



VCI CHEMICAL INDUSTRIES PVT LTD



ACRE COKING & REFRACTORY ENGINEERING CONSULTING CORPORATION (DALIAN), MCC

CONTRACT AGREEMENT

BETWEEN

VCI CHEMICAL INDUSTRIES PVT LTD

AND

**ACRE COKING & REFRACTORY ENGINEERING
CONSULTING CORPORATION
(DALIAN), MCC**

FOR

**DESIGN&ENGINEERING, SUPERVISION,
TRAINING**

FOR

**Green field coal Tar Distillation Plant along with auxiliary
facilities. (Phase I)**

AT

KALINGANAGAR PLANT

**CONTRACT AGREEMENT**

THIS CONTRACT NO. VIL/TDP/DES/2012/001 made this 16th Day of November, Two thousand & twenty-three at Dalian, Liaoning, China.

BETWEEN

VCI CHEMICAL INDUSTRIES PVT LTD, a Company incorporated under the Companies Act, 1956 and having its registered office at 49, Govt. Industrial Estate, Kalpi Road Kanpur, India PIN Code 208012, propose to have its Coal tar distillation plant at Kalingnagar, Jajpur, Odisha (hereinafter referred to as the **“Employer”** or **“Buyer”**) which term or expression unless excluded by or repugnant at the context or the meaning thereof, shall be deemed to include its successors and permitted assigns, **OF THE ONE PART,**

AND

M/s ACRE COKING & REFRACTORY ENGINEERING CONSULTING CORPORATION (DALIAN), MCC, a Company organized and existing under the laws of China (Name of the country) and having its Registered Office at No. 128, Gaoneng Street, Qixianling, Hi-Tech Industrial Zone, Dalian, Liaoning Province, P. R. China (hereinafter referred to as **“BIDDER”**), which term or expression unless excluded by or repugnant to the context or meaning thereof, shall be deemed to include its successors and permitted assigns, **OF THE OTHER PART.**

AND WHEREAS

- a) The Employer has decided to set-up Coal tar distillation Plant at Kalinganagar, Jajpur, Odisha, India, (hereinafter referred to as the **“Facilities”**), and
- b) The Bidder has declared that the Bidder has valuable and specialized knowledge and expertise for providing and executing the above Facilities and
- c) The Bidder has declared that the Bidder is in a position to disclose, impart, deliver and transfer the requisite engineering data, drawings and documents of those items which are in the scope of the Bidder in this Contract, to the Employer for the engineering of the Facilities and for erection, start-up and commissioning of the Facilities with the aim to manufacture product as specified in the Contract, and
- d) The Bidder has obtained clarifications on technical and commercial aspects, inspected the site and surrounding of Facilities and has examined and considered all other matters, condition and things, probable contingencies and generally all matters incidental thereto and ancillary thereof, affecting the execution and completion of the Facilities, and
- e) The Bidder has agreed to undertake design & engineering, supply of plant and equipment, supervision during commissioning and demonstration & establishment of performance guarantee parameters of the Facilities.



NOW IS HEREBY AGREED as follows:

Article 1 Contract Documents

1.1 Definitions (reference GCC Clause 1)

1.2 Contract Documents (reference GCC Clause2)

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

- (a) This contract Agreement and Appendices hereto
- (b) Special Condition of contract and annexure hereto
- (c) General Condition of Contract and annexure hereto
- (d) Technical Specification
- (e) Any other documents shall be added here

1.3 order of Precedence (reference GCC Clause2)

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.2 (Contract Documents) above.

Article 2 Contract Price and Terms Of Payment for design&engineering

2.1 Contract Price (reference GCC Clause 11 & Appendix-1)for design&engineering

The Employer hereby agrees to pay to the Bidder the Contract Price in consideration of the performance by the Bidder of its obligation hereunder. The Contract Price shall be the aggregate of: **[amount of foreign currency in words: six hundred thousand US dollar], [600,000.00 USD]**, and or such other sums as may be determined in accordance to the terms and conditions of the Contract.

2.2 Terms of Payment (reference Appendix-3)

The terms of payment are given in Appendix-3.

Article 3: Effective and Closing Date

3.1 The Effective Date of Contract shall be 16 November 2023 .

3.2 This contract shall remain valid up to 37 months from signing contract (16 December 2026).

Article 4 Scope of Facilities (reference GCC Clause 7 & Technical Specification)

- 4.1 The Contract is the execution of Scope of Facilities as specified in the GCC Clause 7 and Technical Specifications. The quantities/ weights of any item are indicative only for the purpose of making progress payments on pro-rata basis as per Sub-Clause 2.3 of Appendix-3.
- 4.2 Should the actual quantities/ weights differ from the indicated ones, neither the Bidder shall not be entitled to get any additional price from the Employer nor is



the Employer entitled to deduct any amount from the Contract Price due to variation in physical quantities / weight.

Article 5 Times for Completion. (Reference GCC Clause 8 & Appendix-2)

- 5.1 The Facilities will be commissioned in 22 months from the Effective Date the Contract.

The Advanced bank Guarantee (ABG) shall be submitted by the Bidder within 30 days after signing of Contract.

The Letter of Credit (LC) shall be opened by Employer within 15 (fifteen) days of Receipt of Performance Bank Guarantee (PBG) from the Bidder in the format as per **Annexure 1** of GCC.

In case, there as delay in opening of Letter of Credit by Employer, then time of completion shall be extended accordingly. However, in case, there is delay in submission of BG by the Bidder then the time of completion shall remain Unchanged, provide LC has been opened within 15 days of BG submission.

Article 6 consultant

- 6.1 M/s VCI Chemical Industries Private Limited shall be the consultant for this project. When a 3rd party is engaged then bidder shall be informed and all legal / contract document shall be done accordingly.

Article 7 Subcontracting (Reference GCC Clause 19)

- 7.1 This shall be as per GCC Clause 19.

Article 8 Liquidated Damages

8.1 LIQUIDATED DAMAGES DUE TO DELAY

The bidder will also prepare and submit billing schedule to buyer for review and approval. If the bidder fails to attain "Completion of any of the activity" within the prescribed time due to reasons not attributable to the buyer, the buyer shall recover the amount of Liquidated Damages, but not by way of penalty by making deductions from the bidder's account or by encashment of bidder's Bank Guarantees, at the rate of 0.5% of the total Contract Price, excluding taxes & duties paid or payable to the bidder, per week of delay or part thereof up to a maximum of 5% of the Contract Price.

8.2 LIQUIDATED DAMAGES FOR NON-FULFILMENT OF PERFORMANCE GUARANTEE PARAMETERS OF PROJECT

If, for reasons not attributable to the buyer, the performance guarantee parameters specified hereof in the Agreement are not met either in whole or in part, the bidder shall at its cost and expense make such changes, modifications and / or additions to the Project or any part thereof as may be necessary to meet the performance guarantees parameters. The bidder shall notify the buyer upon completion of the necessary changes, modifications and / or additions, and shall request the buyer to repeat the performance guarantee test (2nd test)



so as to establish the performance guarantee parameters. Such repeat test shall be done for a maximum of two (2) times.

In case the performance guarantee parameters are not achieved either in whole or in part the buyer shall recover the amount of Liquidated Damages, but not by way of penalty, by making deductions from the bidder's account or by encashment of bidder's Bank Guarantees, at the rates specified hereof for respective items, subject to a maximum of five (5) percent of the Contract Price, excluding taxes & duties in respect of the failure to meet the minimum level of Performance Guarantees in accordance with the provisions hereof.

The aggregate ceiling on Liquidated Damages due to delay in completion of the Project and for non-fulfilment of Performance Guarantee Parameters of the Project shall be limited to ten (10) percent of the Contract Price, excluding taxes and duties.

LD Table (As per technical discussion)

Sl. No.	Description	PG Valve	Acceptable with LD	LD Quantum
1.	Plant capacity of			
a)	Coal Tar Distillation Plant capacity calculated on dehydrated coal tar basis.	a) 110,000 TPA of crude coal tar.	a) 100,000 TPA of crude coal tar	a) LD @ 1.0% of the contract value for each 4000 TPA (or part) less than PG valve.
b)	Pitch Reforming / Modification unit	b) 93% production rate of modified pitch residue present in coal tar + 20,000 TPA of med soft pitch	b) 92% production rate of modified pitch residue present in coal tar + 20,000 TPA of med soft pitch	b) LD @ 1.0% of the contract value for each 1% (or part) less than PG value.
2)	Naphthalene Distillation - Technical grade Naphthalene			
		Recovery of 91% of 100% naphthalene present in coal tar by GC and by GB standard.	Recovery of 90% of 100% naphthalene present in coal tar.	LD @ 1.0% of the contract value for each 1.0% (or part) less than PG Value for capacity
3.	Softening point of modified pitch.	110°C-115°C (R & B)by ASTM-D3104	± 2°C R & B of desired value	LD @ 1.0% of the contract value for each +/- 1°C (or part) of deviation from PG Value.
4.	Moisture in reformed/ modified pitch produced after granulation	2.5% by wt.	3.0 % on wt. basis	LD @ 1.5% of the contract value for each 0.5% (or part) of deviation from PG Value.

**Article 9 Arbitration**

(Reference GCC Clause 6)

9.1 [Relevant portions of clause 6 of GCC to be incorporated]

Article 10 Appendix

10.1 The following Appendices shall be deemed to form an integral part of this Contract Agreement. Reference in the Contract to any Appendix shall mean the Appendices attached hereto, and the Contract shall be read and construed accordingly.

- | | |
|---|------------------------|
| 1 | Price Schedule |
| 2 | Time Schedule |
| 3 | Terms of Payment |
| 4 | Performance Guarantees |

Article 11.**REGISTERED ADDRESS, DETAILS AND SIGNATURES OF THE PARTIES****1. BUYER**

VCI CHEMICAL INDUSTRIES PVT LTD

Address:

49, Govt. Industrial Estate, Kalpi Road Kanpur, India

PIN Code: 208012

Registration number: U24299UP2021PTC146691

Tax number: 09AAICV0906F1ZE

Bank account: 2645278332

Beneficiary's Bank: KOTAK MAHINDRA BANK LTD

Swift Code: KKBKINBB

2. BIDDER:

ACRE Coking & Refractory Engineering Consulting Corporation (Dalian), MCC

Address:

NO. 128 GAONENG STREET, HIGH-TECH ZONE, DALIAN, LIAONING, CHINA

Unified social credit code: 91210231683013176G

BENEFICIARY'S BANK :

BANK OF CHINA, DALIAN BRANCH DALIAN HI-TECH SUB-BRANCH, DALIAN CHINA

SWIFT: BKCHCNBJ81A

ACCOUNT NUMBER: 302556326235

BANK'S ADDRESS: NO. 17 HUOJU ROAD DALIAN HI-TECH ZONE DALIAN CHINA

No modifications of this Contract including Appendices hereto, shall be valid unless the same is agreed to in writing by the parties and specifically mentioned as an amendment to the Contract.

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



**Signed by for and on behalf of the
Bidder**

[Signature]

[Designation]

In the presence of _____

1) _____
[Signature]

[Designation]

2) _____
[Signature]

[Designation]

**Signed by for and on behalf of the
Employer**

[Signature]

[Designation]

In the presence of _____

1) _____
[Signature]

[Designation]

2) _____
[Signature]

[Designation]

**APPENDIX-1****PRICE SCHEDULE****1. Contract price**

- 1.1 The Contract Price for the entire Scope of Facilities including all the contractual obligation of the Bidder together with its sub-Bidder /vendor is included in the **Article-2** of the contract.

2. Contract price break up

- 2.1 the break –up of the contract price is indicated in the summary price schedule and detailed break up of summary prices is given in the following tables, hereafter (However, in case the Bidder is a consortium of two or more parties, the breakup of the contract price s to be indicated separately for each members of consortium, in the tables given hereafter) .

Table Descriptions

2.1.1 Summary price schedule

2.1.2 Price schedule for Design and Engineering.

2.1.3 Deputation of expert for supervision of erection, testing, commissioning and performance guarantee test.

2.2 The “Po” shall be the prices as on base Date excluding all duties, taxes and other levies, the value of the Po for the purpose of price adjustment cause stipulated in the **Sub- Clause 2.1 to 2.8** of the Appendix -4, are to be given in the following **Table no.1.0,1.1 and 1.2.**

Table no. 1.0
Summary price schedule

Sl no .	Description	Price (10 ⁴ USD)	Note
1	Design and engineering (phase I) (excluding Phenol Refining unit)	60.00	Excluding 10% Design and engineering fee as Tax Deducted at Source (TDS)
2	Deputation of expert for supervision of erection, testing, commissioning, performance, guarantee test services.	48.67	
3	Training of purchaser’s operating and maintenance personnel	13.70	
	Sub-Total price (phase I)	122.37	Excluding Phenol Refining unit



Notes:

1. Bidders to quote in summary price schedule only based on which evaluation will be done.
2. In case of arithmetic error in totaling, corrected arithmetic total will be considered.
3. In case of a discrepancy between words and figures and/or arithmetic error in totaling, corrected arithmetic total will be considered.
4. Remarks/footnotes/comments furnished in un-priced bids will prevail, if any discrepancy is found in furnishing any remarks / footnotes / comments between un-priced bids and priced bids.

Table No 1.1
Price schedule for Design & Engineering

Sl no.	Description	Price (10 ⁴ USD)	Remarks
	Phase I		
1	Basic design and engineering	24.00	Excluding Phenol Refining unit
2	Detailed Engineering including erection drawings	36.00	Excluding Phenol Refining unit
5	As built drawings and manuals	For free	
Sub Total (phase I)		60.00	
Total (in words)		Six hundred thousand USD	



Table no 1.2

PRICE SCHEDULE FOR DEPUTATION OF EXPERTS FOR ERECTION, TESTING COMMISSIONING & PERFORMANCE GUARANTEE (PG) TEST

Sl no.	Description	Quantity (Man months)	Quantity (Man day)	Price (10 ⁴ USD)
1	For supervision of erection & testing			
a	Specialist and Supervisors			
	Civil engineer	6	156	4.21
	Process engineer (450 USD/Man.day)	13	338	15.21
	Electric engineer	3	78	2.11
	Equipment engineer	4	104	2.80
	Instrument engineer and automation engineer	3	78	2.11
	Water supply and drainage engineer	6	156	4.21
	Sub total	35	910	30.65
2	For conducting commissioning , performance guarantee test and post commissioning services			
a	Specialist and Supervisors			
1)	Process engineer(450 USD/Man.day)	7	182	8.20
2)	Electric engineer	2	52	1.40
3)	Instrument engineer and automation engineer	4	104	2.80
4)	Water supply and drainage	3	78	2.11
5)	System engineer	3	78	2.11
6)	Equipment engineer	2	52	1.40
	Sub total	21	546	18.02
	Total (1 + 2)	56	1456	48.67
	Total (in words)	Four hundred and eighty-six thousand seven hundred USD		

**APPENDIX-2****TIME SCHEDULE****1.0 Time schedule for completion of the Facilities**

1.1 The facilities will be commissioned within 22 months from the effective date of the contract as per Article-5 of the Contract Agreement. The overall time schedule for completion of the facilities is given below:

Sl. No.	Items of work	Commencement (No. of month from Effective Date)	Completion (No. of month from Effective Date)
1.	Basic Engineering	0	4.0
2.	Basic Engineering review	4.0	5.0
3.	Detailed Design Engineering	6.0	13.0
4.	Equipment supply from China	10.5	15.5
5.	Equipment arrival at site	14.5	17.5
6.	Equipment erection	15.5	21.5
7.	Testing, Commissioning & Performance	21.5	22.0

2.0 Time Schedule for Feedback Data, Drawings and Documents

2.1 Within 4 weeks from the effective date of contract, the Bidder shall submit to the engineer /Consultant Preliminary list of all drawings and documents by title using the approved numbering system and indicating the schedule of submission of drawings in conformity with the time schedule given in Clause 2.2 and 2.3 hereof. This list shall be updated and submitted by the Bidder at the end of every quarter of the year.

2.2 Drawing/documents for approval

The Bidder shall submit the various drawings and documents to the Engineer/Consultant for approval, as per the following schedule (to be filled up by bidder).



2.2.1 Deliverables to be submitted during BE

No.	Name of drawing	Drawing number	Qty	Remark
I	General layout			
1	General Arrangement			
II	Process			
2	Material flow chart			
3	Tar distillation unit PID			
4	Arrangement of Tar distillation unit			
5	Process flow sheet of Dephenolization unit			
6	Arrangement of Dephenolization, Phenolate decomposition and Naphthalene distillation unit			
7	Process flow sheet of Phenolate decomposition unit			
8	Process flow sheet of Naphthalene distillation unit			
9	Process flow sheet of Intermediate product tank farm			
10	Arrangement of Intermediate product tank farm			
11	Process flow sheet of Pitch reforming/modification unit			
12	Arrangement of Pitch reforming unit			
13	Process flow sheet of Pitch melting unit			
14	Arrangement of Pitch melting unit and pitchwarehouse			
15	Process flow sheet of Pitch moulding unit			
16	Arrangement of Pitch moulding unit			
17	Process flowsheet of Naphthalene refining unit			
18	Arrangement of Naphthalene refining unit			
19	Arrangement of naphthalene flaking and packaging unit			
20	Process flow sheet of Raw material tank farm			
21	Arrangement of Raw material tank farm			
22	Process flow sheet of Product tank farm (including oil mixing unit)			
23	Arrangement of Product tank farm (including oil mixing unit)			
24	Process flow sheet of Ammonia stripping unit			
25	Arrangement of Ammonia stripping unit			
26	Process flowsheet of Phenol refining unit			
27	Arrangement of Phenol refining unit			
III	Machinery maintenance			
28	Arrangement of Maintenance house			



IV	Instrument			
1	Instrumentation for Primary Tar Distillation unit			
2	Instrumentation for Pitch Modification unit			
3	Instrumentation for Pitch Moulding Unit			
4	Instrumentation for Dephenolisation and Phenolate decomposition unit			
5	Instrumentation for Naphthalene Distillation unit			
6	Instrumentation for Intermediate product tank unit			
7	Instrumentation for Raw Material Tank Farm Area			
8	Instrumentation for Product Tank Farm Area(including oil mixing unit)			
9	Instrumentation for Ammonia Stripper Unit			
10	Instrumentation for Naphthalene Refining unit			
11	Instrumentation for Compressed Air Station			
12	Instrumentation for Thermal External Pipelines			
13	Instrumentation for Industrial and fire fighting water system			
14	Instrumentation for Clean circulating water system			
15	Instrumentation for Emergency water and initial rainwater tank			
16	Instrumentation for Turbid circulating water system			
17	Instrumentation for Wastewater treatment Unit			
18	Instrumentation for Phenol Refining unit			
19	Instrumentation for pitch melting unit			
V	Telecommunication			
1	Equipment list of telecommunication system			
2	Equipment list of fire detection and alarm system			
3	Equipment list of CCTV system			
4	Equipment list of gas detection and alarm system			
5	Telecommunication system drawing			
6	Fire detection and alarm system drawing			
7	CCTV system drawing			
8	Gas detection and alarm system drawing			
VI	Systematic			



1	Automation control system config drawing			
VII	Heating power			
1	Balance diagram of thermal medium			
VIII	Water supply and drainage			
1	Water balance chart			
2	Arrangement of Circulating water system			
3	Turbine circulating water flow chart			
4	Circulating water system flow chart			
5	Arrangement of Industrial and fire fighting water system			
6	Industrial and fire fighting water system flow chart			
7	Sewage treatment process diagram			
8	Arrangement of Emergency water and initial rainwater tank and foam station			
IX	Electric			
1	Preliminary single line diagram for tar process unit load center			
2	Preliminary single line diagram for Auxiliary unit load center			
X	Architecture			
1	Drawing of Buildings and steel structures			
XI				
1	Engineering design descriptions			
2	Equipment list			
3	HAZOP and LOPA			
4	Common failure analysis during production			

Lot no.	Drawing submission date	Contents
	Basic engineering	
1	The 4 th month after contract comes into effect	BE drawings submitted to VCI
	The 5 th month after contract comes into effect	VCI closes BE review

**2.2.2 Deliverables to be submitted during DE**

Lot no.	Drawing submission date	Contents
	Detail engineering	
Lot 1	The 3 rd month after BE review	Lot 1 of civil structure drawings for major foundation: oil depot and intermediate tank area
Lot 2	The 4 th month after BE review closes	Lot 1 of non-standard equipment drawings: tank and shell-and-tube heat exchanger; As per Annexure 2 Fabrication drawing in technical agreement.
Lot 3	The 5 th month after BE review closes	Lot 3 of civil structure drawings: tar distillation, dephenolization, phenolate decomposition, technical naphthalene and modified pitch unit, pitch molding and melting unit, refined naphthalene (including refined naphthalene flaker and packing unit) The lot 2 of non-standard equipment drawings: column and remaining heat exchangers. As per Annexure 2 Fabrication drawing in technical agreement.
Lot 4	The 6 th month after BE review closes	Lot 4 of civil structure drawing: lot 2 of waste water treatment facilities; Lot 1 of DE drawings: oil depot, intermediate tank area, ammonia stripping unit, fire pool and accident pool, foam station, lab; all architectural drawings
Lot 5	The 7 th month after BE review closes	Lot 2 of DE drawings: tar distillation, dephenolization, phenolate decomposition, technical naphthalene, modified pitch, refined naphthalene and flaker and packing room, external pipelines; electric, telecommunication, HVAC, thermal engineering, water supply & drainage.
Lot 6	The 7.5 th month after BE review closes	DE drawing of instrument and automation, layout, road, comprehensive pipeline; other drawings
Lot 7	The 8 th month After BE review closes	Operation and maintenance manual; spare part list

2.2.3. After approval by the Employer/Consultant, the Bidder shall submit approved drawings and documents in 2 copies, to the Employer.

2.3 Drawings/Documents for Information/Review

2.3.1 The Bidder shall submit to the engineer/Consultant for information/ review of the drawings and documents as per the Schedule given below:

Sl. No.	Description	Time of submission in weeks from the Effective Date of Contract	
		Imported	Indigenous
1.	Soil investigation Report		VCI
2.	Certified foundation drawing load data		Main equipment, big foundation
3.	Excavation outline drawings		Main equipment, big foundation
4.	Civil working drawings including bar bending schedules	ACRE	



5.	Locations, schedules, fixing details,etc. for foundation/anchor bolts, inserts & embodiments	ACRE	
6.	Design calculation for all civil and structural work		Main equipment,big foundation
7.	load calculation for electrical work	ACRE	
8.	Structural design drawings		
9.	Performance data		
10.	Assignment from Bidder for number of feeders to be provided by the Employer		
11.	List of electromagnetic valves, limit switches, etc.		
12.	Control description and schematic including PLC input/output chart		
13.	Cable tray arrangement, cable and instrument pipe schedule and routings		
14.	Lighting earthing and lightening protection drawings		
15.	Terminal plans and interconnection diagrams for electrical works		
16.	Conduit drawings and cut out details		
17.	Loop schemes, power supply and distribution schemes and panels and desk internal wiring diagrams external connection including terminal wiring diagrams for power control and instrumentation cables		
18.	Detailed drawing for pipe & duct work		
19.	Detailed drawings for underground and over ground services and utilities (including water system)		
20.	Drawings for approval of Statutory authorities		
21.	Instructions for storage & re conservation including those for electrical, instrumentation and communication items		
22.	Erection drawings, erection specifications and erection instructions		
23.	Integrated operation/safety and Maintenance Manuals material specification		
24.	Ordering specification for operation & Maintenance spares		
25.	Detailed assignment schedule for deputation of Overseas experts/specialists as per GCC clauses 7.9- for Employer's approval		
26.	Recommended Man power requirement for operation & Maintenance of the Facilities as per GCC Clause 18.5		
27.	Schedule for training of Employer's as per GCC Clause 18.6 – for Employer's approval		

2.3.2 After “no comment” clearance by the Engineer/Consultant, the Bidder shall submit the final drawings and documents in 2 copies, to the Employer.



