

PART 3 – Conditions of Contract and Contract Forms

Section VII. General Conditions (GC)

The Conditions of contract contained in this standard document for Procurement of Works or Plant (Turnkey Projects) are those suitable for procurement of Plant, Design and Build.

The applicable Conditions of Contract shall be the General Conditions of the FIDIC Conditions of Contract for EPC/TurnKey Projects (2017) prepared by the Federation Internationale des ingenious – conseils (FIDIC) .

Copies of the FIDIC Conditions of Contract can be obtained from:-

FIDIC Secretariate

P.O. Box 86

1000 Lausanne 12

Switzerland

Fax: 4121 653 5432

Telephone 4121 653 5003

<https://fidic.org/books/epcturnkey-contract-2nd-ed-2017-silver-book>

Section VIII. Particular Conditions

The following Particular Conditions shall supplement the General Conditions in Section VII. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions.

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Particular Conditions

The following Particular Conditions (PC) shall supplement the General Conditions (GC). Whenever there is a conflict, the provisions herein shall prevail over those in the GC. The clause number of the PC is the corresponding clause number of the GC.

PC 1.1 Definitions

The Employer is: **Kenya Electricity Transmission Company Limited**

The Project Manager is: **TBA (To be advised)**

The Financier is: **The Government of the Republic of Kenya**

Country of Origin: all countries and territories as indicated in Section V of the bidding documents, Eligible Countries.

PC 1.4 Law and Language

The Contract shall be interpreted in accordance with the laws of: **The Republic of Kenya**

The ruling language is: **English**

The language for communications is: **English**

PC 1.9 . Employer's Use of Contractor's Documents

PC 1.9 The copyright in all drawings, documents and other materials containing data and information furnished to the Employer by the Contractor herein shall be vested in both the Employer and the Contractor. The Contractor shall ensure to submit to the Employer all the raw files as such that may be required to enable reproduction of the same facilities. The Employer shall have the right to issue the same to a third party without any further consultation with the Contractor.

PC 2. Employer's Responsibilities

PC 2.2 The Employer shall acquire and pay for only the change of user permit if required by virtue of the registered land use for the substation site. Should this not be available on commencement of works the Employer shall ensure that the Contractor will not be stopped from working by the local, state or national government authorities as the permit is sought.

PC 4.2. Performance Security

PC 4.2.1 The amount of performance security, as a percentage of the Contract Price for the Facility or for the part of the Facility for which a separate Time for Completion is provided, shall be: **Ten percent (10%)**

The performance security shall be in the form of the **Bank Guarantee** attached hereto in Section IX, Contract Forms issued by a Tier 1 local Kenyan bank licensed by the Central Bank of Kenya and acceptable to the Employer.

PC 4.2.3 The performance security **shall not** be reduced on the date of the Operational Acceptance.

The performance security shall be reduced to **Ten percent (10%)** of the value of the component covered by the extended defect liability to cover the Contractor's extended defect liability in accordance with the provision in the PC, pursuant to GC Sub-Clause 27.10.

PC 4. Scope of Facilities [Spare Parts]

GC Clause 4.1 Only Mandatory Spare parts shall be supplied

PC 6.5 Working hours

Normal working hours are: **8:00am – 5:00pm**

Normal Working Day: Monday to Friday

PC 8. Time for Commencement and Completion

PC 8.1 The Contractor shall commence work on the Facilities **One (1) Month** from the Effective Date for determining Time for Completion as specified in the Contract Agreement.

PC 8.2 The Time for Completion of the whole of the Facilities shall be **12 months** from the Effective Date as described in the Contract Agreement

PC 8.8 Delay Damages

Applicable rate for delay damages: **One percent (1%)** of the Contract Price per week

Maximum deduction for delay damages: **Ten percent (10%)** of the Contract Price

No bonus will be given for earlier Completion of the Facilities or part thereof.

PC 10 Employer's Taking Over

PC 10.1 Upon Completion of works and passing of tests on completion, the Contractor shall be responsible for the care and custody of the Facilities or the relevant part thereof, together with the risk of loss or damage thereto, up to commissioning and energization of the facilities upon which the care and custody of the Facilities shall become the Employer's responsibility.

PC 11.3 Defects Notification Period

The Defects Notification Period is twenty four (24) months. The Defects Notification Period shall be extended by twenty four (24) months.

