

Recommended Tender Documents

Procurement of Plant and Related Works

User Guide

(Version #1.2)

Helsinki - March 2017

PREFACE

These Recommended Tender Documents and User's Guide have been prepared by the Nordic Environment Finance Corporation (NEFCO) for the procurement of Plant and related Works through open tendering in compliance with the NEFCO Procurement Guidelines for projects that are financed in whole or in part by the NEFCO.

These Recommended Tender Documents are derived from the Master Document for Procurement of Goods prepared by the Multilateral Development Banks and International Financing Institutions (IFIs), as well as from EBRD's User Guide for Procurement of Goods and Related Services. The procedures and practices which are presented in them reflect the "best practices" by these institutions.

Borrowers or their procurement consultants should complete these documents by entering data specific to the procurement in question in the relevant sections; in some cases, this necessitates a selection from different alternatives presented in the documents. These alternatives are illustrative and not necessarily comprehensive. Other customised provisions may be required in certain cases. The following guidelines should be observed:

- (a) Specific details such as the "name of the Employer" or "address for tender submission" should be entered where indicated.
- (b) Notes in bold italics found inside a bold square or between square brackets [] represent instructions, which the drafter of the tender document should follow. These instructions should be deleted and not included in the final document.
- (c) General Conditions of Contract should be used without change; amendments to particular clauses therein as required by the specifics of a particular contract should be defined in the Particular Conditions of Contract.

Guidance Notes on using these documents, which can be found at the beginning of each Volume, are only for the use of the drafter and must not be included in the tender documents that are to be issued to potential tenderers.

This document follows the structure and the provisions of the Master Document, except where specific considerations with regard to restricted scale, nature and other specifics of NEFCO-financed operations have required a change and comprises the following Parts and Sections:

PART 1 – TENDERING PROCEDURES

Section I: Instructions to Tenderers (ITT)

This Section provides information to help Tenderers prepare their tenders. Information is also provided on the submission, opening and evaluation of tenders as well as the award of Contracts.

Section II. Evaluation and Qualification Criteria

This Section specifies the criteria to be used to determine the lowest evaluated tender and the requirements for the Tenderer's qualification to perform the contract. The criteria for tender evaluation and the methods for applying such criteria in evaluation should be reviewed carefully. It may be appropriate to delete or to modify some of the criteria given in this document or to use additional criteria. Furthermore, criteria must be quantified in monetary terms except in rare occasions where that is impractical.

Section III: Tender Forms

This Section contains the forms which are to be completed by the Tenderer and submitted as part of its tender.

Section IV. Eligible Countries

This Section includes information regarding eligible countries.

PART 2 –EMPLOYER'S REQUIREMENTS

Section V. Employer's Requirements

User Guide and Summary Description

This Section includes the List of Plant and Related Works, the Delivery and Completion Schedules, the Technical Specifications and the Drawings that describe the Plant and Related Works to be procured.

PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS

Section VI. General Conditions of Contract (GCC)

This Section contains the general clauses to be applied to all contracts. **The text of the clauses in this Section can only be modified or adjusted through Section VII Particular Conditions of Contract.**

Section VII. Particular Conditions of Contract (PCC)

This Section contains clauses specific to each contract that modify or supplement Section VI, General Conditions of Contract. The sections included in the documents should only be regarded as representative of the most common provisions. All particular conditions should be selected and/or drafted specifically for each procurement.

Section VIII: Annex to the PCC - Contract Forms

This Section includes the forms which once completed will form part of the contract. These forms shall be completed only by the successful Tenderer after contract award.

The Invitation for Tenders provides information that enables potential tenderers to decide whether to participate.

The Invitation for Tenders must be published no earlier than 45 calendar days after the publication of the General Procurement Notice on the NEFCO's website (http://www.nefco.org/how_to_work/procurement_notices Error! Hyperlink reference not valid.) as well as the Employer's own procurement website and official government procurement portal in the Employer's country. When possible the Invitation for Tenders shall also be published in a newspaper with wide circulation in the Employer's country and official gazettes or international trade publications as appropriate. The notice should also be sent to potential Contractors that have responded to the General Procurement Notice and to local representatives of potential foreign Contractor's e.g. commercial attachés of the embassies accredited in the Employer's country. Employer should maintain a register of all potential tenderers, who have purchased the tender documents, and make it available to interested parties.

Although the Invitation for Tenders does not form part of the tender documents, it shall be submitted to the NEFCO as part thereof for review and no objection. The information in the Invitation for Tenders must be consistent with and reflect the information provided by the tender documents. Apart from the essential items listed in the Recommended Tender Documents the Invitation for Tenders should also indicate any important tender evaluation criteria and/or qualification requirements. An example of this would include a requirement for a minimum level of experience in execution of works of the nature and complexity that are similar to the works for which the Invitation for Tenders is issued.

INVITATION FOR TENDERS

....[country]

....[project title]

INVITATION FOR TENDERS

...[Plant and related Works to be procured]

This Invitation for Tenders follows the General Procurement Notice for this project which was published on the NEFCO website, Procurement Notices section

(http://www.nefco.org/how_to_work/procurement_notices) on ...[state the date of publication].

[Name of Employer] hereinafter referred to as "the Employer", intends to use part of the proceeds of a loan from the Nordic Environment Finance Corporation (the NEFCO) towards the cost of [insert name of the Project].

The Employer now invites sealed tenders from Contractors for the following contract[s] to be funded from part of the proceeds of the loan:

- [For each contract include a concise description of the Plant and related Works as applicable. State size and principal quantities. For contracts involving works provide locations, estimated duration and advise if any contracts are to be implemented concurrently.].

Tenders are invited for one or more lots. Each lot must be priced separately. Tenders for more than one lot may offer discounts and such discounts will be considered in the comparison of tenders.

Delete the above paragraph if the tender does not involve more than one contract/ lot.

Tendering for contracts that are to be financed with the proceeds of a loan from the NEFCO is open to firms from any country.

To be qualified for the award of a contract, tenderers must satisfy the following minimum criteria:

- ... [Indicate any particular postqualification requirements, which should be the same criteria set out in the Instructions to Tenderers].

Invitation for Tenders

Delete the above paragraph if not applicable.

Tender documents may be obtained from the office at the address below upon payment of a non-refundable fee of *[state currency and value]* or equivalent in a convertible currency.

Only a nominal fee should be charged for tender documents, solely to cover the costs of reproduction and despatching the documents by courier.

[Give instructions for payment by bank transfer or the like in addition to requirements for submitting bank receipt of payment to the Employer].

Upon receiving appropriate evidence of payment of the non-refundable fee, the documents will be promptly dispatched by courier, however, no liability can be accepted for loss or late delivery. If requested the documents can also be dispatched electronically after the presentation by the prospective tenderer of appropriate evidence of payment of the non-refundable fee. In the event of discrepancy between electronic and hard copies of the documents, the hard copy shall prevail.

All tenders must be accompanied by a tender security of ...*[state currency and amount deemed appropriate by the Employer. This should be consistent with paragraph 19.1 of the Instructions to Tenderers]* or its equivalent in a convertible currency.

Delete the above paragraph if no tender security is required.

Tenders must be delivered to the office at the address below on or before*[specify time and date of deadline for submission]*, at which time they will be opened in the presence of those tenderers' representatives who choose to attend.

The date for submission of tenders should be no less than 45 days after the date of publication of this notice or the availability of the tender documents, whichever is the latest.. For tenders requiring a pre-tender meeting or site visit a longer period would be necessary but generally not longer than 60 days.

A register of potential tenderers who have purchased the tender documents may be inspected at the address below.

Prospective tenderers may obtain further information from, and also inspect and acquire the tender documents at, the following office:

[<i>Contact name</i>]
[<i>Employer's entity</i>]
[<i>Address</i>]
[<i>Tel:</i>]
[<i>Fax:</i>]

Date: _____

**Tender Document for
Procurement of Plant
and Related Works**

Procurement of:

Issued on:

Tender No:

Employer:

Country:

Tender Document

Table of Contents

PART 1 – Tendering Procedures	3
Section I. Instructions to Tenderers	3
Section II. Evaluation and Qualification Criteria.....	13
Section III. Tender Forms.....	17
Section IV. Eligible Countries	37
PART 2 – Employer’s Requirements	38
Section V. Employer’s Requirements	39
PART 3 – Contract Forms.....	43
Section VI. General Conditions of Contract	44
Section VII. Particular Conditions of Contract	61
Section VIII. Contract Forms	66

PART 1 – Tendering Procedures
Section I. Instructions to Tenderers

Section I. Instructions to Tenderers

A. General

1. **Scope of Tender**
 - 1.1 The Employer *[insert name]* issues this Tender Document for the procurement of *[insert description of plant and works to be performed, including the name of Lots, if any]*, as specified in Section V, Employer's Requirements.
 - 1.2 Unless otherwise stated, throughout this Tender Document definitions and interpretations shall be as prescribed in Section VI, General Conditions of Contract.
2. **Source of Funds**
 - 2.1 The Borrower or Recipient (hereinafter called "Borrower") *[insert name of Borrower]* has applied for or received financing (hereinafter called "funds") from the Nordic Environment Finance Corporation (hereinafter called "the NEFCO") toward the cost of the project named *[insert name of project]*. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which this Tender Document is issued.
 - 2.2 Payments by the NEFCO will be made only at the request of the Borrower and upon approval by the NEFCO in accordance with the terms and conditions of the financing agreement between the Borrower and the NEFCO (hereinafter called the "Loan Agreement"), and will be subject in all respects to the terms and conditions of that Loan Agreement.
3. **Prohibited Practices**
 - 3.1 The NEFCO requires that Borrowers (including beneficiaries of NEFCO loans), as well as Tenderers, suppliers, sub-suppliers, contractors, subcontractors, concessionaires, consultants and subconsultants under NEFCO financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the NEFCO:
 - (a) defines, for the purposes of this provision, Prohibited Practices as one or more of the following:
 - (i) **"corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;**
 - (ii) **"fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;**
 - (iii) **"coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;**
 - (iv) **"collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party; and**
 - (v) **"theft" means the misappropriation of property belonging to another party.**
 - (b) will reject a proposal for award if it determines that the Tenderer, supplier, sub-supplier, contractor, subcontractor, concessionaire, consultant or subconsultant recommended for award has engaged in Prohibited Practices in competing for the contract in question;
 - (c) will cancel the portion of the NEFCO financing allocated to a contract for Plant, works, services or concessions if it at any time determines that Prohibited Practices were engaged in by representatives of the Borrower or of a beneficiary of the NEFCO financing during the procurement or the execution of that contract,

without the Borrower having taken timely and appropriate action satisfactory to the NEFCO to remedy the situation;

- (d) may declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a NEFCO -financed contract if it at any time determines that the firm has engaged in Prohibited Practices in competing for, or in executing, a NEFCO -financed contract; and
- (e) reserves the right, where a Borrower or a firm has been found by the final judgement of a judicial process in a member country of the NEFCO or a finding by the enforcement (or similar) mechanism of another international organisation, including Mutual Enforcement Institutions, to have engaged in Prohibited Practices.
 - (i) to cancel all or part of the NEFCO financing for such Borrower; and
 - (ii) to declare that such a firm is ineligible, either indefinitely or for a stated period of time, to be awarded a NEFCO -financed contract; and
- (f) will have the right to require that, in contracts financed by the NEFCO, a provision be included requiring suppliers, sub-suppliers, contractors, subcontractors, concessionaires, consultants and sub-consultants to permit the NEFCO to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the NEFCO.

3.2 Furthermore, Tenderers shall be aware of the provisions stated in Section VII and VIII, General and Particular Conditions of Contract.

4. Eligible Tenderers

4.1 A Tenderer may be a natural person, private entity, government-owned entity—subject to Instructions to Tenderers (hereinafter referred to as “ITT”) 4.3—or any combination of such entities in the form of a joint venture, consortium, or association (JVCA). In the case of a joint venture, consortium, or association:

- (a) all partners shall be jointly and severally liable, and**
- (b) the JVCA shall nominate a Representative who shall have the authority to conduct all businesses for and on behalf of any and all the partners of the JVCA during the Tender process and, in the event the JVCA is awarded the Contract, during contract execution.**

4.2 A Tenderer, and all parties constituting the Tenderer, shall have the nationality of an eligible country, in accordance with Section IV, Eligible Countries.