2.4 As-Built Drawings and Documents

2.4.1 The Bidder shall submit as-built drawings & documents after performance Guarantee Test, but before release of payment for PG test certificate as per Clause 23 of GCC as per the schedule given below

Sl. No.	Description	Time of submission in weeks from the Effective Date of Contract	
1.	General arrangement, assembly and sub-assembly drawings	Imported	Indigenous
2.	Performance data		
3.	Test charts		
4.	All design calculations with respective approved design criteria in bound volumes		Main equipment, main structure, Big equipment foundation
5.	Flow diagrams and material balance sheets		
6.	Electrical & instrumentation drawings		
7.	Civil working drawings		
8.	Steel structures drawings		
9.	Utilities and service drawings		
10.	Operation and Safety manuals		
11.	Maintenance manuals		
12.	List of spares (Operation, Maintenance)		
13.	Drawings& bill of materials for operation & maintenance spares		
14.	Ordering specifications including catalogues & details for Operation & Maintenance spares		
15.	Drawings/ordering specifications for operating consumables/supplies		
16.	One set of all documents as listed above, on CD		

2.5 Equipment drawings and erection Instructions drawings for the Plant and Equipment shall be supplied by the Bidder at least one month before the shipment/dispatch of the Plant & Equipment.

**APPENDIX-3****TERMS OF PAYMENT****1.0 GENERAL**

- 1.1 In accordance with the provisions, the buyer shall pay the bidder for the Works and Services as broadly brought in the Agreement, on the basis of the Billing Schedule as per GCC.
- 1.2 10 % of contract price for Engineering Service shall be payable as advance by telegraphic transfer within thirty (30) days from submission of below documents
i) Four copy original Invoice
ii) Bank Guarantee of equivalent amount valid till 20th Months from the sign of contract date in buyer's s approved format.
- 1.3 All payments shall be made as specified hereunder, directly by the buyer to the bidder unless otherwise provided in the Agreement or agreed between the Parties.
- 1.4 The payments will be made in the currencies quoted by the bidder and included in the Agreement unless otherwise agreed to between the Parties
- 1.5 All progress payments shall be regarded as payments by way of advance against the final payment only and not as payment for work completed and shall not preclude defective / imperfect / incomplete Works/ Services. It will not be considered as an admission by the buyer of the due performance of the Agreement, or any part thereof by the bidder nor shall it preclude, determine or affect in any way the powers of the buyer under these conditions or in any way vary or affect the Agreement.

1.6 FOR DESIGN AND ENGINEERING:

Eighty percent (80%) of the Contract Price as mention as progress payment will be payable as per the approved billing Schedule and on submission of the following:

- i) Four (4) originals of invoice duly signed by the bidder stating the details of designs and drawings supplied in support of the amount to be remitted.
- ii) Declaration by the bidder stating the Permanent Account No.
- iii) User's license provided by the bidder authorizing the buyer to use the designs and drawings as per Agreement.
- iv) Copy of Certificate from the buyer confirming receipt, through Engineer's FTP server, of the Designs and Drawings under (i) above by the bidder. The above Certificate shall be issued by the buyer within two (2) weeks from the date of receipt of designs and drawings.
- v) Certificate from the bidder that the designs and drawings invoiced for have been uploaded to the Engineer's FTP are in full conformity to the technical specification.
- vi) Copies of valid Tax Residency Certificate, PE declaration and Form 10F.



- 1.7 Five percent (5%) of Contract Price for Engineering Services for designs and drawings will be payable upon the issue of Provisional Acceptance Certificate of the plant as per the General Conditions (Schedule 6)

- a) Four (4) originals of undisputed Invoice duly signed by the bidder
- b) Four (4) copies of Provisional Acceptance certificate issued by the buyer
- c) Copy of Valid Tax Residency Certificate, Form 10 F and PE declaration.
(Not applicable for Indigenous Vendor)

In case of delay in performance tests for reasons attributable to the buyer, payment for Provisional Acceptance shall be released as per GCC and on submission of

- a) One (1) original and six (6) copies of invoice duly signed by the bidder
- b) Six (6) copies of Declaration issued by the buyer stating that the performance tests of Project have been delayed.
- c) A Bank Guarantee of 5% of Contract Price valid for twelve (12) months or Extended PAC Period as applicable.
- d) Copy of Valid Tax Residency Certificate, Form 10 F and PE declaration.
(Not applicable for Indigenous Vendor)

- 1.8 The last 5% of Contract Price for Engineering Services for Design and Drawings will be payable upon the issue of Final Acceptance Certificate as per the general conditions and on submission of

- a) Four (4) originals of undisputed Invoice duly signed by the bidder.
- b) Four (4) copies of Final Acceptance certificate issued by the buyer
- c) Copy of Valid Tax Residency Certificate, Form 10 F and PE declaration.
(Not applicable for Indigenous Vendor)

In case of delay in issue final Acceptance Certificate for reasons attributable to the buyer, payment for Final Acceptance shall be released on submission of

- a) One (1) original and six (6) copies of invoice duly signed by the bidder
- b) Six (6) copies of Declaration issued by the buyer stating that the final acceptance tests of Project have been delayed.
- c) A Bank Guarantee of 5% of Contract Price valid for twelve (12) months
- d) Copy of Valid Tax Residency Certificate, Form 10 F and PE declaration.
(Not applicable for Indigenous Vendor)

In case of bidder providing Extended Guarantee as per GCC, the payment for Final acceptance shall be released twelve (12) months after issue of PAC certificate on submission of



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- a) One (1) original and six (6) copies of invoice duly signed by the bidder
 - b) Six (6) copies of Declaration issued by the buyer stating that the final acceptance tests of Project have been delayed.
 - c) A Bank Guarantee of 5% of Contract Price valid till extended Guarantee period.
 - d) Copy of Valid Tax Residency Certificate, Form 10 F and PE declaration.
(Not applicable for Indigenous Vendor)

1.9 MODE OF PAYMENT

- 1.9.1 The buyer shall release the all payment except payment as per Clause 1.6 the bidder within 30 days from the date of receipt of the complete and correct invoices & relevant documents by telegraphic transfer/ electronic transfer of fund. Payments as per clause 1.6 shall be payable at sight against presentation of the stipulated documents through an irrevocable Letter of Credit to be opened by a first-class bank in India in favour of the bidder. The Letter of Credit shall be subject to Uniform Customs and Practice for documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600).

The LC should be valid till two months beyond the scheduled delivery dates for Engineering Services.

In case the extension of Letter of Credit is required due to reason attributable to bidder, the bank charges for such extension shall be borne by the bidder.

In case the extension of Letter of Credit is required due to reason attributable to buyer, the bank charges for such extension shall be borne by the buyer.

- 1.9.2 Payment against the last progress invoice shall be released within sixty (60) days from the date of receipt of the complete and correct invoices & relevant documents by telegraphic transfer/ electronic transfer of fund.
- 1.9.3 The following additional documents shall be submitted for release of FAC payment:
- a) No Claim Certificate
 - b) Any other documents, as required by buyer.

2.0 TAXES AND DUTIES (FOREIGN bidder)

- 2.1 All taxes, levies, duties, fees, licenses and other charges of whatever nature levied by the tax authorities in the country other than India in connection with the execution of this Agreement shall be borne and paid by the bidder.
- 2.2 All Designs and Drawings shall be delivered to the buyer by submission in soft copies through electronic transmission by uploading it to the buyer's FTP Server from bidder's location by the bidder. All applicable taxes, duties, statutory charges, levies, cess etc. in India shall be borne and paid by the buyer.
- 2.3 The Contract Price is exclusive of Withholding tax as per the applicable Indian Income tax rules and in accordance with as per the Double Taxation Avoidance Agreement (DTAA) between India and the bidder's country. The withholding tax will be deposited to the Indian Authorities by the buyer.



- 2.4 Withholding tax including surcharge and education cess, if any, will be to the account of the buyer. However, bidder will obtain required statutory clearances / certificates (of financial nature) as desired by buyer and provide all support to buyer to obtain statutory clearances / certificates as desired by the statutes.
- 2.5 The bidder will comply with all regulations in India, including for registering himself with the appropriate authorities in India as applicable from time to time under the statutory provisions.
- 2.6 The bidder shall within three (3) months from the Contract Effective Date furnish to the buyer the Tax Residency Certificate from statutory/ government bodies of the bidder's country of residence. bidder will also furnish a declaration on their letterhead regarding their having/not having Permanent Establishment (PE) in India.
- 2.7 The bidder shall obtain PAN in India and furnish a copy of the PAN card to the buyer. Further, the bidder shall quote the PAN in invoices.
- 2.8 The buyer will forward to the bidder, a Tax Deduction Certificate showing the Withholding Taxes paid by the buyer in India in respect of payments made to the bidder of this Agreement.

3.0 AVOIDANCES OF DOUBLE TAXATION

- 3.1 In case the bidder becomes entitled to receive or receives any tax exemptions, reductions, allowances or privileges in the foreign country on account of taxes & duties paid by the buyer in India, on behalf of the bidder for works/ services or due to Avoidance of Double Taxation Treaty between Governments of the bidder's Country & India then the same shall have to be reimbursed by the bidder to the buyer.
- 3.2 The bidder shall provide to the buyer expeditiously all details, information, clarifications & documents, to the extent that such disclosure is reasonable, as may be required to file the requisite return with the Indian Income Tax Authorities to permit the buyer to get the same assessed in the most economical manner as per the provisions of the Income Tax Act / Agreement for Avoidance of Double Taxation.
- 3.3 Service tax and corresponding Cess if applicable on the works/ services shall be to the account of the buyer. The buyer shall deposit at the applicable rates the service tax and corresponding Cess to the Indian Governmental Authorities. The bidder shall duly authorize the buyer for depositing the aforesaid service tax and corresponding Cess if applicable.
- 3.4 The liability to file return of income with the Indian income-tax authorities for the bidder's income arising in respect of payment under this Agreement shall be the sole responsibility of the bidder.
- 3.5 The buyer's responsibility / liability for Indian taxes is exclusive of personal income tax for bidder's personnel, which will be on bidder's account.

**Attachment -1 to Appendix-3****Format of Letter of Credit**

Type of L/C	Irrevocable
Date & Place of L/C	
Name & Address of applicant	VCI Chemical Industries Private Limited 49, Government Industrial Estate, Kalpi Road, Kanpur, Uttar Pradesh PIN Code 208012, India
Name & Address of the Beneficiary	
Currency & Amount of Credit (in Figures 7 Words)	
Variation in L/C amount or additional amount permitted	
Usance of the Drafts	-----
Credit available with / by	Advising Bank / Payment
Drafts to be drawn on	
	India
Validity of Letter of Credit	
Partial Shipment:	
Transshipment	
Shipment from: XXX	-----
Shipment to: XXX	INCCU, Port of Kolkata
Latest shipment Date	
Description of goods	
Documents Required	As per Separate Annexure Enclosed.
Specify, if any Charges are to beneficiary's account	All Charges to beneficiary's account.
Documents to be presented	Within 21 days as the case may be.
Confirmation Instructions	If beneficiary wishes to be confirmed, at their cost.
Credit to be advised to the beneficiary through (Bank)	Bank Name..... A/c No..... Swift Code.....

**Annexure forming part of letter of credit Application****Documents are to be presented for the purpose of payment and terms & conditions**

A. Total letter of credit Value is **480,000.00 USD** which is equivalent to 80% of the contract value of **Design & Engineering** payable against the following activities:-

	Activity	Foreign Currency (USD)
(i)	Design & Engineering	600,000.00

1.0 GENERAL

- 1.1 In accordance with the provisions, the buyer shall pay the bidder for the Works and Services as broadly brought in the Agreement, on the basis of the Billing Schedule as per GCC.
- 1.2 10 % of contract price for Engineering Service shall be payable as advance by telegraphic transfer within thirty (30) days from submission of below documents
i) Four copy original Invoice
ii) Bank Guarantee of equivalent amount valid till 20th Months from the sign of contract date in buyer's s approved format.
- 1.3 All payments shall be made as specified hereunder, directly by the buyer to the bidder unless otherwise provided in the Agreement or agreed between the Parties.
- 1.4 The payments will be made in the currencies quoted by the bidder and included in the Agreement unless otherwise agreed to between the Parties
- 1.5 All progress payments shall be regarded as payments by way of advance against the final payment only and not as payment for work completed and shall not preclude defective / imperfect / incomplete Works/ Services. It will not be considered as an admission by the buyer of the due performance of the Agreement, or any part thereof by the bidder nor shall it preclude, determine or affect in any way the powers of the buyer under these conditions or in any way vary or affect the Agreement.

1.6 FOR DESIGN AND ENGINEERING:

Eighty percent (80%) of the Contract Price as mention as progress payment will be payable as per the approved billing Schedule and on submission of the following:

- i) Four (4) originals of invoice duly signed by the bidder stating the details of designs and drawings supplied in support of the amount to be remitted.
- ii) Declaration by the bidder stating the Permanent Account No.
- iii) User's license provided by the bidder authorizing the buyer to use the designs and drawings as per Agreement.



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- iv) Copy of Certificate from the buyer confirming receipt, through Engineer's FTP server, of the Designs and Drawings under (i) above by the bidder. The above Certificate shall be issued by the buyer within two (2) weeks from the date of receipt of designs and drawings.
 - v) Certificate from the bidder that the designs and drawings invoiced for have been uploaded to the Engineer's FTP are in full conformity to the technical specification.
 - vi) Copies of valid Tax Residency Certificate, PE declaration and Form 10F.

1.7 Five percent (5%) of Contract Price for Engineering Services for designs and drawings will be payable upon the issue of Provisional Acceptance Certificate of the plant as per the General Conditions (Schedule 6)

- a) Four (4) originals of undisputed Invoice duly signed by the bidder
- b) Four (4) copies of Provisional Acceptance certificate issued by the buyer
- c) Copy of Valid Tax Residency Certificate, Form 10 F and PE declaration.
(Not applicable for Indigenous Vendor)

In case of delay in performance tests for reasons attributable to the buyer, payment for Provisional Acceptance shall be released as per GCC and on submission of

- a) One (1) original and six (6) copies of invoice duly signed by the bidder
- b) Six (6) copies of Declaration issued by the buyer stating that the performance tests of Project have been delayed.
- c) A Bank Guarantee of 5% of Contract Price valid for twelve (12) months or Extended PAC Period as applicable.
- d) Copy of Valid Tax Residency Certificate, Form 10 F and PE declaration.
(Not applicable for Indigenous Vendor)

1.8 The last 5% of Contract Price for Engineering Services for Design and Drawings will be payable upon the issue of Final Acceptance Certificate as per the general conditions and on submission of

- a) Four (4) originals of undisputed Invoice duly signed by the bidder.
- b) Four (4) copies of Final Acceptance certificate issued by the buyer
- c) Copy of Valid Tax Residency Certificate, Form 10 F and PE declaration.
(Not applicable for Indigenous Vendor)

In case of delay in issue final Acceptance Certificate for reasons attributable to the buyer, payment for Final Acceptance shall be released on submission of

- a) One (1) original and six (6) copies of invoice duly signed by the bidder



- b) Six (6) copies of Declaration issued by the buyer stating that the final acceptance tests of Project have been delayed.
- c) A Bank Guarantee of 5% of Contract Price valid for twelve (12) months
- d) Copy of Valid Tax Residency Certificate, Form 10 F and PE declaration.
(Not applicable for Indigenous Vendor)

In case of bidder providing Extended Guarantee as per GCC, the payment for Final acceptance shall be released twelve (12) months after issue of PAC certificate on submission of

- a) One (1) original and six (6) copies of invoice duly signed by the bidder
- b) Six (6) copies of Declaration issued by the buyer stating that the final acceptance tests of Project have been delayed.
- c) A Bank Guarantee of 5% of Contract Price valid till extended Guarantee period.
- d) Copy of Valid Tax Residency Certificate, Form 10 F and PE declaration.
(Not applicable for Indigenous Vendor)

1.9 MODE OF PAYMENT

- 1.9.1 The buyer shall release the all payment except payment as per Clause 1.6 the bidder within 30 days from the date of receipt of the complete and correct invoices & relevant documents by telegraphic transfer/ electronic transfer of fund. Payments as per clause 1.6 shall be payable at sight against presentation of the stipulated documents through an irrevocable Letter of Credit to be opened by a first-class bank in India in favour of the bidder. The Letter of Credit shall be subject to Uniform Customs and Practice for documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600).

The LC should be valid till two months beyond the scheduled delivery dates for Engineering Services.

In case the extension of Letter of Credit is required due to reason attributable to bidder, the bank charges for such extension shall be borne by the bidder.

In case the extension of Letter of Credit is required due to reason attributable to buyer, the bank charges for such extension shall be borne by the buyer.

- 1.9.2 Payment against the last progress invoice shall be released within sixty (60) days from the date of receipt of the complete and correct invoices & relevant documents by telegraphic transfer/ electronic transfer of fund.
- 1.9.3 The following additional documents shall be submitted for release of FAC payment:
- a) No Claim Certificate
 - b) Any other documents, as required by buyer.

Note:

- ✧ All the document shall indicate contract number & date LC no & date.



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- ✧ Wherever invoice is raised against supply of goods it should specifically mention that the items are freely importable as per foreign Trade policy 2004-2009.
 - ✧ Wherever certificates are to issue by the Employer, **V C I** is authorized signatory. Certificate issued by other official will not entitle beneficiary to claim payment.



4 FOR SUPERVISION SERVICES

4.1 100% of the Supervision Charges as per the man-days rates mentioned attributable to Supervision Services for manufacturing, erection, start up, commissioning and performance guarantee test, as progress payment and on submission of the following:

- i) Four (4) originals of undisputed invoice duly signed by the bidder.
- ii) Copies of Foreign Technician Passports and Visa
- iii) Time Sheets duly certified by buyer
- iv) Copies of valid Tax Residency Certificate, PE declaration and Form 10F

4.2 RATES FOR SUPERVISION SERVICES

4.2.1 The rate for Supervision Services shall be as per the below table

S. No	Category	Unit	Rate (Net)
1.	Process engineer	Man-day	450USD /Man day
2.	Others	Man-day	270USD /Man day

4.3 Man-days rates shall be paid for working days only excluding travelling period, Sundays and designated holidays of the buyer. If the bidder is requested to supervise the work at Site on, Sundays or any of the designated holidays, man-days rates shall be paid to the bidder.

4.4 The buyer shall provide shared office space at site/ manufacturer's premises, along-with normal facilities (as available) to the bidder's personnel for free: (for example)
Adequate office facilities at site with
Telephone and fax
Air-conditioning
Toilet
Air tickets (In India)
Hotel rooms
Free local transportation from hotel to the plant site
First aid medical facilities available at plant site
Insurance

4.5 Travel, accommodation and out of pocket expense

- a) For deputation of Foreign Technician in India, the bidder shall bear cost of to and fro air fare in tourist/economy class from an Airport of Country of Origin to the Indian International airport nearest to the site. The buyer shall bear and pay the airfare or first class (or air conditioned wherever applicable) train fare from city of Airport in India to place of work and back.
- b) The buyer shall provide, free of cost suitable and comfortable AC accommodation (lodging only), to the Foreign Technicians during their stay in India.



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- c) The buyer shall provide shared local transportation for their official duty as well as transportation between the nearest airport/ railway station and place of their residence at Kalinganagar.
 - d) If after mutual agreement between, the buyer and bidder, any foreign Technician is required to travel to any place other than the site, the buyer shall provide to the foreign Technician, hotel accommodation and travelling facilities in India either by Air or by Rail (Ac class wherever available and/or automobile).
 - e) The bidder has to arrange his office accommodation at Site. The buyer shall provide only land/space/
- 4.6 The bidder shall be deemed to have satisfied himself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise expressly provided for in this Agreement, cover all its obligations, responsibilities and liabilities under this Agreement.
- 4.7 The numbers of SV engineers and working duration shall be adjusted upon negotiation between VCI and ACRE according to actual situation.
- 4.8 SV working time: 8(eight) hours per day, 48 (forty-eight) hours per week.
- 4.9 SV total price is 486,700.00 USD. The detail refer to Table no 1.2-PRICE SCHEDULE FOR DEPUTATION OF EXPERTS FOR ERECTION, TESTING COMMISSIONING & PERFORMANCE GUARANTEE (PG) TEST.

The daily working time shall be in accordance with the regulations at Site. If overtime work or work on non-working day is needed, mutual agreement shall be reached between the site representatives of both parties.

The overtime work is working after 8 hours daily work on working day; non-working day refers Sunday and official holidays in India.

The bidder's personnel's shifts are not considered as overtime work during Commissioning period.

In case the bidder's technical personnel for Supervision Service at the Site has to work overtime or work on non-working day, the payment shall be calculated the following follows:

1.5 x daily rate / 8 for each hour for overtime work on working day

1.5x daily rate for each man-day worked on Sunday and holiday

5.0 Training

5.1 Terms of Payment for Training Charges

The buyer shall release the all payment the bidder within 30 days from the date of receipt of the complete and correct invoices & relevant documents by telegraphic transfer/ electronic transfer of fund.

- 5.1.1 Ninety-seven and a half percent (97.5%) of the Price specified in the contract shall be released on pro-rate basis upon completion on actual training man-days utilized during the training. The payment shall be made as per the following:

- i) Four (4) originals of undisputed invoice duly signed by the bidder.
- ii) Copies of Trainees Passports and Visas
- iii) Time Sheets duly certified by Bidder



5.1.2 Two and a half percent (2.5% of the Price specified in the contract shall be released upon issue of the Final Acceptance Certificate. The payment shall be made as per the following:

- i) Four (4) originals of undisputed invoice duly signed by the bidder.
- ii) Copies of Final Acceptance Certificate

5.1.3 Service Tax & Education Cess shall be paid to the Bidder at actual. The invoice for the service portion shall separately indicate the Service Tax & Education Cess claimed by the Bidder along with their relevant Service Tax Registration Number obtained by the Bidder

5.2 Training details

5.2.1 Training includes:

theory and operation training for Indian tar plant operators; inspection of each unit before commissioning in tar plant, offer written proposals for problems that will influence commissioning; guidance for test run of each tar refinery unit and commissioning operation to guarantee that each unit can run smoothly, products are qualified and performance test is completed.

5.2.1.1 Theory and operation training for tar plant operators

By referring to the daily operation of tar refinery facilities of Ansteel, Bidder will offer training on desktop theory deduction of technological process and operation of tar refinery unit and field operation; theory and operation training on each tar refinery unit for operators; after the training is completed, ACRE will offer technological theory exams for operators.

Main technical documents: technology instructions of tar refinery unit, operation standards and practical experience, field operating data, and technological theory exams.

Training targets:

- Trainees shall know the technological process, and configuration of each unit and system components.
- Trainees shall know the equipment operating principles, performance and technical parameters, and can independently conduct test run and operation of equipment, and troubleshooting.
- Acquire safe operation knowledge and expertise of certain major.

- Trainees can carry out operation independently under supervision. Opportunities shall be given to trainees for independent operation and each trainee shall do operation for at least 24 hours.
- Each trainee who gets employed for the tar refinery project shall obtain the certificate after training. (Compulsory training for special types of work required by China's relevant department is not included in this training)

5.2.1.2 Persons and Man-days of training requirement:

No.	Unit description	Number of trainees	Training hours (d)	Total hours (man-day)
1	Tar distillation unit	2	14	28
2	Dephenolisation and phenolate decomposition unit, technical naphthalene distillation unit	2	14	28
3	Refined naphthalene unit	2	14	28
4	Modified pitch and pitch melting unit	2	14	28
5	Coal tar unloading and storage unit, coal tar pre-treatment/conditioning unit	2	14	28
6	Main control room	4	14	56
7	Equipment inspection (equipment, electrics and instrument)	3	10	30
8	Lab	2	10	20
9	Management	2	14	28
		21		274

Note: Working hours are 8h per working day

5.2.2 Training fees:

S. No	Category	Unit	Rate (Net)
1.	Engineer	274Man-day	500 USD/Man-day

Total training fee: 274 X500 = 137,000.00 USD

**APPENDIX-4****Performance Guarantees**

1. The Appendix sets out
 - (a) The performance guarantees referred to in Clause 23 of GCC (Performance Guarantee Test).
 - (b) The minimum level of the performance guarantees

2. Preconditions

The Bidder gives the performance guarantees (specified herein) for the Facilities, subject to the preconditions being fully satisfied as outlined in clause 23 of GCC.

