall pass from the Supplier to the Purchaser at the earlier of:

- (i) the date when payment for such Work is made; or
- (ii) delivery of the Work or part thereof to the Site; or
- (iii) the date of express or implied appropriation of any Work to the Contract; or
- (iv) the date upon which the Contract is terminated for any reasons other than termination for Purchaser's breach.

The Supplier shall promptly indemnify and defend the Purchaser against any and all claims, demands, suits, liens or damages arising from any defect in title or encumbrance or charge upon the Work or part thereof. If requested by the Purchaser to do so, the Supplier shall promptly execute any document certifying transfer of title.

10. CHANGES IN THE WORK

10.1 Supplier's Changes

The Supplier shall not make any changes by alterations, amendments, additions to, or omissions from the Work without the express prior written consent of the Purchaser. Should the Supplier wish to make alterations, amendments, additions to, or omissions from any of the Work, it shall provide the Purchaser with such information as the Purchaser may request to allow the Purchaser to evaluate such changes. The Supplier shall not receive any additional compensation for such changes to the Work unless such changes result directly in the Purchaser receiving additional compensation under the Prime Contract. Finally, if such changes result in a cost saving to the Supplier such saving shall be shared equitably amongst the parties.

10.2 Purchaser's Changes

The Purchaser shall pursuant to a Change Order be entitled and without notice to the guarantors (if any), to alter, amend, add to or omit any part of the Work. If such changes are significant and cause a material increase or decrease in the cost or time required for performance of the modified Work, an equitable adjustment to the Contract shall be agreed between the parties and memorialized in a Change Order.

Any agreement reached between the parties concerning a change in the Work shall be governed by a written Change Order (entitled Modification of the Purchase Order), to be issued by the Purchaser, detailing the extent of the change, the effect on the time schedule (if any), any effect on Warranties, the Contract Price and any other matter being of importance thereto. If the Purchaser instructs the Supplier to alter, amend, add to or omit any part of the Work and within ten (10) days thereafter the Supplier has not in writing requested a Change Order, the Supplier shall be deemed to have waived a Change Order and Purchaser shall be entitled to assume that such instruction will not have any impact on any material term of the Contract, including Warranties, or Contract Price. An extension of time shall only be granted in those circumstances where the change to the Work will affect the achievement of Milestones on the critical path of the Work.

Notwithstanding that a Change Order has not been finalized, if instructed to do so by the Purchaser, the Supplier shall immediately comply with the Purchaser's instruction to alter, amend, add to or omit any part of the Work.

If a Change Order does not provide for a lump sum increase or reduction in the Contract Price or alternatively does not set out the basis for determining such increase or reduction in the Contract Price the unit prices set out in the Contract (if any) shall be used to determine the Contract Price increase or reduction and in the absence of such unit prices, the price bases applicable at the date of the Contract shall be used to determine any increase or reduction in the Contract Price.

10.3 Remeasure is not a Change

Where the Contract provides for adjustment to the Contract Price for parts of the Work to be subject to change by application of unit rates to a remeasure of such parts of the Work, the Supplier agrees that such adjustment shall not be considered a change under the Contract and no Change Order(s) shall be issued, nor Supplier's claims acceded for any deviation in remeasure from the Contract basis.

11. SUPPLIER CLAIM

The Supplier shall only be entitled to make a claim in those limited circumstances set forth expressly in the Contract and in no other circumstances. A claim shall be submitted in writing to the Purchaser within ten (10) days of the occurrence giving rise to such claim. If the occurrence is a continuing one, the Supplier shall within ten (10) days of the commencement date of the occurrence, notify the Purchaser of its intent to claim when the full effect of the occurrence can be determined. In such case, the Supplier shall submit a claim no later than ten (10) days after the date when the full effect of the occurrence can be determined. Not later than ten (10) days after the Effective Date, the Purchaser might shorten the aforementioned notice periods if the notice periods in the Prime Contract are shorter, provided however, in any case the notice period shall not be shorter than five (5) days.

The Supplier's claim shall be properly documented with appropriate references to the Contract. The Purchaser shall reject any claim that is not properly documented. In particular, the Supplier shall, in its claim, identify the contractual provision underlying the claim, the amount claimed, should the claim be financial in nature, with supporting calculations, offers and other appropriate documentation, the influence of the occurrence on the time schedule (provided an extension of time shall only be granted in those circumstances where the occurrence giving rise to the claim will affect the achievement of a Milestone on the critical path of the Work) and the influence of the occurrence on any other obligation of the Supplier with appropriate proof of the same.

Should the claim not be submitted in writing, within the applicable period, such claim shall be deemed to have been unconditionally waived in its entirety.

The Purchaser shall review any claim submitted by the Supplier within a reasonable period of time and notify the Supplier in writing of its findings. Should the Supplier not agree with the Purchaser's findings, it might submit the matter to dispute resolution pursuant to Clause 20 (Disputes). For the avoidance of doubt, the Supplier shall not be entitled to suspend the Work, pending resolution of a claim.

12. REMEDIES

12.1 Supplier's Performance Obligation

If the Supplier is in breach of any term of the Contract, the Purchaser shall be entitled to demand that the Supplier promptly remedy the breach such that the Contract is fulfilled in every respect and the cost of remedying a breach shall be borne solely by the Supplier.

12.2 Remedies

a) Purchaser's Buy-Down Right

The Purchaser may, at its sole discretion, opt to accept a breach, a Defect, Latent Defect or other non-conforming Work, provided however, the Purchaser shall be entitled to demand an equitable reduction of the Contract Price to reflect the reduced value of the Work or Plant, as the case may be.

If the Defect, Latent Defect or other non-conforming Work is so significant that the Plant or part thereof cannot be used for its intended purpose or such use is significantly impaired or the cost of operating and maintaining the Plant or part thereof is significantly increased thereby or the reliability of the Plant is significantly impacted, in addition to any other remedies that it may have, the Purchaser may

reject the Plant and reclaim the Contract Price.

For the avoidance of doubt, should the Owner terminate the Prime Contract due to such Defect, Latent Defect or other non-conforming Work, the Purchaser shall have the right to terminate the Contract in accordance with Clause 19.1 (Termination for Breach).

b) Supplier's Obligation to Remedy

Subject to Section 12.2 a) (Purchaser's Buy-Down Right), in the event that a Defect, Latent Defect or other non-conforming Work manifests itself during the Warranty Periods, the Purchaser might demand that the Supplier remedy the same promptly and at its own cost. The Supplier shall be paid for the remedial work should it later demonstrate that the Defect, Latent Defect or other non-conforming Work was attributable solely to normal wear and tear, Force Majeure, the Purchaser or the Owner not having operated and/or maintained the Plant or part thereof in accordance with specific provisions of the O&M Manuals or the Purchaser or the Owner otherwise not having executed works and services in accordance with Good Industry Practice.

If any Defect, Latent Defect or other non-conforming Work appears, the Purchaser may fix a period of time during which the Supplier shall repair or replace any part of the Work, which is defective. Such period of time shall be reasonable having regard to the circumstances, in particular the period set forth in the Prime Contract for effecting such a remedy.

Before commencing with any remedial work, the Supplier shall submit a report to the Purchaser identifying the Defect, Latent Defect or other non-conforming Work, the cause of the same, the remedy which the Supplier recommends and the period required to implement such a remedy. The Supplier acknowledges that the Purchaser might have to seek and obtain the Owner's approval of the proposed remedy and the time required to execute the repair and that the Owner may reject such proposed remedy, in which case the Supplier shall be under an obligation to propose a remedy reasonably acceptable to the Owner.