4.3 A Tenderer shall not have a conflict of interest, as defined in sub-cause 3.26 of the NEFCO’s Procurement Guidelines. All Tenderers found to have a conflict of interest shall be disqualified.

4.4 Firms shall be excluded if:

- (a) as a matter of law or official regulation, the Borrower’s country prohibits commercial relations with that country, provided that the NEFCO is satisfied that such exclusion does not preclude effective competition;
- (b) a firm or individuals representing the firm are subject to EU economic sanctions, as published in the Official Journal of European Union; or
- (c) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower’s country prohibits any import of Plant from that country or any payments to persons or entities in that country.

5. Eligible Plant and Related

5.1 All Plant and Works to be supplied under the Contract and financed by the NEFCO, shall have as their country of origin an eligible country of the NEFCO as listed in Section IV,

Works Eligible Countries.

- 5.2 For purposes of this paragraph, the term Plant includes commodities, raw material, machinery, equipment, and industrial plants; and Related Works includes works such as transportation, installation, commissioning, training, and initial maintenance.

B. Preparation of Tenders

- 6. Cost of Tendering**
- 6.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 6.2 The Tenderer may visit and examine the project site and obtain for itself all information that may be necessary for preparing the tender and entering into a contract. The costs of visiting the site shall be at the Tenderer's own expense. A Tenderer wishing to visit the project site must coordinate its visit with the Employer beforehand.
- 7. Language of Tender**
- 7.1 Tenders from foreign companies should be prepared in English with translation in local language. Tenders from local companies should be prepared in local language with translation in English. The supporting documents not need to be translated.
- 8. Documents Comprising the Tender**
- 8.1 A prospective Tenderer requiring any clarification of the Tender Document shall contact the Employer in writing by sending his written request to the address *[indicate the contact person and address]*. The Employer will respond to any request for clarification, provided that such request is received prior to *[indicate the date]*, within the workweek. The Employer response shall be in writing with copies to all Tenderers who have received the Tender Document, including a description of the inquiry but without identifying its source. Should the Employer deem it necessary to amend the Tender Document as a result of a request for clarification, it shall do so.
- 8.2 Where applicable, the Tenderer is advised to visit and examine the project site and obtain for itself on its own responsibility all information that may be necessary for preparing the tender and entering into a contract for the provision of the Employer's Requirements.
- 8.3 The Tender shall comprise the following:
- (a) letter of Tender in a form furnished in Section III;
 - (b) completed Price Schedules as provided in Section III, Tender Forms;
 - (c) tender Security, in accordance with ITT 15;
 - (d) written confirmation authorising the signatory of the Tender to commit the Tenderer;
 - (e) documentary evidence establishing the eligibility of the Plant and Works offered by the tenderer, in accordance with ITT 13;
 - (f) documentary evidence establishing the Tenderer's qualifications in accordance with the requirements of Section II, Evaluation and Qualification Criteria, using the relevant forms furnished in Section III, Tender Forms;
 - (g) documentary evidence establishing the conformity of the Plant and Works offered by the Tenderer with the Tender Document, using the relevant forms furnished in Section III, Tender Forms;
 - (h) in the case of a tender submitted by a JVCA, JVCA agreement, indicating at least the parts of the Employer's Requirements to be executed by the respective partners.
- 9. Alternative Tenders**
- 9.1 Alternative technical proposals *[insert "shall" or "shall not"]* be considered for *[insert names of parts for which alternative proposals will be considered]*. *[Remove the*

following sentence if alternative proposals are not considered] The method of evaluation of alternative proposals shall be as stipulated in Section II, Evaluation and Qualification Criteria.

9.2 Tenderers wishing to offer technical alternatives to the requirements of the Tender Document must first price the Employer's requirements as described in the Tender Document and shall further provide all information necessary for a complete evaluation of the alternative by the Employer

10. Tender Prices and Discounts

10.1 The prices and discounts quoted by the Tenderer in the Letter of Tender and in the Price Schedules shall be fixed.

10.2 The Tenderer shall quote prices as required in each Price Schedule included in Section II, Tender Forms. Notwithstanding with any other provision in this tender documentation the Plant to be supplied from abroad shall be delivered DDP at Site, Incoterms 2010 and the Plant to be supplied from within the country shall be delivered at Site. The Tenderer shall quote the price of the Plant the following way:

- (a) For Plant delivered from abroad tender price shall be DDP at Site;
- (b) For plant delivered from inside the country tender price shall be – delivered at Site. Site is located in *[indicate the country, city and facility or organization]*

The Related Site Works can include the preparation of installation drawings, arrival inspection, installation, decommissioning of the equipment to be replaced, putting installed equipment into operation, commissioning of Plant to the Employer, and other works required by the Technical Specifications and Price Schedules. Price of the Related Works including travelling, daily allowance, accommodation and other related side costs shall be included in the tender.

10.3 Prices quoted by the Tenderer shall be fixed during the Tenderer's performance of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation which is not consistent with this paragraph will be rejected by the Employer as non-responsive.

11. Currencies of Tender

11.1 All prices quoted by the Tenderer shall be in Euro or local currency; currency(ies) for payment shall be the same as quoted by the Tenderer in its Tender.

12. Documents Establishing the Qualifications of the Tenderer

12.1 To establish its qualifications to perform the Contract the Tenderer shall provide the information requested in Section III, Tender Forms.

The documentary evidence of the Tenderer's qualifications to perform the Contract if its tender is accepted shall establish to the Purchaser's satisfaction that:

- (a) the Tenderer, has the financial, technical and production capability and capacity necessary to perform the Contract, and Tenderer's average annual revenue in the last *[insert number of years – normally 3]* years was at least *[insert number – normally 2-3]* times greater than price of his tender. In case of tender submitted by JVCA, the leading partner should demonstrate at least 50% compliance with the requirement;
- (b) the Tenderer has satisfactorily supplied similar goods and services to other employers and completed at least *[insert number – normally 3]* similar contracts in the recent *[insert number of years – normally 5]* years;
- (c) the Tenderer is not bankrupt or under bankruptcy procedures according to the national legislation or regulations.

12.2 The Tenderer shall submit the Manufacturer's Authorisation, using the form included in Section III, Tender Forms where the Tenderer does not manufacture or produce the Plant it offers to supply.

12.3 The Tenderer shall submit evidence that it will be represented by an Agent in the country, equipped and able to carry out the Contractor's maintenance, repair and spare parts-stocking obligations prescribed in the Conditions of Contract and Employer's Requirements, where a Tenderer does not conduct business within the Employer's Country.

13. Documents Establishing the Eligibility of Plant and Related Works

13.1 To establish the eligibility of the Plant and Works, Tenderers shall complete the forms, included in Section III, Tender Forms.

13.2 The Tenderer must provide the following documentary evidence to establish the conformity of the Plant and Works:

The documentary evidence of the Plant's and Works' conformity to the tender documents may be in the form of literature, drawings and data, and shall consist of:

- (a) a detailed description of the essential technical and performance characteristics of the Plant and Works;
- (b) a list giving full particulars, including available sources and current prices, of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Plant for a period of 3 years, following commencement of the use of the Plant by the Employer; and
- (c) a paragraph-by-paragraph commentary on the Employer's Requirements demonstrating substantial responsiveness of the Plant and Works to those specifications or a statement of deviations and exceptions to the provisions of the Employer's Requirements.

14. Period of Validity of Tenders

14.1 Tenders shall remain valid [*insert number – usually 90*] days after the tender submission deadline date. A tender valid for a shorter period shall be rejected as non responsive.

14.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Employer may request Tenderers to extend the period of validity of their tenders. The request and the responses shall be made in writing. The Tenderer granting the request shall also extend the tender security for twenty-eight (28) days beyond the deadline of the extended validity period. A Tenderer may refuse the request without forfeiting its tender security. A Tenderer granting the request shall not be required or permitted to modify its tender, except as provided in ITT 14.3.

14.3 If the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial Tender validity, the Contract price shall be adjusted as specified in the request for extension. Tender evaluation shall be based on the Tender Price without taking into consideration the above adjustment.

15. Tender Security

15.1 The Tenderer shall furnish as part of its tender, the original of a tender security using the form included in Section III, Tender Forms. The tender security amount shall be not less than [*insert percentage – normally 2%*] of tender price in the currency of the tender, and it shall be valid for twenty-eight days (28) beyond the original validity period of the Tender.

15.2 Any Tender not accompanied by a substantially responsive tender security shall be rejected by the Employer as non responsive. In addition, the tender security may be forfeited:

- (a) if a Tenderer withdraws its tender during the period of Tender validity specified by the Tenderer in the Letter of Tender, or
- (b) if the successful Tenderer fails to sign the Contract or furnish a performance security.

16. Format and Signing of Tender

16.1 The Tenderer shall prepare one original of the documents comprising the tender and clearly mark it "ORIGINAL." In addition, the Tenderer shall submit [*insert number*] copies of the tender and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

In addition, the Tenderer shall include into its Tender an electronic form of tender

documents in a PDF format on CD ROM.

16.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by a person duly authorised to sign on behalf of the Tenderer. This authorisation shall be confirmed by the Tenderer's statutory documents attached to the Tender.

16.3 A Tender submitted by a JVCA shall comply with the following requirements:

- (a) It shall be signed so as to be legally binding on all partners and
- (b) Include the Representative's authorisation, consisting of a power of attorney signed by those legally authorised to sign on behalf of the JVCA.

C. Submission and Opening of Tenders

17. Submission, Sealing and Marking of Tenders

17.1 Tenderers may always submit their Tenders by mail or by hand. Procedures for submission, sealing and marking are as follows:

- a) Tenderers submitting Tenders by mail or by hand shall enclose the original and copies of the Tender in separate sealed envelopes.
- b) Address of the Employer *[insert the address]*

17.2 The inner and outer envelopes shall:

- a) bear the name and address of the Tenderer;
- b) be addressed to the Employer;
- c) bear the specific identification of this Tendering process pursuant to ITT 1.1; and
- d) bear a warning: "Do not to open before *[insert the time and date for Tender opening]*"

17.3 If envelopes and packages are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the Tender.

18. Deadline for Submission of Tenders

18.1 Tenders must be received by the Employer at the address and no later than *[insert the date and time for Tender opening]*.

19. Tender Opening

19.1 The Employer shall conduct the Tender opening in public, in the presence of Tenderers' designated representatives and anyone who choose to attend, and at the address specified in 17.1(b) above immediately after deadline specified for submission of tenders in 18.1 above.

D. Examination of Tenders

20. Confidentiality

20.1 Information relating to the evaluation of Tenders shall not be disclosed to Tenderers or any other persons not officially concerned with such process until information on Contract award is communicated to all Tenderers.

20.2 Any attempt by a Tenderer to influence improperly the Employer in the evaluation of the Tenders or Contract award decisions may result in the rejection of its Tender.

20.3 Notwithstanding ITT 20.1, from the time of Tender opening to the time of Contract award, if any Tenderer wishes to contact the Employer on any matter related to the Tendering

process, it should do so in writing.