3. Performance Guarantee Parameters
performance Guarantee parameters to meet and fulfilled by bidder has been specified in chapter 15.0 of technical specification.

4. Failure in Guarantees and Liquidated Damages

Failure to Attain Guaranteed Parameters

If the production capacity of the facilities attained in performance guarantee test, pursuant to Clause 23 of GCC is less than the guaranteed figure specified but the actual production capacity attained in the performance guarantee test is not less than the minimum level of performance guarantee parameters specified and the Bidder selects to pay liquidated damages to Buyer in lieu of making changes modifications and/ or additions to the facilities, pursuant to Sub-Clause 23 of GCC then the Bidder shall pay liquidated damages at the rate specified

Limitation of Liability

The Bidder's aggregate liability to pay liquidated damages for failure to attain the performance guarantees parameters above the minimum levels of performance guarantee parameters specified shall not exceed five percent (5%) of the contract value.

However, in case the Bidder expresses its inability to achieve a maximum level of performance guarantee parameters and reduce consumption of raw materials and Liabilities below the maximum level of guaranteed maximum level of consumption of raw materials and Utilities. The Employer shall not reject the plant and equipment after commissioning and achievement of minimum Performance Guarantee parameters after successful commissioning and achievement of minimum Performance Guarantee parameters the total liability of the Bidder on account of delay and non-achievement of maximum PG parameters will not be more than LD of ten percent (10%).

In case even after all possible repairs and replacements the Facilities fail to attain the minimum level of performance guarantee parameters the Employer may reject the Facility and recover the entire cost paid to the Bidder or alternatively the Employer may proceed for commercial settlement with the Bidder for acceptance of the Facilities at the negotiated Price.



GENERAL CONDITIONS OF CONTRACT

(GCC) WITH ANNEXURES



GENERAL CONDITIONS OF CONTRACT
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GENERAL CONDITIOS OF CONTRACT

A. CONTRACT & INTERPRETATIN

1. Definitions

The following words and expressions shall have the meaning hereby assigned to them

“Contract” means the Contract Agreements entered into between the employer and the Bidder together with the Contract Documents referred to therein, they shall constitute the Contract and the term the contract shall in all such documents be construed according

“Contract Documents” means the documents listed in Article 1.2 (contract Documents) of the Contract Agreement (including any amendments thereto).

“GCC” means the General Conditions of Contract hereof

“SCC” means the Special Conditions of Contract

Technical Specifications / Contract Technical Specifications” means the technical; specification. Schedules, Detailed designs statements of technical data performance characteristics value and all other technical particulars of the contract.

“GTS” means the General Technical Specifications

“Day” means calendar day of the Gregorian Calendar

“Month” means calendar month of the Gregorian calendar

“Purchases” means VCI CHEMICAL INDUSTRIES PVT LTD (VIL) Plant and includes the legal successors or permitted assigns of the Employer

“Engineer” means the person appointed by the Employer in the manner provided in Sub-Clauses 17.1 (Engineer) hereof and to perform the duties delegated by the Employer.

“Consultant” means the person(s) named as such in the Cause **1.4** of SCC to perform the duties delegated by the Employer as specified in the Article 6 of the Contract Agreement

“Bidder” means the person(s) whose bid to perform the contract has been accepted b the Employer and is named as such in the Contract Agreement, and includes the legal successors or permitted assigns of the Bidder In case Contract is with Consortium of two or more members then the Bidder shall mean one or more members of Consortium as the case may be “Bidder’s Representative” means any person nominated by the Bidder and approved by the Employer in the manner provided in Sub-Clause 17.2 (Bidder’s Representative) thereof to perform the duties delegated b the Bidder For site work Bidders Representative shall also mean the representative of Sub Bidders and Sub Bidders Sub Bidders.



“Sub Bidder” including vendors means any person to whom execution of any part of the Facilities including preparation of any design or supply of an Plant and Equipment is sub-Contracted directly or indirectly by the Bidder and included its legal successors or permitted assigns.

“Contract Price” means the sum specified in Article 2.1 (Contract Price) of the Contradict Agreement subject to such additions and adjustments thereto or deductions there from as may be made pursuant to the contract.

“Base Date” means the date given in Sub-Clause 2.0 of Apendx-4 of Contract Agreement which shall be considered in price variation formulae as given in Sub-Clause 2.3 to 2.9 of Appendix-4 of Contract Agreement.

“Facilities” mean the work specified in Clause 7 hereof, Technical Specification, including General Technical Specification and all supply & services to be carried out by the Bidder under the Contract.

“Plant and Equipment” means permanent plant equipment, machinery and things of all kinds to be provided and incorporated in the Facilities by the Bidder under the Contract but does not include Bidder’s Equipment.

“Installation Services or Services” means all those services ancillary to the supply of the Plant and Equipment for the facilities to be provided by the Bidder under the Contract e.g., design & engineering supervision work.

“Site” means the land and other places upon which the Facilities are to be installed, and such other land or places as may be specified in the Contract as forming part of the site

“Effective Data of Contract” means the date of signing of Contract or 30 days from date of Letter of acceptance (LOA), whichever is earlier.

“Time for Completion” means the time specified in Article 5. Of the contract Agreement within which Completion of the Facilities as a whole (or of a part of the Facilities where a separate Time for Completion of such part has been prescribed) is to be attained in accordance with the stipulations made on the Contract Agreement and the relevant provisions of the Contract.

“Inspector” / “Inspecting Engineer” shall mean any person or firm nominated by or on behalf of the Employer or his duty authorized agent to inspect equipment, materials, supplies or work under the Contract

“Pre-commissioning” means the checking testing including conducting of integrated trial runs (could integrated trial runs in case of Facilities involving operation at high temperature) and meeting other requirements specified in the Technical Specifications that are to be carried out by the joint team of Bidder & Buyer in preparation for.

“Preliminary Acceptance” of the Facilities means that the Facilities have been completed operational and structurally and put in a tight and clean condition and that all work in respect of Pre-commissioning of the Facilities have been completed in other words, that the Facilities are fit for Startup & Commissioning and Preliminary Acceptance Certificate has been issued!



“Program of Performance” shall mean the program submitted by the Bidder in accordance with clause 18.1.

“Preliminary acceptance Certificate” means the Certificate to be issued by the Employer on successful completion of Preliminary Acceptance Tests.

“Commissioning Certificate” is the Certificate to be issued by the Employer as per Sub-Clause 25.3 hereof.

“Completion of the Facilities” means the Facilities have been completed and accepted when commissioned, Performance Guarantee parameters established as per Clause 27 and Final Acceptance certificate issued as per Clause 26 hereof.

“Taking Over” means on from FOB the Employer shall be responsible for the care & custody of the Facilities together with the risk of loss or damage thereto and shall thereafter take-over the facilities.

“Performance Guarantee Test” means the tests specified in the Technical Specifications to be carried out to ascertain whether the Facilities are able to attain the Performance Guarantees specified in the Contract as per Clause 27 hereof

“Performance Guarantee Certificate” means the certificate to be issued by the Employer upon successful establishment of performance guarantees Parameter as specified in Appendix-5 to Contract Agreement.

“Final Acceptance” means the acceptance by the employer of the facilities which certifies the Bidders fulfillment of the Contract in respect of Performance Guarantee of the Facilities in accordance with the provisions of clause 27 hereof and completion of Defects Liability Period

“Final Acceptance Certificate” is the Certificate to be issued by the Employer as Clause 28 hereof.

“Defect Liability Period” means the periods of validity of the warranties given by the Bidder commencing from the date of Commissioning of the Facilities, during which the Bidder is responsible for defects with respect to the Facilities as provided in Clause 30 (Defect Liability) hereof.

2. Contract Documents

Subject to Article 1.3 (Order of Precedence) of the Contract Agreement all documents forming part of the Contract (and parts thereof) are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole

The Bidder shall be required to provide at least 4 (four) copies of signed Contract Agreement for Employer's use within 30 (thirty) days of the date of signing of the Contract.



3. Interpretation.

3.1 Language

All correspondence and communications to be given and all other documentation to be prepared and supplied under the Contract shall be written in English, and the Contract shall be construed and interpreted in accordance with English language.

3.2 Singular and Plural

The singular shall include the plural and the plural the singular, except where the context otherwise requires.

3.3 Persons

3.3.1 Words importing persons or parties shall include firms, Corporations Companies Joint Ventures, Consortiums and Government entities.

3.4 Incoterms

3.4.1 Unless inconsistent with any provisions of the contract, the meaning of any trade term and the rights and obligations of parties there under shall be as prescribed by incoterms 2020 with amendments if any

Incoterms means international rules for interpreting trade terms published by the international Chamber of Commerce (latest edition) 38 Course Albert 1 75008 Paris, France

3.5 Entire Agreement

3.5.1 The Contract constitutes the entire agreement between the Employer and Bidder with respect to the subject matter of Contract and supersedes all communications, negotiations and agreements (whether written oral) of parties with respect thereto made prior to the date of Contract.

3.6 Amendment

3.6.1 No amendment or other variation of the Contract shall be effective unless it is in writing is date expressly refers to the Contract and is signed by a duly authorized representative of each party hereto.

3.7 Bidder

3.7.1 The Bidder shall be an independent Entity performing the Contract the Contract does not create any agency, partnership, joint venture or other joint relationship between the parties hereto

3.7.2 All employees, representatives or Sub-Bidders engaged by the Bidder in connection with the performance of the contract shall be under the complete control & supervision of the Bidder and shall not be deemed to be employees of the Employer.



4. Notices

4.1 Unless otherwise stated in the Contract all notices to be given under the Contract shall be in writing, and shall be sent by personal delivery, post / airmail post special courier, tele fax email to the address of the relevant party set out in the Special Conditions of Contract, with the following provisions

4.1.1 Any notice delivered personally or sent by facsimile; email shall be deemed to have been delivered on date of its dispatch.

4.1.2 Either party may change its postal, tele fax, email address or addressee for receipt of such notices by 10 (ten) days' notice to the other party in writing

4.2 Notices shall be deemed to include any approvals, consents, instructions, orders and certificates to be given under the Contract.

5. Governing Law

The Contract including the Arbitrating proceedings shall be governed by and interpreted in accordance with laws of DIFC, UAE.

5.1 Dispute Resolution. The Parties shall endeavor to settle amicably by mutual discussions any disputes, differences or claims whatsoever related to this Contract.

5.2 Resolution by the Parties. Any and all claims asserted by one Party related to this Contract shall be submitted in writing to the other Party within twenty (20) Days following the event causing such claim except if the Parties have agreed on a different time scale, for the purpose of seeking to resolve said claim amicably by negotiation. In no event may SUPPLIERS use the fact that any such claim has not been settled as justification for stopping or delaying the execution of the Supply. If the Parties fail to reach an agreement within twenty (20) Days of receipt by the defending Party of the written submission of the Party asserting any claim, the matter shall be dealt with in accordance with the provisions of Section 5.2.1.

5.2.1 In the event BUYER and SUPPLIERS have been unable to settle or agree upon within a period of twenty (20) Days as set forth in Section 5.2 above, each Party shall nominate a senior officer of its management to meet at a mutually agreed time and place not later than forty-five (45) Days from the dispute or disagreement has arisen to attempt to resolve such dispute or disagreement. Should a resolution of such dispute or disagreement not be obtained within twenty (20) Days from the meeting of senior officers for such purpose, either Party may then by notice to the other submit the dispute to arbitration in accordance with Section 5.3 hereof.

5.3 Arbitration Proceeding. Failing an amicable settlement pursuant to Section 5.2, any controversy, claim or dispute arising out of, relating to, or having any connection with this Contract, including, but not limited to any question regarding its existence, validity, interpretation, performance, termination or breach thereof, or claims for damages arising therefrom, shall be exclusively and definitively settled by final and binding arbitration; provided, however, that the arbitrators shall have no authority to award punitive damages or consequential or incidental damages. The Parties hereby waive their rights to recover punitive damages or consequential or incidental damages in connection with any such controversy, claim or dispute.



5.3.1 Rules of Arbitration. The arbitration proceeding shall be conducted in accordance with the then existing Rules of Arbitration of the International Court of Arbitration of the International Chamber of Commerce (the "ICC").

5.3.2 Administration of the Arbitration Proceeding. The arbitration proceedings shall be administered by the International Court of Arbitration of the International Chamber of Commerce (the "ICC Court").

5.3.3 Number of Arbitrators. The arbitration proceeding shall be conducted by a tribunal formed by three (3) arbitrators, of whom one (1) shall be appointed by claimant, one (1) by respondent and the third, who shall serve as chairperson of the arbitration tribunal, shall be appointed by the two Party-appointed arbitrators, or, in the event the two party-appointed arbitrators are unable to agree upon the selection of the chairperson or obtain the chairperson's acceptance of such appointment within ten (10) Business Days after their appointment and acceptance as arbitrators, the ICC Court shall appoint the chairperson. The decision of the arbitrators shall be based upon the principles of good faith and good will.

5.3.4 Place of Arbitration. The place of arbitration shall be DIFC, UAE.

5.3.5 Language of Arbitration. The language of the arbitration shall be English, and all documents and testimony offered into evidence during the arbitration shall be translated into English at the expense of the party offering the evidence.

5.3.6 Entry of Judgement. The award of the arbitral tribunal shall be final, non-appealable and binding. Judgement on the final award or any interim award issued by the arbitral tribunal may be entered and enforced by any court of competent jurisdiction.

5.3.7 Costs and Attorneys' Fees. The arbitral tribunal is authorized to award costs and attorneys' fees and to allocate them between the Parties to the dispute. The costs of the arbitration proceedings, including attorneys' fees, shall be borne in the manner determined by the arbitral tribunal.

5.3.8 Confidentiality. All data exchanged among the parties and the arbitral tribunal is confidential.

5.3.9 Survival of Obligations. Unless otherwise agreed in writing, the Parties shall continue to diligently perform their respective duties and obligations under this Contract including the matter involved in the claim of any other disputed part while such arbitration proceeding is pending of final resolution, provided that BUYER has paid all undisputed amounts that are due and payable under this Contract without derogating from any rights of set-off BUYER may have under this Contract.

5.4 Submission to Dispute Resolution.

(i) BUYER, SUPPLIERS and the Designated Sub-BUYER hereto irrevocably submit to arbitration pursuant to the terms and conditions set forth in Section 5.3 hereof.

(ii) SUPPLIERS and the Designated Sub-BUYER hereto irrevocably waive, to the fullest extent permitted by applicable Laws, all sovereign from jurisdiction, attachment (both before and after judgement) and execution to which it might otherwise be entitled in any action or proceeding against SUPPLIERS or the Designated Sub-BUYER in the courts of China, of Brazil or of any other



country or jurisdiction and will not raise or claim or cause to be pleaded any such immunity at or in respect of any action or proceeding against SUPPLIERS or the Designated Sub-BUYER relating in any way to this Contract or any of the security granted hereunder.

(iii) BUYER, SUPPLIERS and the Designated Sub-BUYER hereto irrevocably waive, to the fullest extent permitted by applicable Laws, any objection that any of them may now or thereafter have to the laying of place of arbitration in DIFC, UAE.

6. Settlement of disputes.

The settlement of dispute including the Arbitrating proceedings shall be governed by and interpreted in accordance with laws of DIFC, UAE

B. SUBJECT MATTER OF CONTRACT

7. Scope of Facilities

7.1 Design, Drawings & Technical Documents

7.1.1. The Bidder shall be responsible for supply of all the design, drawings and technical documents & information in respect of the plant & equipment as per Appendix 2 to contract Agreement & commissioning spares. The Contract shall deliver the design, drawing technical documents & information, to the Employer by Microsoft based File Transfer Protocol FileZilla or other suitable one. *(will confirm with VCI)*

7.2 Supply of Plant & Equipment, Commissioning Spares, Operation and Maintenance Spare, Initial Fills & Lubricants and Special Tools & Tackles.

7.2.1. Plant and Equipment

The Bidder shall be responsible for supply of plant & equipment as described in the Technical Specifications including General Technical Specification and Drawings/ documents.

A separate list of division of scope of supplies under bidder scope of supplies is enclosed as annexure with technical specification.

7.2.2 Commissioning Spares

7.2.2.1 The Bidder shall, within the Contract Price, supply adequate commissioning spares required during Start up and commissioning along with the plant and equipment mentioned in Clause 7.4.1, hereof.

7.2.2.2 Should the commissioning spares found to be inadequate, the Bidder shall supply without any extra cost to the Buyer, additional required commissioning in spares within the time schedule to ensure that the Facilities are commissioned.

7.2.3 Operation and Maintenance Spares

7.2.3.1 The Bidder shall furnish list of spares required for the normal operation and maintenance of the Facilities, for a period of two years which will be required after commissioning, Price for



such lists shall be submitted at least 6 months before the schedules commissioning and shall be kept valid for a period of twelve months.

7.2.3.2 The list of spares along with itemized price shall include such details as:

- a) Item amount of equipment in Contract
- b) Designation.
- c) Number per item
- d) Materials indicating chemical composition and physical properties like fits and tolerance, finishes. Heat treatment etc.
- e) Manufacturing drawing number/ordering specification number/Vendor name & address.
- f) Catalogue reference.

7.2.3.3 The Bidder shall undertake to supply operation & maintenance spare at reasonable price at any time after later during the life of the Facilities on request from the Buyer.

7.2.4 Initial Fill and Lubricants.

7.2.4.1 The Bidder shall supply along with the Plant & equipment the oils, grease & lubricants required for the initial fill including flushing liquor and also chemicals for picking etc. well in advance, for commissioning of the Plant & Equipment.

7.2.4.2 The cost of such initial fill of oils including hydraulic oils grease and other lubricants is included in the Contract Price

7.2.4.3 These oils, grease & lubricants should be preferable of Indian origin, In the case of imported oil, grease & lubricants, specification for the same shall be furnished by the Bidder for procurement in future.

7.2.4.4 The Bidder shall also furnish consumption rates of all the consumables along with estimates annual requirement and ordering specification for timely procurement by the Buyer for future requirements.

7.2.5 Special Tools & Tackles

The Bidder shall supply along with the Plant & Equipment special tools & tackles. Instruments and appliances which will be required for erection, commissioning, operation and maintenance of the Facilities.

The Bidder shall provide ordering specification including the names of suppliers giving sufficient details to enable the Buyer to procure such special tools, tackles, instruments and appliances at a late date, when necessary, after successful commissioning.

7.3 Technical Services

7.3.1 Technical Services to be provided by the Bidder shall include the following amongst others.

- a) Basic design layout, engineering & drawings.
- b) Detailed designs, layout, engineering & drawings.
- c) Drawings / data for carrying out Plant Engineering and detailed design/drawings of civil, structural and services.



- d) technical services relating to planning procurement, manufacturing, inspection, expedition, packing, shipping storage, etc.
- e) Supervision of civil & structural engineering work & erection work including specialized erection service.
- f) technical consultation/ liaison /guidance relating to details design and plant engineering by Bidder's Sub-Bidders, Co-ordination relating to site work and other engineering work, feedback data and informant to the buyer / Consultant or the Bidder's scope of supply and services.
- g) Training of buyer's Personnel.
- h) Deputation of Foreign Experts for supervision of design and manufacture of Plant and Equipment as well as for supervision of erection, cold tests, commissioning, guarantee tests, etc.
- i) The Bidder shall assist in preparing application forms, providing necessary drawings, documents, test certification. Including necessary coordination with statutory and other concerned authorities.

7.4 Training of Buyer's Personnel

Subject to stipulates of the Contract, the Bidder shall arrange for training in India & abroad of the Buyer's personnel for operation, maintenance and other services of the facilities under the Bidder's scope of supply. The Bidder shall furnish the details of the training to be provided to the buyer's personnel for the approval of the buyer. Buyer may indicate the field of training and man-days to the Bidder for compliance.

7.4.1. The traveling and living expenses of the buyer's trainees shall be borne by the Buyer. The Buyer shall also arrange necessary travel documents for its trainees. The Bidder shall, however, assist in arranging visa and medical insurance for such trainees, wherever necessary.

7.5 Deputation of Foreign Experts for Supervision of Erection, Commissioning & Performance Guarantee Tests.

7.5.1 The Bidder shall depute at site its Foreign Experts to supervise the erection, commissioning and conducting of performance guarantee tests of the Plant & Equipment with its auxiliaries as contracted herein so as to establish to the Buyer that the guarantees as agreed by the Bidder in accordance with the appendix-5 of Contract Agreement are fully met.

7.5.2 Bio-date of the Foreign Engineers /experts shall be furnished by the Bidder to the Buyer / Engineer / Consultant for approval sufficiently in advance before their deputation The Bidder shall obtain at its own cost, passports, visas,-and other effects of any Experts / personnel who are non/residents of India, employed or engaged by him for work.

7.5.3 The Bidder further guarantees that, in case the number of man days for foreign Experts actually utilized exceeds the quantum indicated in Appendix-1 of the Contract Agreement, such additional Foreign Experts man day shall be deputed b the Bidder for completing its scope of work, but no extra payment for deputing such extra man days shall be payable by the Buyer unless additional deputation is required for the reasons attributable to the buyer.

7.5.4 If some of the Experts deputed for supervision of erection, commissioning and Performance Guarantee Tests are required by Buyer beyond the Final Acceptance of the Facilities (Post commissioning services) after fulfillment of all the Contractual obligations b the Bidder the Bidder shall provide such services in accordance with the terms and rates stipulated in the Contract or to be mutually agreed upon between the Buyer and the Bidder if not already provided for in the Contract.



7.5.5 In the event, Expert is not found of required skill / expertise, then the Employer will be the right to send the Expert back at the cost of the Bidder.

7.6 Demonstration of Performance Guarantee

7.6.1 The Bidder guarantees the equipment for its workmanship, materials, design and satisfactory performance in accordance with the relevant specifications & provisions of this Contract within his scope. The guarantee for performance includes individual items and systems for the ratings / output as well as for the integrated operation of the Plant. The Buyer, upon successful commissioning of each equipment / system will conduct performance guarantee tests to demonstrate the integrated operation of all equipment / systems.

7.6.2 The details of the performance guarantee test, test procedures, test schedules. For the demonstration of the performance guarantees shall be submitted to the Buyer which will be mutually agreed upon. Any subsequent deviation modification in the agreed schedule, if considered necessary, at a later date shall be mutually discussed and agreed upon.

7.6.3 After commencing a test, it shall be completed unless in the opinion of either Buyer of Bidder a safety hazard exists which necessitates shut down.

7.6.4. The Bidder shall **assist** the demonstrate the Performance Guarantee Tests and achieve the guaranteed production capacity in a sustained manner and also the other parameters as specified in Appendix -5 of the Contract Agreement.

8 Time for Completion.

8.1 The Bidder shall attain Completion of the Facilities as defined at Clause 1 hereof within the times stated in the Article-5 of Contract Agreement or within such extended time to which the Bidder has got from employer in written.

9 Bidder's Responsibilities as specified in technical specification.

9.1 The Bidder shall carryout Scope of Facilities as specified in Clause -7 with due care and diligences in accordance with the Contract.

9.2 The Bidder shall comply with the Indian Laws that may be in vogue as on Base Date of the Contract or may come into force during currency of the Contract, that binds upon the bidder and buyer.

10. Buyer's responsibilities

10.1The Buyer shall ensure the accuracy of information and / or data to be supplied by the Buyer, except when otherwise expressly stated in the Contract.

C. PAYMENT

11. Contract Prices

11.1 Price Basis

11.1.1 The Contract Price quoted in **US Dollar** shall comprise of basic price and all duties, taxes and levies, as may be applicable and prevailing on base date of the Contract.