The Purchaser shall ensure that the Supplier has reasonable access to that part of the Site to remedy the Defect, Latent Defect or other non-conforming Work, provided however, the Supplier acknowledges that such remedial work must be scheduled with the Owner and have due regard to the operation of the W&D Center.

The Supplier shall act in good faith to complete remedial work in the shortest possible time and shall perform such remedial work, with the Purchaser's and Owner's consent, round the clock on a multi shift basis, at weekends and on holidays.

c) Purchaser's Right to Remedy

If, after receiving notification of any Defect, Latent Defect or other non-conforming Work, the Supplier fails to promptly commence to remedy the same and/or fails to prosecute such remedial work with due diligence or alternatively fails to remedy the Defect, Latent Defect or other non-conforming Work within a reasonable period of time, the Purchaser shall be entitled to give the Supplier three (3) days written notice of its intention to take charge of such remedial work and thereafter the Purchaser shall be entitled to remedy or have remedied such Defect, Latent Defect or other non-conforming Work, subject to the provisions of Section 12.2 d) (Back Charges).

Furthermore, in the event of an emergency or should the circumstances otherwise reasonably justify such action, the Purchaser and/or the Owner shall be entitled to carry out any remedial work, for which the Supplier is liable under Clause 6.1 (Warranties).

The Purchaser's or Owner's assumption of such remedial work shall not release the Supplier from any Warranty or other obligation including the payment of the remedial work in accordance with Section 12.2 d) (Back Charges), provided such remedial work is executed in accordance with Good Industry Practice.

d) Back Charges for Remedy of Defects

If any remedial work is carried out by either the Purchaser or the Owner pursuant to the terms of Section 12.2 c) (Purchaser's Right to

Remedy), and/or involves a replacement of a defective part using a part taken from the Purchaser or Owner's Site store, provided that the Supplier is liable for such remedial work pursuant to the Contract, it shall reimburse the Purchaser and/or the Owner for any reasonable direct costs incurred thereby including the reasonable expenses related to administration and handling.

e) Back Charges for Making-up any Delay and Disruption

If the Supplier hinders, impedes the progress or otherwise disrupts the work or services being carried out or performed by the Purchaser, the Owner or any other third party employed or engaged in work connected with the W&D Center or being undertaken at the Site then the Supplier shall indemnify the Purchaser for any costs and expenses incurred by the Purchaser. Upon receipt of such demand the Supplier shall make prompt payment in full of such demand to the Purchaser.

12.3 Liquidated Damages

a) Liquidated Damages

In the event that the Supplier fails to achieve a Milestone, Substantial Completion and/or Work Take Over on or before the date agreed in the Contract and/or the Plant or any part thereof fails to achieve any performance guarantees set forth in the Contract, in relation to which failure Liquidated Damages are a remedy, then the Supplier shall pay Liquidated Damages as set forth below or elsewhere in the Contract, as the case may be, for:

- (i) late delivery of the Work in the rate of five per cent (5 %) of the Contract Price or fourteen thousand US Dollar (USD 14,000), whatever is the higher amount for each week delay and pro rata temporis for any part of the week, as the case may be;
- (ii) late submittal of specifically agreed documents, seven thousand US Dollar (USD 7,000) per document, for each week, or part thereof, of delay beyond the stipulated submittal date;
- (iii) where applicable, shortfall in performance as set forth in Appendix E or elsewhere in the Contract.

Non-delivery and delivery with Defect shall be deemed late delivery or late submission.

If the Supplier repairs any Defect, Latent Defect or other non-conforming Work after delivery but before Work Take Over and the achievement of any Milestone is delayed as a consequence thereof, the Liquidated Damages shall be payable between the date the Defect, Latent Defect or other non-conforming Work occurred until the time the Defect, Latent Defect or other non-conforming Work is repaired. If the Work is taken out of the Supplier's hands due to its breach of Contract or alternatively the Purchaser, the Owner or any third party remedies a Defect, Latent Defect or other non-conforming Work the Supplier shall equally be liable for payment of the Liquidated Damages.

The Purchaser may claim such Liquidated Damages at any time prior to the end of the Warranty Periods or as long as any dispute is not settled and the Supplier hereby waives the right to assert any shorter limitation period set forth by law.

b) Maximum Aggregate Liquidated Damages

The maximum aggregate Liquidated Damages payable for delay in delivery and non-achievement of the performance guarantees shall be twenty per cent (20%) of the Contract Price or forty thousand US Dollar (USD 40,000) whatever is the higher amount.

c) Liquidated Damages Are Not Penalties

The parties acknowledge and agree that because of the unique nature of the Plant and the Work, and the unavailability of substitutes for either the Plant and the Work, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by the Purchaser if the Work is not completed on time and/or the Plant fails to achieve the performance guarantees. Consequently, the parties have, in good faith, established the Liquidated Damages set forth in the Contract.

13. LIABILITIES AND INDEMNITIES

13.1 Third Party Claims

To the fullest extent permitted by law, the Supplier shall indemnify, hold harmless and defend the Purchaser, the Owner, their agents, employees, officers and directors, from and against any and all claims, demands, suits, proceedings, liabilities, judgements, awards, losses, damages, costs or expenses (including reasonable legal fees of the indemnified parties) arising out of or related to Work and/or the performance or non-performance of the Plant or part thereof and/or the performance or non-performance of the Contract, and resulting in bodily injury or death, or damage to or destruction of third-party tangible property.

13.2 Tax Indemnity

The Supplier shall defend, indemnify and hold the Purchaser and/or the Owner, its assigns and affiliates, harmless from and against all claims by any governmental unit claiming withholding taxes levied on vendors', suppliers', Subcontractors' or agents' invoices received by the Supplier or taxes based on income or profits of the Supplier or any of its Subcontractors, agents or employees with respect to any payment for the Work made to or earned by the Supplier, or any of its or their respective agents or employees under this Contract. The Purchaser and/or the Owner shall defend, indemnify and hold the Supplier or any Subcontractors, its assigns and affiliates harmless from and against all claims by any governmental unit claiming taxes based on sales and use and other taxes on goods and services, including property taxes.

13.3 Breach of Warranties

The Supplier shall defend, at its sole expense or otherwise bear the cost of, all claims, demands, suits and/or proceedings which relate directly or indirectly to an alleged breach of Warranties as set forth in Sections 6.1 d) and 6.1 e) (Warranties) and shall hold the Purchaser, the Owner and their agents, employees, officers and directors harmless from any liabilities, judgements, awards, losses, damages, fines, penalties, costs and/or expenses resulting therefrom.

Without derogating from the generality of the foregoing, if the Work and/or the Plant or part thereof gives rise to a claim, demand, suit and/or proceeding of the type mentioned in foregoing paragraph then the Supplier shall obtain for the Purchaser and/or the Owner the right to use the Work and/or Plant or part thereof, including all computer software incorporated therein or take such action to alter, modify or replace the Work and/or the Plant or part thereof, such that the Work and/or the Plant or part thereof no longer infringes, provided however, such alteration, modification or replacement shall not result in the Plant being less valuable or cause the Plant to perform adversely in comparison to the time prior to such alteration, modification or replacement and further provided that any alteration, modification or replacement shall not relieve the Supplier of the duty to perform the Work and/or supply the Plant or any part thereof such that the same conforms with the Contract in all respects.

13.4 Limitation of Liability

The Supplier's aggregate liability for all claims of any kind (other than claims under Clause 13.1 (Third Party Claims) and Clause 13.3 (Breach of Warranties), whether based on contract, warranty, tort (including negligence), strict liability or otherwise, for all losses or damages arising out of, connected with or resulting from the Contract, its performance or breach shall not exceed an amount equal to the Contract Price.