- 21. Clarification of Tenders**
- 21.1 The Employer may, at its discretion, ask any Tenderer for a clarification of its Tender to be provided within *[insert number]* days. The Employer's request for clarification and the response shall be in writing. No change in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Tenders.
- 21.2 If a Tenderer does not provide clarifications of its Tender by the date and time set in the Employer's request for clarification, its Tender may be rejected.
- 22. Determination of Responsiveness**
- 22.1 The Employer's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT8.
- 22.2 A substantially responsive Tender is one that meets the requirements of the Tender Document without material deviation, reservation, or omission.
- (a) "Deviation" is a departure from the requirements specified in the Tender Document;
- (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tender Document; and
- (c) "Omission" is the failure to submit part or all of the information or documentation required in the Tender Document.
- 22.3 A material deviation, reservation, or omission is one that,
- (a) if accepted, would:
- (i) affect in any substantial way the scope, quality, or performance of the Employer's Requirements as specified in Section V; or
- (ii) limit in any substantial way, inconsistent with the Tender Document, the Employer's rights or the Tenderer's obligations under the proposed Contract; or
- (b) if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.
- 22.4 If a Tender is not substantially responsive to the requirements of the Tender Document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- 22.5 Provided that a Tender is substantially responsive, the Employer may waive any quantifiable nonconformity in the Tender that does not constitute a material deviation, reservation or omission.

E. Tender Evaluation and Comparison

- 23. Evaluation of Tenders and Correction of Mathematical Errors**
- 23.1 The Employer shall use the criteria and methodologies indicated in Section II, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted.
- 23.2 Provided that the Tender is substantially responsive, the Employer shall correct arithmetical errors as indicated in Section III. Evaluation and Qualification Criteria.
- 23.3 If a Tenderer does not accept the correction of errors, its Tender shall be declared non-responsive and its Tender security shall be forfeited.
- 23.4 Tender evaluation and comparison and a subsequent contract award shall be carried out in

line with NEFCO's Tender Evaluation Guidelines.

- 24. Conversion to Single Currency** 24.1 For evaluation and comparison purposes, the currency (ies) of the tender shall be converted into a single currency as specified in Section II. Evaluation and Qualification Criteria.
- 25. Tender Adjustments** 25.1 For the evaluation and comparison purposes the Employer shall adjust the Tender prices using the criteria and methodology specified in Section II. Evaluation and Qualification Criteria.
- 26. Qualification of the Tenderer** 26.1 The Employer shall determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated and substantially responsive Tender meets the qualifying criteria specified in Section II, Evaluation and Qualification Criteria.
- 27. Employer's Right to Accept Any Tender, and to Reject Any or All Tenders** 27.1 The Employer reserves the right to accept or reject any Tender, and to annul the Tendering process and reject all Tenders at any time prior to contract award, without thereby incurring any liability to Tenderers. In case of annulment, all Tenders submitted and specifically, Tender securities, shall be promptly returned to the Tenderers.

F. Award of Contract

- 28. Award Criteria** 28.1 The Employer shall award the Contract to the Tenderer whose offer has been determined to be the lowest evaluated Tender and is substantially responsive to the Tender Document, provided further that the Tenderer is determined to be qualified to perform the Contract satisfactorily.
- 29. Variation of quantities at time of award** 29.1 At the time the Contract is awarded, the Employer reserves the right to increase or decrease the quantity of Plant and Works originally specified in Section V, Employer's Requirements up to *[indicate percentage]*, and without any change in the unit prices or other terms and conditions of the Tender and the Tender Document.
- 30. Notification of Award** 30.1 Prior to the expiration of the period of Tender validity, the Employer shall notify the successful Tenderer, in writing, that its Tender has been accepted.
- 30.2 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.
- 30.3 At the same time, the Employer shall also notify all other Tenderers of the results of the Tendering, identifying the name of the winning Tenderer, and the price it offered. After receiving the notification of the results of tendering, the unsuccessful Tenderers may request in writing to the Employer for a debriefing seeking explanations on the grounds on which their Tenders were not selected. The Employer shall promptly respond in writing to any unsuccessful Tenderer who requests a debriefing.
- 31. Signing of Contract** 31.1 Promptly upon notification, the Employer shall send the successful Tenderer the Contract Agreement.
- 31.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Employer.
- 31.3 Upon the successful Tenderer's furnishing of the signed Contract Agreement and Performance Security, the Employer will discharge its Tender Security.
- 32. Performance Security** 32.1 Within twenty-eight (28) days of the receipt of notification of award from the Employer, the successful Tenderer shall furnish the performance security in accordance with the conditions of contract. If the performance security furnished by the successful Tenderer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Tenderer to be acceptable to the Employer. A foreign institution providing a bond shall have a correspondent financial institution located in the

Employer's Country.

- 32.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender security. In that event the Employer may award the Contract to the next lowest evaluated Tenderer whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.

Section II. Evaluation and Qualification Criteria

Boxed guidance notes and provisions in italics font are illustrative provisions containing instructions and guidance which the drafter should follow. They are not part of the text and should not be included in the final tender document. All reference numbers provided in this Section shall be construed as reference numbers in Section I, Instruction to Tenderers. Provisions entitled "EXAMPLE" in this Section are optional and may be included in the final tender document at the Employer's discretion.

This Section contains all the criteria that the Employer shall use to evaluate tenders and qualify Tenderers. In accordance with ITT, no other factors, methods or criteria shall be used. The Tenderer shall provide all the information requested in the forms included in Section III, Tender Forms.

Evaluation Criteria and Methodology

9 Alternative Tenders

9.1 Technical Alternative Proposals

The following to be used when technical alternatives are accepted and these will be considered on their own merits providing that the base tender is priced.

EXAMPLE:

Tenderers wishing to offer technical alternatives to the requirements of the tender documents must first price the Employer's technical specifications as described in Section VI, Employer's Requirements and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including, as appropriate, drawings, design calculations, Technical Specifications, breakdown of prices, and other relevant details. Technical alternatives which comply with the performance specifications for the Plant shall be considered by the Employer on their own merits.

10 Discounts

The Employer will adjust the Tender Price, using the methodology prescribed by the Tenderer in its Letter of Tender, to take account of the Discounts offered by the Tenderer as read out during the Tender Opening.

In the event of any ambiguity in the Tenderer's methodology, the benefit of the doubt shall be given to the Employer. If a Tenderer does not accept the Employer's determination, its tender shall be declared non-responsive and its Tender Security shall be forfeited.

22 Determination of Responsiveness

Non-substantive deviations or omissions (commercial and technical) in the tender will not constitute cause for rejection but shall be reflected in the evaluation wherever practicable and appropriate. The cost of all quantifiable deviations or omissions will be added to the tender price in question. A reasonable estimate of the cost will be made by the Employer, taking into consideration the corresponding quotations of other responsive tenderers or other appropriate market prices. Such costs will be at the Employer's sole discretion. A tenderer will not be requested or permitted to offer a price adjustment for rectifying such deviations or omissions.

Deviations and other factors that are in excess of the requirements of the tender documents or otherwise result in unsolicited benefits for the Employer shall not be taken into account in tender evaluation.

23 Correction of Mathematical Errors

1.1.1 (a) Where there are errors between the total of the amounts given under the column for the price breakdown and the amount given under the Total Price, the former shall prevail and the latter will be corrected accordingly;

1.1.2 (b) If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;

1.1.2.1.1 (c) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and

1.1.2.1.2 (d) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

24 Conversion to a Single Currency

If tenders are invited to be quoted in more than one currency, the Employer shall state the currency to which prices will be converted. Conversion shall be at the selling exchange rate published by the central bank or any commercial bank in the Employer's country. The Employer must enter the name of the bank and the date of the exchange rate to be used. That date must be no earlier than 30 days prior to the deadline specified for the submission of tenders and no later than the expiry of the initial validity period specified in ITT Para 18.1. It is customary to use the date of the deadline specified for the submission of tenders.

If tenders are invited to be quoted in more than one currency, the currency that shall be used for tender evaluation and comparison purposes to convert all tender prices expressed in various currencies into a single currency is: *[insert the name of the currency]*

The source of exchange rate shall be: *[insert the name of the source of the exchange rates].*

The date for the exchange rate shall be: *[specify date (day/month/year)]*

25 Tender Adjustments

25.1 The Employer can adjust tender price for evaluation for quantifiable nonmaterial nonconformities related to documentation requirements that could impact on costs to Employer in case of contract award to the respective tenderer. The methodology proposed by the tender evaluation committee for carrying out such an adjustment of tender price shall be submitted for NEFCO's review and "no objection" prior to completion of evaluation and award recommendation on contract award.

Qualification Criteria

Boxed guidance notes and provisions in italics font are illustrative provisions containing instructions and guidance which the drafter should follow. They are not part of the text and should not be included in the final tender document.

26.1 To be qualified for contract award in accordance with ITT 26.1, the Tenderer (individually, or joint venture collectively) must demonstrate to the Employer that it substantially satisfies the requirements regarding eligibility, experience, financial position and litigation history, specified below:

a) Eligibility

EXAMPLE:

Tenderers shall meet the eligibility requirements set forth in ITT Para 4 (as evidenced from Application Submission Sheet & Letter of Tender):

- Not having conflicts of interests as described in ITT 4.3;
- Not having been declared ineligible due to non-compliance with requirements described in ITT 4.4.

b) Historical non-performance

EXAMPLE:

Tenderers shall meet the following requirement with regard to historical non-performance and/or litigation awards against the tenderer or any partner of a joint venture:

- Non-performance of a contract did not occur within the last **[insert number]** (___) years prior to the deadline for application submission, based on all information on fully settled disputes or litigation (as per Form CON-2);
- All pending litigation shall in total not represent more than **[insert number]** percent (%) of the Tenderer's net worth and shall be treated as resolved against the Tenderer (as per Form CON-2).

c) Financial Situation

i) Historical financial performance

Firms owned by individuals and partnerships may not be required to maintain audited balance sheets by the laws of their countries of origin. In such cases, the audit requirement may be relaxed by the Employer.

Audited balance sheets are usually required for five years, but this could be less in special country circumstances.

EXAMPLE:

The audited balance sheets for the last **[specify number of years]** years shall be submitted and must demonstrate the soundness of the Tenderer's financial position, showing long-term profitability (as per Form FIN-3.1).

ii) Average Annual Turnover

EXAMPLE:

Average annual turnover over the last **[insert number]*** years exceeded EURO **[insert**

value] ** equivalent (as per Form FIN-3.2). In case of tender submitted by JVCA, the leading partner should demonstrate at least 50% compliance with the requirement.

**This period is normally five years, but may be less if special circumstances warrant it.*

***Usually not less than 2.5 times the estimated annual cash flow in the proposed contract (based on a straight-line projection). The coefficient may be smaller for very small contracts, but not less than 1.5, and should take into consideration special country circumstances.*

iii) Financial Resources

EXAMPLE:

The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means sufficient to meet the production cash flow for the contract estimated as not less than Euro *[insert value]** equivalent, taking into account the Tenderer's commitments for other contracts (as per Forms FIN-3.3 and FIN-3.4).

**Usually equivalent to the estimated cost of the contract. The financial resources qualification criterion shall be calculated taking into account the method and schedule of payments proposed by the Employer. Under the supply of Plant contracts, the bulk of payment (80% of the contract price) would normally be released by the Employer to the Contractor upon shipment of the Plant. In order to satisfy the negative cash flow arising under such contract, the Contractor would have to mobilise financial resources which would be almost equivalent to the Contract Price.*

d) Experience

EXAMPLE:

Experience as Contractor, in at least *[insert number]** contracts within the last *[insert number]*** years, each with a value of at least *[insert percentage value]****, that have been successfully and substantially completed and that are similar to the proposed Plant (as per Form EXP-2.4.1).