PC 14.1 – The Contract Price

PC 14.1(b) The following duties and taxes are applicable:

a. Import Duties and Taxes on Imported Machinery and Equipment

- a) All imported materials, equipment and plant (including Mandatory Spares) to be used in this project are unless exempted) subject to Import Duty, Import Declaration Fee (IDF), Railway Development Levy (RDL) and Value Added Tax.
- b) The amount paid for RDL, VAT, (IDF) and Import Duty under 14.2.1 (a) above shall be reimbursed to the Contractor by the Employer.

b. Import duties and taxes for Contractors equipment and machinery

For contractor's equipment and machinery imported on temporary basis for the execution of the contract, the contractor is liable for payment of duties/taxes on importation, however the contractor in collaboration with the Employer will request temporary importation approval from Kenya Revenue Authority whereby the duties/taxes will not be paid if the imported equipment and machinery are re - exported within the granted allowed period

- b) The price tendered by the Contractor shall include VAT, customs duties and other taxes payable.

c. Local Taxation

VAT

All materials, plant and equipment purchased for permanent installation of the project are subject to Value Added Tax. Fuel used by the Contractor for transport or during construction is also subject to VAT.

All works executed by local or foreign subcontractors for construction of the project are subject to VAT.

d. Other Taxes

All payments made to the Contractor, Sub-Contractors or Consultants shall be subject to withholding tax.

The Contractor, subcontractors and consultants shall indemnify and hold Employer free from any liability on account of all taxes such as payroll taxes and corporate tax in connection with the provision of the Services during execution of the project and nothing in this clause shall prevent the Employer from withholding any taxes that the Employer is required under the laws of the Republic.

e. Import License

The Contractor will be responsible for obtaining the necessary import licenses required under Kenya regulations for import into Kenya of all the Goods being supplied from outside of the country, and for all the administrative work associated therewith to the limit and extent as indicated in this contract. The Employer will provide reasonable assistance in applying for the licenses to the Contractor in respect thereof.

f. Pre-Shipment Inspection

The Contractor shall procure the issuance of an Inspection Certificate of Conformity (COC) issued by an authorized KEBS partner prior to shipment. The certificate is a mandatory Customs Clearance document in Kenya. Kenya Bureau of Standards has appointed Societe Generale de Surveillance S.A and INTERTEK Group Plc to perform the Pre shipment Verification of Conformity programme on their behalf, depending on the country of supply. The cost for Pre-Shipment inspection fee shall be reimbursed by the Employer.

g. Delivery and Documents

Upon shipment, the Contractor shall notify the Employer and the Employer's Representative, and the Insurance Company, by cable, telex or facsimile the full details of the shipment including contract number, description of Goods, quantity the vessel, the bill of lading number and date, port of loading, date of shipment, port of discharge etc. The Contractor shall mail or courier the following documents in two copies to the Employer and three copies to the Employer's Representative, with a copy to the Insurance Company:

(a) For Imported Goods

i) The Contractor's invoice showing Goods description, quantity, unit price, total amount;

ii) Non-negotiable bill of lading

iii) Packing list identifying contents of each package

iv) Insurance Certificate;

v) Manufacturer's/ Contractor's warranty certificate;

vi) Inspection certificate (Clean Report of Findings) issued by the nominated inspection agency;

vii) Contractor's factory inspection report; and

viii) Certificate of Origin

The above documents shall be received by the Employer and Employer's Representative at least two weeks before arrival of the Goods at the port and, if not received, the Contractor will be responsible for any consequent expenses (including and demurrage). This is to provide time to obtain tax exemption for each shipment, if applicable.

(b) For Domestic Goods

i) Copies of the Contractor's Invoice showing Goods description, quantity, unit price, total amount;

ii) Delivery note;

iii) Manufacturer's/ Contractor's guarantee certificate;

iv) Inspection Certificate issued by the nominated inspection agency and the Contractor's factory inspection report; and

v) Certificate of Origin.

PC 14.2 Advance Payment Guarantee

The amount of Advance Payment shall be: **Twenty percent (20%) of the Contract Price** against receipt by the Employer of the Advance Payment Guarantee in the form provided hereto in Section IX, Contract Forms issued by a Tier 1 local Kenyan bank licensed by the Central Bank of Kenya and acceptable to the Employer.

PC 21 Disputes and Arbitration

PC Clause 21.1 The DAAB shall be appointed within **28 days** after the declaration of a dispute by either party.

The DB shall be comprised of: **Three members**

Each Party shall appoint one member and thereafter jointly appoint the third member within fourteen (14) days from when a dispute has been declared.