13.5 Waiver of Liability for Indirect and Consequential Damages

Neither party shall be liable to the other whether in contract, tort (including negligence) and strict liability or otherwise for loss of production, loss of operation, loss of goods, food, deli, material and equipment handled and stored in the W&D Center, cost of capital including consequences on overdue payments, loss of goodwill or reputation, loss of anticipated savings or profit, loss of or waste of

management or labor, or loss of use or under-utilization of resources and/or any indirect, incidental, punitive, or consequential loss or damage, provided however, the hereinbefore exclusion of liability shall not limit the application of and/or the scope of recovery in relation to the indemnities set forth in Clause 13.1 (Third Party Claims), Clause 13.3 (Breach of Warranties) and Clause 14.5 (Supplier's Liability). Furthermore the exclusion of liability shall not limit recovery of Liquidated Damages and/or certain specific types of pure financial loss or damages but only to the extent that the Contract provides expressly for such recovery.

13.6 Exclusions to Limitation of Liability

The limitations of liability set forth in the Contract shall not apply in instances where a party has been grossly negligent, reckless, willful or has intentionally breached a term of the Contract.

14. INSURANCE

14.1 Supplier Furnished Insurance

As from the Effective Date until the Supplier shall have performed all of its obligations set forth in the Contract, the Supplier shall take out and maintain and cause its Subcontractors to take out and maintain, at its sole expense, the following insurance coverage (coverage in at least the equivalent amounts if the policies are not concluded in US Dollar):

- a) Property Insurance against loss or damage to the Work until the Work is at Site;
- b) Comprehensive General Liability insurance including Commercial and Supplier's Protective Liability with a combined single limit of not less than the equivalent of two million US Dollar (USD 2,000,000) per occurrence. Such insurance coverage shall include personal injury and death, property damage, product/completed operation liability, XCU hazards liability and Broad Form Property Damage; and
- c) Excess liability coverage with an aggregate limit of not less than the equivalent of five million US Dollar (USD 5,000,000) per occurrence [and in the aggregate in excess of the limits provided in Section 14.1 (b) and Clause 14.2 (Additional Insurance)].

The insurance coverage set forth under (a) above shall insure the Work for the full replacement value thereof including any materials incorporated therein or services required therefore, whether supplied by the Supplier or not, and shall include all designs, drawings, specifications and equipment which vest in and become the property of the Purchaser, against loss, destruction or damage of any kind. The insurance coverage set forth under (b) and (c) shall cover any liabilities of the Supplier and/or its Subcontractors resulting from the execution of the Contract.

14.2 Additional Insurance

Throughout the time during which Supplier's or Supplier's Subcontractor's personnel perform Work on Site, the Supplier shall take out and maintain, at its expense, the following insurance coverage:

- a) All insurance required by Applicable Law in relation to workers' compensation or its equivalents including employer's liability in connection with the performance of the Work in an amount not less than the equivalent of one million US Dollar (USD 1,000,000) for any one occurrence;
- b) Comprehensive Automobile Liability insurance with bodily injury and property damage with combined single limits of not less than the equivalent of one million US Dollar (USD 1,000,000) per any one occurrence covering vehicles owned, hired and/or used; and
- c) Adequate insurance to cover the replacement cost of Supplier's

Equipment.

14.3 Insurance during Erection and Commissioning

The Purchaser or the Owner will take out a project specific Contractor's All Risk Insurance (CAR), such CAR insurance to name the Supplier (and its Subcontractors) as named insured, which shall insure, inter alia, the Work from the date of delivery to Site until Work Take Over. The CAR shall include a Third Party Liability Insurance in an amount not less than the equivalent of ten million US Dollar (USD 10,000,000) for any one occurrence.

The coverage, exclusions and deductibles for the CAR may vary from project to project, provided however, the CAR deductibles shall not exceed an equivalent of twenty thousand US Dollar (USD 20,000). The Purchaser shall notify the Supplier of the actual amount of the deductibles in a timely manner.

The Supplier shall strictly adhere and cause its Subcontractors to strictly adhere to the terms of the MC and the CAR and shall promptly make all information available required by the insurer.

14.4 Duties of the Supplier in Case of Damage or Loss

If any occurrence related solely to the Work may give rise to a claim under the insurance coverage, the Supplier shall be entitled to prepare, submit and negotiate any claim and shall be entitled to the proceeds of any claim paid by the insurer. If any occurrence related to both the W&D Center and the Work may give rise to a claim under the insurance coverage, the Purchaser shall be entitled to prepare, submit and negotiate said claim and shall be entitled to the proceeds of any claim paid by the insurer, provided however, to the extent that proceeds relate to damage to the Work, such portion shall be paid to the Supplier.

14.5 Supplier's Liability

Should the Supplier or any Subcontractor cause any insurance policy to be vitiated or alternatively cause the insurer to deny coverage in a particular instance, the Supplier shall indemnify the Purchaser in relation to all costs, expenses, losses or damages arising therefrom. The Supplier shall not be discharged from any obligation set forth in the Contract by virtue of any denial of coverage and/or the failure of an insurer to pay any claim in respect of any insurance set forth in this Clause or otherwise. The Supplier shall be liable for all deductibles and excesses relating to any insurance save where the Purchaser or Owner is solely responsible for the occurrence giving rise to the claim.

14.6 Provisions of Policies; Renewals

All insurance policies to be purchased by the Supplier under Clauses 14.1 (Supplier furnished Insurance) and 14.2 (Additional Insurance) shall:

- (i) contain an endorsement whereby Supplier's insurers waive rights of subrogation against the Purchaser, the Owner and their respective employees, agents, officers and directors;
- (ii) contain an endorsement stating that the policy cannot be cancelled without at least thirty (30) days' prior notice to Purchaser;
- (iii) in the case of the insurance set forth in Clause 14.1 (Supplier Furnished Insurance), commence no later than thirty (30) days after the Effective Date, and in the case of the insurance set forth in Clause 14.2 (Additional Insurance), commence no later than thirty (30) days prior to the date when the Supplier commences its Site activities and all such insurances shall expire no earlier than the end of the Defects Liability Period, if applicable; and
- (iv) name the Purchaser, the Owner and their respective employees, agents, officers and directors as additional insured.

The Supplier shall provide evidence of such insurance coverage to the Purchaser in the Acord Format (certified copy of the Policy or Certificate) or any other similar format, which is acceptable to Purchaser, within thirty (30) days of receipt of Effective Date. The

renewal of any policy or the replacement thereof shall be submitted to Purchaser not later than thirty (30) days prior to the expiration date of the policy.

If the Supplier fails to produce evidence of the required insurance coverage, then the Purchaser reserves the right to obtain and pay for such insurance. Premiums paid by the Purchaser in such an event shall be reimbursed by the Supplier or alternatively will be set off against any payments of whatever kind due to the Supplier.

The Supplier's and/or its Subcontractors' insurance coverage set forth in Clauses 14.1 (Supplier Furnished Insurance) and/or 14.2 (Additional Insurance) shall be deemed primary insurance.

15. FORCE MAJEURE

15.1 Excused by Force Majeure

In case of Force Majeure acting upon either the Supplier or the Purchaser, the affected party shall not be considered in default of those obligations impacted by Force Majeure and shall be excused the performance or punctual performance, as the case may be, of such obligations for so long as the Force Majeure event continues and any affected obligations shall be equitably adjusted, provided however, unless otherwise expressly provided herein the Supplier shall not be entitled to compensation for additional costs incurred by virtue of such Force Majeure and furthermore should the Supplier wish to claim an extension of time due to Force Majeure, it shall be under an obligation to provide reasonable evidence that the Force Majeure event has in fact impacted the timely completion of items of Work on the critical path towards the achievement of any Milestones or Substantial Completion, as the case may be.