** Usually at least three (3) contracts for the delivery of Plant required under the contract or similar;*

*** This period is normally five years, but may be less if special circumstances warrant it;*

**** Usually not less than 80% of the estimated cost of the contract.*

Section III. Tender Forms

Table of Forms

Letter of Tender	18
Covenant of Integrity	20
Forms of Price Schedules	22
Form of Tender Security.....	25
Manufacturer's Authorisation.....	26
Tenderer Information Sheet	28
Partner to JVCA Information Sheet.....	29
History of Non-Performing Contracts	30
Historical Financial Performance	31
Average Annual Turnover	32
Financial Resources.....	33
Current Contract Commitments.....	34
Experience.....	35
Experience (cont.)	36

Letter of Tender

Note for Tenderers: *The Tenderer must prepare the Letter of Tender and Covenant of Integrity on stationery with its letterhead clearly showing the Tenderer’s complete name and address. All text within square brackets [] is for guidance in preparing this form and shall be deleted by the Tenderer from the final document.*

Date: _____

Tender No.: _____

Alternative No.: _____

To: _____

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Tender Document, including Addenda issued in accordance with Instructions to Tenderers paragraph 8;
- (b) We offer to supply, in conformity with the Tender Document, the following Plant and Related Works:.....
- (c) The total price of our Tender, excluding any discounts offered in item (d) below is:
.....
- (d) The discounts offered and the methodology for their application are:
.....
.....
.....
- (e) Our tender shall be valid for the period[insert validity period as specified in ITT18.1] days from the date fixed for the Tender submission deadline in accordance with the Tender Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) If our tender is accepted, we commit to furnish a performance security in accordance with the Tender Document;
- (g) Our firm, including any subcontractors or suppliers and subsuppliers for any part of the Contract, have nationalities from eligible countries
- (h) We, including any subcontractors or suppliers and subsuppliers for any part of the Contract have no conflict of interest in accordance with ITT 4.3;
- (i) We are not participating, as a Tenderer or as a subcontractor, in more than one Tender in this Tendering process in accordance with ITT 4.3, other than alternative offers submitted in accordance with ITT 13;
- (j) Our firm, its affiliates or subsidiaries—including any subcontractors or suppliers and subsuppliers for any part of the contract—have not been declared ineligible by NEFCO, under the Employer’s country laws or official regulations or by an act of compliance with a decision of the United Nations Security Council;
- (k) We are not a government-owned entity;
- (l) The following commissions, gratuities, or fees have been paid or are to be paid with respect to the Tendering process or execution of the Contract:

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(If no one has been paid or is to be paid, indicate "No One.")

- (m) We understand that this tender, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed.
- (n) We understand that you are not bound to accept the lowest evaluated tender or any other tender that you may receive.

Name:

.....

In the capacity of:

.....

Signed:

.....

**Duly authorised to sign the
Tender for and on behalf of:**

.....

Date:

.....

Covenant of Integrity

to *[Name of Employer]*]
 from *[Name of Tenderer]*]

“We declare and covenant that neither we nor anyone, including any of our directors, employees, agents, joint venture partners or sub-contractors (“the **Parties**”), where these exist, acting on our behalf with due authority or with our knowledge or consent, or facilitated by us, has engaged, or will engage, in any Prohibited Practices (as defined below) in connection with the tendering process or in the execution or supply of any works, goods or services for *[specify the contract or tender invitation]* (the “**Contract**”) and covenant to so inform you if any instance of any such Prohibited Practices shall come to the attention of any person in our organisation having responsibility for ensuring compliance with this Covenant.

We shall, for the duration of the tender process and, if we are successful in our tender, for the duration of the Contract, appoint and maintain in office an officer, to whom you shall have full and immediate access, having the duty, and the necessary powers, to ensure compliance with this Covenant.

If any of the Parties, where these exist and as applicable, (i) have been convicted in any court of any offence involving Prohibited Practices in connection with any tendering process or provision of works, goods or services during the five (5) years immediately preceding the date of this Covenant, or (ii) have been dismissed or resigned from any employment on the grounds of being implicated in any Prohibited Practices, or (iii) have been excluded from participation in a tendering procedure on the grounds of Prohibited Practices by Nordic Environment Finance Corporation (NEFCO) or by any national or EU Institutions or any international financial institution, we shall give details of any event in (i)-(iii) above together with details of the measures that we have taken, or shall take, to ensure that no Party will commit any Prohibited Practices in connection with the Contract *[give details if necessary]*.

In the event that we are awarded the Contract, we grant the Purchaser/Client/Employer/NEFCO and auditors appointed by either of them, as well as any authority or body having competence under relevant legislation, the right of inspection of our records and those of all our sub-contractors under the Contract. We accept to preserve these records generally in accordance with applicable law but in any case for at least six (6) years from the date of performance of the Contract.”

For the purpose of this Covenant, “Prohibited Practices” includes:

- **Corrupt Practice** is the offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.
- **Fraudulent Practice** is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
- **Coercive Practice** is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party to influence improperly the actions of a party.
- **Collusive Practice** is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.
- **Obstructive Practice** is (a) deliberately destroying, falsifying, altering or concealing of evidence material to an investigation related to the Contract; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to such investigation or from pursuing the investigation, or (b) acts intended to materially impede the exercise of NEFCO’s contractual rights of audit or access to information or the rights that any relevant authority has in accordance with any law, regulation or treaty.
- **Money Laundering** is (i) the conversion or transfer of property, knowing that such property is derived from criminal activity or participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in such activity to evade the legal consequences of his action; (ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from participation in such activity; (iii) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from participation in such activity;

(iv) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling any of the actions mentioned in the foregoing points.

• **Financing of terrorism** is the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of the Council of the European Union Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism.

Date:

Signature:

[Name and position]

for and on behalf of

[Name of the firm or joint venture]

Forms of Price Schedules

EXAMPLE:

Price Schedule #1: Plant and Materials to be supplied

Date: _____

Tender: _____

Name of the Tenderer: _____

1	2	3	4	5	6
Item	Description	Unit	Q-ty	Unit price: DDP or at site (EUR or LC*)	Total price: DDP or at site (EUR or LC*) (4 x 5)
Total amount (to be carried to Summary Schedule)					

Note: * - local currency

Name

In the capacity of

Signed:

Duly authorised to sign the tender for and on behalf of _____

Dated on _____ day of _____, _____.

Note:

1. In case of discrepancy between unit price and total, these will be adjusted in accordance with the Instructions to Tenderers, Clause 23.
2. Prices and currencies to be in accordance with the Instructions to Tenderers.
3. All items in the Section V – Employer’s Requirements must be entered and priced in the appropriate Price Schedule. Items not priced will be deemed to have been included in price of the priced items.

EXAMPLE:**Price Schedule #2: Related Works to be Executed**

Date: _____

Tender No.: _____

Name of the Tenderer: _____

<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>
Item	Description	Unit	Q-ty	Unit price (EUR or LC*)	Total price (EUR or LC*) (4 x 5)
Total amount (to be carried to Summary Schedule)					

*Note: * - local currency*

Name

In the capacity of

Signed

Duly authorised to sign the tender for and on behalf of _____

Dated on _____ day of _____, _____.

Note:

1. In case of discrepancy between unit price and total, these will be adjusted in accordance with the Instructions to Tenderers, Clause 23.
2. Prices and currencies to be in accordance with the Instructions to Tenderers.
3. All items in the Section V – Employer’s Requirements must be entered and priced in the appropriate Price Schedule. Items not priced will be deemed to have been included in price of the priced items.

EXAMPLE:**Summary Price Schedule**

Date: _____

Tender: _____

Name of the Tenderer: _____

<i>1</i>	<i>2</i>	<i>3</i>
Item	Description	Total price: DDP or at site (EUR or LC*)
1	Price Schedule #1: Plant and Materials to be Supplied	
2	Price Schedule #2: Related Works to be Executed	
Total summary (to be carried to Tender Form)		

Note: * - local currency

Name

In the capacity of

Signed

Duly authorised to sign the tender for and on behalf of _____

Dated on _____ day of _____, _____.

Note:

1. In case of discrepancy between unit price and total, these will be adjusted in accordance with the Instructions to Tenderers, Clause 23.
2. Prices and currencies to be in accordance with the Instructions to Tenderers.
3. All items in the Section V – Employer’s Requirements must be entered and priced in the appropriate Price Schedule. Items not priced will be deemed to have been included in price of the priced items.

Form of Tender Security

Note for Tenderer: All text within square brackets [] is for use in preparing this form and shall be deleted from the final document.

_____ [Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: _____ [Name and Address of Employer]

Date: _____

TENDER GUARANTEE No.: _____

We have been informed that _____ [name of the Tenderer] (hereinafter called "the Tenderer") has submitted to you its tender dated _____ (hereinafter called "the Tender") for the execution of _____ [name of contract] under Invitation for Tenders No. _____ ("the IFT").

Furthermore, we understand that, according to your conditions, tenders must be supported by a tender guarantee.

At the request of the Tenderer, we _____ [name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ [amount in figures] (_____) [amount in words] upon receipt by us of your first demand in writing accompanied by a written statement stating that the Tenderer is in breach of its obligation(s) under the Tender conditions, because the Tenderer:

- (a) has withdrawn its Tender during the period of Tender validity specified by the Tenderer in the Letter of Tender; or
- (b) having been notified of the acceptance of its Tender by the Employer during the period of tender validity, (i) fails or refuses to execute the Contract Form, if required, or (ii) fails or refuses to furnish the performance security, in accordance with the Tender Document.

This guarantee will expire: (a) if the Tenderer is the successful Tenderer, upon our receipt of copies of the contract signed by the Tenderer and the performance security issued to you upon the instruction of the Tenderer; and (b) if the Tenderer is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of your notification to the Tenderer of the name of the successful Tenderer; or (ii) twenty-eight days after the expiration of the Tenderer's Tender.

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

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

[signature(s)]

Manufacturer's Authorisation

Note for Tenderer: *The Tenderer shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This letter of authorisation should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. The Tenderer shall include it in its Tender, if so indicated in the TDS. All text within square brackets [] is for use in preparing this form and shall be deleted from the final document.*

Date: *[insert date (as day, month and year) of Tender Submission]*

Tender No.: *[insert number of Tendering process]*

To: *[insert complete name of Employer]*

WHEREAS

We *[insert complete name of Manufacturer]*, who are official manufacturers of *[insert type of Plant manufactured]*, having factories at *[insert full address of Manufacturer's factories]*, do hereby authorise *[insert complete name of Tenderer]* to submit a Tender the purpose of which is to provide the following Plant, *[insert name and or brief description of the Plant]*, manufactured by us and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 21.1 of the General Conditions, with respect to the Plant offered by the above firm.

Signed: *[insert signature(s) of authorised representative(s) of the Manufacturer]*

Name: *[insert complete name(s) of authorised representative(s) of the Manufacturer]*

Title: *[insert title]*

Duly authorised to sign this Authorisation on behalf of: *[insert complete name of Manufacturer]*

Dated on _____ day of _____, _____ *[insert date of signing]*

Tenderer's Qualification

To establish its qualifications to perform the contract in accordance with Section III (Evaluation and Qualification Criteria) the Tenderer shall provide the information requested in the corresponding Information Sheets included hereunder.

Eligibility
Form ELI 1.1
Tenderer Information Sheet

Date: _____

Tender No.: _____

Page _____ of _____ pages

1. Tenderer's Legal Name
2. In the case of a JVCA, the legal name of each partner:
3. Tenderer's Country of Constitution, Incorporation, or Registration:
4. Tenderer's Year of Constitution, Incorporation, or Registration:
5. Tenderer's Legal Address in Country of Constitution, Incorporation, or Registration:
6. Tenderer's Authorised Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: <input type="checkbox"/> Articles of Incorporation or Registration of firm named in 1, above, in accordance with ITT Sub-Clauses 4.1 and 4.2. <input type="checkbox"/> In case of government owned entity from the Employer's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law, in accordance with ITT Sub-Clause 4.5.

1.1.2.1.3

Form ELI 1.2

Partner to JVCA Information Sheet

Date: _____

Tender No.: _____

Page _____ of _____ pages

1. Tenderer's Legal Name:
2. JVCA Partner's Legal Name:
3. JVCA Partner's Country of Constitution, Incorporation, or Registration:
4. JVCA Partner's Year of Constitution into a legally-enforceable JVCA:
5. JVCA Partner's Legal Address in Country of Constitution, Incorporation, or Registration:
6. JVCA Partner's Authorised Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: <input type="checkbox"/> Articles of Constitution, Incorporation or Registration of firm named in 1, above, in accordance with ITT Sub-Clauses 4.1 and 4.2. <input type="checkbox"/> In case of government owned entity from the Employer's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law, in accordance with ITT Sub-Clause 4.5.