PC Clause 21.2 Appointment (if not agreed) will be made by: **Nairobi Centre for International Arbitration**

a)

PC 21.6 Unless settled amicably, any Dispute in respect of which the DAAB's decision (if any) has not become binding and final shall be settled by arbitration administered by the Nairobi Center for International Arbitration ("NCIA") in accordance with the Nairobi Center for International Arbitration Rules for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The Tribunal shall consist of three (3) arbitrators.

The language of the arbitration shall be English.

The seat of arbitration shall be Nairobi, Kenya.

The award rendered shall apportion the costs of the arbitration;

The award shall be in writing and shall set forth in reasonable detail the facts of the Dispute and the reasons for the tribunal's decision; and

Each Party will appoint an arbitrator within ten (10) days of the date of the request to initiate arbitration and two appointed arbitrators shall then jointly appoint a third arbitrator to act as Chairman within ten (10) Days of the date of the appointment of the second arbitrator, and no arbitrator shall have any existing or prior relationship with either Party. Arbitrators not appointed within the time limits set forth in the preceding sentence shall be appointed by NCIA.

If there is a conflict between this Agreement and the said Rules, this Agreement shall prevail.

The award of the arbitration shall be final and binding to the parties.

PC 27. Extension of Defects Notification Period

The critical components covered under the extended defect liability are **Towers, Conductors and OPGW** and the period shall be extended by **two (2)** years.

Section IX. - Contract Forms

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Notification of Award - Letter of Acceptance

To: _____

This is to notify you that your Bid dated _____ for execution of the _____ for the Contract Price in the aggregate of _____, as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose one of the Performance Security Forms included in Section IX, - Contract Forms, of the Bidding Document

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Agency: _____

Attachment: Contract Agreement

Contract Agreement

THIS AGREEMENT is made the _____ day of _____, _____,
BETWEEN

(1) _____, a corporation incorporated under the laws of _____ and having its principal place of business at _____ (hereinafter called “the Employer”), and (2) _____, a corporation incorporated under the laws of _____ and having its principal place of business at _____ (hereinafter called “the Contractor”).

WHEREAS the Employer desires to engage the Contractor to design, manufacture, test, deliver, install, complete and commission certain Facilities, viz. _____ (“the Facilities”), and the Contractor has agreed to such engagement upon and subject to the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:

Article 1.

Contract Documents

1.1 Contract Documents (Reference GC Clause 2)

The following documents shall constitute the Contract between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract:

- (a) This Contract Agreement and the Appendices hereto
- (b) Letter of Bid, Preamble to the Price Schedules contained in the Bid Document and Price Schedules submitted by the Contractor
- (c) Particular Conditions
- (d) General Conditions
- (e) Specification
- (f) Drawings
- (g) Bid documents as issued by the Employer
- (h) Any other documents forming part of the Employer’s Requirements
- (i) Any other documents shall be added here

1.2 Order of Precedence (Reference GC Clause 2)

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above.

1.3 Definitions (Reference GC Clause 1)

Capitalized words and phrases used herein shall have the same meanings as are ascribed to them in the General Conditions.

Article 2.

Contract Price

2.1 Contract Price (Reference GC Clause 11)

**and Terms of
Payment**

The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price shall be the aggregate of: _____, _____ as specified in Price Schedule No. 5 (Grand Summary), and _____, _____, or such other sums as may be determined in accordance with the terms and conditions of the Contract.

2.2 Terms of Payment (Reference GC Clause 12)

The terms and procedures of payment according to which the Employer will reimburse the Contractor are given in the Appendix (Terms and Procedures of Payment) hereto.

**Article 3.
Effective Date**

3.1 Effective Date (Reference GC Clause 1)

The Effective Date from which the Time for Completion of the Facilities shall be counted is the date when all of the following conditions have been fulfilled:

- (a) This Contract Agreement has been duly executed for and on behalf of the Employer and the Contractor;
- (b) The Contractor has submitted to the Employer the performance security and the advance payment guarantee;
- (c) The Employer has paid the Contractor the advance payment

Each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.

3.2 If the conditions listed under 3.1 are not fulfilled within four (4) months from the date of this Contract notification because of reasons not attributable to the Contractor, the Parties shall discuss and agree on an equitable adjustment to the Contract Price and the Time for Completion and/or other relevant conditions of the Contract.

**Article 4.
Communications**

4.1 The address of the Employer for notice purposes, pursuant to GC 4.1 is: _____.

4.2 The address of the Contractor for notice purposes, pursuant to GC 4.1 is: _____.

**Article 5.
Appendices**

5.1 The Appendices listed in the attached List of Appendices shall be deemed to form an integral part of this Contract Agreement.