15.2 Definition of Force Majeure

"Force Majeure" shall mean any event or circumstance, to the extent that such event or circumstance:

- (i) is beyond the reasonable control of the party relying thereon;
- (ii) was not operative or could not reasonably have been foreseen at the date of the Contract;
- (iii) is not an act, event or condition, the risks or consequences of which such party has expressly agreed to assume hereunder; and
- (iv) cannot be cured, remedied, avoided, offset, negotiated or otherwise overcome by the prompt exercise of due diligence of the party relying thereon (or any third person over whom such party has control, including any Subcontractor);

and shall, subject to the foregoing, mean any event or circumstance or a combination of events or circumstances beyond the reasonable control of the party affected by such Force Majeure, including but not limited to strikes or labor disputes (but not strikes or labor disputes involving the Supplier's or Subcontractors' employees unless part of a national or regional strike), which despite all reasonable efforts of the affected party to prevent or mitigate its effects, causes a delay or disruption in the performance of any obligation imposed on such party under the Contract, provided that:

- (i) the circumstances of Force Majeure shall not have arisen, whether in whole or in part, by some default, omission or neglect of the party claiming relief or, in the case of the Supplier, any Subcontractor;
- (ii) the party claiming relief shall have given the other notice, as soon as reasonably practicable in the circumstances but in any event within forty-eight (48) hours of becoming aware of the Force Majeure, and
- (iii) in the case of the Supplier only, such Force Majeure constitutes Force Majeure under the Prime Contract.

15.3 Information and Mitigation of Force Majeure

Upon the occurrence of any Force Majeure event, the Supplier shall endeavor to continue to perform its obligations under the Contract so far as reasonably practicable and shall during the period of such

Force Majeure event protect and secure the Work in such manner as the Purchaser shall require. The Supplier shall notify the Purchaser of the steps it proposes to take including any reasonable alternative means of performance that is not prevented by Force Majeure. Further, should a Force Majeure event occur, the party impacted by Force Majeure, shall use all reasonable endeavors to minimize the effect of the Force Majeure event on the Work or the performance of the Contract.

15.4 Termination for Force Majeure

a) Notice of Termination

Notwithstanding that the Supplier may have been granted an extension of time for completion under Clause 10 (Changes in the Work), if by virtue of Clause 15.1 (Excused by Force Majeure) either party shall be excused the performance of any material obligation for a continuous period of six (6) months, then the Purchaser may at any time thereafter, and provided such performance or punctual performance is still excused, by notice to the Supplier terminate the Contract. Such termination shall be governed by the provisions set forth in Section 19.2 b) (Termination for Convenience).

b) Payments during Force Majeure and/or Upon Termination

The Supplier agrees to store, preserve and conserve the Work in progress for the first ninety (90) days of Force Majeure at no cost to the Purchaser. Thereafter, the Supplier shall be entitled to invoice the Purchaser for the reasonable costs of storing, preserving and conserving the Work in progress, such invoice to be submitted at regular intervals of not less than sixty (60) days.

In the event that the Force Majeure continues for an uninterrupted period of six (6) months, the Supplier shall be entitled to be paid for the Work in progress, provided however, the Supplier shall properly label all such Work in progress as the property of the Purchaser and thereafter continue to store, preserve and/or conserve the same at its own risk; or alternatively, and at the Purchaser's request, deliver such Work in progress to the Site or any other destination selected by the Purchaser. Risk in relation to the Work shall remain with the Supplier. If the Plant or part thereof is already at the Site, the Purchaser may elect to store, preserve and conserve and the Supplier shall offer all assistance necessary to allow the storage, preservation and conservation of such Plant or part thereof. If Purchaser opts to store, preserve and conserve such Plant or part thereof at Site, risk shall pass to the Purchaser.

In the event that the Contract is terminated pursuant to Section 15.4 a) (Notice of Termination) above, the Purchaser shall pay to the Supplier (after receipt of Supplier's commercial invoice, such invoice to be supported by time sheets and Work in progress reports and invoices for material and services purchased) the following:

- (i) all Work in progress;
- (ii) the cost of plant and materials ordered for the Work which have been delivered to the Supplier, or for which the Supplier is liable to accept delivery and such plant and materials shall become the property of the Purchaser when paid for by the Purchaser;
- (iii) any other cost or liability which was reasonably incurred by the Supplier in the expectation of completing the Work; and
- (iv) the reasonable cost of removing any Supplier's Equipment or materials from Site and the reasonable cost of repatriating Supplier staff employed at Site in connection with the Work.

The total sum to be paid to the Supplier under this Clause, when added to any other sums previously paid by the Purchaser to the Supplier pursuant to the Contract, shall not exceed that portion of the Contract Price attributable to the terminated portion of the Work. For the avoidance of doubt, the Supplier shall not be entitled to claim any loss of profit in relation to the Work nor shall it be entitled to any payments for non-utilization or under-utilization of its staff after the termination.

16. ASSIGNMENT

The Supplier shall not assign the Contract or the performance of any

part, nor any moneys due or to become due hereunder, without Purchaser's prior written consent, and any attempted assignment without such consent of Purchaser shall be void. The Purchaser may assign the Contract or any rights or obligations hereunder to any company in the SWISSLOG Group, or to the Owner or successors in interest of the Owner.

17. CONFIDENTIALITY, EXCHANGE OF PROPRIETARY INFORMATION

To enable the parties to execute the Work, the parties may disclose and exchange proprietary and/or confidential information. Each party shall maintain any such information received from the other party in strict confidence and shall not disclose the same to any third party or use such information except for performance of the Work, provided however, nothing contained herein shall preclude the Purchaser from disclosing proprietary and/or confidential information received from the Supplier to the Owner or the Owner's employees, directors, agents and/or advisors. Each party shall ensure that proprietary and/or confidential information received from the other party is disseminated within its own organization on a "need to know" basis only and that any recipient within its own organization receiving such information is bound by a confidentiality undertaking as stringent as the obligation set forth herein. The recipient party shall not make any reproduction of any proprietary and/or confidential information received from the other party or otherwise store the same in any manner without the prior written approval of that party. Nothing contained herein shall prevent disclosure of proprietary and/or confidential information with a view to complying with the requirements of applicable law and/or an order of the court and/or to the extent necessary to resolve a claim or dispute pursuant to Clause 20 (Disputes).

The Purchaser and the Owner reserve the sole right to publicize or authorize any press release or publicity material concerning the Works or any part thereof. The Supplier shall not make any such disclosure without the prior written consent of the Purchaser and the Owner.

18. SUSPENSION

18.1 Right to Suspend

The Purchaser may at any time, with or without reason, instruct the Supplier to suspend the performance of the Work or portion thereof by giving written notice to the Supplier. Such suspension shall continue for the period specified in the suspension notice. At any time after the effective date of the suspension, the Purchaser may require the Supplier to resume performance of the Work or any portion thereof. On or before the end of a specified suspension period, the Purchaser will advise the Supplier in writing that:

- (i) the suspension period will be extended; or
- (ii) the Work will resume; or
- (iii) the Contract will be terminated on a specific date.

If no such notice is received from the Purchaser prior to the expiration of the suspension period, the Supplier shall give notice to the Purchaser requesting the Purchaser's intention about continuation of the Contract.