11.1.2 The Contract Price does not include Customs Duty, Counter Veiling Duty, Cess and additional Duty of Customs, if any, on the imported plant & equipment specified in the Contract, for which prices indicated in Contract, the cost of such shall be borne by buyer.

Customs Duty, Counter Veiling Duty, Cess and Additional Duty of Customs, if any, for replacement against short supply, damaged, defective items, of such imported Plant & Equipment shall be borne by the Bidder.

11.1.3 The Contract Price does not include Income Tax & Research & Development (R&D) Cess and Service Tax on imported Engineering / Technical Services / Foreign Supervision & training by overseas experts for which prices indicated in the Contract are in foreign currencies.

11.1.4 The Contract Price includes price towards supervision by Foreign Experts for a number of man days specified in Appendix – 1, Should the actual man days deployed is more than the number indicated in **Appendix-1**, the Buyer shall not pay any extra price to the Bidder for extra man days unless additional deputation is requiring for the reasons attributable to the buyer.

11.1.5 The prices for imported supplies for which prices are quoted in foreign currency, are for delivery on **FOB Chinese seaport**.

11.1.6 Raw Water & Electrical Power required for Construction & Erection Work at side, shall be supplied by the Buyer free of cost. However, Electrical Power for fabrication work, if any, envisaged at site, shall be supplied metered & charged at the rates prevailing from time to time.

11.2 Firm Contract Price

11.2.1 The Price for items for which the price indicates in the Contract shall be firm and not subject to any escalation.

11.3 Adjustment of Price for Weights and Physical Quantities of Work

11.3.1 The Contract is for Basic and detailed engineering and supply of plant & equipment as specified in the Clause 7 hereof & Technical Specifications. The physical quantities and weights as given in the contract/billing schedule, are indicative only for the purpose of making progress payments on pro rata basis as per Clause 2.3 of Appendix-3 of Contract Agreement Neither the Bidder shall be entitled to get any additional price from the Employer nor the Employer is entitled to deduct any amount from the Contract Price due to variation in physical quantities and weights.

11.4 Billing and Dispatch Schedule

11.4.1 The Bidder within 60 (sixty) days of the Effective Date of the Contract shall submit detailed Billing Schedules (Breakup of the Price Schedule contained in the Appendix-1_ for the purpose of giving the value of Po for the consideration of Price Adjustment, if applicable, in accordance to the Appendix-4 and release of progress payments in accordance to Appendix-3, which will be scrutinized and approved b the Employer. The detailed Billing Schedules shall be based on Time Schedule included in Appendix-2 (Time Schedule) to the Contract Agreement and PERT network as per Sub-Clause 18.1.1 hereof, for respective progress payment terms in accordance with Clause 2.3 of Appendix-3



11.4.2 Within 4 (four) months from the Effective Date of Contract, a detailed shipping schedule matching to billing schedule & time schedule, shall be submitted by the Bidder, indicating the break-up of the complete Plant & Equipment into shipment units with approximate weights and dimension and the respective dates upon which such units will be dispatched from the Bidder's and / or its Sub-Bidders works. The Bidder shall arrange for supplies of the Plant & Equipment in the logical sequence required for erection at site within the overall Time for Completion of the Facilities unless otherwise agreed to by the Employer.

12. Terms of Payment

12.0 General

- 12.1 In accordance with the provisions, the buyer shall pay the bidder for the Works and Services as broadly brought in the Agreement, on the basis of the Billing Schedule as per GCC.
- 12.2 10 % of contract price for Design&Engineering Service shall be payable as advance by telegraphic transfer within thirty (30) days from submission of below documents
- i) Four copy original Invoice
 - ii) Bank Guarantee of equivalent amount valid till delivery of final acceptance certificate in buyer's s approved format.
- 12.3 All payments shall be made as specified hereunder, directly by the buyer to the bidder unless otherwise provided in the Agreement or agreed between the Parties.
- 12.4 The payments will be made in the currencies quoted by the bidder and included in the Agreement unless otherwise agreed to between the Parties
- 12.5 All progress payments shall be regarded as payments by way of advance against the final payment only and not as payment for work completed and shall not preclude defective / imperfect / incomplete Works/ Services. It will not be considered as an admission by the buyer of the due performance of the Agreement, or any part thereof by the bidder nor shall it preclude, determine or affect in any way the powers of the buyer under these conditions or in any way vary or affect the Agreement.

12.6 FOR DESIGN AND ENGINEERING:

Eighty percent (80%) of the Contract Price as mention as progress payment will be payable as per the approved billing Schedule and on submission of the following:

- i) Four (4) originals of invoice duly signed by the bidder stating the details of designs and drawings supplied in support of the amount to be remitted.
- ii) Declaration by the bidder stating the Permanent Account No.
- iii) User's license provided by the bidder authorizing the buyer to use the designs and drawings as per Agreement.
- iv) Copy of Certificate from the buyer confirming receipt, through Engineer's FTP server, of the Designs and Drawings under (i) above by the bidder. The above Certificate shall be issued by the buyer within four (4) weeks from the date of receipt of designs and drawings.



v) Certificate from the bidder that the designs and drawings invoiced for have been uploaded to the Engineer's FTP are in full conformity to the technical specification.

vi) Copies of valid Tax Residency Certificate, PE declaration and Form 10F.

12.7 Five percent (5%) of Contract Price for Engineering Services for designs and drawings will be payable upon the issue of Provisional Acceptance Certificate of the plant as per the GCC

- a) Four (4) originals of undisputed Invoice duly signed by the bidder
- b) Four (4) copies of Provisional Acceptance certificate issued by the buyer
- c) Copy of Valid Tax Residency Certificate, Form 10 F and PE declaration.
(Not applicable for Indigenous Vendor)

In case of delay in performance tests for reasons attributable to the buyer, payment for Provisional Acceptance shall be released as per GCC and on submission of

- a) One (1) original and six (6) copies of invoice duly signed by the bidder
- b) Six (6) copies of Declaration issued by the buyer stating that the performance tests of Project have been delayed.
- c) A Bank Guarantee of 5% of Contract Price valid for twelve (12) months or Extended PAC Period as applicable.
- d) Copy of Valid Tax Residency Certificate, Form 10 F and PE declaration.
(Not applicable for Indigenous Vendor)

12.8 The last 5% of Contract Price for Engineering Services for Design and Drawings will be payable upon the issue of Final Acceptance Certificate as per the GCC and on submission of

- a) Four (4) originals of undisputed Invoice duly signed by the bidder.
- b) Four (4) copies of Final Acceptance certificate issued by the buyer
- c) Copy of Valid Tax Residency Certificate, Form 10 F and PE declaration.
(Not applicable for Indigenous Vendor)

In case of delay in issue final Acceptance Certificate for reasons attributable to the buyer, payment for Final Acceptance shall be released on submission of

- a) One (1) original and six (6) copies of invoice duly signed by the bidder
- b) Six (6) copies of Declaration issued by the buyer stating that the final acceptance tests of Project have been delayed.
- c) A Bank Guarantee of 5% of Contract Price valid for twelve (12) months



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- d) Copy of Valid Tax Residency Certificate, Form 10 F and PE declaration.
(Not applicable for Indigenous Vendor)

In case of bidder providing Extended Guarantee as per GCC, the payment for Final acceptance shall be released twelve (12) months after issue of PAC certificate on submission of

- a) One (1) original and six (6) copies of invoice duly signed by the bidder
- b) Six (6) copies of Declaration issued by the buyer stating that the final acceptance tests of Project have been delayed.
- c) A Bank Guarantee of 5% of Contract Price valid till extended Guarantee period.
- d) Copy of Valid Tax Residency Certificate, Form 10 F and PE declaration.
(Not applicable for Indigenous Vendor)

12.9 MODE OF PAYMENT

12.9.1 The buyer shall release the all payment except payment as per Clause 12.6 the bidder within 30 days from the date of receipt of the complete and correct invoices & relevant documents by telegraphic transfer/ electronic transfer of fund. Payments as per clause 12.6 shall be payable at sight against presentation of the stipulated documents through an irrevocable Letter of Credit to be opened by a first-class bank in India in favour of the bidder. The Letter of Credit shall be subject to Uniform Customs and Practice for documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600).

The LC should be valid till two months beyond the scheduled delivery dates for Engineering Services.

In case the extension of Letter of Credit is required due to reason attributable to bidder, the bank charges for such extension shall be borne by the bidder.

In case the extension of Letter of Credit is required due to reason attributable to buyer, the bank charges for such extension shall be borne by the buyer.

12.9.2 Payment against the last progress invoice shall be released within sixty (60) days from the date of receipt of the complete and correct invoices & relevant documents by telegraphic transfer/ electronic transfer of fund.

12.9.3 The following additional documents shall be submitted for release of FAC payment:

- a) No Claim Certificate
- b) Any other documents, as required by buyer.

13 Securities

Issuance of Securities (Bank Guarantees)



The Bank Guarantee for Foreign Currency payments shall be issued by Scheduled Commercial Bank based on counter Bank Guarantee to be issued by Overseas Bank acceptable to Schedule Indian Bank and the payable by Scheduled Commercial Bank or State Bank of India (SBI)

13.1 Advance bank Guarantee

The Bidder shall, with in 1 (one) month, after signing of Contract Agreement provide a Bank Guarantee (as per Annexure I hereof) for the release of advance payment (10% of the contract value) by the employer in the same currency or currencies. This should be valid up to defect Liability period. (Months 20). Foreign bidder shall submit the bank guarantee in foreign currency only.

13.2 Performance Bank Guarantee

The Bidder shall, with in 10 (ten) months, after signing of Contract Agreement provide a Bank Guarantee (as per Annexure I hereof) for the due performance of the Contract in amount equivalent to 5% of the Contract Price in the same currency or currencies. This should be valid up to defect Liability period. (Months 34). Foreign bidder shall submit the bank guarantee in foreign currency only.

If the Bidder fails to provide the Performance bank guarantee, the Employer shall have the right to take risk purchase action including forfeiting the bid security, and get the Facilities executed by any other party at the risk and cost of the Bidder, after expiry of the notice for terminating the Contract for such default by the Bidder.

13.3 Bank Guarantee for release of payments towards Performance Guarantee Certificate.

13.3.1 The Bidder shall provide Bank Guarantee (as per Annexure – II hereof) to the Employer for an amount equivalent to the payment under Clause 23 hereof, in the same currency or currencies for a period of 12 months.

13.3.2 The Bank Guarantee shall be returned to the Bidders soon as the Performance Guarantee Test is successfully completed and the guaranteed output and other parameters are met, at the latest, however, on expiry of 12 months from the date of release of payment against Commissioning Certificate.

13.4 Bank Guarantee for release of payments towards Final Acceptance Certificate.

13.4.1 The Bidder shall provide Bank Guarantee as per Annexure –II hereof) to the Employer for an amount equivalent to the payment under **Clause 28** hereof, in the same currency or currencies valid for a period of 12 months.

13.5 Claims under Security (Bank Guarantee)

If the Employer considers itself entitled to any claim under any Bank Guarantee, it shall so not if the Bidder, specifying the default to the Bidder upon which it bases its claim, and it shall require the Bidder to remedy the same If the Bidder fails to remedy or to take steps to remedy the same within fourteen days of receipt of such notice, then the Employer shall be entitled to call Security.



The actual expenditure incurred by the Bidder for extension of BG/Additional Insurance Premium shall be reimbursed to the Bidder in case delay in Completion of project is not attributable to the Bidder.

14 Taxes & Duties

14.1 Except as otherwise specifically provided in the Contract, the Bidder shall bear and pay all taxes, duties, levies and charges assessed on the Bidder, its Sub-Bidders or their employees outside India.

All taxes & duties payable outside Indian in respect of performance of the contract shall be borne & paid by the Bidder. The Employer shall have no liability whatsoever on this account

14.1 Avoidance of Double Taxation.

In case the Overseas Bidder become entitled to receive or receives any tax exemptions, reductions, allowances or privileges in the foreign country on account of taxes & duties paid by the Employer in India, on behalf of the Overseas Bidder for imported supplies & services or due to Avoidance of Double Taxation Treaty between Governments of Overseas Bidder's Country & Indian then the same shall have to be reimbursed by the Overseas Bidder to the Employer.

14.3 Service Tax & Education Cess

14.3.1 Service Tax and Education Cess shall be applicable as per prevalent Indian government rules.

14.3.2 Inside India, the relevant taxes of above shall be paid by Buyer.

14.4 Income Tax

Any Indian Income Tax Which Employer may be required to deduct by law or statute, shall be deducted at the source under Indian Income Tax Act or account of the Bidder. Employer shall provide the Bidder a certificate for such deduction of Tax. The Bidder shall indicate their Permanent Account Number with the relevant Income Tax Authority to Employer.

D. CONFIDENTIAL INFORMATION

15. Copyright

The copyrights in all drawings, documents and other materials containing data and information including drawings/ordering specifications / catalogues for last wearing parts furnished by the Bidder to the Employer shall remain vested in the Bidder, however the employer shall have the right to use all such drawings, documents and other material, data and information for execution of the Contract and operation and maintenance of the Facilities being subject of the Contract.

If the above-mentioned drawings and documents will be used in other projects, the buyer shall pay to the bidder, the price shall be discussed by both parties.



16. Confidential Information

16.1 The Employer and the Bidder shall keep confidential and shall not without the written consent of the other party hereto, divulge to any third party any document, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to during or following termination of the Contract. Notwithstanding the above, the Bidder may furnish to its Sub-Bidder(s) such documents, data & other information it receives from the Employer to the extent required for Sub-Bidder(s) to perform its work under the Contract in which event the Bidder shall obtain from such Sub-Bidder(s) an undertaking of confidentiality similar to that imposed on the Bidder under this clause.

The buyer shall not use such documents, data and other information received from the bidder for any purpose other than the operation and maintenance of the Project. Similarly, the bidder shall not use such documents, data and other information received from the buyer for any purpose other than the design, procurement of Plant and Equipment, construction or such other work and services as are required for the performance of the Contract.

16.1 The Employer shall use such documents, data and other information received from the Bidder Installation, operation and maintenance of the Facilities.

16.2 The obligation of a party under Sub-Clauses 16.1 and 16.2 hereof, however shall not apply to that information which

- a) now or thereafter enters the public domain through no fault of that party.
- b) Can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto.
- c) Otherwise lawfully becomes available to that party from a third that has no obligation of confidentiality.

The above provisions of this clause shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Project or any part thereof.

The provisions of this clause shall survive termination, for whatever reason, of the Contract.

E WORK EXECUTION**17 Representatives****17.1 Engineer**

17.1.1 The Employer shall notify the Bidder in writing the name of the Engineer. The Employer may from time to time appoint some other person as the Engineer in place of the person previously so appointed. The Engineer shall represent and act for the Employer at all times during the currency of the contract.

17.2 Bidder's Representative.

17.2.1 The Bidder shall appoint the Bidder's Representative with the consent of Employer



17.2.2 The Bidder shall not revoke the appointment of the Bidder's Representative without the Employer's prior written consent.

17.2.3 The Bidder's Representative shall represent and act for the Bidder at all times during the currency of the Contract and shall give to the Engineer all the Bidder's notices, instructions, information and all other communications under the Contract. All notices instructions information and all other communications given by the Employer or the Engineer to the Bidder under the Contract shall be given to the Bidder's Representative or, in its absence its deputy, except as herein otherwise provided.

18 Work Program

18.1 Program of Performance

18.1.1 Within three (3) weeks after the effective date of signing the Contract Agreement the Bidder shall prepare and submit to the Engineer the Master PERT Network (Hard & soft) for the performance of the Contract, showing the sequence in which, it proposes to design, manufacture transport and pre-commission to achieve Acceptance of the Facilities in accordance with the Contract.

18.1.2 The Engineer shall approve the Master PERT Network after scrutiny and discussions with the Bidder with two (2) weeks of submission of Master PERT Network. The Bidder shall submit finalized Master PERT network in number of copies as required by the Employer

18.1.3 Bases on the finalized Master PERT Network as per Clause 18.1.3 hereof, the Bidder shall submit L-1 & L-2 Network for each unit of the Facilities progressively with five (5) to twelve (12) weeks from the effective Date of the Contract These Networks shall be approved by the Engineer within three (3) weeks o the submission

18.1.4 The Bidder shall update and revise the finalized Master PERT Network as and when appropriate or when required by the Engineer but without modification in the times for completion.

18.2 Progress Report

18.2.1 The Bidder shall submit to the Engineer a progress report along with Computerized Network Analysis Report ever /month

18.2.2 The progress report shall be in a form acceptable to the Engineer and shall indicate (a) percentage completion achieved compared with the planned percentage completion for ach activity and (b) where any activity is behind the program, giving comments and they consequences and stating the corrective action being taken consequence and stating the connective action being taken.

18.2.3 Progress Review Meeting

Employer shall arrange progress review meeting periodically (not exceeding 3 months) to monitor the progress of the work.

18.3 Progress of Performance



18.3.1 If at any time the Bidder's actual progress falls behind the Program of Performance hereof, Orit becomes apparent that it will so fall behind. The Bidder shall, at the request of the Engineer, prepare and submit to the Engineer a revised program, taking into account the prevailing circumstances, and shall notify the Engineer of the steps being taken to expedite progress so as to attain Completion of the Facilities within the time for completion.

18.4 Manpower Requirement for Operation & Maintenance of Facilities

18.4.1 The Bidder shall submit to the Employer within a reasonable period but not later than six (6) months from the effective Date of the Contract the recommended manpower requirement category wise and unit wise for the regular operation of the plant.

18.5 Training

18.5.1 The Bidder shall identify the key positions and number of persons both in maintenance and operations department to be trained for efficient running of the plan

18.5.2 The Bidder shall arrange for training of the personnel of the Employer, abroad / in India for the man-days indicated in Table -1 of Appemdix-1 of Contract Agreement.

19 Subcontracting

19.1 The Bidder shall submit list of Vendors for item under his scope of supply for employer's scrutiny and approval. Any change / addition in the vendor list shall require prior approval of the employer.

20 Design and Engineering

20.1 Specifications and Drawings

20.1.1 The Bidder shall execute the basic and detailed design and the engineering working compliance with the provisions of the Contract or where not so specified, in accordance with good engineering practice.

20.1.2 The Bidder shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Engineer / Consultant or not bidder shall be solely responsible for any loss damages caused due to procurement of improper stock detective plant and equipment by buyer based on drawing stock documents with discrepancies, errors supplied by bidders.

20.2 Codes and Standards

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition the revised version of such codes and standards correct at the date of bid submission shall apply unless otherwise specified During Contract execution, any changes in such codes and standards shall be applied after approval by the Engineer/ Consultant.

20.3 Approval / Review of Technical Documents by Engineer / Consultant



20.3.1 The Bidder shall prepare (or cause its sub Bidders to prepare) and furnish to the Engineer / Consultant by **Microsoft FTP** the drawings / documents listed at Sub-Clause 2.2 of Appendix -2 to the Contract Agreement for approval or review as specified and in accordance with the requirements of Sub-clause 18.1 (Program of Performance) hereof.

20.3.2 To enable the Employer to accord approved and to review documents the Bidder shall submit back-up data / drawings / basic calculations / assumptions as may be required by the Employer / Consultant.

20.3.3 The Engineer / Consultant's approval with or without modification of the document furnished by the Bidder, shall not relieve the Bidder of any responsibility or liability imposed upon it by any provisions of the contract.

21. Inspection & Testing

21.1 All necessary tests and inspection shall be carried out of the materials and equipment as per QAP/ Indian Standard / International code & practice for testing to ensure the quality of material and workmanship. The Employer/Engineer/Consultant shall have option to witness all the tests. In case of waiver given by Employer, Test certificates for all tests shall be furnished to employer prior to dispatch clearance.

21.2 The successful bidder shall offer all necessary facilities for inspection by employer or his authorized representative. The Bidder shall give fifteen (15) days advance intimation regarding the readiness for inspection and tests.

21.3 No material /equipment shall be dispatched without a provisional acceptance certificate to be supplied by employer. However, mill and shop inspection shall not relieve the supplier of responsibility for replacing at his cost any defective part/material/ equipment and repairing any defective workmanship that may be discovered at site.

21.4 Material which shows injurious defects subsequent to its acceptance, at the manufacturer's works or during erection and testing at site, shall be rejected and the successful bidder notified to their effect and he would be required to furnish new materials or make suitable repairs at his cost within a reasonable time.

21.5 Inspection & Testing of material shall be as per Quality Assurance Plan. Samples shall be taken as per **BIS codes** or equivalent of international standard as required.

21.6 Employer reserves the right to appoint any third party to be associated for testing and inspection of the materials

22. Preliminary Acceptance

22.1 On completion of erection of the Facilities under supervision by the Bidder, trial runs for individual equipment/units shall be conducted jointly by the Buyer & Bidder to prove the facilities.

Trial runs shall comprise idle, no-load and part-load trial runs, as applicable.

Trial runs shall be conducted by the Buyer & Bidder under its responsibility with participation of Employer's supervisory personnel and skilled operating.



On successful completion of trial runs and liquidation of the defects and deficiencies Bidder shall notify the Employer in writing for conducting integrated trial runs.

22.2 On receipt of the notice Employer shall deploy the necessary operating personnel and provide raw materials, utilities & services as per **Clause 7** hereof.

22.3 As mutually agreed between the Bidder and the Employer, the Bidder shall conduct Pre-Commissioning including integrated trial runs of the Facilities.

22.3.1 In case of Facilities involving operation at high temperature, trial runs on individual equipment/ units and integrated trial runs shall be conducted in cold condition.

22.4 As soon as all works in respect of integrated Pre-Commissioning are completed and the Facilities are ready for Commissioning, the Bidder shall so notify the Engineer in writing.

22.5 The Engineer shall, within seven (7) days after receipt of the Bidder's notice either issue a Preliminary Acceptance Certificate (PAC) stating that the Facilities are fit for start-up and commissioning, as at the date of the Bidder's notice or notify the Bidder in writing of any defect and/or deficiencies.

If the Engineer notifies the Bidder of any defects and/or deficiencies, the Bidder shall then correct such defects and/or deficiencies, and shall repeat the procedure described in **Sub-Clause 24.4** hereof.

If the Engineer is satisfied that the defects and/or deficiencies, indicated/listed by the Employer to the Bidder have been liquidated and the Facilities are fit for start-up and commissioning, the Engineer shall, within seven (7) days after receipt of the Bidder's notice, issue a Preliminary Acceptance Certificate.

23. Performance Guarantee Test

23.1 The Bidder shall guarantee that during the performance guarantee test, the Facilities and all parts thereof within his scope shall attain the performance guarantee parameters specified in Appendix-5.

23.2 If, for reasons attributable to the bidder, the performance guarantee parameters specified in Appendix-5 to the Contract Agreement are not attained either in whole or in part, after first campaign of performance guarantee test, the Bidder shall at its own cost make good any deficiencies within his scope and the Bidder shall be allowed by the Employer to repeat the performance guarantee tests twice after first campaign of guarantee test and the Bidder must establish the performance guarantee parameters.

23.3 In case the Bidder expresses its inability to achieve the performance guarantee parameters but attains above the minimum acceptance level of performance guarantee parameters, as specified in Appendix-5 to the Contract Agreement, either in whole or in part in spite of repeated performance guarantee tests conducted by the Buyer & Bidder, the Employer shall recover the amount of Liquidated Damages, but not by way of penalty, by making deductions from the Bidder's account or as a last resort by encashment of Bidder's Bank Guarantee(s) at the rate specified in Appendix-5 to the Contract Agreement for the respective items, subject to a maximum of five percent (5%) of the Contract Price, in respect of the failure to meet the minimum level of performance guarantee in accordance with the provisions in Appendix-5 to Contract Agreement.