5.2 Reference in the Contract to any Appendix shall mean the Appendices attached hereto, and the Contract shall be read and construed accordingly.

IN WITNESS WHEREOF the Employer and the Contractor have caused this Agreement to be duly executed by their duly authorized representatives the day and year first above written.

Signed by, for and on behalf of the Employer

[Signature]

[Title]

in the presence of _____

Signed by, for and on behalf of the Contractor

[Signature]

[Title]

in the presence of _____

APPENDICES

- Appendix 1 Terms and Procedures of Payment
- Appendix 2 Price Adjustment
- Appendix 3 Insurance Requirements
- Appendix 4 Time Schedule
- Appendix 5 List of Major Items of Plant and Installation Services and List of Approved Subcontractors
- Appendix 6 Scope of Works and Supply by the Employer
- Appendix 7 List of Documents for Approval or Review
- Appendix 8 Functional Guarantees

Appendix 1. Terms and Procedures of Payment

In accordance with the provisions of GC Clause 12 (Terms of Payment), the Employer shall pay the Contractor in the following manner and at the following times, on the basis of the Price Breakdown given in the section on Price Schedules. Payments will be made in the currencies quoted by the Bidder unless otherwise agreed between the Parties. Applications for payment in respect of part deliveries may be made by the Contractor as work proceeds.

TERMS OF PAYMENT

Twenty percent (20%) of the total Contract Price amount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security shall be reduced in proportion to the value of the plant and equipment delivered to the site/warehouse, as evidenced by shipping and delivery documents and the value of work performed by the Contractor as evidenced by the invoices for installation services.

Schedule No. 1. Plant and Equipment Supplied from Abroad

In respect of plant and equipment supplied from abroad, the following payments shall be made:

Forty percent (40%) of the total or pro rata CIP amount upon Incoterm “CIP”, upon delivery to the site/warehouse within seventy-five (75) days after certification of invoice.

Thirty percent (30%) of the total or pro rata CIP amount CIP upon installation of within seventy-five (75) days after certification of invoice.

Five percent (5%) of the total or pro rata CIP amount upon issue of the Completion Certificate, within seventy-five (75) days after certification of invoice.

Five percent (5%) of the total or pro rata CIP amount upon issue of the Operational Acceptance Certificate, within seventy-five (75) days after certification of invoice.

Schedule No. 2. Plant and Equipment Supplied from within the Employer's Country

In respect of plant and equipment supplied from within the Employer's country, the following payments shall be made:

Forty percent (40%) of the total or pro rata EXW amount upon Incoterm “Ex-Works”, upon delivery to the site/warehouse within seventy-five (75) days after certification of invoice.

Thirty percent (30%) of the total or pro rata EXW amount EXW upon installation of within seventy-five (75) days after certification of invoice.

Five percent (5%) of the total or pro rata EXW amount upon issue of the Completion Certificate, within seventy-five (75) days after certification of invoice.

Five percent (5%) of the total or pro rata EXW amount upon issue of the Operational Acceptance Certificate, within seventy-five (75) days after certification of invoice.

Schedule No. 3. Design Services

In respect of design services for both the foreign currency and the local currency portions, the following payments shall be made:

Eighty percent (80%) of the total or pro rata design services amount upon acceptance of design in accordance with GC Clause 20 by the Project Manager within forty-five (45) days after certification of invoice.

Schedule No. 4. Installation Services

In respect of installation services for both the foreign and local currency portions, the following payments shall be made:

Seventy percent (70%) of the measured value of work performed by the Contractor, as identified in the said Program of Performance, during the preceding month, as evidenced by the Employer's authorization of the Contractor's application, will be made monthly within seventy-five (75) days after certification of invoice.

Five percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Completion Certificate, within seventy-five (75) days after certification of invoice.

Five percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Operational Acceptance Certificate, within seventy-five (75) days after certification of invoice.

In the event that the Employer fails to make any payment on its respective due date, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate of One Month USD Libor rate plus 0.25% percent per month for period of delay until payment has been made in full.

PAYMENT PROCEDURES

The procedures to be followed in applying for certification and making payments shall be as follows:

All payments shall be made upon certification of invoice by the Engineer. The submission date will be the date upon which the Contractor receives a scanned copy of the payment certificate from the Engineer issued to the Employer.