Save where the Purchaser has suspended for Supplier breach and/or Force Majeure, the Purchaser shall reimburse to the Supplier those direct costs listed below attributable to the suspension which are incurred during the suspension period, provided that the same are reasonable and properly evidenced in writing:

- (i) the direct cost of storing, conserving, preserving and otherwise safeguarding the Work;
- (ii) the direct cost of Supplier's personnel;
- (iii) the direct cost incurred by Subcontractors in storing, conserving, preserving and otherwise safeguarding a portion of the Work and/or maintaining personnel;
- (iv) rental payments made in respect of equipment used at Site, provided however, the Purchaser has agreed in writing that the

rental of such equipment should continue during the suspension period; and/or

- (v) the direct cost of demobilization or re-mobilization.

Reimbursement of such costs may be applied for at intervals of no less than every sixty (60) days until the end of such suspension period.

The Supplier shall be entitled to no other payment or compensation during the period of the suspension or as a consequence of the suspension.

18.2 Supplier's Obligation during Suspension

In the event that the Supplier's performance under the Contract is suspended by the Purchaser, as provided in Clause 18.1 (Right to Suspend), the Supplier shall:

- (i) discontinue performance under the Contract to the extent specified in the notice of suspension;
- (ii) place no further orders or Subcontracts for materials, services, or facilities with respect to the suspended part of the Work other than to the extent required in the notice;
- (iii) make reasonable efforts to obtain suspension upon terms satisfactory to Purchaser of all orders, Subcontracts and rental agreements to the extent they relate to performance of suspended part of the Work;
- (iv) continue to protect and maintain the Work including those portions that have been suspended;
- (v) keep, to the extent required in the notice, its organization and equipment committed to performance under the Contract on a standby basis; and
- (vi) take all other reasonable steps to minimize costs associated with such suspension.

18.3 Supplier's Waiver of Right to Suspend for Dispute

Save as expressly provided in Clause 15 (Force Majeure) and this Clause, any suspension of the Work or part thereof by the Supplier shall be deemed a willful or intentional breach of contract.

19. TERMINATION FOR BREACH OR CONVENIENCE

19.1 Termination for Breach

a) Breach and Notice of Termination upon Breach

If the Supplier shall:

- (i) assign the Contract, or sublet the whole or any part of the Work without the consent of the Purchaser; or
- (ii) suspend the Work or part thereof; or
- (iii) despite previous warnings in writing from the Purchaser, fail to execute the Work in accordance with the Contract, or is failing to proceed with the Work with due diligence such that the timely achievement of any Milestone, Substantial Completion and/or Work Take Over is jeopardized, or is neglecting to carry out its obligations under the Contract and such neglect is affecting adversely the carrying out of the Work; or
- (iv) otherwise commit a breach of any term of the Contract;

then the Purchaser may give seven (7) days' notice to the Supplier of its intention to proceed in accordance with the provisions of this Clause. Upon the expiry of such notice, if the Supplier has not commenced to remedy such defect and/or thereafter diligently pursued such remedy to successful completion within a reasonable period of time having regard to all the circumstances including the Purchaser's obligations under the Prime Contract, the Purchaser may, without prejudice to any other remedy under the Contract, forthwith terminate the Contract and enter the Site and expel the Supplier therefrom but without thereby releasing the Supplier from any of its obligations or liabilities which have accrued under the Contract and without affecting the rights and powers conferred by the Contract on the Purchaser. Upon such termination, the Purchaser may (provided that completion is reasonably practicable) itself complete the Work or may employ any other contractor to do so. The Purchaser shall enjoy

the free use of any Supplier's Equipment for this purpose.

The Supplier shall immediately discontinue further performance of the Work, shall segregate any Work and/or Plant from other work and equipment not being part of the Contract and clearly mark or otherwise identify the Work and/or Plant as being the property of the Purchaser. Further, the Supplier shall not remove any Plant or part thereof or any Supplier's Equipment from the Site.

b) Bankruptcy and Insolvency

If the Supplier shall become bankrupt or insolvent, shall cease or threaten to cease to carry on business or become unable to pay its debts as they fall due or if a petition for the winding up of the Supplier is presented and accepted by a competent authority or a meeting is convened for the purposes of considering a resolution for the making of a receiving order or the Supplier compounds with its creditors, or being a corporation commences a winding up, not being a members' voluntary winding up for the purpose of amalgamation or reconstruction (approved in advance by the Purchaser), or has an administration order made against it or carries on its business under an administrator, examiner or a receiver or manager for the benefit of its creditors or any of them or becomes unable to pay its debts as they fall due excluding contested demands in good faith, then the Purchaser shall be entitled at its absolute sole discretion:

- (i) to terminate the Contract forthwith by notice to the Supplier or to the administrator, examiner, receiver, manager or liquidator or to any person in whom the Contract may become vested, in which event the provisions of Section c) (Payment Upon Termination) shall apply; or
- (ii) to give such administrator, examiner, receiver, manager or liquidator or other person the option of performing the Contract subject to its providing a guarantee in a form satisfactory to the Purchaser for the due and faithful performance of the Contract up to an amount to be agreed.

c) Payments upon Termination for Breach

- (i) Save where the Purchaser has rejected the Work in its entirety, in which case the Supplier shall be under a duty to refund the Contract Price and pay any Liquidated Damages and other damages due hereunder, as soon as practicable after the Purchaser has terminated the Contract for breach, the Purchaser shall, after making such inquiries as it thinks fit, value the Work and all sums then due to the Supplier as of the date of termination and certify the amount thereof.
- (ii) The Purchaser shall not be liable to make any further payments to the Supplier until the costs of execution and all other expenses incurred by the Purchaser in completing the Work (including Warranty work) have been ascertained; such costs and expenses to include:
 - (a) the losses the Purchaser shall suffer in the event that the Work fails to comply with the terms of the Contract;
 - (b) the losses the Purchaser shall suffer as a result of delay the Supplier causes in failing to complete the Work by the agreed date; and
 - (c) Liquidated Damages and other damages due to the Owner or third parties.

If the cost to complete when added to the total amounts already paid to the Supplier prior to the date of termination exceeds the Contract Price, the Supplier shall upon demand pay to the Purchaser the amount of such excess. Any such excess shall be deemed a debt owed by the Supplier to the Purchaser and shall be recoverable accordingly. For the avoidance of doubt, the Supplier undertakes to compensate the Purchaser within thirty (30) days of receipt of an invoice of the Purchaser. If the actual cost to complete, as calculated pursuant to the principles set forth herein, is less than the Contract Price minus any earlier payments made to Supplier, such difference shall be paid to the Supplier within thirty (30) days of the end of the Defects Liability Period.

19.2 Termination for Convenience

a) Notice of Termination for Convenience

The Purchaser may, at its sole discretion, terminate or cancel the Contract, in whole or in part, for convenience, pursuant to the terms of this Clause by giving the Supplier written notice of such termination for convenience. Such notice shall become effective three (3) days after Purchaser's has sent the same.

In the event of termination for convenience, the Supplier shall immediately discontinue further performance of the Work. The Purchaser shall be entitled to take delivery of any and all Work completed or commenced prior to the date of termination for convenience and the Supplier shall deliver the same free of any liens or encumbrances of whatever kind.

b) Payments upon Termination for Convenience

For any items of Work delivered prior to or pursuant to such termination that accord with the Contract, the Supplier shall be entitled to an amount, in percentage terms, equal to the value that the delivered parts of the Work bear to the total Contract Price, such value to be determined through mutual agreement of the Purchaser and the Supplier. Furthermore, the Supplier shall be entitled to an equitable amount to cover its:

- (i) direct, unavoidable costs committed to third parties prior to termination; and
- (ii) reasonable direct, unavoidable costs for prompt, orderly termination (less salvage value and other amounts, recoverable by the Supplier) (collectively "the Termination Costs").