23.4 The Employer shall not reject the plant & equipment after commissioning and achievement of minimum acceptance level of performance guarantee parameters. After successful commissioning and achievement of the minimum acceptance level of performance guarantee parameters, the total liability of the bidder on account of delay and demonstration of maximum PG parameters shall not be more than Liquidated Damages. In case even after all possible repairs and replacements the Bidder fails to attain the minimum level of performance guarantee parameters, the Employer may reject the Facility and recover the entire cost paid to the Bidder or alternatively the Employer may proceed for commercial settlement with the Bidder for acceptance of the Facilities at the negotiated Price.

23.5 In case, the performance guarantee test has not been carried out for reasons attributable to the Employer within a period of six month from the date of commissioning mentioned in Commissioning Certificate, the Bidder shall receive payment towards Performance Guarantee, against Bank Guarantee of equal value to be valid for a period of 12 (twelve) months beyond aforesaid six (6) months period and conducting of the Performance Guarantee Tests and its commercial implications, if any, shall be mutually finalized between the parties.

24. Final Acceptance

24.1 Final Acceptance shall occur in respect of the Facilities when:

a) The performance guarantee tests have been successfully completed or the number of Liquidated Damages, if recoverable, has been recovered by the Employer from the Bidder.

b) The Bidder has submitted all final drawings & documents for the respective Facilities in accordance with the provisions of this Contract as given in Appendix-2.

c) The Bidder has fulfilled all the obligations under the Contract.

24.2 At any time after the events set out in **Sub-Clause 24.1** hereof, have occurred, the Bidder may give a notice to the Engineer requesting for the issue of Final Acceptance Certificate (FAC).

24.3 The Engineer shall, within seven (7) days after receipt of the Bidder's notice, issue a Final Acceptance Certificate.

24.4 Payment for Final Acceptance may be released against BG of equal value valid for 12 months after fulfillment of clause-24.1 a & b.

F. GUARANTEES AND LIABILITIES

25. Completion Time Guarantee

25.1 The Bidder guarantees that it shall attain "Completion of the Facilities" as defined in appendix enclosed with ITB, within the Time for Completion.

25.2 Bonus for completion of the Facilities before Time Schedule

If the Bidder attains Completion of the Facilities before the Time for Completion, the Employer shall pay to the Bidder a bonus at the rate of 0.5% of the Contract Price plus escalation, if any, excluding taxes and duties per complete month ahead of Time Schedule up to a maximum of 2.5% of the Contract Price plus escalation, if any, excluding taxes and duties.



26. Defect Liability

26.1 The Bidder shall warrant that the Facilities or any part thereof shall be free from defects in the design, engineering and workmanship of the Plant & Equipment.

26.2 The Defect Liability Period shall be twelve (12) months from the date of commissioning mentioned in the Commissioning Certificate or eighteen (18) months from the date of Preliminary Acceptance Certificate (PAC), whichever is earlier, provided the delay in commissioning after PAC is not due to reasons attributable to the Bidder.

If during the Defect Liability Period any defect be found in the design, engineering, and workmanship by the Bidder, the Bidder shall promptly, in consultation and agreement with the Employer and at its cost, repair, replace or otherwise make good such defect as well as any damage to the Facilities caused by such defect.

26.3 If the repair, replacement or making good is of such a character that it may affect the efficiency of the Facilities or any part thereof, the Employer may give to the Bidder a notice requiring that tests of the defective part of the facilities shall be made by the Bidder immediately upon completion of such remedial work, whereupon the Bidder shall carry out such tests.

If such part fails the tests, the Bidder shall carry out further repair, replacement or making good (as the case may be) until that part of the Facilities passes such tests. The tests shall be agreed upon by the Employer and the Bidder.

If the Bidder does not commence the rectification either by repair or replacement of such defects within 30 (thirty) days from the date of notice by the Employer or does not complete the rectification with reasonable diligence and within a reasonable time, the Employer may, at its option, rectify the defects at the Bidders expense. The Employer shall, in such case, deduct from payment due to the Bidder the expenses incurred by the Employer for remedy of such defects without prejudice to the other rights of the Employer under the Contract.

26.4 If the facilities or any part thereof cannot be used by reason of such defect and/or making good of such defect Liability Period of the Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the employer because of any of the aforesaid reasons.

26.5 In addition, the Bidder shall also provide an extended warranty for any such replaced or repaired component of the Facilities for the period of minimum 12 months but not more than 36 months cumulatively or as it may be stipulated in Contract Technical Specifications.

27. Patent Indemnity

27.1 The Bidder shall, indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, loses, damages, costs and expenses of whatsoever 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 by reason of the installation of the Facilities by the Bidder.

Such indemnity shall not cover any use of the Facilities or any part thereof other than for the purpose indicated by or to be reasonably inferred by from the contract, any infringement resulting from the use of the Facilities or any part thereof, or any products thereby in association



or combination with any other equipment, plant or materials not supplied by the Bidder, pursuant to the Contract Agreement.

27.2 If any proceedings are brought or any claim is made against the Employer arising out of the matters, the Employer shall promptly give the Bidder a notice thereof, and the Bidder 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.

If the bidder 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 at the risk & cost of the Bidder.

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

27.3 The employer shall indemnify and bid harmless the Bidder and its employees, officers and Sub bidder from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Bidder 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 by the Employer.

28.0 FORCE MAJEURE

If at any time during the continuance of this Contract the performance by either party under this Contract shall be prevented by reasons of any declared war, hostility, acts of the public or enemy, civil commotion, sabotage, fire, flood, earthquake, explosion, epidemic, quarantine restrictions or other Acts of God, (hereinafter referred to as 'eventuality') affecting the performance and respective obligation of the parties provided that notice of the happening of any such eventuality is given by either party to the other within fifteen (15) days from the date of the occurrence of such eventuality, neither party shall, by reason of such eventuality be entitled to terminate this Contract, nor shall either party have any claim for damages against the other in respect of such non-performance and the work under this Contract. The performance shall be resumed as soon as practicable after such eventuality has come to an end or ceased to exist. Under such circumstances the contractual delivery period shall be extended by a period equal to that during which such eventuality operated plus an additional period, if any, as may be considered reasonable by buyer. Whether the eventuality has come to an end or ceased to exist will be deliberated and mutually settled. Should one or both parties be prevented from fulfilling their contractual obligations by a state of force majeure lasting continuously for a period of at least three (3) months, both the parties shall consult each other regarding the further implementation of the Contract, provided always that, if no mutually agreed arrangement is arrived at within a period of one (1) month from the expiry of the three (3) months referred to above, the Contract shall be deemed to have expired at the end of the said three (3) months referred to above. The above-mentioned expiry of the Contract will imply that both the parties have the obligation to reach an Agreement regarding the winding up and financial settlement of the Contract.



29.0 SUSPENSION AND TERMINATION

29.1 SUSPENSION

29.1.1 The buyer may, by notice to the bidder, order the bidder to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the Effective Date of the suspension and the reasons therefor. The bidder shall thereupon suspend performance of such obligation until ordered in writing to resume such performance by the buyer. All work so stopped shall be resumed by the bidder based on a schedule to be mutually agreed upon between the buyer and the bidder.

Such suspension shall not exceed in aggregate for a period of seven (7) months. However, if the period of suspension exceeds seven (7) months, the cost and time aspect shall be mutually discussed and decided.

29.1.2 For any work, which is executed by the bidder during the suspension, the buyer shall neither pay the bidder nor shall be liable to the bidder for any damage or loss caused by such suspension.

29.2 TERMINATION

29.2.1 TERMINATION FOR BUYERS CONVENIENCE

29.2.1.1 The buyer may at any time terminate the Contract for any reason by giving the bidder a notice of termination that refers to **Clause 29.2.1** hereof.

29.2.1.2 Upon receipt of the notice of termination under **Sub-Clause 29.2.1.1** hereof, the bidder shall either immediately or upon the date specified in the notice of termination

- a) cease all further work, except for such work as the buyer may specify in the notice of termination for the sole purpose of protecting that part of the Project already executed, or any work required to leave the Site in a clean and safe condition
- b) terminate all subcontracts, except those to be assigned to the buyer pursuant to paragraph (d) (ii) below
- c) remove all bidder's Equipment from the Site, repatriate the bidder's and its Sub-bidders' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition
- d) In addition, the bidder, subject to the payment specified in **Sub-Clause 29.2.1.3** hereof, shall
 - (i) deliver to the buyer the parts of the Project executed by the bidder up to the date of termination
 - (ii) to the extent legally possible, assign to the buyer all right, title and benefit of the bidder to the Project and to the Plant and Equipment as at the date of termination, and, as may be required by the buyer, in any subcontracts concluded between the bidder and its Sub-bidders
 - (iii) deliver to the buyer all drawings, specifications, Equipment and other documents prepared by the bidder or its Sub-bidders as at the date of termination in connection with the Project.



29.2.1.3 In the event of the termination of the Contract under **Sub-Clause 29.2.1.1** hereof, the buyer shall pay to the bidder only the direct cost incurred by bidder, the properly attributable to the parts of the Project executed by the bidder as of the date of termination.

29.2.2 TERMINATION FOR BIDDER

29.2.2.1 The buyer, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefor to the bidder, referring to this **Sub-Clause 29.2.2** hereof:

- a) if the bidder becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the bidder is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the bidder takes or suffers any other analogous action in consequence of debt.

29.2.2.2 If the bidder

- a) has abandoned or repudiated the Contract
- b) has without valid reason failed to commence work on the Project promptly or has suspended the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from the buyer to proceed
- c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause
- d) refuses or is unable to provide sufficient / adequate resources to execute and complete the Project, at rates of progress that give reasonable assurance to the buyer that the bidder can attain Completion of the Project by the Time for Completion.

then the buyer may, without prejudice to any other rights it may possess under the Contract, give a notice to the bidder stating the nature of the default and requiring the bidder to remedy the same. If the bidder fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the buyer may terminate the Contract forthwith by giving a notice of termination to the bidder that refers to this **Sub-Clause 29.2.2** hereof.

29.2.2.3 Upon receipt of the notice of termination under **Sub-Clauses 29.2.2.1 or 29.2.2.2** hereof, the bidder shall, either immediately or upon such date as is specified in the notice of termination,

- a) cease all further work, except for such work as the buyer may specify in the notice of termination for the sole purpose of protecting that part of the Project already executed, or any work required to leave the Site in safe condition
- b) terminate all subcontracts, except those to be assigned to the buyer pursuant to paragraph (d) below



-
- c) deliver to the buyer the parts of the Equipment executed by the bidder up to the date of termination
 - d) to the extent legally possible, assign to the buyer all right, title and benefit of the bidder to the Project as at the date of termination, and, as may be required by the buyer, in any subcontracts concluded between the bidder and its Sub-bidders
 - e) deliver to the buyer all drawings, specifications and other documents prepared by the bidder or its Sub-bidders as at the date of termination in connection with the Project.
- 29.2.2.4 The buyer may complete the Project itself or by employing any third party at the risk and cost of the bidder. The buyer may, to the exclusion of any right of the bidder over the same, take over and use any design, services and inputs in connection with the Project for such reasonable period as the buyer considers expedient for the Project.
- 29.2.2.5 Subject to **Sub-Clause 29.2.2.6** hereof, the bidder shall be entitled to be paid the Price attributable to the Part of the services executed as at the date of termination. Any sums due to the buyer from the bidder accruing prior to the date of termination shall be deducted from the amount to be paid to the bidder under this Contract.
- 29.2.2.6 If the buyer completes the Project, the cost of completing the Project by the buyer shall be determined.
- If the sum that the bidder is entitled to be paid, pursuant to Sub-Clause 29.2.2.5 hereof, plus the reasonable costs incurred by the buyer in completing the Project, exceeds the Contract Price, the bidder shall be liable for such excess.
- If such excess is greater than the sums due to the bidder under Sub-Clause 29.2.2.5 hereof, the bidder shall pay the balance to the buyer, and if such excess is less than the sums due the bidder under Sub-Clause 29.2.2.5 hereof, the buyer shall pay the balance to the bidder.
- The buyer and bidder shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.
- 29.2.3 In this Clause 29.2 hereof, the expression “Project executed” shall include all work/ services executed, by the bidder and used or intended to be used for the purpose of the Project, up to and including the date of termination.
- 29.2.4 In this Clause 29 hereof, in calculating any money due from the buyer to the bidder, account shall be taken of any sum previously paid by the buyer to the bidder under the Contract, including any advance payment paid.

**ANNEXURE-1****ADVANCE BANK GUARANTEE**

(On Non-Judicial Stamp paper of appropriate value)

----- (Name of the Bank)

Address-----
-----**Guarantee No.**-----**A/c. Messrs**----- **(Name of Bidder)****Date of Expiry**-----**Limit to liability (Currency & amount)**-----**Invitation for bid no.**----- **dated**-----**For**----- **(name of Facilities)****Sub: Advance Bank Guarantee.****To,****Date:**-----**2023**

VCI CHEMICAL INDUSTRIES PRIVATE LIMITED

49, Industrial Estate, Kalpi Road

Kanpur (U.P) 208012

Dear Sir,

In consideration of the _____ (name of Employer) (hereinafter called "Employer") which expression shall unless repugnant to the subject or context include his successors and assigns having agreed to exempt M/s. _____ (hereinafter called "Bidder") from demand under the terms & conditions of the tender (hereinafter called the said "Bidding document") issued by the Employer vide No. _____ for the works _____ (Name of the Facilities) for advance payment in the form of Telegraphic Transfer for the due fulfillment by the Bidder of the terms and conditions contained in the said Bidding document including any amendments thereto on production of Bank Guarantee for USD. / ____ **(US dollar / or equivalent amount in any freely convertible foreign currency) (____ only) (Figure in words).**

1. We _____ (name of the Bank) do hereby expressly irrevocably and unreservedly undertake to unconditionally pay to you merely on your written demand, without referring it to the Bidder and without protest and demur an amount not exceeding _____ (currency and amount). Any such demand made on us shall be conclusive as regards the amount due and payable by us under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding _____
2. Notwithstanding anything to the contrary, we agree that your decision as to whether the Bidder has committed a breach of any terms and conditions of the contract shall be final and binding on us and we shall not be entitled to ask you to establish your claims or claims under this Guarantee but shall pay the same forthwith without any objection or excuse.
3. We undertake to pay to you any money so demanded notwithstanding any dispute or disputes raised by the Bidder(s)/supplier(s) in any suit or proceeding pending before any court or Tribunal or arbitration relating thereto, our liability under these presents being absolute and unequivocal.
The payment so made by us under this guarantee shall be a valid discharge of our liability for payment there under.



4. This guarantee shall come into force from the date of signing contract and shall remain irrevocably valid and inforce initially upto 20 months
5. We _____ Bank Ltd. Further agree with you that you shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Bidding document and we shall not be relieved from our liability by reason of any such variation.
6. It shall not be necessary for the Employer to proceed against the Bidder before proceeding the Bank and the Guarantee herein contained shall be enforceable against the Bank, notwithstanding any security which Employer may have obtained from the Bidder at this time when proceedings are taken against Bank hereunder be outstanding or unrealized.
7. We _____ Bank Ltd. Further undertake to unconditionally pay the amount claimed by the Employer merely on demand and without protest or demur to the extent aforesaid.
8. Notwithstanding anything contained herein before our liability under this guarantee is restricted upto a sum _____ (currency and amount) and shall expire on _____ unless a claim or demand is made on us in writing within the three months of expiry date all your rights shall be forfeited and we shall stand relieved and discharged from our liabilities hereunder.
9. We, the said Bank lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Employer in writing and agree that any change in the constitution of the Employer or the Bidder or the said bank shall not discharge our liability hereunder dated _____ day of _____ 200 .____ for _____ Bank Ltd.

Yours faithfully,

For _____ **(Name of the Bank)**



PERFORMANCE BANK GUARANTEE

ANNEXURE - II

(To be executed on Non-Judicial Stamp Paper of appropriate value)

..... (Name of the Bank)

Address

Guarantee No.

A/c Messrs (Name of Bidder)

Date of Expiry

Limit to liability (currency & amount)

Contract No.

For (Name of Facilities)

Subject : Performance Bank Guarantee.

Date 2023

To
.....**Date:-----**

Dear Sir,

We refer to the Contract Agreement (hereinafter called the "Contract") Reference No. Dated between you and M/s. (Name of the Bidder) (hereinafter called the "Bidder") for the design, supply of plant & equipment and supervision during erection, testing, commissioning and performance guarantee tests of . (Name of the Facilities)

Whereas the Bidder has undertaken to produce a Bank guarantee under the Contract including any amendment thereto, to secure its obligations to you for the performance of Contract including the guarantees and warranty of the Facilities & the equipment supplied.

1. We (Name of the Bank) do hereby expressly irrevocably and unreservedly undertake to unconditionally pay to you merely on your written demand, without referring it to the Bidder and without protest and demur an amount not exceeding (currency and amount). Any such demand made on us shall be conclusive as regards the amount due and payable by us under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding
2. Notwithstanding anything to the contrary we agree that your decision as to whether the Bidder has committed a breach of any terms and conditions of the contract shall be final and binding on us and we shall not be entitled to ask you to establish your claim or claims under this Guarantee but shall pay the same forthwith without any objection or excuse.
3. We undertake to pay to you any money so demanded notwithstanding any dispute or



disputes raised by the Bidder(s) / supplier(s) in any suit or proceeding pending before any court or Tribunal or arbitration relating thereto, our liability under these presents being absolute and unequivocal.

The payment so made by us under this Guarantee shall be a valid discharge of our liability for payment thereunder.

4. This guarantee shall come into force from the date of issue of this guarantee and shall remain irrevocably valid and inforce initially upto 10 months.
5. This guarantee shall not in any way be affected by you taking any securities from the Bidder or by the winding up, dissolution, insolvency or death as the case may be of the Bidder. We shall not be entitled to proceed against the assets of the Bidder at your site
6. In order to give full effect to the Guarantee herein contained, you shall be entitled to act as if we were your principal debtors in respect of all your claims against the Bidder, hereby guaranteed by us as aforesaid and we hereby expressly waive all our suretyship and other rights, if any, which are in any way inconsistent with the above or any other provisions of this Guarantee.
7. This guarantee is in addition to any other guarantee or guarantees given to you by us.
8. This guarantee shall not be discharged by any change in the constitution of the Bidder or us, nor shall it be affected by any change in your constitution or by any amalgamation or absorption thereof or therewith but will ensure for and be available to and effaceable by the absorbing or amalgamated company or concern.
9. Notwithstanding anything contained herein before our liability under this guarantee is restricted upto a sum (currency and amount) and shall expire on unless a claim or demand is made on us in writing within three months of the expiry date all your rights shall be forfeited and we shall stand relieved and discharged from our liabilities hereunder.
10. We have full power to sign this guarantee under the delegations of powers and notification made under general regulation and resolutions in this regard.

Your faithfully

Dated day of 2023.
For
(Name of the Bank)



BANK GUARANTEE FOR RELEASE OF PAYMENT AGAINST COMMISSIONING
CERTIFICATE/ PERFORMANCE GUARANTEE CERTIFICATE/ FINAL
ACCEPTANCE CERTIFICATE

ANNEXURE - III

(To be executed on Non-Judicial Stamp Paper of appropriate value)

..... (Name of the Bank)
Address

Guarantee No.

A/c Messrs (Name of Bidder)

Date of Expiry

Limit to liability (currency & amount)
.....

Contract No.

For (Name of Facilities)

Sub: Release of Payment against Commissioning Certificate/ Performance Guarantee
Certificate/ Final Acceptance Certificate.

Date 2023.

To
.....
.....
.....
[Name and Address of Employer]

Dear Sir,

We refer to the Contract Agreement (hereinafter called the "Contract") Reference No. Dated between you and M/s. (Name of the Bidder) (hereinafter called the "Bidder") for the design, civil, manufacture, supply of plant & equipment, refractories and structures, storage, insurance & handling, erection, testing, commissioning and performance guarantee tests of. (Name of the Facilities).

Whereas, the Bidder has undertaken to produce additional Bank guarantee under the provisions of the Contract to secure Bidder's obligations to you for conducting the Commissioning/ Performance Guarantee Tests/ Final Acceptance Certificate (FAC) [strikeout whichever is not applicable] as per the provision of the Contract.

1. We (Name of the Bank) do hereby expressly irrevocably and unreservedly undertake to unconditionally pay to you merely on your written demand, without referring it to the Bidder and without protest and demur an amount not exceeding (currency and amount). Any such demand made on us shall be conclusive as regards the amount due and payable by us under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding
2. Notwithstanding anything to the contrary, we agree that your decision as to whether the



Bidder has committed a breach of any terms and conditions of the contract shall be final and binding on us and we shall not be entitled to ask you to establish your claim or claims under this Guarantee but shall pay the same forthwith without any objection or excuse.

3. We undertake to pay to you any money so demanded notwithstanding any dispute or disputes raised by the Bidder(s) / supplier(s) in any suit or proceeding pending before any court or Tribunal or arbitration relating thereto, our liability under these presents being absolute and unequivocal.

The payment so made by us under this Guarantee shall be a valid discharge of our liability for payment thereunder.

4. This guarantee shall come into force from the date of issue of this guarantee and shall remain irrevocably valid and in force upto the issue of the Commissioning/ Performance

Guarantee Tests/ Final Acceptance Certificate (FAC)

5. This guarantee shall not in any way be affected by you taking any securities from the Bidder or by the winding up, dissolution, insolvency or death as the case may be of the Bidder. We shall not be entitled to proceed against the assets of the Bidder at your site
6. In order to give full effect to the Guarantee herein contained, you shall be entitled to act as if we were your principal debtors in respect of all your claims against the Bidder, hereby guaranteed by us as aforesaid and we hereby expressly waive all our suretyship and other rights, if any, which are in any way inconsistent with the above or any other provisions of this Guarantee.
7. This guarantee is in addition to any other guarantee or guarantees given to you by us
8. This guarantee shall not be discharged by any change in the constitution of the Bidder or us, nor shall it be affected by any change in your constitution or by any amalgamation or absorption thereof or therewith but will ensure for and be available to and effaceable by the absorbing or amalgamated company or concern.
9. Notwithstanding anything contained herein before our liability under this guarantee is restricted upto a sum (currency and amount) and shall expire on unless a claim or demand is made on us in writing within three months of the expiry date all your rights shall be forfeited and we shall stand relieved and discharged from our liabilities hereunder.
10. We have full power to sign this guarantee under the delegations of powers and notification made under general regulation and resolutions in this regard.

Your faithfully

Dated day of 2023.
For
(Name of the Bank)



ANNEXURE – IV

FORM OF PRELIMINARY ACCEPTANCE CERTIFICATE

Ref No. : _____

Date : _____

To :

.....

[Name and address of Bidder]

Contract Agreement No : _____

[Name of the Facilities]

Dear Sirs,

Pursuant to Clause 22 (Preliminary Acceptance) of the General Conditions of the Contract entered into between yourselves and the Employer dated _____ [date], relating to the _____ [brief description of the facilities], we hereby notify you that the erection, testing & trial runs of the individual unit of the following part(s) of the Facilities was completed successfully on the date specified below. The Facilities are fit for start-up and commissioning. However, you shall liquidate all the outstanding defects and / or deficiencies and complete the balance items listed in the attachment hereto, as soon as possible, so that the Facilities are fully in accordance with the requirements of the Contract and commissioning activities of the Facilities can be started. Further, you shall be fully responsible for care and custody of the Facilities and the risk of loss thereof till the issue of commissioning certificate in terms of the Contract.

1. Description of the Facilities or part thereof : _____ [description]

2. Date of Completion of Trial runs: _____ [date]

This letter does not relieve you of your obligation to complete the execution, commissioning, establishment of performance guarantee parameters of the Facilities in accordance with the Contract nor of your obligations during the Defects Liability Period.

Yours faithfully,

 Title
 (Project Manager)



FORM OF FINAL ACCEPTANCE CERTIFICATE

ANNEXURE – V

Ref No. : _____

Date : _____

To :

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

[Name and address of Bidder]

Contract Agreement No : _____

[Name of the Facilities]

Dear Sirs,

Pursuant to Clause 25 (Final Acceptance of the Facilities) of the General Conditions of the Contract entered into between yourselves and the Employer dated _____ [date], relating to the _____ [brief description of the facilities], we hereby notify you that the following part(s) of the Facilities was (were) completed satisfactorily including completion of Defects Liability Period of twelve months after commissioning, on the date specified below, and that, in accordance with the terms of the Contract.