The Engineer shall issue the payment certificate within seven days' receipt of the correct invoice with the correct relevant attachments as per contract. The relevant attachments are as follows:-

Schedule No. 1. Plant and Equipment Supplied from Abroad and Schedule No. 2 Plant and Equipment Supplied from within the Employer's Country

- a. Valid copy of advance and performance guarantee

- b. Packing list for the plant and equipment supplied and being invoiced – this should be verifiable and correlated to the price schedule
- c. Delivery receipt signed by both the Contractor and Engineer/Employer

Schedule No. 3. Design Services

- a. Valid copy of advance and performance guarantee
- b. Approval from Engineer indicating acceptance of design and level of completion of design works.

Schedule No. 4. Installation Services

- a. Valid copy of advance and performance guarantee
- b. Measurement certificate signed by the Contractor and Engineer/Employer.

All payments will be made through Direct Transfer to the contractor account.

In the event the Engineer requires the contractor invoice to be corrected, the Contractor shall correct the invoice and certification shall only be made after correction of the invoice.

Appendix 2. Price Adjustment

NOT APPLICABLE

Appendix 3. Insurance Requirements

Insurances to be Taken Out by the Contractor

In accordance with the provisions of GC Clause 34, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, such approval not to be unreasonably withheld.

(a) Cargo Insurance

Covering loss or damage occurring, while in transit from the supplier's or manufacturer's works or stores until arrival at the Site, to the Facilities (including spare parts therefor) and to the construction equipment to be provided by the Contractor or its Subcontractors.

| <u>Amount</u> | <u>Deductible limits</u> | <u>Parties insured</u> | <u>From</u> | <u>To</u> |
|---------------|--------------------------|---|------------------------------------|-----------|
| Supply | KES 1,000,000 | All the parties having interest in the transport of goods | During all transports and transits | |

(b) Installation All Risks Insurance

Covering physical loss or damage to the Facilities at the Site, occurring prior to completion of the Facilities, with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the defect liability period while the Contractor is on the Site for the purpose of performing its obligations during the defect liability period.

| <u>Amount</u> | <u>Deductible limits</u> | <u>Parties insured</u> | <u>From</u> | <u>To</u> |
|----------------|--------------------------|---|---|-----------|
| Contract value | KES7,500,000 | All the parties' in connection with the works at Site | From the commencement of the works at Site until the Completion date plus 18 months of Extended Maintenance | |

(c) Third Party Liability Insurance

Covering bodily injury or death suffered by third parties (including the Employer's personnel) and loss of or damage to property (including the Employer's property and any parts of the Facilities that have been accepted by the Employer) occurring in connection with the supply and installation of the Facilities.

| <u>Amount</u> | <u>Deductible limits</u> | <u>Parties insured</u> | <u>From</u> | <u>To</u> |
|---------------|--------------------------|------------------------|-------------|-----------|
|---------------|--------------------------|------------------------|-------------|-----------|

| | | | |
|------------|---------------|---|---|
| €1,500,000 | KES 1,000,000 | All the parties' in connection with the works at Site | From the commencement of the works at Site until the Completion date plus 18 months of Extended Maintenance |
|------------|---------------|---|---|

(d) Automobile Liability Insurance

Covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the supply and installation of the Facilities. Comprehensive insurance in accordance with statutory requirements.

(e) Workers' Compensation

In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

(f) Employer's Liability

In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

(g) Other Insurances

The Contractor is also required to take out and maintain at its own cost the following insurances:

Details:

| | | | | |
|---------------|--------------------------|------------------------|-------------|-----------|
| <u>Amount</u> | <u>Deductible limits</u> | <u>Parties insured</u> | <u>From</u> | <u>To</u> |
|---------------|--------------------------|------------------------|-------------|-----------|

The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GC Sub-Clause 34.1, except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to GC Sub-Clause 34.1, except for the Cargo, Workers' Compensation and Employer's Liability Insurances. All insurer's rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.

Insurances To Be Taken Out By The Employer

NOT APPLICABLE

Appendix 4. Time Schedule

Appendix 5. List of Major Items of Plant and Installation Services and List of Approved Subcontractors

A list of major items of Plant and Installation Services is provided below.