The Supplier shall properly document the Termination Costs and promptly (but within thirty (30) days after receipt of the termination notice) submit the same for Purchaser's review and approval. If the Purchaser disputes the Termination Costs or part thereof, it shall be entitled to have the Supplier's accounts audited by a competent accounting firm. The Supplier shall make every reasonable effort to mitigate the Termination Costs. The Supplier's sole right to compensation and the Purchaser's sole liability in relation to termination for convenience, shall be the Termination Costs, and such Termination Costs shall not exceed the amount fixed in accordance with Appendix C.

20. DISPUTES

20.1 Dispute Resolution Procedure

Claims, disputes and other matters relating to the execution and progress of the Work or the interpretation of or performance under the Contract shall be referred initially to the Purchaser for decision. The Purchaser shall be the initial interpreter of the terms and conditions of the Contract and the initial judge of performance thereunder. Any objection to the Purchaser's interpretation or decision shall be raised by written notice to the Purchaser within two (2) weeks thereafter stating the reason for the Supplier's objections.

Should the Supplier be dissatisfied with the interpretation of the Purchaser under the Paragraph above, a vice president or a higher ranked person of the Supplier and a vice president or a higher ranked person of the Purchaser shall meet. Each representative shall have full authority to settle such dispute.

If a party fails to attend such a meeting and/or not less than twenty-eight (28) days from the date of an initial meeting said persons fail to settle such dispute, then either party may give written notice to the other party of the desire to commence mediation pursuant to the terms of Clause 20.2 (Mediation Rules and Venue), and a mediation session shall take place within (30) days after the notice date.

The Purchaser may, at its sole discretion, refer any dispute to arbitration pursuant to the terms of Clause 20.4 (Arbitration Rules and Venue) hereof or alternatively file a suit against the Supplier in any court of competent jurisdiction. The Supplier irrevocably submits to the non-exclusive jurisdiction of the competent court in the Purchaser's jurisdiction with regard to all matters arising from or in connection with

the Contract and the Supplier agrees that a judgement in any proceedings brought in such court shall be conclusive and binding upon it and may be enforced in the courts of any other jurisdiction.

20.2 Mediation Rules and Venue

Upon notification of either party to commence mediation, the parties must jointly appoint a mutually acceptable mediator. If the parties are unable to agree upon the appointment of a mediator within (1) week after a party has given notice of a desire to mediate the dispute, any party may apply to American Arbitration Association (AAA), or such other organization or person agreed to by the parties in writing, for appointment of a mediator. The parties may mutually agree to extend any of the time periods stated herein.

The parties agree to share equally the costs of the mediation, which costs will not include costs incurred by a party for representation by counsel at the mediation.

The venue of mediation shall be the Purchaser's place of business or as the parties otherwise agree.

The parties agree to mediate in good faith for a minimum period of two (2) weeks from the actual commencement of mediation. If the parties are not successful in resolving the dispute through mediation, as above, either party may request to pursue the dispute by adjudication upon two (2) weeks written notice to the other party specifying its intended course of action. If the AAA appointed mediator is unable or unwilling to perform the adjudicator role then the parties shall submit the matter to adjudication pursuant to Clause 20.3 (Adjudication Rules and Venue).

The parties agree that the mediation provided for here is a compromise negotiation for purposes of all international, federal and state rules of evidence. The entire procedure will be confidential. All conduct, statements, promises, offers, views and opinions, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, representatives or other invitees to the mediation and by the neutral, who is the parties' joint agent for purposes of these compromise negotiations, are confidential and shall, in addition and where appropriate, be deemed to be attorney client privileged. Such conduct, statements, promises, offers, views and opinions shall not be discoverable or admissible for any purposes, including impeachment, in any litigation or other proceeding involving the parties and shall not be disclosed to anyone not an agent, employee, expert, witness, or representative for any of the parties. However, evidence otherwise discoverable or admissible in a later proceeding is not excluded from discovery or admission as a result of its use in the mediation. If not entirely enforceable, the parties intend that the court enforce this provision to the extent enforceable by such court.

20.3 Adjudication Rules and Venue

Dispute adjudication shall be in accordance with the FIDIC-Conditions of Contract for EPC-Turnkey Projects 1999. The Dispute Adjudication Board shall consist of one adjudicator. In case the Dispute Adjudication Board has not been requested within such seven (7) days, installed within four (4) weeks, or rendered its decision within eight (8) weeks, from the day of its request, then the arbitration proceeding shall continue. Subject to the mediator not being acting as adjudicator, the adjudicator shall be appointed by AAA.

20.4 Arbitration Rules and Venue

Any arbitration proceedings shall be governed by the Rules of Arbitration of the American Arbitration Association by three (3) arbitrators appointed in accordance with said Rules and the venue of the arbitration shall be Washington DC.

21. ENTIRE AGREEMENT, INDEPENDENT SUPPLIER

- a) The Contract contains the entire understanding of the parties with respect to the subject matter hereof. There are no other oral or written understandings, terms or conditions and neither

party has relied upon any representation, express or implied, not contained in the Contract.

- b) The Supplier is an independent Supplier and nothing contained herein shall be construed as constituting any relationship with the Purchaser or the Owner other than that of a purchaser and an independent supplier, nor shall it be construed as creating any relationship whatsoever between the Purchaser and the Supplier's employees. Neither the Supplier, nor any of its employees, are or shall be deemed to be employees of the Purchaser or the Owner.
- c) Each party has reviewed every provision contained herein and has had an adequate opportunity to negotiate each of the provisions of the Contract and to have any ambiguities, lacunae or concerns discussed and where appropriate addressed. Therefore, it is agreed that neither party shall assert in any dispute that the Contract has been drawn up exclusively or primarily by only the other party, and that therefore it should be interpreted against that other party.
- d) Unless otherwise provided, Purchaser and Supplier do not intend any term of the Contract to be enforceable by a party other than themselves.

22. WAIVER

- a) The rights of the Purchaser under the Contract are cumulative; and nothing contained in the Contract shall be deemed to exclude or restrict any right or remedy that the Purchaser may have at law or pursuant to the terms of another agreement.
- b) Subject to Section (c) below, no act, course of conduct, failure or neglect to act or acquiescence on the part of the Purchaser or a person acting on its behalf shall result in the Purchaser being taken to have waived, or being precluded (permanently or temporarily) from enforcing or relying on:
 - (i) a provision of the Contract; or
 - (ii) a breach by the Supplier of an obligation under the Contract or at law; or
 - (iii) a right or remedy of the Purchaser at law, including a right arising out of a breach such as described in (ii) above.
- c) For the avoidance of doubt, Section (b) shall not apply as between the Purchaser and the Supplier to the extent that the Purchaser in writing expressly waives reliance on a specific provision, breach or right; but this is subject to any condition, limitation or other term attaching to such waiver.

23. NOTICES

23.1 Language of Notices

All certificates, notices or written orders to be given to the Supplier by the Purchaser, and all notices to be given to the Purchaser by the Supplier, shall either be delivered by hand against written acknowledgement of receipt, or be sent by courier or airmail or one of the agreed systems of electronic transmission. The addresses for the receipt of such communications shall be as stated in the Purchase Order. All notices pursuant to the Contract shall be in the English language.