1. Description of the Facilities or part thereof : _____ [description]
2. Date of Completion : _____ [date]

Yours faithfully,

Title



VCI CHEMICAL INDUSTRIES PVT LTD



ACRE COKING & REFRACTORY ENGINEERING CONSULTING CORPORATION (DALIAN), MCC

CONTRACT AGREEMENT

BETWEEN

VCI CHEMICAL INDUSTRIES PVT LTD

AND

**ACRE COKING & REFRACTORY ENGINEERING
CONSULTING CORPORATION
(DALIAN), MCC**

FOR

SUPPLY OF EQUIPMENT

FOR

**Green field coal Tar Distillation Plant along with auxiliary
facilities. (Phase I)**

AT

KALINGANAGAR PLANT



CONTRACT AGREEMENT

THIS CONTRACT NO. VIL/TDP/DES/2012/002 made this 16th Day of November, Two thousand & twenty-three at Dalian, Liaoning, China.

BETWEEN

VCI CHEMICAL INDUSTRIES PVT LTD, a Company incorporated under the Companies Act, 1956 and having its registered office at 49, Govt. Industrial Estate, Kalpi Road Kanpur, India PIN Code 208012, propose to have its Coal tar distillation plant at Kalingnagar, Jajpur, Odisha (hereinafter referred to as the **“Employer” or “Buyer”**) which term or expression unless excluded by or repugnant at the context or the meaning thereof, shall be deemed to include its successors and permitted assigns, **OF THE ONE PART,**

AND

M/s ACRE COKING & REFRACTORY ENGINEERING CONSULTING CORPORATION (DALIAN), MCC, a Company organized and existing under the laws of China (Name of the country) and having its Registered Office at No. 128, Gaoneng Street, Qixianling, Hi-Tech Industrial Zone, Dalian, Liaoning Province, P. R. China (hereinafter referred to as **“BIDDER”**), which term or expression unless excluded by or repugnant to the context or meaning thereof, shall be deemed to include its successors and permitted assigns, **OF THE OTHER PART.**

AND WHEREAS

- a) The Employer has decided to set-up Coal tar distillation Plant at Kalinganagar, Jajpur, Odisha, India (hereinafter referred to as the **“Facilities”**), and
- b) The Bidder has declared that the Bidder has valuable and specialized knowledge and expertise for providing and executing the above Facilities and
- c) The Bidder has declared that the Bidder is in a position to disclose, impart, deliver and transfer the requisite engineering data, drawings and documents of those items which are in the scope of the Bidder in this Contract, to the Employer for the engineering of the Facilities and for erection, start-up and commissioning of the Facilities with the aim to manufacture product as specified in the Contract, and
- d) The Bidder has obtained clarifications on technical and commercial aspects, inspected the site and surrounding of Facilities and has examined and considered all other matters, condition and things, probable contingencies and generally all matters incidental thereto and ancillary thereof, affecting the execution and completion of the Facilities, and
- e) The Bidder has agreed to undertake design & engineering, supply of plant and equipment, supervision during commissioning and demonstration & establishment of performance guarantee parameters of the Facilities.



NOW IS HEREBY AGREED as follows:

Article 1 Contract Documents

1.1 Definitions (reference GCC Clause 1)

1.2 Contract Documents (reference GCC Clause2)

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

- (a) This contract Agreement and Appendices hereto
- (b) Special Condition of contract and annexure hereto
- (c) General Condition of Contract and annexure hereto
- (d) Technical Specification
- (e) Any other documents shall be added here

1.3 Order of Precedence (reference GCC Clause2)

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.2 (Contract Documents) above.

Article 2 Contract Price and Terms of Payment

2.1 Contract Price (reference GCC Clause 11 & Appendix-1)

The Employer hereby agrees to pay to the Bidder the Contact Price in consideration of the performance by the Bidder of its obligation hereunder. The Contract Price shall be the aggregate of: [amount of foreign currency in words: **One million seven hundred and fifty-two thousand one hundred US dollar**], [**1,752,100.00 USD**], and or such other sums as may be determined in accordance to the terms and conditions of the Contract.

2.2 Terms of Payment (reference Appendix-3)

The terms of payment are given in Appendix-3.

Article 3: Effective and closing Date

3.1 The Effective Date of Contract shall be 16 November 2023 .

3.2 This contract shall remain valid up to 37 months from signing contract(16 December 2026).

Article 4 Scope of Facilities (reference GCC Clause 7 & Technical Specification)

- 4.1 The Contract is the execution of Scope of Facilities as specified in the GCC Clause 7 and Technical Specifications. The quantities/ weights of any item are indicative only for the purpose of making progress payments on pro-rata basis as per Sub-Clause 2.3 of Appendix-3.



- 4.2 Should the actual quantities/ weights differ from the indicated ones, neither the Bidder shall not be entitled to get any additional price from the Employer nor is the Employer entitled to deduct any amount from the Contract Price due to variation in physical quantities / weight.

Article 5 Times for Completion. (Reference GCC Clause 8 & Appendix-2)

- 5.1 The Facilities will be commissioned in 22 months from the Effective Date the Contract.

The Advanced bank Guarantee (ABG) shall be submitted by the Bidder within 30 days after signing of Contract.

The Letter of Credit (LC) shall be opened by Employer within 15 (fifteen) days of Receipt of Performance Bank Guarantee (PBG) from the Bidder in the format as per **Annexure 1** of GCC.

In case, there is delay in opening of Letter of Credit by Employer, then time of completion shall be extended accordingly. However, in case, there is delay in submission of BG by the Bidder then the time of completion shall remain Unchanged, provide LC has been opened within 15 days of BG submission.

Article 6 consultant

- 6.1 M/s VCI Chemical Industries Private Limited shall be the consultant for this project. When a 3rd party is engaged then bidder shall be informed and all legal / contract document shall be done accordingly.

Article 7 Subcontracting (Reference GCC Clause 19)

- 7.1 This shall be as per GCC Clause 19.

Article 8 Liquidated Damages

8.1 LIQUIDATED DAMAGES DUE TO DELAY

The bidder will also prepare and submit billing schedule to buyer for review and approval. If the bidder fails to attain "Completion of any of the activity" within the prescribed time due to reasons not attributable to the buyer, the buyer shall recover the amount of Liquidated Damages, but not by way of penalty by making deductions from the bidder's account or by encashment of bidder's Bank Guarantees, at the rate of 0.5% of the total Contract Price, excluding taxes & duties paid or payable to the bidder, per week of delay or part thereof up to a maximum of 5% of the Contract Price.

8.2 LIQUIDATED DAMAGES FOR NON-FULFILMENT OF PERFORMANCE GUARANTEE PARAMETERS OF PROJECT

If, for reasons not attributable to the buyer, the performance guarantee parameters specified hereof in the Agreement are not met either in whole or in part, the bidder shall at



its cost and expense make such changes, modifications and / or additions to the Project or any part thereof as may be necessary to meet the performance guarantees parameters. The bidder shall notify the buyer upon completion of the necessary changes, modifications and / or additions, and shall request the buyer to repeat the performance guarantee test (2nd test) so as to establish the performance guarantee parameters. Such repeat test shall be done for a maximum of two (2) times.

In case the performance guarantee parameters are not achieved either in whole or in part the buyer shall recover the amount of Liquidated Damages, but not by way of penalty, by making deductions from the bidder's account or by encashment of bidder's Bank Guarantees, at the rates specified hereof for respective items, subject to a maximum of five (5) percent of the Contract Price, excluding taxes & duties in respect of the failure to meet the minimum level of Performance Guarantees in accordance with the provisions hereof.

The aggregate ceiling on Liquidated Damages due to delay in completion of the Project and for non-fulfilment of Performance Guarantee Parameters of the Project shall be limited to ten (10) percent of the Contract Price, excluding taxes and duties.

LD Table (As per technical discussion)

Sl. No.	Description	PG Value	Acceptable with LD	LD Quantum
1.	Plant capacity of			
a)	Coal Tar Distillation Plant capacity calculated on dehydrated coal tar basis.	a) 110,000 TPA of crude coal tar.	a) 100,000 TPA of crude coal tar	a) LD @ 1.0% of the contract value for each 4000 TPA (or part) less than PG value.
b)	Pitch Reforming / Modification unit	b) 93% production rate of modified pitch residue present in coal tar + 20,000 TPA of med soft pitch	b) 92% production rate of modified pitch residue present in coal tar + 20,000 TPA of med soft pitch	b) LD @ 1.0% of the contract value for each 1% (or part) less than PG value.
2)	Naphthalene Distillation - Technical grade Naphthalene			
		Recovery of 91% of 100% naphthalene present in coal tar by GC and by GB standard.	Recovery of 90% of 100% naphthalene present in coal tar.	LD @ 1.0% of the contract value for each 1.0% (or part) less than PG Value for capacity
3.	Softening point of modified pitch.	110°C-115°C (R & B)by ASTM-D3104	± 2°C R & B of desired value	LD @ 1.0% of the contract value for each +/- 1°C (or part) of deviation from PG Value.
4.	Moisture in reformed/ modified pitch produced after granulation	2.5% by wt.	3.0 % on wt. basis	LD @ 1.5% of the contract value for each 0.5% (or part) of deviation from PG Value.

**Article 9 Arbitration**

(Reference GCC Clause 6)

9.1 [Relevant portions of clause 6 of GCC to be incorporated]

Article 10 Appendix

10.1 The following Appendices shall be deemed to form an integral part of this Contract Agreement. Reference in the Contract to any Appendix shall mean the Appendices attached hereto, and the Contract shall be read and construed accordingly.

- 1 Price Schedule
- 2 Time Schedule
- 3 Terms of Payment
- 4 Advanced payment and Performance Guarantees
- 5 List of Approved Vendors

Article 11.**REGISTERED ADDRESS, DETAILS AND SIGNATURES OF THE PARTIES****1. BUYER**

VCI CHEMICAL INDUSTRIES PVT LTD

Address:

49, Govt. Industrial Estate, Kalpi Road Kanpur, India

PIN Code: 208012

Registration number: U24299UP2021PTC146691

Tax number: 09AAICV0906F1ZE

Bank account: 2645278332

Beneficiary's Bank: KOTAK MAHINDRA BANK LTD

Swift Code: KKBKINBB

2. BIDDER:

ACRE Coking & Refractory Engineering Consulting Corporation (Dalian), MCC

Address:

NO. 128 GAONENG STREET, HIGH-TECH ZONE, DALIAN, LIAONING, CHINA

Unified social credit code: 91210231683013176G

BENEFICIARY'S BANK :

BANK OF CHINA, DALIAN BRANCH DALIAN HI-TECH SUB-BRANCH, DALIAN CHINA

SWIFT: BKCHCNBJ81A

ACCOUNT NUMBER: 302556326235

BANK'S ADDRESS: NO. 17 HUOJU ROAD DALIAN HI-TECH ZONE DALIAN CHINA

No modifications of this Contract including Appendices hereto, shall be valid unless the same is agreed to in writing by the parties and specifically mentioned as an amendment to the Contract.

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



**Signed by for and on behalf of the
Bidder**

[Signature]

[Designation]

In the presence of _____

1) _____
[Signature]

[Designation]

2) _____
[Signature]

[Designation]

**Signed by for and on behalf of the
Employer**

[Signature]

[Designation]

In the presence of _____

1) _____
[Signature]

[Designation]

2) _____
[Signature]

[Designation]



Appendix-1

PRICE SCHEDULE**1. Contract price**

1.1 The Contract Price for the entire Scope of Facilities including all the contractual obligation of the Bidder together with its sub-Bidder /vendor is included in the **Article-2** of the contract.

2. Contract price break up

2.1 the break –up of the contract price is indicated in the summary price schedule and detailed break up of summary prices is given in the following tables, hereafter (However, in case the Bidder is a consortium of two or more parties, the breakup of the contract price s to be indicated separately for each members of consortium, in the tables given hereafter) .

Table Descriptions

2.1.1 Summary price schedule

2.1.2 Price schedule for Design and Engineering.

2.1.3 Deputation of expert for supervision of erection, testing, commissioning and performance guarantee test.

2.2 The “Po” shall be the prices as on base Date excluding all duties, taxes and other levies, the value of the Po for the purpose of price adjustment cause stipulated in the **Sub- Clause 2.1 to 2.8** of the Appendix -4, are to be given in the following **Table no.1.0 and 1.1** .

Table no. 1.0
Summary price schedule

SI no .	Description	Price (10 ⁴ USD)	Note
1	Supplies of mechanical plant and equipment, etc . (Due to Annexure-1 scope of equipment supply from ACRE 20230901)	175.21	FOB Chinese seaport (Excluding phenol refining unit)
	Total contract price (phase I)	175.21	
Contract price : 1,752,100 USD Foreign currency (In words) :One million seven hundred and fifty-two thousand one hundred USD			

Notes:



- 1 Bidders to quote in summary price schedule only based on which evaluation will be done.
- 2 In case of arithmetic error in totaling, corrected arithmetic total will be considered.
- 3 In case of a discrepancy between words and figures and/or arithmetic error in totaling, corrected arithmetic total will be considered.
- 4 Remarks/footnotes/comments furnished in un-priced bids will prevail, if any discrepancy is found in furnishing any remarks / footnotes / comments between un-priced bids and priced bids.

Table no. 1.1

Price schedule for supply of plant and equipment

SI no.	Description	Weight (T)	Unit	Qty	FOB Price (Chinese seaport) (10 ⁴ USD)
I	Mechanical equipment				
1	Tar Distillation unit				
1.1	Dehydration tower Tray	0.5	Set	1	
1.2	Fraction column Tray	5.5	Set	1	
2	Naphthalene distillation unit				
2.1	primary distillation column tray	5.5	Set	1	
2.2	rectification column tray	5.5	Set	1	
3	Naphthalene refining unit				
3.1	1# Crystallizer	73.0	Set	2	
3.2	2# Crystallizer	73.0	Set	2	
3.3	3# Crystallizer	73.0	Set	2	
4	Ammonia water stripping unit				
4.1	Ammonia stripper	2.01	Set	1	
	with internals (Tray)	0.264	Set	1	
	with On-site level gauge		Set	1	
4.2	Partial condenser of ammonia	0.75	Set	1	
4.3	Ammonia vapor condenser	0.65	Set	1	
	Sub-total (SI no.1 to 4)				174.81
5	Spare parts for two years operation				
5.1	Ammonia stripper gasket		Set	10	
5.2	Partial condenser of ammonia gasket		Set	2	
5.3	Partial condenser of ammonia gasket		Set	2	
5.4	Partial condenser of ammonia float valve		Set	20	
	Sub-total				0.40
	Total (SI no. 1 to 5) Excluding Phenol refining unit	239.675			175.21
	Foreign currency (In words)	One million seven hundred and fifty-two thousand one hundred USD			



APPENDIX-2

TIME SCHEDULE

1.0 Time schedule for completion of the Facilities

1.1 The facilities will be commissioned within 22 months from the effective date of the contract as per Article-5 of the Contract Agreement. The overall time schedule for completion of the facilities is given below:

Sl. No.	Items of work	Commencement (No. of month from Effective Date)	Completion (No. of month from Effective Date)
1.	Basic Engineering	0	4.0
2.	Basic Engineering review	4.0	5.0
3.	Detailed Design Engineering	6.0	13.0
4.	Equipment supply from China	10.5	15.5
5.	Equipment arrival at site	14.5	17.5
6.	Equipment erection	15.5	21.5
7.	Testing, Commissioning & Performance	21.5	22.0

2.0 Time Schedule for Feedback Data, Drawings and Documents

2.1 Within 4 weeks from the effective date of contract, the Bidder shall submit to the engineer /Consultant Preliminary list of all drawings and documents by title using the approved numbering system and indicating the schedule of submission of drawings in conformity with the time schedule given in Clause 2.2 and 2.3 hereof. This list shall be updated and submitted by the Bidder at the end of every quarter of the year.

2.2 Drawing/documents for approval

The Bidder shall submit the various drawings and documents to the Engineer/Consultant for approval, as per the following schedule (to be filled up by bidder).

2.2.1 Deliverables to be submitted during BE

No.	Name of drawing	Drawing number	Qty	Remark
I	General layout			
1	General Arrangement			
II	Process			
2	Material flow chart			
3	Tar distillation unit PID			
4	Arrangement of Tar distillation unit			



5	Process flow sheet of Dephenolization unit			
6	Arrangement of Dephenolization, Phenolate decomposition and Naphthalene distillation unit			
7	Process flow sheet of Phenolate decomposition unit			
8	Process flow sheet of Naphthalene distillation unit			
9	Process flow sheet of Intermediate product tank farm			
10	Arrangement of Intermediate product tank farm			
11	Process flow sheet of Pitch reforming/modification unit			
12	Arrangement of Pitch reforming unit			
13	Process flow sheet of Pitch melting unit			
14	Arrangement of Pitch melting unit and pitchwarehouse			
15	Process flow sheet of Pitch moulding unit			
16	Arrangement of Pitch moulding unit			
17	Process flowsheet of Naphthalene refining unit			
18	Arrangement of Naphthalene refining unit			
19	Arrangement of naphthalene flaking and packaging unit			
20	Process flow sheet of Raw material tank farm			
21	Arrangement of Raw material tank farm			
22	Process flow sheet of Product tank farm (including oil mixing unit)			
23	Arrangement of Product tank farm (including oil mixing unit)			
24	Process flow sheet of Ammonia stripping unit			
25	Arrangement of Ammonia stripping unit			
26	Process flowsheet of Phenol refining unit			
27	Arrangement of Phenol refining unit			
III	Machinery maintenance			
28	Arrangement of Maintenance house			
IV	Instrument			
1	Instrumentation for Primary Tar Distillation unit			
2	Instrumentation for Pitch Modification unit			
3	Instrumentation for Pitch Moulding Unit			
4	Instrumentation for Dephenolisation and Phenolate decomposition unit			
5	Instrumentation for Naphthalene Distillation unit			
6	Instrumentation for Intermediate product tank unit			
7	Instrumentation for Raw Material Tank Farm Area			



8	Instrumentation for Product Tank Farm Area(including oil mixing unit)			
9	Instrumentation for Ammonia Stripper Unit			
10	Instrumentation for Naphthalene Refining unit			
11	Instrumentation for Compressed Air Station			
12	Instrumentation for Thermal External Pipelines			
13	Instrumentation for Industrial and fire fighting water system			
14	Instrumentation for Clean circulating water system			
15	Instrumentation for Emergency water and initial rainwater tank			
16	Instrumentation for Turbid circulating water system			
17	Instrumentation for Wastewater treatment Unit			
18	Instrumentation for Phenol Refining unit			
19	Instrumentation for pitch melting unit			
V	Telecommunication			
1	Equipment list of telecommunication system			
2	Equipment list of fire detection and alarm system			
3	Equipment list of CCTV system			
4	Equipment list of gas detection and alarm system			
5	Telecommunication system drawing			
6	Fire detection and alarm system drawing			
7	CCTV system drawing			
8	Gas detection and alarm system drawing			
VI	Systematic			
1	Automation control system config drawing			
VII	Heating power			
1	Balance diagram of thermal medium			
VIII	Water supply and drainage			
1	Water balance chart			
2	Arrangement of Circulating water system			
3	Turbine circulating water flow chart			



4	Circulating water system flow chart			
5	Arrangement of Industrial and fire fighting water system			
6	Industrial and fire fighting water system flow chart			
7	Sewage treatment process diagram			
8	Arrangement of Emergency water and initial rainwater tank and foam station			
IX	Electric			
1	Preliminary single line diagram for tar process unit load center			
2	Preliminary single line diagram for Auxiliary unit load center			
X	Architecture			
1	Drawing of Buildings and steel structures			
XI				
1	Engineering design descriptions			
2	Equipment list			
3	HAZOP and LOPA			
4	Common failure analysis during production			

Lot no.	Drawing submission date	Contents
	Basic engineering	
1	The 4 th month after contract comes into effect	BE drawings submitted to VCI
	The 5 th month after contract comes into effect	VCI closes BE review

2.2.2 Deliverables to be submitted during DE

Lot no.	Drawing submission date	Contents
	Detail engineering	
Lot 1	The 3 rd month after BE review	Lot 1 of civil structure drawings for major foundation: oil depot and intermediate tank area
Lot 2	The 4 th month after BE review closes	Lot 1 of non-standard equipment drawings: tank and shell-and-tube heat exchanger; As per Annexure 2 Fabrication drawing in technical agreement.
Lot 3	The 5 th month after BE review closes	Lot 3 of civil structure drawings: tar distillation, dephenolization, phenolate decomposition, technical naphthalene and modified pitch unit, pitch molding and melting unit, refined naphthalene (including refined naphthalene flaker and packing unit) The lot 2 of non-standard equipment drawings: column and remaining heat exchangers. As per Annexure 2 Fabrication drawing in technical agreement.



Lot 4	The 6 th month after BE review closes	Lot 4 of civil structure drawing: lot 2 of waste water treatment facilities; Lot 1 of DE drawings: oil depot, intermediate tank area, ammonia stripping unit, fire pool and accident pool, foam station, lab; all architectural drawings
Lot 5	The 7 th month after BE review closes	Lot 2 of DE drawings: tar distillation, dephenolization, phenolate decomposition, technical naphthalene, modified pitch, refined naphthalene and flaker and packing room, external pipelines; electric, telecommunication, HVAC, thermal engineering, water supply & drainage.
Lot 6	The 7.5 th month after BE review closes	DE drawing of instrument and automation, layout, road, comprehensive pipeline; other drawings
Lot 7	The 8 th month After BE review closes	Operation and maintenance manual; spare part list

2.2.3. After approval by the Employer/Consultant, the Bidder shall submit approved drawings and documents in 2 copies, to the Employer.

2.3 Drawings/Documents for Information/Review

2.3.1 The Bidder shall submit to the engineer/Consultant for information/ review of the drawings and documents as per the Schedule given below:

Sl. No.	Description	Time of submission in weeks from the Effective Date of Contract	
		Imported	Indigenous
1.	Soil investigation Report		VCI
2.	Certified foundation drawing load data		Main equipment, big foundation
3.	Excavation outline drawings		Main equipment, big foundation
4.	Civil working drawings including bar bending schedules	ACRE	
5.	Locations, schedules, fixing details, etc. for foundation/anchor bolts, inserts & embodiments	ACRE	
6.	Design calculation for all civil and structural work		Main equipment, big foundation
7.	load calculation for electrical work	ACRE	
8.	Structural design drawings		
9.	Performance data		
10.	Assignment from Bidder for number of feeders to be provided by the Employer		
11.	List of electromagnetic valves, limit switches, etc.		
12.	Control description and schematic including PLC input/output chart		
13.	Cable tray arrangement, cable and instrument pipe schedule and routings		
14.	Lighting earthing and lightening protection drawings		
15.	Terminal plans and interconnection diagrams for electrical works		
16.	Conduit drawings and cut out details		



17.	Loop schemes, power supply and distribution schemes and panels and desk internal wiring diagrams external connection including terminal wiring diagrams for power control and instrumentation cables		
18.	Detailed drawing for pipe & duct work		
19.	Detailed drawings for underground and over ground services and utilities (including water system)		
20.	Drawings for approval of Statutory authorities		
21.	Instructions for storage & re conservation including those for electrical, instrumentation and communication items		
22.	Erection drawings, erection specifications and erection instructions		
23.	Integrated operation/safety and Maintenance Manuals material specification		
24.	Ordering specification for operation & Maintenance spares		
25.	Detailed assignment schedule for deputation of Overseas experts/specialists as per GCC clauses 7.9- for Employer's approval		
26.	Recommended Man power requirement for operation & Maintenance of the Facilities as per GCC Clause 18.5		
27.	Schedule for training of Employer's as per GCC Clause 18.6 – for Employer's approval		

2.3.2 After “no comment” clearance by the Engineer/Consultant, the Bidder shall submit the final drawings and documents in 2 copies, to the Employer.