Historical Contract Non-Performance

Form CON – 2

History of Non-Performing Contracts

Tenderer’s Legal Name: _____

Date: _____

JVCA Partner’s Legal Name: _____

Tender No.: _____

Page _____ of _____ pages

1.1.2.1.4 Non-Performing Contracts in accordance with Section II, Evaluation Criteria			
<input type="checkbox"/> Contract non-performance did not occur during the stipulated period, in accordance with Sub-Clause 26.1(b) of Section II, Evaluation Criteria			
Year	Non-performed portion of contract	Contract identification	Total Contract amount (current value, Euro equivalent)
1.1.2.1.5 Pending Litigation, in accordance with Section III, Evaluation Criteria			
<input type="checkbox"/> No pending litigation <input type="checkbox"/> Pending litigation, as indicated below			
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, Euro equivalent)
		Contract Identification: Name of Employer: Address of Employer: Matter in dispute:	
		Contract Identification: Name of Employer: Address of Employer: Matter in dispute:	

Financial Situation

Form FIN – 3.1

Historical Financial Performance

Tenderer’s Legal Name: _____

Date: _____

JVCA Partner Legal Name: _____

Tender No.: _____

Page _____ of _____ pages

To be completed by the Tenderer and, if JVCA, by each partner

Financial information	Historic information for previous _____ () years 1.1.2.1.6 (Euro equivalent in 000s)						
	Year 1	Year 2	Year 3	Year ...	Year n	Avg.	Avg Ratio
Information from Balance Sheet							
Total Assets (TA)							
Total Liabilities (TL)							
Net Worth (NW)							
Current Assets (CA)							
Current Liabilities (CL)							
Information from Income Statement							
Total Revenue (TR)							
Profits Before Taxes (PBT)							

Attached are copies of financial statements (balance sheets, including all related notes, and income statements) for the years required above complying with the following conditions:

- (a) Must reflect the financial situation of the Tenderer or partner to a JVCA, and not sister or parent companies
- (b) Historic financial statements must be audited by a certified accountant
- (c) Historic financial statements must be complete, including all notes to the financial statements
- (d) Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted)

Form FIN – 3.2 Average Annual Turnover

Tenderer’s Legal Name: _____

Date: _____

JVCA Partner Legal Name: _____

Tender No.: _____

Page _____ of _____ pages

Annual turnover data		
Year	Amount and Currency	Euro equivalent
*Average Annual Turnover		

*Average annual turnover calculated as total certified payments received for supply in progress or completed, divided by the number of years specified in Section II, Evaluation Criteria, Sub-Clause 26.1(c)(ii).

Form FIN 3.3

Financial Resources

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit and other financial means, net of current commitments, available to meet the total cash flow demands of the subject contract or contracts as indicated in Section II, Evaluation and Qualification Criteria.

Source of financing	Amount (Euro equivalent)
1.	
2.	
3.	
4.	

Form Fin 3.4

Current Contract Commitments

Tenderers and each partner to a JVCA should provide information on their current commitments on all contracts that they have been awarded, for which a letter of intent or acceptance has been received, or lastly for contracts approaching completion but for which an unqualified full completion certificate has yet to be issued.

Name of contract	Employer, contact address, telephone & fax	Value of outstanding supply (current Euro equivalent)	Estimated completion date	Average monthly invoicing over last six months (Euro/month)
1.				
2.				
3.				
4.				
5.				
etc.				

Form EXP – 2.4.1

Experience

Tenderer's Legal Name: _____

Date: _____

JVCA Partner's Legal Name: _____

Tender No.: _____

Page _____ of _____ pages

Similar Contract No. <i>[insert specific number]</i> of <i>[total number of contracts]</i> required	Information	
Contract Identification		
Award date Completion date		
Role in Contract		
Total Contract amount		Euro
If a partner in a JVCA, specify participation in total contract amount	_____ %	Euro _____
Employer's Name:		
Address: Telephone/fax number: E-mail:		

Form EXP – 2.4.1 (cont.)
Experience (cont.)

Tenderer’s Legal Name: _____

Page _____ of _____ pages

JVCA Partner’s Legal Name: _____

Similar Contract No. <i>[insert specific number]</i> of <i>[total number of contracts]</i> required	Information
Description of the similarity in accordance with Sub-Clause 26.1(d) of Section II:	
Amount	
Physical size	
Complexity	
Technology	

Section IV. Eligible Countries

The NEFCO permits firms and individuals from all countries to offer Plant, Works and Services for NEFCO.

Consistent with international law, the proceeds of the NEFCO's loans, equity investment or guarantees shall not be used for payment to persons or entities or for any import of Plant, if such payment or import is prohibited by EU sanctions and a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. Persons or entities, or Contractor s offering Plant and Works, covered by such prohibition should therefore not be eligible for the award of NEFCO -financed contracts.

PART 2 – Employer's Requirements

Section V. Employer's Requirements

1. List of Plant and Related Works

The list of Plant, related Works and mandatory spare parts to be inserted in the Tender documents by the Employer, as applicable prior to issue of the Tender Document. Tables to be expanded as necessary.

EXAMPLE:

<u>1.1 List of Plant</u>			
List No.	Name of Plant	<u>Brief Description</u>	<u>Quantity</u>

EXAMPLE:

<u>1.2 List of Related Works</u>			
List No.	Name of <u>Related Works</u>	<u>Brief Description</u>	<u>Quantity</u>

EXAMPLE:

<u>1.3 List of Mandatory Spare Parts</u>			
List No.	Name of mandatory spare parts	<u>Brief Description</u>	<u>Quantity</u>

2. Delivery and Completion Schedule

Text of Delivery and Completion Schedules to be inserted in the Tender documents by the Employer, as applicable prior to the issue of the Tender Document.

The required date of arrival on the Project Site is no later than: _____.

The required completion date is no later than: _____.

Name of Plant or <u>Related Service</u>	Delivery Schedule (dd/mm/yyyy)

3. Technical Specifications

These notes for preparing specifications are intended only as information for the Employer or the person drafting the tender documents. They should not be included in the final documents

Preparing the Technical Specifications:

A set of precise and clear specifications are a prerequisite for tenderers to respond realistically and competitively to the requirements of the Employer without qualifying their tenders. The specifications must be drafted to permit the widest possible competition whilst presenting a clear statement of the required standards of workmanship, materials and performance of the Plant and Works to be procured. This is consistent with realising the objectives of economy, efficiency and fairness, will ensure the responsiveness of tenders and will facilitate the task of tender evaluation and transparency of the award. The specifications should require that all Plant and materials to be incorporated in the Plant be new, unused and of the most recent or current models. They should also incorporate all recent improvements in design and materials unless otherwise provided for in the Specifications.

Wherever appropriate, standardised general technical specifications covering workmanship, materials, manufacturing, quality assurance and testing should be used with deletions or addenda for the particular procurement.

Care must be taken in drafting specifications to ensure that they are not restrictive. Recognised international standards should be used wherever possible. Where other particular standards are used, i.e. national standards of the Employer's country, the specifications should clearly state that equipment, materials, and workmanship that meet other authoritative standards, and which ensure at least a substantially equal quality or performance as the standards mentioned, will also be acceptable. Reference to brand names and catalogue numbers should be avoided as far as possible; where unavoidable they should always be followed by the words "or at least equivalent".

Text of Technical Specifications to be inserted in the Tender documents by the Employer, as applicable.

Item No.	Full Technical Specification of Plant required	

EXAMPLE:

Equivalence of Standards and Codes

Wherever reference is made in the Technical Specifications to specific standards and codes to be met by the Plant and materials to be furnished or tested, the provisions of the latest current edition or revision of the relevant standards or codes in effect shall apply, unless otherwise expressly stated in the Specifications. Where such standards and codes are national or related to a particular country or region, other authoritative standards that ensure substantial equivalence to the standards and codes specified will be acceptable.

4. Drawings

These notes for preparing drawings are intended only as information for the Employer or the person preparing the Tender documents. They should not be included in the final document.

It is customary to bind the drawings in a separate volume, which is often larger than the other volumes of documents. The size will be dictated by the scale of the drawings, which must not be reduced to the extent that details are rendered illegible.

Where appropriate, the Employer should attach other pertinent documentation such as drawings, diagrams, site plan, etc. which would assist Tenderers to submit a responsive Tender.

The Contractor may be requested to provide drawings or samples either with its Tender or more commonly, for review prior to delivery during contract implementation.

PART 3 – Contract Forms

Section VI. General Conditions of Contract

Table Of Contents

1.	General Provisions	46
1.1	Definitions	46
1.2	Interpretation	47
1.3	Communications.....	48
1.4	Law and Language	49
1.5	Priority of Documents	49
1.6	Contract Agreement.....	49
1.7	Assignment	49
1.8	Copyright	49
1.9	Confidential Details	50
1.10	Compliance with Laws	50
1.11	Joint and Several Liability	50
1.12	Inspections and Audit by the NEFCO.....	50
2.	Contract Documents.....	51
3.	Prohibited Practices.....	51
4.	Eligibility	52
5.	Notices.....	52
6.	Settlement of Disputes.....	52
7.	Scope of Supply	52
8.	Delivery.....	52
9.	Contractor's Responsibilities	52
10.	Contract Price	52
11.	Terms of Payment	53
12.	Taxes and Duties.....	53
13.	Performance Security	53
14.	Subcontracting.....	53
15.	Specifications and Standards.....	54
16.	Packing and Documents	54
17.	Insurance	54
18.	Transportation.....	54
19.	Inspections and Tests	54
20.	Liquidated Damages	55

21	Warranty.....	55
22.	Patent Indemnity.....	56
23.	Limitation of Liability.....	56
24.	Change in Laws and Regulations.....	57
25.	Force Majeure.....	57
26	Change Orders and Contract Amendments.....	57
27	Extensions of Time.....	58
28.	Termination.....	58

Section VI. General Conditions of Contract

These General Conditions (GC), read in conjunction with the Particular Conditions (PCC) and other documents listed therein, constitute a complete document expressing the rights and obligations of the parties.

1. General Provisions

1.1 Definitions

In the Conditions of Contract (“these Conditions”), which include the Particular Conditions and these General Conditions, the following words and expressions shall have the following stated meanings. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

1.1.1 The Contract

1.1.1.1 “Contract” means the Contract Agreement, the Letter of Acceptance, the Letter of Tender, these Conditions, the Specification, the Schedules, and the further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance.

1.1.1.2 “Contract Agreement” means the contract agreement referred to in Sub-Clause 1.6 [Contract Agreement].

“Contract Documents” means the documents listed in the Contract Agreement, including any amendments thereto.

“Contract Price” means the price payable to the Contractor as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.

“Completion” means the fulfillment of the Related Works by the Contractor in accordance with the terms and conditions set forth in the Contract.

1.1.1.3 “Letter of Acceptance” means the letter of formal acceptance, signed by the Employer, of the Letter of Tender, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such letter of acceptance, the expression “Letter of Acceptance” means the Contract Agreement and the date of issuing or receiving of the Letter of Acceptance means the date of signing the Contract Agreement.

1.1.1.4 “Letter of Tender” means the document entitled Letter of Tender, which was completed by the Contractor and includes the signed offer to the Employer for the Plant.

1.1.1.5 “Specification” means the document entitled specification, as included in the Contract, and any additions and modifications to the specification in accordance with the Contract. Such document specifies the Plant.

1.1.1.6 “Drawings” means the drawings of the Plant, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the Contract.

1.1.1.7 “Schedules” means the document(s) entitled schedules, completed by the Contractor and submitted with the Letter of Tender, as included in the Contract. Such document(s) may include the Bill of Quantities, data, lists, and schedules of rates and/or prices.

1.1.1.8 “Tender” means the Letter of Tender and all other documents which the Contractor submitted with the Letter of Tender, as included in the Contract.

“GCC” means the General Conditions of Contract.

“PCC” means the Particular Conditions of Contract.

1.1.2 Parties and Persons

1.1.2.1 “Party” means the Employer or the Contractor, as the context requires.

1.1.2.2 “Employer” means the person named as Employer in the PCC and the legal successors in title to this person.