23.2 Delivery of Notices

A notice shall be deemed delivered:

- (i) when presented personally; or
- (ii) if received on a working day for the receiving party, when transmitted by facsimile to the receiving party's facsimile number specified and, if received on a day that is not a working day of the receiving party, on the first working day following the date it has been transmitted by facsimile to the receiving party's facsimile number specified above; or
- (iii) if sent by courier or by mail, when actually received.

Any notice given by facsimile shall be confirmed in writing, delivered personally or sent by registered or certified mail, but the failure to so confirm shall not void or invalidate the original notice if it is in fact received by the party to which it is addressed.

Either party may change its nominated address by written notice to the other party, provided however if any notice, request or other communication is given or made by the Purchaser and/or the Owner to the Supplier, any delay or error in the transmission of the communication or its failure to arrive shall not deprive the Purchaser and/or the Owner of the right to rely on the communication.

24. GOVERNING LAW AND CONTRACT LANGUAGE

- a) The Contract shall be governed and interpreted in accordance with the provisions and stipulations set forth herein and complemented where necessary by the laws of the state where the Purchaser has its place of business.
- b) Any international private law statutes / conflicts of laws provisions and the United Nations' Convention on Contracts for the Sale of Goods shall be excluded.
- c) The language of the Contract shall be English.

Appendix A, Page 1 of 2

Specimen Forms for Bank Guarantee and Letter of Credit

A1. Bank Guarantee (Specimen)

SWISSLOG
.....
.....

Performance Guarantee No.

We have been informed that you have concluded on a Contract No. with Messrs. (hereinafter called "Supplier") for the supply of at a total price of According to this Contract, Supplier is required to provide you with a performance guarantee in the amount of (20% of the Contract Price).

This being stated, we, (name and address of bank), irrespective of the validity and the legal effects of the above-mentioned Contract and waiving all rights of objection and defense arising from the principal debt, hereby irrevocably undertake to pay immediately to you, upon your first demand, any amount up to:

(currency / amount.....)
(in full letters:)

upon receipt of your written request for payment and your written confirmation stating that in your belief Supplier has not fulfilled its obligations in conformity with the terms of the above-mentioned Contract.

For the purpose of identification, your request for payment and your confirmation have to be presented through the intermediary of a first rate bank confirming that the signatures are legally binding upon your firm. If, in this respect, such bank will make use of tested telex, SWIFT or tested cable, it will have to transmit in any case the full wording of your request for payment and of your above-mentioned written confirmation and to confirm at the same time that the originals of these documents, legally binding upon your firm, have been forwarded to us.

Our guarantee is valid until and expires in full and automatically, irrespective of whether the present document is returned to us or not.

With each payment under this guarantee our obligation will be reduces pro rata.

.....
(Place, date)

.....
(Name of issuing bank)

Appendix A, Page 2 of 2

A2. ACCEPTABLE TEXT OF A LETTER OF CREDIT

Swisslog
.....
.....

Irrevocable Letter of Credit No.

We hereby issue our irrevocable Letter of Credit No. in your favor and for account of
..... [Name of the Supplier] for the aggregate amount of:

..... [currency / amount]
(in words)

expiring on

Funds under this Letter of Credit are available to you against receipt at the counters of
[Name of confirming Bank] in, of your sight draft (s) drawn on us, mentioning thereon
our Letter of Credit No. accompanied by your written drawing certification in the form as follows:

Drawing Certification

to: [name and address of confirming bank]

Re: Irrevocable Letter of Credit No.

Please be advised that we are hereby drawing under the above referenced Letter of Credit and that:

- 1) Supplier owes us as of the date hereof [currency / amount] in connection with
- 2) We have requested payment from [name of the borrower] in the amount of [currency / amount] and as of the date hereof they have failed to pay or reimburse us for such amount.
- 3) This drawing is in the amount of [currency / amount], which is not in excess of the amount for which payment has been requested as set forth in Paragraph (2) hereof.

Swisslog
signed by:

The amount, which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawing hereunder. Partial drawings are permitted.

We hereby engage with you that all drafts drawn and presented under and in accordance with the terms of this Letter of Credit will be duly honored by us. All charges in and outside of (country of issuing bank) are for the account of the applicant.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500.

.....
(Place, date)

.....
(Name of issuing bank)

Appendix B, Page 1 of 2

B1: PARTIAL RELEASE AND WAIVER SPECIMEN FORM

State of _____
County of _____

Swisslog Contract No. _____

WHEREAS, _____ (herein called "Supplier") has been employed by Swisslog _____ (herein together with its parent, subsidiaries and affiliates called "Purchaser") to furnish _____ (hereafter referred to as "Work") for the premises known as _____ of which _____ is the Owner.

THEREFORE, Supplier for and in consideration of a payment of _____ which together with prior payments constitutes a total payment of _____ and other good and valuable considerations, except as set forth below, does hereby waive, relinquish and release any and all known contractual claims for compensation of any nature which Supplier has or may have against Purchaser and Owner on account of the Work and any and all liens or claims or rights of Lien(s) under the Laws of the State of _____ relating to Mechanics or Materialmen's Liens, on the above-described premises and all improvements thereon, and on the monies or other considerations due or to become due from Purchaser to Supplier on account of the Work furnished prior to _____ [date] by Supplier for the above-described premises. Further, Supplier hereby agrees that of the date hereof, Supplier has paid or has caused to be paid all bills, invoices, charges or other amount dues and payable which are payable by Supplier to others for labor, services and/or material furnished to or for the benefit of Supplier for the Work. Further, Supplier hereby agrees to defend, indemnify and hold harmless Purchaser and Owner against any and all costs, liabilities, damages, and expenses of whatever nature incurred (including reasonable attorney's fees) as a result of any claim asserted or filed by anyone against Purchaser and Owner relating to the Work and/or the filing of any Mechanic's or Materialmen's Lien for any reason by any party who has provided labor, services or material for the Work and of furtherance hereof agrees to immediately take at its sole expense whatever actions are necessary to satisfy any such liens or to remove any such lien which may be filed against the premises.

Check Appropriate Box:

- I declare under oath that I have not further subcontracted any part of the Work and that all material furnished under the Work has been furnished from my own stock and has been paid for in full (if this box is checked, you do not need to execute Subcontractor's Affidavit).
- I subcontracted part or all of the Work, some or all material furnished under the Work was not from my own stock, or some or all material furnished under the Work has not been paid for in full. (If this box is checked, you must execute Subcontractor's Affidavit, which is made a part hereof).

Signed this ___ day of _____, 20__

_____ as Supplier, By: _____ (Officer)

its: _____

Execute Either A or B Below:

A. If Corporation or Partnership

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public in and for the said county in said state, hereby certify that _____, whose name as _____ of _____ a corporation (partnership), is signed to the foregoing Final Release and Waiver, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing, he as such officer (partner) and with full authority, executed the same voluntarily for and as the act of said corporation (partnership) on the day the same bears date.

B. If Individual

I, _____, a Notary Public in and for the said county in said state, hereby certify that _____, whose name is signed to the foregoing Final Release and Waiver, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal of office this _____ day of _____, 20__.

_____ Notary Public

Appendix B, Page 2 of 2

B2: FINAL RELEASE AND WAIVER SPECIMEN FORM

State of _____
County of _____

Swisslog Contract No. _____

WHEREAS, _____ (herein called "Supplier") has been employed by Swisslog _____ (herein together with its parent, subsidiaries and affiliates called "Purchaser") to furnish _____ (hereafter referred to as "Work") for the premises known as _____ of which _____ is the Owner.