2.4 As-Built Drawings and Documents

2.4.1 The Bidder shall submit as-built drawings & documents after performance Guarantee Test, but before release of payment for PG test certificate as per Clause 23 of GCC as per the schedule given below

Sl. No.	Description	Time of submission in weeks from the Effective Date of Contract	
1.	General arrangement, assembly and sub-assembly drawings	Imported	Indigenous
2.	Performance data		
3.	Test charts		
4.	All design calculations with respective approved design criteria in bound volumes		Main equipment, main structure, Big equipment foundation
5.	Flow diagrams and material balance sheets		
6.	Electrical & instrumentation drawings		
7.	Civil working drawings		



8.	Steel structures drawings		
9.	Utilities and service drawings		
10.	Operation and Safety manuals		
11.	Maintenance manuals		
12.	List of spares (Operation, Maintenance)		
13.	Drawings& bill of materials for operation & maintenance spares		
14.	Ordering specifications including catalogues & details for Operation & Maintenance spares		
15.	Drawings/ordering specifications for operating consumables/supplies		
16.	One set of all documents as listed above, on CD		

2.5 Equipment drawings and erection Instructions drawings for the Plant and Equipment shall be supplied by the Bidder at least one month before the shipment/dispatch of the Plant & Equipment.

**APPENDIX-3****TERMS OF PAYMENT****1.0 GENERAL**

- 1.1 In accordance with the provisions of the agreement, the buyer shall pay the bidder for the Supply of Equipment as broadly brought in the Agreement, on the basis of the Billing Schedule as per clause GCC.
- 1.2 All payments shall be made as specified in Clause no. 1.10 hereunder, directly by the buyer to the bidder unless otherwise provided in the Contract or agreed between the Parties.
- 1.3 The payments will be made in the currencies quoted by the bidder and included in the Contract unless otherwise agreed to between the Parties
- 1.4 All progress payments shall be regarded as payments by way of advance against the final payment only and not as payment for work completed and shall not preclude defective / imperfect / incomplete Works/ Supply of Equipment. It will not be considered as an admission by the buyer of the due performance of the Contract, or any part thereof by the bidder nor shall it preclude, determine or affect in any way the powers of the buyer under these conditions or in any way vary or affect the Contract.
- 1.5 An advance payment of ten percent (10%) of the Contract Price shall be paid by buyer to bidder by telegraphic transfer within thirty (30) days from the date of receipt of commercial invoice issued by bidder in four (4) original copies duly signed by bidder along with an Advance Bank guarantee of equivalent amount, in buyer's approved pro-forma from a bank approved by the buyer and in RBI's approved list valid till finishing FOB equipment supply and shall be on reducing balance basis based on the progress of the Supply of Equipment. The above commercial invoice and Bank Guarantee shall be issued by bidder within thirty (30) days of the Contract Effective Date by the Parties. The bidder after getting the payment shall submit a receipt for the same.
- 1.6 Eighty percent (80 %) of the Contract Price with respect to each and every part shipment for Supply of Equipment as well as related designs and drawings will be payable as per Billing and Shipping schedule approved by the buyer and against presentation of following dispatch documents proving that the goods are delivered F.O.B. Port of Shipment:
 - a) Full set (2) originals and two (2) copies of clean on-Board Bill of Lading or airway bill or house bill of lading or warehouse receipt.
 - b) Four (4) originals of invoice duly signed by the bidder.
 - c) One (1) original and three 3 copies of Certificate of country of origin issued by relative govt. authority.
 - d) Two (2) sets of Packing lists duly signed by the bidder; Packing list will be submitted by the bidder container wise/ Bulk wise.
 - e) Two (2) originals of Inspection or Test Certificate, issued by the bidder.



-
- f) Two (2) copies of the Dispatch Clearance Certificate (DCC) issued by the buyer as per the General Conditions for supply of equipment.
 - g) Two (2) originals and two (2) Copies of Certificate from the bidder to the effect that contents in each case are neither more nor less than those entered in the invoice and packing list and quality of the goods is guaranteed as new and as per the relevant specification.
 - h) Certificate from bidder to the effect that immediately after shipment one complete set of non-negotiable shipping documents has been sent to buyer VCI and another complete set to the Clearing Agents by email. *(VCI will confirm)*
 - i) Certificate issued by the bidder stating that the wooden packing material has been treated to ISPM 15 or equivalent and IPPC special marking has been labelled on the wooden packing material or Declaration in the commercial invoice/packing list for consignment that article mentioned in the invoice/packing list have not been packed with packaging materials of plant origin.

For progress payments related to supply of Equipment against its delivery, the bidder shall raise their Customs invoice corresponding to 100% of the order value of relevant supplied equipment.

- 1.7 Five percent (5%) of Contract Price will be payable upon the issue of Provisional Acceptance Certificate of the plant as per the contract.

- a) Four (4) originals of Invoice duly signed by the bidder
- b) Four (4) copies of Provisional Acceptance certificate issued by the buyer

In case of delay in performance tests for reasons attributable to the buyer, payment for Provisional Acceptance shall be released on submission of

- a) One (1) original and six (6) copies of invoice duly signed by the bidder
- b) Six (6) copies of Declaration issued by the buyer stating that the performance tests for the Project have been delayed.
- c) A Bank Guarantee of 5% of Contract Price valid for twelve (12) months

- 1.8 The last 5% of Contract Price will be payable upon the issue of Final Acceptance Certificate as per the general conditions and on submission of

- a) Four (4) originals of Invoice duly signed by the bidder.
- b) Four (4) copies of Final Acceptance certificate issued by the buyer.

In case of delay in issue final Acceptance Certificate for reasons attributable to the buyer, payment for Final Acceptance shall be released on submission of

- a) One (1) original and six (6) copies of invoice duly signed by the bidder
- b) Six (6) copies of Declaration issued by the buyer stating that the final acceptance tests for the Project have been delayed.



- c) A Bank Guarantee of 5% of Contract Price valid for twelve (12) months

1.9 MODE OF PAYMENT (Foreign bidder)

- 1.9.1 The Payment as per Clauses 1.5, 1.7, 1.8, 1.9 hereof will be affected by the buyer by telegraphic transfer within thirty (30) days of receipt of correct invoice and other documents as stipulated in respective clauses.
- 1.9.2 Payments as per clause 1.6 are payable within Thirty (30) days against presentation of the stipulated documents through an irrevocable Letter of Credit as per the format and to be opened by a first-class bank in India in favour of the bidder. The Letter of Credit shall be subject to Uniform Customs and Practice for documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600).
- 1.9.3 In case the execution of the Agreement is not completed in time, the validity of the letters of credit shall be extended upon bidder's request as mutually agreed. However, in case extension is due to reasons attributable to the bidder, the relevant cost shall be borne by the bidder. In case the extension of Letter of Credit is required due to reason attributable to buyer, the bank charges for such extension shall be borne by the buyer.

Note:-

1. All the document shall indicate contract number & date LC no & date.
2. Wherever invoice is raised against supply of goods it should specifically mention that the items are freely importable as per foreign Trade policy 2004-2009.
3. Wherever certificates are to issue by the Employer, **V C I** is authorized signatory. Certificate issued by other official will not entitle beneficiary to claim payment.

2 TAXES AND DUTIES (FOREIGN bidder)

- 2.1 All designs and drawings related to the Supply of Equipment shall be despatched along with the Equipment and will be cleared through customs. In the event of shipment of designs and drawings related to the Supply of Equipment in this category is being made by the bidder independent of the Equipment despatch, the invoice for related designs and drawings shall be of "nil" commercial value.
- 2.2 The country of origin of the Equipment and Commissioning Spares covered under this Agreement shall as designated by the bidder.
- (Note: The country of origin has to be submitted by the bidder for checking, before signing of the Agreement).
- The bidder shall take buyer's prior approval for any change in the country of origin of Equipment.
- 2.3 The bidder shall bear and pay all taxes, duties, charges or levies which may be assessed, imposed or levied upon the Equipment as well as the related designs and drawings or any income realised by him in connection with and in the execution of the Agreement by any



-
- country or governmental agency thereof in which the Equipment as well as the related designs and drawings are produced or from which it is sold, despatched or shipped.
- 2.4 Customs Duty, Port Charges, Countervailing Duty and any other applicable taxes, duties, etc. and statutory charges or levies in India shall be borne and paid by the buyer for clearance of supplied equipment under this Agreement.
- 2.5 Freight and insurance will be arranged and paid for by the buyer from F.O.B. Port of Shipment to the Plant site.
- 2.6 The buyer shall forward to the bidder Tax certificate, if any showing the taxes paid by the buyer in India in respect to the Contractual Payment made to the bidder for supply of Equipment.
- 2.7 The net weight of each component of Equipment as submitted by the bidder for various sections of the Technical Specification is guaranteed by the bidder within a margin of $\pm 5\%$. In the event that the design weight for each section deviates by more or less than the above margin, the bidder, during engineering work, shall inform the buyer of each deviation and the reason thereof with technical evidence of necessity for such deviation and deliveries of such items shall be affected only when such deviation is acceptable to the buyer.
- 2.8 Buyer shall inform the bidder his comments/acceptance of aforesaid deviation, if any, proposed by the bidder, within two (2) weeks of receipt of bidder's intimation to this effect by e-mail/fax. In order to establish to the buyer the correct weights of individual items, the bidder shall clearly indicate in the individual packing list the net weights and gross weights of Equipment. However, the bidder will ensure that the shortage/excess weight will not have any impact on performance of the Project and that should be communicated to the buyer. In this case buyer reserves the right to hold the progress payment till the date of receipt of communication from the bidder on shortages / excess weight.

**Attachment -1 to Appendix-3****Format of Letter of Credit**

Type of L/C	Irrevocable
Date & Place of L/C	
Name & Address of applicant	VCI Chemical Industries Private Limited 49, Government Industrial Estate , Kalpi Road , Kanpur, Uttar Pradesh PIN Code 208012, India
Name & Address of the Beneficiary	
Currency & Amount of Credit (in Figures 7 Words)	
Variation in L/C amount or additional amount permitted	
Usance of the Drafts	-----
Credit available with / by	Advising Bank / Payment
Drafts to be drawn on	
	India
Validity of Letter of Credit	
Partial Shipment:	
Transshipment	
Shipment from: Chinese seaport	-----Air/Sea Port
Shipment to: XXX XXX	INCCU Port of Kolkata
Latest shipment Date	
Description of goods	
Documents Required	As per Separate Annexure Enclosed.
Specify, if any Charges are to beneficiary's account	All Charges outside India to beneficiary's account.
Documents to be presented	Within 21 days as the case may be.
Confirmation Instructions	If beneficiary wishes to be confirmed, at their cost.
Credit to be advised to the beneficiary through (Bank)	Bank Name..... A/c No..... Swift Code.....

**Annexure forming part of letter of credit Application****Documents are to be presented for the purpose of payment and terms & conditions**

A. Total letter of credit Value is **1,401,680.00 USD** which is equivalent to 80% contract value payable against the following activities:-

	Activity	Foreign Currency (USD)
(i)	Supply of plant & Equipment (including Spare parts for two years operation)	1,752,100.00

1.0 GENERAL

- 1.1 In accordance with the provisions of the agreement, the buyer shall pay the bidder for the Supply of Equipment as broadly brought in the Agreement, on the basis of the Billing Schedule as per clause GCC.
- 1.2 All payments shall be made as specified in Clause no. 1.10 hereunder, directly by the buyer to the bidder unless otherwise provided in the Contract or agreed between the Parties.
- 1.3 The payments will be made in the currencies quoted by the bidder and included in the Contract unless otherwise agreed to between the Parties
- 1.4 All progress payments shall be regarded as payments by way of advance against the final payment only and not as payment for work completed and shall not preclude defective / imperfect / incomplete Works/ Supply of Equipment. It will not be considered as an admission by the buyer of the due performance of the Contract, or any part thereof by the bidder nor shall it preclude, determine or affect in any way the powers of the buyer under these conditions or in any way vary or affect the Contract.
- 1.5 An advance payment of ten percent (10%) of the Contract Price shall be paid by buyer to bidder by telegraphic transfer within thirty (30) days from the date of receipt of commercial invoice issued by bidder in four (4) original copies duly signed by bidder along with an Advance Bank guarantee of equivalent amount, in buyer's approved pro-forma from a bank approved by the buyer and in RBI's approved list valid till finishing FOB equipment supply and shall be on reducing balance basis based on the progress of the Supply of Equipment. The above commercial invoice and Bank Guarantee shall be issued by bidder within thirty (30) days of the Contract Effective Date by the Parties. The bidder after getting the payment shall submit a receipt for the same.
- 1.6 Eighty percent (80 %) of the Contract Price with respect to each and every part shipment for Supply of Equipment as well as related designs and drawings will be payable as per Billing and Shipping schedule approved by the buyer and against presentation of following dispatch documents proving that the goods are delivered F.O.B. Port of Shipment:



-
- a) Full set (2) originals and two (2) copies of clean on-Board Bill of Lading or airway bill or house bill of lading or warehouse receipt.
 - b) Four (4) originals of invoice duly signed by the bidder.
 - c) One (1) original and three 3 copies of Certificate of country of origin issued by relative govt. authority.
 - d) Two (2) sets of Packing lists duly signed by the bidder; Packing list will be submitted by the bidder container wise/ Bulk wise.
 - e) Two (2) originals of Inspection or Test Certificate, issued by the bidder.
 - f) Two (2) copies of the Dispatch Clearance Certificate (DCC) issued by the buyer as per the General Conditions for supply of equipment.
 - g) Two (2) originals and two (2) Copies of Certificate from the bidder to the effect that contents in each case are neither more nor less than those entered in the invoice and packing list and quality of the goods is guaranteed as new and as per the relevant specification.
 - h) Certificate from bidder to the effect that immediately after shipment one complete set of non-negotiable shipping documents has been sent to buyer VCI and another complete set to the Clearing Agents by email. (*VCI will confirm*)
 - i) Certificate issued by the bidder stating that the wooden packing material has been treated to ISPM 15 or equivalent and IPPC special marking has been labelled on the wooden packing material or Declaration in the commercial invoice/packing list for consignment that article mentioned in the invoice/packing list have not been packed with packaging materials of plant origin.

For progress payments related to supply of Equipment against its delivery, the bidder shall raise their Customs invoice corresponding to 100% of the order value of relevant supplied equipment.

- 1.7 Five percent (5%) of Contract Price will be payable upon the issue of Provisional Acceptance Certificate of the plant as per the contract.

- a) Four (4) originals of Invoice duly signed by the bidder
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- c) A Bank Guarantee of 5% of Contract Price valid for twelve (12) months



1.8 The last 5% of Contract Price will be payable upon the issue of Final Acceptance Certificate as per the general conditions and on submission of

- a) Four (4) originals of Invoice duly signed by the bidder.
- b) Four (4) copies of Final Acceptance certificate issued by the buyer.

In case of delay in issue final Acceptance Certificate for reasons attributable to the buyer, payment for Final Acceptance shall be released on submission of

- a) One (1) original and six (6) copies of invoice duly signed by the bidder
- b) Six (6) copies of Declaration issued by the buyer stating that the final acceptance tests for the Project have been delayed.
- c) A Bank Guarantee of 5% of Contract Price valid for twelve (12) months

1.9 MODE OF PAYMENT (Foreign bidder)

1.9.1 The Payment as per Clauses 1.5, 1.7, 1.8, 1.9 hereof will be affected by the buyer by telegraphic transfer within thirty (30) days of receipt of correct invoice and other documents as stipulated in respective clauses.

1.9.2 Payments as per clause 1.6 are payable within Thirty (30) days against presentation of the stipulated documents through an irrevocable Letter of Credit as per the format and to be opened by a first-class bank in India in favour of the bidder. The Letter of Credit shall be subject to Uniform Customs and Practice for documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600).

1.9.3 In case the execution of the Agreement is not completed in time, the validity of the letters of credit shall be extended upon bidder's request as mutually agreed. However, in case extension is due to reasons attributable to the bidder, the relevant cost shall be borne by the bidder. In case the extension of Letter of Credit is required due to reason attributable to buyer, the bank charges for such extension shall be borne by the buyer.

Note:-

- 1. All the document shall indicate contract number & date LC no & date.
- 2. Wherever invoice is raised against supply of goods it should specifically mention that the items are freely importable as per foreign Trade policy 2004-2009.
- 3. Wherever certificates are to issue by the Employer, **V C I** is authorized signatory. Certificate issued by other official will not entitle beneficiary to claim payment.

**APPENDIX-4****Performance Guarantees**

1. The Appendix sets cut
 - (a) The performance guarantees referred to in Clauses 23 of GCC (Performance Guarantee Test).
 - (b) The minimum level of the performance guarantees
2. Preconditions

The Bidder gives the performance guarantees (specified herein) for the Facilities, subject to the preconditions being fully satisfied as outlined in clause 23 of GCC.
3. Performance Guarantee Parameters

performance Guarantee parameters to meet and fulfilled by bidder has been specified in chapter 15.0 of technical specification.
4. Failure in Guarantees and Liquidated Damages

Failure to Attain Guaranteed Parameters

If the production capacity of the facilities attained in performance guarantee test, pursuant to Clause 23 of GCC is less than the guaranteed figure specified but the actual production capacity attained in the performance guarantee test is not less than the minimum level of performance guarantee parameters specified and the Bidder selects to pay liquidated damages to Buyer in lieu of making changes modifications and/ or additions to the facilities, pursuant to Sub-Clause 23 of GCC then the Bidder shall pay liquidated damages at the rate specified

Limitation of Liability

The Bidder's aggregate liability to pay liquidated damages for failure to attain the performance guarantees parameters above the minimum levels of performance guarantee parameters specified shall not exceed five percent (5%) of the contract value.-

However, in case the Bidder expresses its inability to achieve a maximum level of performance guarantee parameters and reduce consumption of raw materials and Liabilities below the maximum level of guaranteed maximum level of consumption of raw materials and Utilities. The Employer shall not reject the plant and equipment after commissioning and achievement of minimum Performance Guarantee parameters after successful commissioning and achievement of minimum Performance Guarantee parameters the total liability of the Bidder on account of delay and non-achievement of maximum PG parameters will not be more than LD of ten percent (10%).

In case even after all possible repairs and replacements the Facilities fail to attain the minimum level of performance guarantee parameters the Employer may reject the Facility and recover the entire cost paid to the Bidder or alternatively the Employer may proceed for commercial settlement with the Bidder for acceptance of the Facilities at the negotiated Price.



List of Approved Vendors

APPENDIX-5

No.	Equipment Item No.	Name	Sub-supplier
		1. Tar Distillation unit	
1	K53201	Dehydration tower Tray	Ningbo kexin chemical engineering technology Co., Ltd
2	K53202	Fraction column Tray	HuBei Lituo Energy Chemical Equipment Co.,Ltd
		2. Naphthalene distillation unit	Jiangxi Pangtai Environmental Protection Co. , Ltd.
1	K53601	primary distillation column tray	Tianjin Tianda Tianjiu Technology Co. , Ltd.
2	K53602	rectification column tray	
		3. Naphthalene refining unit	
1	RE57201AB	1# Crystallizer	Ningbo kexin chemical engineering technology Co., Ltd
2	RE57202AB	2# Crystallizer	HuBei Lituo Energy Chemical Equipment Co.,Ltd
3	RE57203AB	3# Cystallizer	Wuxi Huanyu Equipment Technology Co. , Ltd.
		4.Ammonia water stripping unit	
		Ammonia stripper	Shenyang Paisi Titanium Equipment Co.,Ltd
			Shenyang Orient Titanium Industry Co., Ltd
			Ningbo kexin chemical engineering technology Co., Ltd
1	K42401	with internals (Tray)	HuBei Lituo Energy Chemical Equipment Co.,Ltd
		with On-site level gauge	Liaoyang Fuji Instruments Co. , Ltd.
			LIAO YANG KEAO INSTRUMENT CO.,LTD
2	E42401	Ammonia partial condenser	Shenyang Paisi Titanium Equipment Co.,Ltd
			Shenyang Orient Titanium Industry Co., Ltd
3	E42404	Ammonia vapor condensing cooler	Ningbo kexin chemical engineering technology Co., Ltd
			HuBei Lituo Energy Chemical Equipment Co.,Ltd



GENERAL CONDITIONS OF CONTRACT

(GCC) WITH ANNEXURES



GENERAL CONDITIONS OF CONTRACT
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GENERAL CONDITIOS OF CONTRACT

A. CONTRACT & INTERPRETATIN

1. Definitions

The following words and expressions shall have the meaning hereby assigned to them

“Contract” means the Contract Agreements entered into between the employer and the Bidder together with the Contract Documents referred to therein, they shall constitute the Contract and the term the contract shall in all such documents be construed according

“Contract Documents” means the documents listed in Article 1.2 (contract Documents) of the Contract Agreement (including any amendments thereto).

“GCC” means the General Conditions of Contract hereof

“SCC” means the Special Conditions of Contract

Technical Specifications / Contract Technical Specifications” means the technical; specification. Schedules, Detailed designs statements of technical data performance characteristics value and all other technical particulars of the contract.

“GTS” means the General Technical Specifications

“Day” means calendar day of the Gregorian Calendar

“Month” means calendar month of the Gregorian calendar

“Purchases” means VCI CHEMICAL INDUSTRIES PVT LTD (VIL) Plant and includes the legal successors or permitted assigns of the Employer

“Engineer” means the person appointed by the Employer in the manner provided in Sub-Clauses 17.1 (Engineer) hereof and to perform the duties delegated by the Employer.

“Consultant” means the person(s) named as such in the Cause **1.4** of SCC to perform the duties delegated by the Employer as specified in the Article 6 of the Contract Agreement

“Bidder” means the person(s) whose bid to perform the contract has been accepted b the Employer and is named as such in the Contract Agreement, and includes the legal successors or permitted assigns of the Bidder In case Contract is with Consortium of two or more members then the Bidder shall mean one or more members of Consortium as the case may be “Bidder’s Representative” means any person nominated by the Bidder and approved by the Employer in the manner provided in Sub-Clause 17.2 (Bidder’s Representative) thereof to perform the duties delegated b the Bidder For site work Bidders Representative shall also mean the representative of Sub Bidders and Sub Bidders Sub Bidders.



“Sub Bidder” including vendors means any person to whom execution of any part of the Facilities including preparation of any design or supply of an Plant and Equipment is sub-Contracted directly or indirectly by the Bidder and included its legal successors or permitted assigns.

“Contract Price” means the sum specified in Article 2.1 (Contract Price) of the Contradict Agreement subject to such additions and adjustments thereto or deductions there from as may be made pursuant to the contract.

“Base Date” means the date given in Sub-Clause 2.0 of Apendx-4 of Contract Agreement which shall be considered in price variation formulae as given in Sub-Clause 2.3 to 2.9 of Appendix-4 of Contract Agreement.

“Facilities” mean the work specified in Clause 7 hereof, Technical Specification, including General Technical Specification and all supply & services to be carried out by the Bidder under the Contract.

“Plant and Equipment” means permanent plant equipment, machinery and things of all kinds to be provided and incorporated in the Facilities by the Bidder under the Contract but does not include Bidder’s Equipment.

“Installation Services or Services” means all those services ancillary to the supply of the Plant and Equipment for the facilities to be provided by the Bidder under the Contract e.g., design & engineering supervision work.

“Site” means the land and other places upon which the Facilities are to be installed, and such other land or places as may be specified in the Contract as forming part of the site

“Effective Data of Contract” means the date of signing of Contract or 30 days from date of Letter of acceptance (LOA), whichever is earlier.

“Time for Completion” means the time specified in Article 5. Of the contract Agreement within which Completion of the Facilities as a whole (or of a part of the Facilities where a separate Time for Completion of such part has been prescribed) is to be attained in accordance with the stipulations made on the Contract Agreement and the relevant provisions of the Contract.