1.1.2.3 “Contractor” means the person(s) named as Contractor in the Letter of Tender accepted by the Employer and the legal successors in title to this person(s).

1.1.2.4 “Subcontractor” means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Plant or the Related Works; and the legal successors in title to each of these persons.

1.1.2.5 “Bank” means the financing institution (if any) named in the PCC.

1.1.2.6 “Borrower” means the person (if any) named as the borrower in the PCC.

“Eligible Countries” means the countries and territories eligible as listed in Section IV.

1.1.3 Dates, Tests, Periods and Completion

1.1.3.1 “Base Date” means the date 28 days prior to the latest date for submission of the Tender.

1.1.3.2 “Acceptance Test” means the tests (if any) which are specified in the Contract and which are carried out in accordance with the Specification for the purpose of issuing the “Acceptance Certificate”.

1.1.3.3 “day” means a calendar day and “year” means 365 days.

1.1.4 Money and Payments

1.1.4.1 “Contract Price” means the price defined in Sub-Clause 10, The Contract Price, and includes adjustments in accordance with the Contract.

1.1.5 Plant

1.1.5.1 “Plant” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Contractor is required to supply to the Employer under the Contract.

1.1.5.2 “Related Works” means the Works incidental to the supply of the Plant, such as insurance, transportation, designing, installation or supervision of installation, commissioning, training and initial maintenance and other such obligations of the Contractor under the Contract.

1.1.6 Other Definitions

1.1.6.1 “Employer’s Country” is the country specified in the PCC.

1.1.6.2 “Force Majeure” is defined in Clause 25, Force Majeure.

1.1.6.3 “Laws” means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.

1.1.6.4 “Performance Security” means the security (or securities, if any) under Sub-Clause 13, Performance Security.

1.1.6.5 “Project Site,” where applicable, means the place named in the PCC.

1.1.6.6 “Unforeseeable” or “Unforeseen” means not reasonably foreseeable by an experienced Contractor by the Base Date.

1.1.6.7 “Change Order” or “Change” is defined in Sub-clause 26, Change Orders and Contract Amendments

1.2 Interpretation

1.2.1 Interpretation of the Contract, except where the context requires otherwise:

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;
- (d) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record;

- (e) the word “tender” is synonymous with “bid” and “tenderer” with “bidder” and the words “tender documents” with “bidding documents”.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

1.2.2 If the context so requires it, singular means plural and vice versa.

1.2.3 Incoterms

1.1.3 (a) Unless inconsistent with any provisions in the Contract, the meaning of any trade term and the rights and obligations of Parties thereunder shall be as prescribed by Incoterms.

- (b) The Incoterms, when used, shall be governed by the rules prescribed in the current edition of Incoterms, specified in the PCC, and published by the International Chamber of Commerce, Paris, France

1.2.4 Entire Agreement

The Contract constitutes the entire agreement between the Employer and the Contractor and supersedes all communications, negotiations and agreements (whether written or oral) of the Parties with respect thereto made prior to the date of Contract.

1.2.5 Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorised representative of each Party thereto.

1.2.5 Nonwaiver

- (a) Subject to GCC 1.2.5(b) below, no relaxation, forbearance, delay, or indulgence by either Party in enforcing any of the terms and conditions of the Contract or the granting of time by either Party to the other shall prejudice, affect, or restrict the rights of that Party under the Contract, neither shall any waiver by either Party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- (b) Any waiver of a Party’s rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorised representative of the Party granting such waiver, and must specify the right and the extent to which it is being waived.

1.2.6 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

1.3 Communications

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:

- (a) in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the PCC; and
- (b) delivered, sent or transmitted to the address for the recipient’s communications as stated in the PCC. However:
- (i) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
- (ii) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued

Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other

Party.

1.4 Law and Language

The Contract shall be governed by the law of the country or other jurisdiction stated in the PCC.

The ruling language of the Contract shall be that stated in the PCC.

The language for communications shall be that stated in the PCC. If no language is stated there, the language for communications shall be the ruling language of the Contract.

Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for the purposes of interpretation of the Contract, this translation shall govern.

The Contractor shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Contractor.

1.5 Priority of Documents

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- (a) the Contract Agreement (if any),
- (b) the Letter of Acceptance,
- (c) the Letter of Tender,
- (d) the Particular Conditions
- (e) these General Conditions,
- (f) the Specification,
- (g) the Drawings, and
- (h) the Schedules and any other documents forming part of the Contract.

If an ambiguity or discrepancy is found in the documents, the Employer shall issue any necessary clarification or instruction.

1.6 Contract Agreement

The Parties shall enter into a Contract Agreement within 28 days after the Contractor receives the Letter of Acceptance, unless the Particular Conditions establish otherwise. The Contract Agreement shall be based upon the form annexed to the Particular Conditions. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Employer.

1.7 Assignment

Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party:

- (a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and
- (b) may, as security in favour of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.

1.8 Copyright

- 1.8.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Employer by the Contractor herein shall remain vested in the Contractor, or, if they are furnished to the Employer directly or through the Contractor by any third Party, including Contractor's of materials, the copyright in such materials shall remain vested in

such third Party.

1.9 Confidential Details

The Contractor's and the Employer's Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify the Contractor's compliance with the Contract and allow its proper implementation.

Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the Plant prepared by the other Party without the prior agreement of the other Party. However, the Contractor shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects.

Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this Clause.

1.10 Compliance with Laws

The Contractor shall, in performing the Contract, comply with applicable Laws.

Unless otherwise stated in the Particular Conditions:

- (a) the Employer shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the Employer's Country which (i) such authorities or undertakings require the Employer to obtain in the Employer's name, and (ii) are necessary for the execution of the Contract, including those required for the performance by both the Contractor and the Employer of their respective obligations under the Contract;
- (b) the Contractor shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the Employer's Country which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Employer under GC Sub-Clause 1.10(a) hereof and that are necessary for the performance of the Contract. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to GC Sub-Clause 10.1 hereof.

1.11 Joint and Several Liability

If the Contractor is a joint venture, consortium, or association (JVCA) of two or more persons, all such persons shall be jointly and severally bound to the Employer for the fulfillment of the provisions of the Contract, unless otherwise specified in the PCC, and shall designate one of such persons to act as a leader with authority to bind the JVCA. The composition or the constitution of the JVCA shall not be altered without the prior consent of the Employer.

1.12 Inspections and Audit by the NEFCO

The Contractor shall permit the NEFCO and/or persons appointed by the NEFCO to inspect the Site and/or the Contractor's (including its subsuppliers, contractors, subcontractors, consultants or subconsultants) accounts and records relating to the performance of the Contract and to have such accounts and records audited by auditors appointed by the NEFCO if required by the NEFCO.

The Contractor shall maintain all documents and records related to the Contract in accordance with applicable law but in any case for at least six years from the date of substantial performance of the Contract.

The Contractor shall provide any documents necessary for the investigation of allegations of Prohibited Practices and require its employees or agents with knowledge of the Contract to respond to questions from the NEFCO.

2. Contract Documents

Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

3. Prohibited Practices

3.1 The NEFCO requires that Borrowers (including beneficiaries of NEFCO loans), as well as tenderers, suppliers, sub-suppliers, contractors, subcontractors, concessionaires, consultants and sub-consultants under NEFCO financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the NEFCO:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) **“corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;**
 - (ii) **“fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;**
 - (iii) **“coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;**
 - (iv) **“collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party; and**
 - (v) **“theft” means the misappropriation of property belonging to another party.**
- (b) will cancel the portion of the NEFCO financing allocated to a contract for Plant, works, Works or concessions if it at any time determines that Prohibited Practices were engaged in by representatives of the Borrower or of a beneficiary of the NEFCO financing during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to the NEFCO to remedy the situation;
- (c) may declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a NEFCO -financed contract if it at any time determines that the firm has engaged in Prohibited Practices in competing for, or in executing, a NEFCO -financed contract; and
- (d) reserves the right, where a Borrower or a firm has been found by the final judgement of a judicial process in a member country of the NEFCO or a finding by the enforcement (or similar) mechanism of another international organisation, including Mutual Enforcement Institutions, to have engaged in Prohibited Practices
 - v) to cancel all or part of the NEFCO financing for such Borrower; and
 - vi) to declare that such a firm is ineligible, either indefinitely or for a stated period of time, to be awarded a NEFCO -financed contract.

4. Eligibility

- 4.1 The Contractor and its Subcontractors shall have the nationality of an Eligible Country. A Contractor or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or is constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.
- 4.2 All Plant and Related Works to be supplied under the Contract and financed by the NEFCO shall have their origin in Eligible Countries. For the purpose of this Clause, origin means the country where the Plant have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

5. Notices

- 5.1 Any notice given by one Party to the other, pursuant to the Contract shall be in writing to the address specified in the PCC. The term "in writing" means communicated in written form with proof of receipt.
- 5.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

6. Settlement of Disputes

- 6.1 The Employer and the Contractor shall make every effort to resolve amicably by direct informal negotiation any dispute arising between them under or in connection with the Contract.
- 6.2 If, after twenty-eight (28) days from the commencement of such consultation, the Parties have failed to resolve their dispute by such mutual consultation, then either Party may give notice to the other Party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the PCC.
- 6.3. Notwithstanding any reference to arbitration herein,
- (a) the Parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
 - (b) the Employer shall pay the Contractor any monies due the Contractor.

7. Scope of Supply

- 7.1 The Plant and Related Works to be supplied shall be as specified in Section VI, Employer's Requirements.

8. Delivery

- 8.1 Subject to GCC 27.1, the Delivery of the Plant and Completion of the Related Works shall be in accordance with the Delivery and Completion Schedule specified in Section V, Employer's Requirements. The shipping and other documents to be furnished by the Contractor are specified in the PCC. The documents specified therein shall be received by the Employer before arrival of the Plant and, if not received, the Contractor shall be responsible for any consequent expenses.

9. Contractor's Responsibilities

- 9.1 The Contractor shall supply all the Plant and Related Works included in the Scope of Supply in accordance with GCC 7, and the Delivery and Completion Schedule, as per GCC 8.

10. Contract Price

- 10.1 Unless otherwise prescribed in the PCC, the Contract price shall be fixed throughout the duration of Contract performance.

11. Terms of Payment

- 11.1 The Contract Price shall be paid as specified in the PCC.

The Contractor's request for payment shall be made to the Employer in writing, accompanied by invoices describing, as appropriate, the Plant delivered and Related Works performed, and by the documents submitted pursuant to GCC 8 and upon fulfillment of all other obligations stipulated in the Contract.

- 11.2 Payments shall be made promptly by the Employer, no later than sixty (60) days after submission of an invoice or request for payment by the Contractor, and after the Employer has accepted it.

- 11.3 The currencies in which payments shall be made to the Contractor under this Contract shall be those in which the Tender price is expressed.

- 11.4 In the event that the Employer fails to pay the Contractor any payment by its due date, or within the period set forth in the PCC, the Employer shall pay to the Contractor interest on the amount of such delayed payment, at the rate shown in the PCC, for the period of delay, until payment has been made in full, whether before or after judgment, or arbitration award.

12. Taxes and Duties

- 12.1 For Plant manufactured outside the Employer's country the Contractor shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Employer's country.

- 12.2 For Plant manufactured within the Employer's country the Contractor shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Plant to the Employer.

- 12.3 If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in the Employer's Country, the Employer shall use its best efforts to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.

13. Performance Security

- 13.1 If so required in the PCC, the Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract of the amount specified in the PCC.

- 13.2 If so required, pursuant to GCC 13.1, the performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Employer, and shall be in one of the forms stipulated by the Employer in the PCC, or in another form acceptable to the Employer.

- 13.3 The proceeds of the performance security shall be payable to the Employer as compensation for any loss resulting from the Contractor's failure to complete its obligations under the Contract.

- 13.4 The performance security shall be discharged by the Employer and returned to the Contractor not later than twenty-eight (28) days following the date of completion of the Contractor's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the PCC.