THEREFORE, Supplier for and in consideration of a final payment of _____ which together with prior payments constitutes a total payment of _____ and other good and valuable considerations, does hereby waive, relinquish and release any and all contractual claims for compensation of any nature which Supplier has or may have against Purchaser and Owner on account of the Work and any and all liens or claims or rights of Lien(s) under the Laws of the State of _____ relating to Mechanics or Materialmen's Liens, on the above-described premises and all improvements thereon, and on the monies or other considerations due or to become due from Purchaser to Supplier on account of the Work for the above-described premises. Further, Supplier hereby agrees that of the date hereof, Supplier has paid or has caused to be paid all bills, invoices, charges or other amount dues and payable which are payable by Supplier to others for labor, services and/or material furnished to or for the benefit of Supplier for the Work. Further, Supplier hereby agrees to defend, indemnify and hold harmless Purchaser and Owner against any and all costs, liabilities, damages, and expenses of whatever nature incurred (including reasonable attorney's fees) as a result of any claim asserted or filed by anyone against Purchaser and Owner relating to the Work and/or the filing of any Mechanic's or Materialmen's Lien for any reason by any party who has provided labor, services or material for the Work and of furtherance hereof agrees to immediately take at its sole expense whatever actions are necessary to satisfy any such liens or to remove any such lien which may be filed against the premises.

Check Appropriate Box:

- I declare under oath that I have not further subcontracted any part of the Work and that all material furnished under the Work has been furnished from my own stock and has been paid for in full (if this box is checked, you do not need to execute Subcontractor's Affidavit).
- I subcontracted part or all of the Work, some or all material furnished under the Work was not from my own stock, or some or all material furnished under the Work has not been paid for in full. (If this box is checked, you must execute Subcontractor's Affidavit, which is made a part hereof).

Signed this ___ day of _____, 20__

_____ as Supplier, By: _____ (Officer)

its: _____

Execute Either A or B Below:

A. If Corporation or Partnership

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public in and for the said county in said county in said state, hereby certify that _____, whose name as _____ of _____ a corporation (partnership), is signed to the foregoing Final Release and Waiver, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing, he as such officer (partner) and with full authority, executed the same voluntarily for and as the act of said corporation (partnership) on the day the same bears date.

B. If Individual

I, _____, a Notary Public in and for the said county in said county in said state, hereby certify that _____, whose name is signed to the foregoing Final Release and Waiver, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing, he executed the same voluntarily on the day the same bears date.

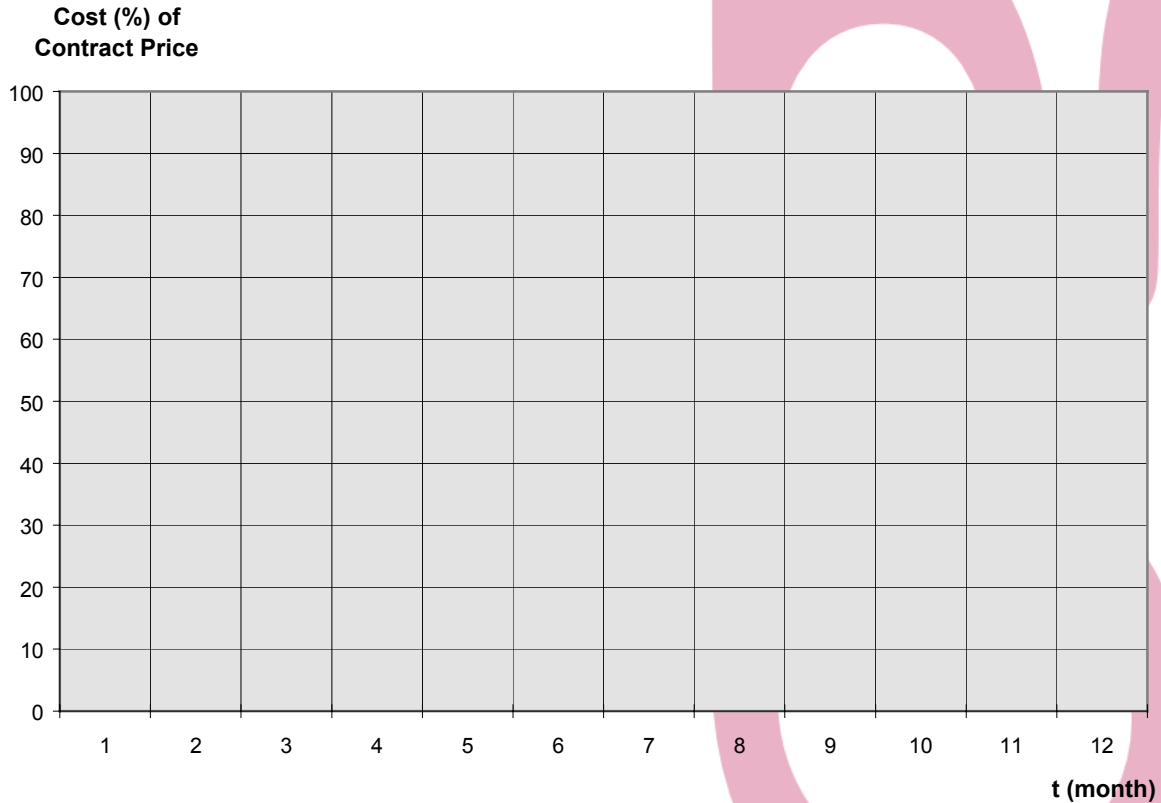
Given under my hand and official seal of office this _____ day of _____, 20__.

_____ Notary Public

Appendix C

C: Not to Exceed Termination and/or Cancellation Cost Curve

The parties agree to the following “Not to Exceed Cost Curve” for termination in accordance with the Contract, Clause 19.2 (Termination for Convenience):



The graph above inserted shall contain the not-to-exceed-costs at the end of each month of contract performance and the graph shall be completed by numerically indicating the percentages into the Table below (in case of conflict, the Table below shall have precedence over the graph above):

Period in Month after Date of NTP or Purchase Order	Not to exceed Costs [insert percentage number]	Basis of the Percentages
End of Contract Month #1		% Contract Price
End of Contract Month #2		% Contract Price
End of Contract Month #3		% Contract Price
End of Contract Month #4		% Contract Price
End of Contract Month #5		% Contract Price
End of Contract Month #6		% Contract Price
End of Contract Month #7		% Contract Price
End of Contract Month #8		% Contract Price
End of Contract Month #9		% Contract Price
End of Contract Month #10		% Contract Price

Appendix D

D: Certificate of Compliance

Supplier's Name		CERTIFICATE OF COMPLIANCE	
SUPPLIER ADDRESS:		PROJECT:	
SUPPLIER'S REF:		CONTRACT NO:	
		SWISSLOG-P.O. No.:	
		SWISSLOG P.O. REV / ISSUE:	
<u>EQUIPMENT DESCRIPTION</u> <u>REF NO. and MANUFACTURER</u>		<u>QUANTITY</u>	<u>PACKING LIST NO.</u>
<p><u>CONFIRMATION:</u> We represent, warrant and hereby certify that all parts referenced above have been manufactured / erected and commissioned, where applicable in accordance with the requirements of the Contract and the Inspection and Test Plan and the Quality Assurance System that the shipment is complete and no items are missing and that no outstanding NCR's, concessions or vendor incident reports exist and the associated documentation package is complete and signed for submission.</p>			
<u>Accepted by:</u>	<u>Signature</u>	<u>Stamp</u>	<u>Date</u>
FOR SUPPLIER
	QA MANAGER		