The following Subcontractors and/or manufacturers are approved for carrying out the items of the Facilities indicated below. Where more than one Subcontractor is listed, the Contractor is free to choose between them, but it must notify the Employer of its choice in good time prior to appointing any selected Subcontractor. In accordance with GC Sub-Clause 19.1, the Contractor is free to submit proposals for Subcontractors for additional items from time to time. No Subcontracts shall be placed with any such Subcontractors for additional items until the Subcontractors have been approved in writing by the Employer and their names have been added to this list of Approved Subcontractors.

| Major Items of Plant and Installation Services | Approved Subcontractors/Manufacturers | Nationality |
|--|---------------------------------------|-------------|
| | | |
| | | |
| | | |

Appendix 6. Scope of Works and Supply by the Employer

No personnel, facilities, works and supplies will be provided/supplied by the Employer.

Appendix 7. List of Documents for Approval or Review

Pursuant to GC Sub-Clause 20.3.1, the Contractor shall prepare, or cause its Subcontractor to prepare, and present to the Project Manager in accordance with the requirements of GC Sub-Clause 18.2 (Program of Performance), the following documents for review and approval.

| Descriptions | Prints | | Electronic Copy by E-mail (see notes) | | Electronic Copy CD | |
|---------------------------|----------|----------|---------------------------------------|----------|--------------------|----------|
| | Employer | Engineer | Employer | Engineer | Employer | Engineer |
| | | | | | | |
| For approval | | | | | | |
| Calculations and drawings | | 1 | 1 | 1 | 1 | 1 |
| Other design documents | | 1 | 1 | 1 | 1 | 1 |
| Method statements | | 1 | 1 | 1 | 1 | 1 |
| Commissioning procedures | | 1 | 1 | 1 | 1 | 1 |
| | | | | | | |
| For construction | | | | | | |
| Calculations and drawings | 1 | 1 | 1 | 1 | 1 | 1 |
| Other design documents | 1 | 1 | 1 | 1 | 1 | 1 |
| Method Statements | 1 | 1 | 1 | 1 | 1 | 1 |
| Commissioning procedures | 1 | 1 | 1 | 1 | 1 | 1 |
| | | | | | | |
| Final records | | | | | | |
| Calculations and drawings | 3 | | 1 | 1 | 4 | 1 |
| Other design documents | 3 | | 1 | 1 | 4 | 1 |
| Method Statements | 3 | | 1 | 1 | 4 | 1 |
| Commissioning procedures | 3 | | 1 | 1 | 4 | 1 |

Appendix 8. Functional Guarantees

Functional guarantees are inappropriate for this contract. However, material and equipment supplied shall conform in all respects to the technical specification and the schedules of technical information and be fit for purpose.

Performance Security Form – *Bank Guarantee*

Beneficiary:

Date: _____

PERFORMANCE GUARANTEE No.: _____

We have been informed that _____ (hereinafter called “the Contractor”) has entered into Contract No. _____ dated _____ with you, for the execution of _____ (hereinafter called “the Contract”).

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Contractor, we _____ hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ (____)¹, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire no later than the earlier of:²

- (a) twelve months after our receipt of Operational Acceptance Certificate; or
- (b) eighteen months after our receipt of a copy of the Completion Certificate; or
- (c) the ____ day of _____, 2____.

Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

[signature(s)]

¹ The Guarantor shall insert an amount representing the percentage of the Contract Price specified in the Contract and denominated either in the currency(ies) of the Contract or a freely convertible currency acceptable to the *Employer*.

² This text shall be revised as and where necessary to take into account (i) partial acceptance of the Facilities in accordance with Sub-Clause 25.4 of the GCC; and (ii) extension of the performance security when the Contractor is liable for an extended warranty obligation pursuant to Sub-Clause 27.10 of the GCC (although in this latter case the *Employer* might want to consider an extended warranty security in lieu of the extension of the performance security).

Bank Guarantee Form for Advance Payment

Beneficiary: _____

Date: _____

ADVANCE PAYMENT GUARANTEE No.: _____

We have been informed that _____ (hereinafter called “the Contractor”) has entered into Contract No. _____ dated _____ with you, for the execution of _____ (hereinafter called “the Contract”).

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of _____ (_____) is to be made against an advance payment guarantee.

At the request of the Contractor, we _____ hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ (_____) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than toward the execution of the Works.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Contractor on his account number _____ at _____.

The maximum amount of this guarantee is valid shall be progressively reduced in proportion to the value of each part-shipment or part-delivery of plant and equipment to the site, as indicated in copies of the relevant shipping and delivery documents that shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of documentation indicating full repayment by the Contractor of the amount of the advance payment, or on the ____ day of _____, 2____, whichever is earlier.³ Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication

³ Insert the expected expiration date of the Time for Completion. The *Employer* should note that in the event of an extension of the time for completion of the Contract, the *Employer* would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the *Employer* might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the *Employer*’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”