14. Subcontracting

- 14.1 The Contractor shall notify the Employer in writing of all subcontracts awarded under the Contract if not already specified in the Tender. Such notification, in the original Tender or later, shall not relieve the Contractor from any of its obligations, duties, responsibilities, or

liability under the Contract.

14.2 Subcontracts shall comply with the provisions of GCCs 3 and 4.

15. Specifications and Standards

- 15.1 (a) The Contractor shall ensure that the Plant and Related Works comply with technical requirements, as specified in Section V, Employer's Requirements.
- (b) The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Employer, by giving a notice of such disclaimer to the Employer.
- (c) Wherever references are made in the Contract to codes and standards, in accordance with which it shall be executed, the addition or the revised version of such codes and standards shall be those specified in Section V, Employer's Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Employer and shall be treated in accordance with GCC 26.

16. Packing and Documents

- 16.1 The Contractor shall provide such packing of the Plant as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Plant's final destination and the absence of heavy handling facilities at all points in transit.
- 16.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the PCC, and in any other instructions ordered by the Employer.

17. Insurance

- 17.1 Unless otherwise specified in the PCC, the Plant supplied under the Contract shall be fully insured, in a freely convertible currency from an eligible country, against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the PCC.

18. Transportation

- 18.1 Unless otherwise specified in the PCC, responsibility for arranging transportation of the Plant shall be in accordance with the specified Incoterms.

19. Inspections and Tests

- 19.1 The Contractor shall at its own expense and at no cost to the Employer carry out all such tests and/or inspections of the Plant and Related Works as specified in the PCC.
- 19.2 The inspections and tests may be conducted on the premises of the Contractor or its Subcontractor, at point of delivery, and/or at the Plant's final destination, or in another place in the Employer's country as specified in the PCC. Subject to GCC 19.3, if conducted on the premises of the Contractor or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Employer.
- 19.3 The Employer or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC 19.2, provided that the Employer bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 19.4 Whenever the Contractor is ready to carry out any such test and inspection, it shall give a

reasonable advance notice, including the place and time, to the Employer. The Contractor shall obtain from any relevant third Party or manufacturer any necessary permission or consent to enable the Employer or its designated representative to attend the test and/or inspection.

- 19.5 The Employer may require the Contractor to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Plant comply with the technical specifications codes and standards under the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 19.6 The Contractor shall provide the Employer with a report of the results of any such test and/or inspection.
- 19.7 The Employer may reject any Plant or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Contractor shall either rectify or replace such rejected Plant or parts thereof or make alterations necessary to meet the specifications at no cost to the Employer, and shall repeat the test and/or inspection, at no cost to the Employer, upon giving a notice pursuant to GCC 19.4.
- 19.8 The Contractor agrees that neither the execution of a test and/or inspection of the Plant or any part thereof, nor the attendance by the Employer or its representative, nor the issue of any report pursuant to GCC 19.6, shall release the Contractor from any warranties or other obligations under the Contract.

20. Liquidated Damages

- 20.1 Except as provided under GCC 27, if the Contractor fails to deliver any or all of the Plant, by the date(s) of delivery, or perform the Related Works within the period specified in the Contract, the Employer may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the PCC of the Contract Price for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in the PCC. Once the maximum is reached, the Employer may terminate the Contract pursuant to GCC 28.

21 Warranty

- 21.1 The Contractor warrants that all the Plant are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 21.2 Subject to GCC 15.1(b), the Contractor further warrants that the Plant shall be free from defects arising from any act or omission of the Contractor or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.
- 21.3 Unless otherwise specified in the PCC, the warranty shall remain valid for twelve (12) months after the Plant, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the PCC, or for eighteen (18) months after the date of shipment, from the port, or place of loading in the country of origin, whichever period concludes earlier.
- 21.4 The Employer shall give notice to the Contractor stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Employer shall afford all reasonable opportunity for the Contractor to inspect such defects.
- 21.5 Upon receipt of such notice, the Contractor shall, within the period specified in the PCC, expeditiously repair or replace the defective Plant or parts thereof, at no cost to the Employer.

If having been notified, the Contractor fails to remedy the defect within the period specified in the PCC, the Employer may proceed to take within a reasonable period such remedial action as may be necessary, at the Contractor's risk and expense and without prejudice to any other rights which the Employer may have against the Contractor under the Contract.

22. Patent Indemnity

22.1 The Contractor shall, subject to the Employer's compliance with GCC 22.2, indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Employer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

- (a) the installation of the Plant by the Contractor or the use of the Plant in the country where the Site is located; and
- (b) the sale in any country of the products produced by the Plant.

Such indemnity shall not cover any use of the Plant or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Plant or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Contractor, pursuant to the Contract.

22.2 If any proceedings are brought or any claim is made against the Employer arising out of the matters referred to in GCC 22.1, the Employer shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

22.3 If the Contractor fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

The Employer shall indemnify and hold harmless the Contractor and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Employer.

23. Limitation of Liability

23.1 Except in cases of gross negligence or willful misconduct:

- (a) the Contractor shall not be liable to the Employer, whether in contract, in tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer; and
- (b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort, or otherwise, shall not exceed the Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any

obligation of the Contractor to indemnify the Employer with respect to patent infringement.

24. Change in Laws and Regulations

24.1 If, within less than twenty-eight (28) days prior to the date of Tender Submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the place of the Employer's country where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC 10.

25. Force Majeure

25.1 The Contractor shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

25.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Contractor that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Contractor. Such events may include, but are not limited to, acts of the Employer in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

If a Force Majeure situation arises, the Contractor shall promptly notify the Employer in writing of such condition and the cause thereof. Unless otherwise directed by the Employer in writing, the Contractor shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

26 Change Orders and Contract Amendments

26.1 The Employer may at any time order the Contractor through notice in accordance with GCC 5, to make changes within the general scope of the Contract in any one or more of the following:

- (a) drawings, designs, or specifications, where Plant to be furnished under the Contract are to be specifically manufactured for the Employer;
- (b) the method of shipment or packing;
- (c) the place of delivery; and
- (d) the Related Works to be provided by the Contractor .

26.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Contractor's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Contractor for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Contractor's receipt of the Employer's change order.

26.3 Prices to be charged by the Contractor for any Related Works that might be needed but which were not included in the Contract shall be agreed upon in advance by the Parties and shall not exceed the prevailing rates charged to other Parties by the Contractor for similar Works.

26.4 Subject to the above, no variation in, or modification of, the terms of the Contract shall be made except by written agreement signed by the Parties.

27 Extensions of Time

- 27.1 If at any time during performance of the Contract, the Contractor or its subcontractors should encounter conditions impeding timely delivery of the Plant or completion of Related Works pursuant to GCC 8, the Contractor shall promptly notify the Employer in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Contractor's notice, the Employer shall evaluate the situation and may at its discretion extend the Contractor's time for performance, in which case the extension shall be ratified by the Parties by amendment of the Contract.
- 27.2 Except in case of Force Majeure, as provided under GCC 25, a delay by the Contractor in the performance of its Delivery and Completion obligations shall render the Contractor liable to the imposition of liquidated damages pursuant to GCC 20, unless an extension of time is agreed upon, pursuant to GCC 27.1.

28. Termination**28.1 Termination for Default**

- (a) The Employer, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Contractor, may terminate the Contract in whole or in part:

- 28.2
- (i) if the Contractor fails to deliver any or all of the Plant within the period specified in the Contract, or within any extension thereof granted by the Employer pursuant to GCC 27;
 - (ii) if the Contractor fails to perform any other obligation under the Contract; or
 - (iii) if the Contractor, in the judgment of the Employer, has engaged in Prohibited Practices, as defined in GCC 3, in competing for, or in executing the Contract.

- 28.3 (b) In the event the Employer terminates the Contract in whole or in part, pursuant to GCC 28.1(a), the Employer may procure, upon such terms and in such manner as it deems appropriate, Plant or Related Works similar to those undelivered or not performed, and the Contractor shall be liable to the Employer for any additional costs for such similar Plant or Related Works. However, the Contractor shall continue performance of the Contract to the extent not terminated.

28.4 Termination for Insolvency

The Employer may at any time terminate the Contract by giving notice to the Contractor if the Contractor becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Contractor, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Employer.

28.5 Termination for Convenience

- (a) The Employer, by notice sent to the Contractor, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Employer's convenience, the extent to which performance of the Contractor under the Contract is terminated, and the date upon which such termination becomes effective.

- 28.6 (b) The Plant that are complete and ready for shipment within twenty-eight (28) days after the Contractor's receipt of the notice of termination shall be accepted by the Employer at the Contract terms and prices. For the remaining Plant, the Employer may elect:

- (i) to have any portion completed and delivered at the Contract terms and prices; and/or
- (ii) to cancel the remainder and pay to the Contractor an agreed amount for partially completed Plant and Related Works and for materials and parts

previously procured by the Contractor.

Section VII. Particular Conditions of Contract

The following Particular Conditions of Contract shall supplement the GCC. Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

Boxed guidance notes and provisions in italics font contain instructions and guidance which the drafter should follow. They are not part of the text and should not be included in the final document.

All reference Clauses and Sub-clauses provided in the Particular Conditions of Contract shall be construed as reference Clauses and Sub-clauses in Section VI, General Conditions of Contract.

GCC
reference

Particular Conditions of Contract

General Provisions

- 1.1.2.2 The Employer is: *[Insert the name of Employer]*
- 1.1.2.5 The Lender is: *[insert name of the financing institution financing the Contract]*
- 1.1.2.6 The Borrower is: *[insert name of the borrower]*
- 1.1.6.1 The Employer's Country is: *[insert the name of the Employer's country]*
- 1.1.6.5 The Project Site is: *[insert description, if applicable]*
- 1.2.3 (a) The version of Incoterms shall be the current edition of Incoterms, published by The International Chamber of Commerce, Paris.
- 1.4 The governing law is that of: *[insert name of the country]*.
The language for communications is *[name of language for communications only if different from the ruling language]*:
The ruling language is: *[this shall be the language specified in the Instructions to Tenderers]*
- 1.6 The Parties shall enter into a Contract Agreement within 28 days after the Contractor receives the Letter of Acceptance.
- 1.11 The individuals or firms in a joint venture, consortium or association shall be held jointly and severally liable.
- 5 **Notices**
- 5.1 For **notices**, the Employer's address shall be:
Attention: _____
Street Address: _____
Floor/ Room number: _____
City: _____
Postal Code: _____

Country: _____

Telephone: _____

Facsimile number: _____

Electronic mail address: _____

6 Settlement of Disputes

6.2 The rules of procedure for arbitration shall be as follows:

EXAMPLE:

- (a) In the case of a dispute between the Employer and a Contractor which is a national of the Employer's country, the dispute shall be referred to adjudication/arbitration in accordance with the laws of the Employer's country.
- (b) In the case of a dispute between the Employer and a foreign Contractor, the dispute shall be settled by arbitration in accordance with the provisions of the UNCITRAL Arbitration Rules.
- (c) The place of arbitration shall be [*insert*].
- (d) The arbitration proceedings shall be conducted in the language governing the Contract.

Notwithstanding any referral of a dispute to arbitration herein:

- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- (b) the Employer shall pay the Contractor any monies due the Contractor.

8 Delivery

8.1 The shipping and other documents to be furnished by the Contractor are:

EXAMPLE:

- (a) For Plant supplied from outside the Employer's country: the Plant shall be delivered DAP/DDU (place of destination).

Upon shipment, the Contractor shall notify the Employer and the Insurance Company of the full details of the shipment, including: Contract number; description of Plant; quantity; the number and date of the usual transport document (such as railway or road consignment note, bill of lading, or multimodal transport document); date of shipment; expected date of arrival; vessel and ports of loading and discharge, if appropriate.

The Contractor shall mail the following documents to the Employer, with a copy to the Insurance Company:

- (i) copies of the Contractor's invoice showing the Plant's description, quantity, unit price and total amount;
- (ii) original and (_____) copies of the negotiable, clean, on-board bill of lading marked "freight prepaid" and (_____) copies of non-negotiable bill of lading;
- (iii) copies of packing list identifying contents of each package;
- (iv) insurance certificate;
- (v) Manufacturer's/Contractor's warranty certificate;
- (vi) inspection certificate, issued by the nominated inspection agency and the Contractor's factory inspection report;

- (vii) certificate of origin

The above documents shall be received by the Employer at least one week before arrival of the Plant at the port or place of arrival, and, if not received, the Contractor will be responsible for any consequent expenses.

EXAMPLE:

- (b) For Plant supplied from within the Employer's country:

Upon delivery of the Plant to the transporter, the Contractor shall notify the Employer and mail the following documents to the Employer:

- (i) copies of the Contractor's invoice showing the Plant's description, quantity, unit price and total amount;
- (ii) delivery note, railway receipt or truck receipt;
- (iii) Manufacturer's or Contractor's warranty certificate;
- (iv) inspection certificate issued by the nominated inspection agency, and the Contractor's factory inspection report;
- (v) evidence of payment of customs duties or other similar import taxes on directly imported components incorporated in the Plant.

The above documents shall be received by the Employer before arrival of the Plant and, if not received, the Contractor will be responsible for any consequent expenses.

EXAMPLE:

- I Works:

- (i) copy of the Contractor's invoice, which should provide a full description of the Works performed

10 Contract price

- 10.1 Price adjustments shall not apply.

11 Terms of payment

The following example is appropriate for contracts where the value of Plant exceeds that of Related Works and contract duration is equal to or less than 6 months.

- 11.1 The terms of payment shall be as follows:

EXAMPLE:

The method and conditions of payment to be made to the Contractor under this Contract shall be as follows:

- (a) Payment for Plant shall be made in _____ [*insert currency or currencies specified in the Contractor's tender*] in the following manner:
 - (i) Advance payment: Ten (10) percent of the Contract Price shall be paid within thirty (30) days of signing the Contract, and upon submission of a claim and a bank guarantee in a form acceptable to the Employer, for an equivalent amount valid until the Plant are delivered;
 - (ii) On shipment: Eighty (80) percent of the Contract Price of the Plant shipped shall be paid within thirty (30) days of delivery of Plant at destination against the Minutes of Arrival signed by both parties, and upon submission of documents specified in Clause 8; and
 - (iii) On acceptance: Ten (10) percent of the Contract Price of the Plant and ninety (90) percent of the Contract Price of the Related Works shall be paid

within thirty (30) days of Plant testing and commissioning, upon submission of a claim supported by the acceptance certificate issued by the Employer for the Plant.

The following example is appropriate for contracts where the value of Plant is comparable to or less than that of Related Works and/or contract duration is over 6 months.

EXAMPLE:

The method and conditions of payment to be made to the Contractor under this Contract shall be as follows:

- (a) Payment for Plant shall be made in _____ *[insert currency or currencies specified in the Contractor's tender]* in the following manner:
- (i) Advance payment: Ten (10) percent of the Contract Price shall be paid within thirty (30) days of signing the Contract, and upon submission of a claim and an advance payment security in a form acceptable to the Employer, for an equivalent amount valid until the Plant is delivered;
 - (ii) On shipment: Eighty (80) percent of the Contract Price of the Plant shipped shall be paid within thirty (30) days of delivery of Plant at destination against the Minutes of Arrival signed by both parties, and, upon submission of documents specified in Clause 8; and
 - (iii) On acceptance: Ten (10) percent of the Contract Price of the Plant shall be paid within thirty (30) days of Plant testing and commissioning, upon submission of a claim supported by the acceptance certificate for the Plant issued by the Employer.
- (b) Payment for Related Works shall be made in _____ *[insert currency or currencies specified in the Contractor's tender]* in the following manner:
- Eighty (80) percent of the measured value of work performed by the Contractor during the preceding month/quarter *[choose periodicity, as appropriate]*, as evidenced by Employer's authorisation of the Contractor's application, shall be paid monthly/quarterly *[choose periodicity, as appropriate]* within thirty (30) days of the receipt of respective invoice; and
 - Ten (10) percent of the Contract Price of the Related Works shall be paid within thirty (30) days of Plant testing and commissioning, upon submission of a claim supported by the acceptance certificate issued by the Employer for the Plant.

11.2 The Contractor shall nominate up to 3 (three) accounts and notify these to the Employer within 28 days within 28 days after the Contractor receives the Letter of Acceptance. Payments shall be made by the Employer only to the account(s) nominated by the Contractor in accordance with this Clause.

11.4 The payment-delay period after which the Employer shall pay interest to the Contractor is *[insert number]* days.

The interest rate that shall be applied is: *[insert percent interest rate]* %.

13 Performance Security

13.1 A performance security *[insert "shall" or "shall not"]* be required.

If a performance security is required, the amount of performance security as a percentage of the Contract Price shall be: *[specify percentage: five (5) to ten (10) percent of the Contract Price is reasonable; it should not normally exceed ten (10) percent]*.

13.3 If a performance security is required, the currency shall be: *[specify the currency. Normally, the currency(ies) in which the Contract Price is payable]*

If required, the performance security shall be in the form of unconditional bank guarantee.

13.4 Discharge of Performance Security shall take place:

EXAMPLE:

After delivery and acceptance of the Plant, the performance security shall be reduced to two (2) percent of the Contract Price to cover the Contractor's warranty obligations in accordance with GCC Clause 21.3

16 Packing and Documents

16.2 The packing, marking and documentation within and outside the packages shall be: *[insert details required for packing marking and documentation]*

17 Insurance

17.1 The insurance coverage shall be in an amount equal to 110 percent of the DDP value of the Plant from "warehouse to warehouse" on an "All Risks" basis, including War Risks and Strikes.

18 Transportation

18.1 Responsibility for arranging transportation of the Plant shall be in accordance with the specified Incoterms.

19 Inspection and tests

19.1 The inspections and tests shall be:

Preshipment inspection: *[specify inspection and tests]*

Final acceptance: *[specify inspection and tests]*

19.2 The inspections and tests shall be conducted at: _____

20 Liquidated Damages

20.1 The liquidated damage shall be: _____ % per week.

The maximum percentage of liquidated damages shall be: _____%

<p><i>Applicable rate would normally be set at one half (0.5 of a) percent per week and the maximum deduction should not exceed ten (10) percent of the Contract Price.</i></p>

21 Warranty

21.3 The period of validity of the warranty shall be *[insert number of months]* months from the date of the Acceptance certificate signed by Employer.

EXAMPLE:

Without prejudice to Clauses 21.3, 21.4 and 21.5, the Contractor shall promptly correct, at no cost to the Employer, any defect in any Plant or parts repaired or replaced pursuant to Clauses 21.3, 21.4 and 21.5 above, upon receipt of a written notice of defect within 12 months of the acceptance of the repaired or replaced Plant or parts.

21.5 The period for repair or replacement shall be: *[insert number of days]* days.

Section VIII. Contract Forms

This Section contains Contract Forms which once completed will constitute part of the Contract. The forms for the Contract Agreement, Performance Security and Advance Payment Security, when required, shall only be completed by the successful Tenderer after the contract award.

1. LETTER OF ACCEPTANCE

[on letterhead paper of the Employer]

To: *[name and address of the Contractor]*

..... *[date]*

Subject: *[Notification of Award Contract No.]*

This is to notify you that your Tender dated *[insert date]* for the execution of the
[insert name of the contract and identification number] for the amount of
[insert amount(s) in figures and words and name(s) of currency(ies)], as corrected and modified in
accordance with the Instructions to Tenderers is hereby accepted by us.

You are requested to furnish the Performance Security in the amount of *[insert amount(s) in figures and words and name(s) of currency(ies)]* within 28 days in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included in Section IX (Contract Forms) of the Tender Document.

Authorised Signature:

Name of Signatory:

Title of Signatory:

Name of Agency:

Attachment: Contract Agreement

2. Contract Agreement

THIS CONTRACT AGREEMENT is made on the *[insert number]* day of *[insert month]*, *[insert year]*.

BETWEEN

(1) *[insert complete name of the Employer]*, a *[insert description of type of legal entity, for example, an agency of the Ministry of {insert name of Ministry/agency} of the Government of {insert name of Country of the Employer }, or corporation incorporated under the laws of {insert name of Country of the Employer }]* and having its principal place of business at *[insert address of the Employer]* (hereinafter called “the Employer ”),

and

(2) *[insert name of the Contractor]*, a corporation incorporated under the laws of *[insert country of Contractor]* and having its principal place of business at *[insert address of Contractor]* (hereinafter called “the Contractor ”).

WHEREAS the Employer invited tenders for Plant and Related Works, described as *[insert brief description of the Plant and Related Works]* and has accepted a Tender by the Contractor for the supply of these Plant and Related Works, and the Employer agrees to pay the Contractor the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
 - (a) the Letter of Acceptance
 - (b) the Letter of Tender
 - (c) the Addenda No.s *[insert addenda numbers if any]*.
 - (d) the Particular Conditions
 - (e) the General Conditions
 - (f) the Employer’s Requirements
 - (g) the Drawings; and
 - (h) the completed Schedules.
3. In consideration of the payments to be made by the Employer to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Employer to supply of the Plant and Related Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the supply of the Plant and Related Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

Agreement to be executed in accordance with the laws of *[name of the borrowing country]* on the day, month and year indicated above.

Signed for and on behalf of the Employer:

.....

Name:

Date:

In the presence of Witness:

Name:

Address:

Date:

Signed for and on behalf the Contractor:

Name:

Date:

In the presence of Witness:

Name:

Address:

Date:

3. PERFORMANCE SECURITY

[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated]

Date: [insert date (as day, month, and year)]

Tendering Process Reference: [insert no. and title of Tendering process]

Bank's Branch or Office: [insert complete name of Guarantor]

Beneficiary: [insert complete name of Employer]

PERFORMANCE GUARANTEE No.: [insert Performance Guarantee number]

We have been informed that [insert complete name of the Contractor (hereinafter called "the Contractor")] has entered into Contract No. [insert number] dated [insert day and month], [insert year] with you, for the supply of [description of Plant and related Works] and the remedying of any defects therein (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(s) not exceeding [insert amount(s) in figures and words] such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing declaring the Contractor to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This Guarantee shall expire no later than the [insert number] day of [insert month] [insert year],² and any demand for payment under it 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.

.....[Signatures of authorised representatives of the bank]

The Bank shall insert the amount(s) specified in the PCC and denominated, as specified in the PCC, either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Employer.

² Dates established in accordance with Clause 13.4 of the General Conditions of Contract ("GCC"), taking into account any warranty obligations of the Contractor under Clause 11.2 of the GCC intended to be secured by a partial Performance Guarantee. The Employer should note that in the event of an extension of the time to perform the Contract, the Employer would need to request an extension of this Guarantee from the Bank. 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: "We agree 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 us before the expiry of the Guarantee."

4. ADVANCE PAYMENT SECURITY

[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated]

Date: [insert date (as day, month, and year) of Tender Submission]

Tendering Process Reference: [insert number and title of Tendering process]

[bank's letterhead]

Beneficiary: [insert legal name and address of Employer]

ADVANCE PAYMENT GUARANTEE No.: [insert Advance Payment Guarantee no.]

We have been informed that [name of the Contractor]. (hereinafter called "the Contractor") has entered into Contract No. [reference number of the Contract]. dated with you, for the supply of Plant and Related Works [name of contract and brief description of Plant and Related Works] (hereinafter called "the Contract").

Furthermore, we understand that, according to the Conditions of the Contract, an advance payment in the sum [name of the currency and amount in figures] ¹. (. [amount in words].) is to be made against an advance payment guarantee.

At the request of the Contractor, we [name of the Bank]. hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [name of the currency and amount in figures]*. (. [amount in words].) 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 performing his obligations under the Contract.

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 its account number [Contractor's account number]. at [name and address of the Bank].

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

. [Seal of Bank and Signature(s)].

Note –

All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.

1 The Guarantor shall insert an amount representing the amount of the advance payment denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.