“Inspector” / “Inspecting Engineer” shall mean any person or firm nominated by or on behalf of the Employer or his duty authorized agent to inspect equipment, materials, supplies or work under the Contract

“Pre-commissioning” means the checking testing including conducting of integrated trial runs (could integrated trial runs in case of Facilities involving operation at high temperature) and meeting other requirements specified in the Technical Specifications that are to be carried out by the joint team of Bidder & Buyer in preparation for.

“Preliminary Acceptance” of the Facilities means that the Facilities have been completed operational and structurally and put in a tight and clean condition and that all work in respect of Pre-commissioning of the Facilities have been completed in other words, that the Facilities are fit for Startup & Commissioning and Preliminary Acceptance Certificate has been issued!



“Program of Performance” shall mean the program submitted by the Bidder in accordance with clause 18.1.

“Preliminary acceptance Certificate” means the Certificate to be issued by the Employer on successful completion of Preliminary Acceptance Tests.

“Commissioning Certificate” is the Certificate to be issued by the Employer as per Sub-Clause 25.3 hereof.

“Completion of the Facilities” means the Facilities have been completed and accepted when commissioned, Performance Guarantee parameters established as per Clause 27 and Final Acceptance certificate issued as per Clause 26 hereof.

“Taking Over” means on from FOB the Employer shall be responsible for the care & custody of the Facilities together with the risk of loss or damage thereto and shall thereafter take-over the facilities.

“Performance Guarantee Test” means the tests specified in the Technical Specifications to be carried out to ascertain whether the Facilities are able to attain the Performance Guarantees specified in the Contract as per Clause 27 hereof

“Performance Guarantee Certificate” means the certificate to be issued by the Employer upon successful establishment of performance guarantees Parameter as specified in Appendix-5 to Contract Agreement.

“Final Acceptance” means the acceptance by the employer of the facilities which certifies the Bidders fulfillment of the Contract in respect of Performance Guarantee of the Facilities in accordance with the provisions of clause 27 hereof and completion of Defects Liability Period

“Final Acceptance Certificate” is the Certificate to be issued by the Employer as Clause 28 hereof.

“Defect Liability Period” means the periods of validity of the warranties given by the Bidder commencing from the date of Commissioning of the Facilities, during which the Bidder is responsible for defects with respect to the Facilities as provided in Clause 30 (Defect Liability) hereof.

2. Contract Documents

Subject to Article 1.3 (Order of Precedence) of the Contract Agreement all documents forming part of the Contract (and parts thereof) are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole

The Bidder shall be required to provide at least 4 (four) copies of signed Contract Agreement for Employer’s use within 30 (thirty) days of the date of signing of the Contract.



3. Interpretation.

3.1 Language

All correspondence and communications to be given and all other documentation to be prepared and supplied under the Contract shall be written in English, and the Contract shall be construed and interpreted in accordance with English language.

3.2 Singular and Plural

The singular shall include the plural and the plural the singular, except where the context otherwise requires.

3.3 Persons

3.3.1 Words importing persons or parties shall include firms, Corporations Companies Joint Ventures, Consortiums and Government entities.

3.4 Incoterms

3.4.1 Unless inconsistent with any provisions of the contract, the meaning of any trade term and the rights and obligations of parties there under shall be as prescribed by incoterms 2020 with amendments if any

Incoterms means international rules for interpreting trade terms published by the international Chamber of Commerce (latest edition) 38 Course Albert 1 75008 Paris, France

3.5 Entire Agreement

3.5.1 The Contract constitutes the entire agreement between the Employer and Bidder with respect to the subject matter of Contract and supersedes all communications, negotiations and agreements (whether written oral) of parties with respect thereto made prior to the date of Contract.

3.6 Amendment

3.7.1 No amendment or other variation of the Contract shall be effective unless it is in writing is date expressly refers to the Contract and is signed by a duly authorized representative of each party hereto.

3.7 Bidder

3.7.1 The Bidder shall be an independent Entity performing the Contract the Contract does not create any agency, partnership, joint venture or other joint relationship between the parties hereto

3.7.2 All employees, representatives or Sub-Bidders engaged by the Bidder in connection with the performance of the contract shall be under the complete control & supervision of the Bidder and shall not be deemed to be employees of the Employer.



4. Notices

4.1 Unless otherwise stated in the Contract all notices to be given under the Contract shall be in writing, and shall be sent by personal delivery, post / airmail post special courier, tele fax email to the address of the relevant party set out in the Special Conditions of Contract, with the following provisions

4.1.1 Any notice delivered personally or sent by facsimile; email shall be deemed to have been delivered on date of its dispatch.

4.1.2 Either party may change its postal, tele fax, email address or addressee for receipt of such notices by 10 (ten) days' notice to the other party in writing

4.2 Notices shall be deemed to include any approvals, consents, instructions, orders and certificates to be given under the Contract.

5. Governing Law

The Contract including the Arbitrating proceedings shall be governed by and interpreted in accordance with laws of DIFC, UAE.

5.1 Dispute Resolution. The Parties shall endeavor to settle amicably by mutual discussions any disputes, differences or claims whatsoever related to this Contract.

5.2 Resolution by the Parties. Any and all claims asserted by one Party related to this Contract shall be submitted in writing to the other Party within twenty (20) Days following the event causing such claim except if the Parties have agreed on a different time scale, for the purpose of seeking to resolve said claim amicably by negotiation. In no event may SUPPLIERS use the fact that any such claim has not been settled as justification for stopping or delaying the execution of the Supply. If the Parties fail to reach an agreement within twenty (20) Days of receipt by the defending Party of the written submission of the Party asserting any claim, the matter shall be dealt with in accordance with the provisions of Section 5.2.1.

5.2.1 In the event BUYER and SUPPLIERS have been unable to settle or agree upon within a period of twenty (20) Days as set forth in Section 5.2 above, each Party shall nominate a senior officer of its management to meet at a mutually agreed time and place not later than forty-five (45) Days from the dispute or disagreement has arisen to attempt to resolve such dispute or disagreement. Should a resolution of such dispute or disagreement not be obtained within twenty (20) Days from the meeting of senior officers for such purpose, either Party may then by notice to the other submit the dispute to arbitration in accordance with Section 5.3 hereof.

5.3 Arbitration Proceeding. Failing an amicable settlement pursuant to Section 5.2, any controversy, claim or dispute arising out of, relating to, or having any connection with this Contract, including, but not limited to any question regarding its existence, validity, interpretation, performance, termination or breach thereof, or claims for damages arising therefrom, shall be exclusively and definitively settled by final and binding arbitration; provided, however, that the arbitrators shall have no authority to award punitive damages or consequential or incidental damages. The Parties hereby waive their rights to recover punitive damages or consequential or incidental damages in connection with any such controversy, claim or dispute.



5.3.1 Rules of Arbitration. The arbitration proceeding shall be conducted in accordance with the then existing Rules of Arbitration of the International Court of Arbitration of the International Chamber of Commerce (the "ICC").

5.3.2 Administration of the Arbitration Proceeding. The arbitration proceedings shall be administered by the International Court of Arbitration of the International Chamber of Commerce (the "ICC Court").

5.3.3 Number of Arbitrators. The arbitration proceeding shall be conducted by a tribunal formed by three (3) arbitrators, of whom one (1) shall be appointed by claimant, one (1) by respondent and the third, who shall serve as chairperson of the arbitration tribunal, shall be appointed by the two Party-appointed arbitrators, or, in the event the two party-appointed arbitrators are unable to agree upon the selection of the chairperson or obtain the chairperson's acceptance of such appointment within ten (10) Business Days after their appointment and acceptance as arbitrators, the ICC Court shall appoint the chairperson. The decision of the arbitrators shall be based upon the principles of good faith and good will.

5.3.4 Place of Arbitration. The place of arbitration shall be DIFC, UAE.

5.3.5 Language of Arbitration. The language of the arbitration shall be English, and all documents and testimony offered into evidence during the arbitration shall be translated into English at the expense of the party offering the evidence.

5.3.6 Entry of Judgement. The award of the arbitral tribunal shall be final, non-appealable and binding. Judgement on the final award or any interim award issued by the arbitral tribunal may be entered and enforced by any court of competent jurisdiction.

5.3.7 Costs and Attorneys' Fees. The arbitral tribunal is authorized to award costs and attorneys' fees and to allocate them between the Parties to the dispute. The costs of the arbitration proceedings, including attorneys' fees, shall be borne in the manner determined by the arbitral tribunal.

5.3.8 Confidentiality. All data exchanged among the parties and the arbitral tribunal is confidential.

5.3.9 Survival of Obligations. Unless otherwise agreed in writing, the Parties shall continue to diligently perform their respective duties and obligations under this Contract including the matter involved in the claim of any other disputed part while such arbitration proceeding is pending of final resolution, provided that BUYER has paid all undisputed amounts that are due and payable under this Contract without derogating from any rights of set-off BUYER may have under this Contract.

5.4 Submission to Dispute Resolution.

(i) BUYER, SUPPLIERS and the Designated Sub-BUYER hereto irrevocably submit to arbitration pursuant to the terms and conditions set forth in Section 5.3 hereof.

(ii) SUPPLIERS and the Designated Sub-BUYER hereto irrevocably waive, to the fullest extent permitted by applicable Laws, all sovereign from jurisdiction, attachment (both before and after judgement) and execution to which it might otherwise be entitled in any action or proceeding against SUPPLIERS or the Designated Sub-BUYER in the courts of China, of Brazil or of any other



country or jurisdiction and will not raise or claim or cause to be pleaded any such immunity at or in respect of any action or proceeding against SUPPLIERS or the Designated Sub-BUYER relating in any way to this Contract or any of the security granted hereunder.

(iii) BUYER, SUPPLIERS and the Designated Sub-BUYER hereto irrevocably waive, to the fullest extent permitted by applicable Laws, any objection that any of them may now or thereafter have to the laying of place of arbitration in DIFC, UAE.

6. Settlement of disputes.

The settlement of dispute including the Arbitrating proceedings shall be governed by and interpreted in accordance with laws of DIFC, UAE

B. SUBJECT MATTER OF CONTRACT

7. Scope of Facilities

7.1 Design, Drawings & Technical Documents

7.1.1. The Bidder shall be responsible for supply of all the design, drawings and technical documents & information in respect of the plant & equipment as per Appendix 2 to contract Agreement & commissioning spares. The Contract shall deliver the design, drawing technical documents & information, to the Employer by Microsoft based File Transfer Protocol FileZilla or other suitable one. *(will confirm with VCI)*

7.2 Supply of Plant & Equipment, Commissioning Spares, Operation and Maintenance Spare, Initial Fills & Lubricants and Special Tools & Tackles.

7.2.1. Plant and Equipment

The Bidder shall be responsible for supply of plant & equipment as described in the Technical Specifications including General Technical Specification and Drawings/ documents.

A separate list of division of scope of supplies under bidder scope of supplies is enclosed as annexure with technical specification.

7.2.2 Commissioning Spares

7.2.2.1 The Bidder shall, within the Contract Price, supply adequate commissioning spares required during Start up and commissioning along with the plant and equipment mentioned in Clause 7.4.1, hereof.

7.2.2.2 Should the commissioning spares found to be inadequate, the Bidder shall supply without any extra cost to the Buyer, additional required commissioning in spares within the time schedule to ensure that the Facilities are commissioned.

7.2.3 Operation and Maintenance Spares

7.2.3.1 The Bidder shall furnish list of spares required for the normal operation and maintenance of the Facilities, for a period of two years which will be required after commissioning, Price for



such lists shall be submitted at least 6 months before the schedules commissioning and shall be kept valid for a period of twelve months.

7.2.3.2 The list of spares along with itemized price shall include such details as:

- a) Item amount of equipment in Contract
- b) Designation.
- c) Number per item
- d) Materials indicating chemical composition and physical properties like fits and tolerance, finishes. Heat treatment etc.
- e) Manufacturing drawing number/ordering specification number/Vendor name & address.
- f) Catalogue reference.

7.2.3.3 The Bidder shall undertake to supply operation & maintenance spare at reasonable price at any time after later during the life of the Facilities on request from the Buyer.

7.2.4 Initial Fill and Lubricants.

7.2.4.1 The Bidder shall supply along with the Plant & equipment the oils, grease & lubricants required for the initial fill including flushing liquor and also chemicals for picking etc. well in advance, for commissioning of the Plant & Equipment.

7.2.4.2 The cost of such initial fill of oils including hydraulic oils grease and other lubricants is included in the Contract Price

7.2.4.3 These oils, grease & lubricants should be preferable of Indian origin, In the case of imported oil, grease & lubricants, specification for the same shall be furnished by the Bidder for procurement in future.

7.2.4.4 The Bidder shall also furnish consumption rates of all the consumables along with estimates annual requirement and ordering specification for timely procurement by the Buyer for future requirements.

7.2.5 Special Tools & Tackles

The Bidder shall supply along with the Plant & Equipment special tools & tackles. Instruments and appliances which will be required for erection, commissioning, operation and maintenance of the Facilities.

The Bidder shall provide ordering specification including the names of suppliers giving sufficient details to enable the Buyer to procure such special tools, tackles, instruments and appliances at a late date, when necessary, after successful commissioning.

7.3 Technical Services

7.3.1 Technical Services to be provided by the Bidder shall include the following amongst others.

- a) Basic design layout, engineering & drawings.
- b) Detailed designs, layout, engineering & drawings.
- c) Drawings / data for carrying out Plant Engineering and detailed design/drawings of civil, structural and services.



- d) technical services relating to planning procurement, manufacturing, inspection, expedition, packing, shipping storage, etc.
- e) Supervision of civil & structural engineering work & erection work including specialized erection service.
- f) technical consultation/ liaison /guidance relating to details design and plant engineering by Bidder's Sub-Bidders, Co-ordination relating to site work and other engineering work, feedback data and informant to the buyer / Consultant or the Bidder's scope of supply and services.
- g) Training of buyer's Personnel.
- h) Deputation of Foreign Experts for supervision of design and manufacture of Plant and Equipment as well as for supervision of erection, cold tests, commissioning, guarantee tests, etc.
- i) The Bidder shall assist in preparing application forms, providing necessary drawings, documents, test certification. Including necessary coordination with statutory and other concerned authorities.

7.4 Training of Buyer's Personnel

Subject to stipulates of the Contract, the Bidder shall arrange for training in India & abroad of the Buyer's personnel for operation, maintenance and other services of the facilities under the Bidder's scope of supply. The Bidder shall furnish the details of the training to be provided to the buyer's personnel for the approval of the buyer. Buyer may indicate the field of training and man-days to the Bidder for compliance.

7.4.1. The traveling and living expenses of the buyer's trainees shall be borne by the Buyer. The Buyer shall also arrange necessary travel documents for its trainees. The Bidder shall, however, assist in arranging visa and medical insurance for such trainees, wherever necessary.

7.5 Deputation of Foreign Experts for Supervision of Erection, Commissioning & Performance Guarantee Tests.

7.5.1 The Bidder shall depute at site its Foreign Experts to supervise the erection, commissioning and conducting of performance guarantee tests of the Plant & Equipment with its auxiliaries as contracted herein so as to establish to the Buyer that the guarantees as agreed by the Bidder in accordance with the appendix-5 of Contract Agreement are fully met.

7.5.2 Bio-date of the Foreign Engineers /experts shall be furnished by the Bidder to the Buyer / Engineer / Consultant for approval sufficiently in advance before their deputation The Bidder shall obtain at its own cost, passports, visas,-and other effects of any Experts / personnel who are non/residents of India, employed or engaged by him for work.

7.5.3 The Bidder further guarantees that, in case the number of man days for foreign Experts actually utilized exceeds the quantum indicated in Appendix-1 of the Contract Agreement, such additional Foreign Experts man day shall be deputed b the Bidder for completing its scope of work, but no extra payment for deputing such extra man days shall be payable by the Buyer unless additional deputation is required for the reasons attributable to the buyer.

7.5.4 If some of the Experts deputed for supervision of erection, commissioning and Performance Guarantee Tests are required by Buyer beyond the Final Acceptance of the Facilities (Post commissioning services) after fulfillment of all the Contractual obligations b the Bidder the Bidder shall provide such services in accordance with the terms and rates stipulated in the Contract or to be mutually agreed upon between the Buyer and the Bidder if not already provided for in the Contract.



7.5.5 In the event, Expert is not found of required skill / expertise, then the Employer will be the right to send the Expert back at the cost of the Bidder.

7.6 Demonstration of Performance Guarantee

7.6.1 The Bidder guarantees the equipment for its workmanship, materials, design and satisfactory performance in accordance with the relevant specifications & provisions of this Contract within his scope. The guarantee for performance includes individual items and systems for the ratings / output as well as for the integrated operation of the Plant. The Buyer, upon successful commissioning of each equipment / system will conduct performance guarantee tests to demonstrate the integrated operation of all equipment / systems.

7.6.2 The details of the performance guarantee test, test procedures, test schedules. For the demonstration of the performance guarantees shall be submitted to the Buyer which will be mutually agreed upon. Any subsequent deviation modification in the agreed schedule, if considered necessary, at a later date shall be mutually discussed and agreed upon.

7.6.3 After commencing a test, it shall be completed unless in the opinion of either Buyer of Bidder a safety hazard exists which necessitates shut down.

7.6.4. The Bidder shall **assist** the demonstrate the Performance Guarantee Tests and achieve the guaranteed production capacity in a sustained manner and also the other parameters as specified in Appendix -5 of the Contract Agreement.

8 Time for Completion.

8.1 The Bidder shall attain Completion of the Facilities as defined at Clause 1 hereof within the times stated in the Article-5 of Contract Agreement or within such extended time to which the Bidder has got from employer in written.

9 Bidder's Responsibilities as specified in technical specification.

9.1 The Bidder shall carryout Scope of Facilities as specified in Clause -7 with due care and diligences in accordance with the Contract.

9.2 The Bidder shall comply with the Indian Laws that may be in vogue as on Base Date of the Contract or may come into force during currency of the Contract, that binds upon the bidder and buyer.

10. Buyer's responsibilities

10.1The Buyer shall ensure the accuracy of information and / or data to be supplied by the Buyer, except when otherwise expressly stated in the Contract.

C. PAYMENT

11. Contract Prices

11.1 Price Basis



11.1.1 The Contract Price quoted in **US Dollar** shall comprise of basic price and all duties, taxes and levies, as may be applicable and prevailing on base date of the Contract.

11.1.2 The Contract Price does not include Customs Duty, Counter Veiling Duty, Cess and additional Duty of Customs, if any, on the imported plant & equipment specified in the Contract, for which prices indicated in Contract, the cost of such shall be borne by buyer.

Customs Duty, Counter Veiling Duty, Cess and Additional Duty of Customs, if any, for replacement against short supply, damaged, defective items, of such imported Plant & Equipment shall be borne by the Bidder.

11.1.3 The Contract Price does not include Income Tax & Research & Development (R&D) Cess and Service Tax on imported Engineering / Technical Services / Foreign Supervision & training by overseas experts for which prices indicated in the Contract are in foreign currencies.

11.1.4 The Contract Price includes price towards supervision by Foreign Experts for a number of man days specified in Appendix – 1, Should the actual man days deployed is more than the number indicated in **Appendix-1**, the Buyer shall not pay any extra price to the Bidder for extra man days unless additional deputation is requiring for the reasons attributable to the buyer.

11.1.5 The prices for imported supplies for which prices are quoted in foreign currency, are for delivery on **FOB Chinese seaport**.

11.1.6 Raw Water & Electrical Power required for Construction & Erection Work at site, shall be supplied by the Buyer free of cost. However, Electrical Power for fabrication work, if any, envisaged at site, shall be supplied metered & charged at the rates prevailing from time to time.

11.2 Firm Contract Price

11.2.1 The Price for items for which the price indicates in the Contract shall be firm and not subject to any escalation.

11.3 Adjustment of Price for Weights and Physical Quantities of Work

11.3.1 The Contract is for Basic and detailed engineering and supply of plant & equipment as specified in the Clause 7 hereof & Technical Specifications. The physical quantities and weights as given in the contract/billing schedule, are indicative only for the purpose of making progress payments on pro rata basis as per Clause 2.3 of Appendix-3 of Contract Agreement Neither the Bidder shall be entitled to get any additional price from the Employer nor the Employer is entitled to deduct any amount from the Contract Price due to variation in physical quantities and weights.

11.4 Billing and Dispatch Schedule

11.4.1 The Bidder within 60 (sixty) days of the Effective Date of the Contract shall submit detailed Billing Schedules (Breakup of the Price Schedule contained in the Appendix-1_ for the purpose of giving the value of Po for the consideration of Price Adjustment, if applicable, in accordance to the Appendix-4 and release of progress payments in accordance to Appendix-3, which will be scrutinized and approved b the Employer. The detailed Billing Schedules shall be based on Time Schedule included in Appendix-2 (Time Schedule) to the Contract Agreement and PERT network



as per Sub-Clause 18.1.1 hereof, for respective progress payment terms in accordance with Clause 2.3 of Appendix-3

11.4.2 Within 4 (four) months from the Effective Date of Contract, a detailed shipping schedule matching to billing schedule & time schedule, shall be submitted by the Bidder, indicating the break-up of the complete Plant & Equipment into shipment units with approximate weights and dimension and the respective dates upon which such units will be dispatched from the Bidder's and / or its Sub-Bidders works. The Bidder shall arrange for supplies of the Plant & Equipment in the logical sequence required for erection at site within the overall Time for Completion of the Facilities unless otherwise agreed to by the Employer.

12. Terms of Payment

12.0 General

- 12.1 In accordance with the provisions of the agreement, the buyer shall pay the bidder for the Supply of Equipment as broadly brought in the Agreement, on the basis of the Billing Schedule as per clause GCC.
- 12.2 All payments shall be made as specified in Clause no. 1.10 hereunder, directly by the buyer to the bidder unless otherwise provided in the Contract or agreed between the Parties.
- 12.3 The payments will be made in the currencies quoted by the bidder and included in the Contract unless otherwise agreed to between the Parties
- 12.4 All progress payments shall be regarded as payments by way of advance against the final payment only and not as payment for work completed and shall not preclude defective / imperfect / incomplete Works/ Supply of Equipment. It will not be considered as an admission by the buyer of the due performance of the Contract, or any part thereof by the bidder nor shall it preclude, determine or affect in any way the powers of the buyer under these conditions or in any way vary or affect the Contract.
- 12.5 An advance payment of ten percent (10%) of the Contract Price shall be paid by buyer to bidder by telegraphic transfer within thirty (30) days from the date of receipt of commercial invoice issued by bidder in four (4) original copies duly signed by bidder along with an Advance Bank guarantee of equivalent amount, in buyer's approved pro-forma from a bank approved by the buyer and in RBI's approved list valid till finishing FOB equipment supply and shall be on reducing balance basis based on the progress of the Supply of Equipment. The above commercial invoice and Bank Guarantee shall be issued by bidder within thirty (30) days of the Contract Effective Date by the Parties. The bidder after getting the payment shall submit a receipt for the same.
- 12.6 Eighty percent (80 %) of the Contract Price with respect to each and every part shipment for Supply of Equipment as well as related designs and drawings will be payable as per Billing and Shipping schedule approved by the buyer and against presentation of following dispatch documents proving that the goods are delivered F.O.B. Port of Shipment:
 - a) Full set (2) originals and two (2) copies of clean on-Board Bill of Lading or airway bill or house bill of lading or warehouse receipt.



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- b) Four (4) originals of invoice duly signed by the bidder.
 - c) One (1) original and three 3 copies of Certificate of country of origin issued by relative govt. authority.
 - d) Two (2) sets of Packing lists duly signed by the bidder; Packing list will be submitted by the bidder container wise/ Bulk wise.
 - e) Two (2) originals of Inspection or Test Certificate, issued by the bidder.
 - f) Two (2) copies of the Dispatch Clearance Certificate (DCC) issued by the buyer as per the General Conditions for supply of equipment.
 - g) Two (2) originals and two (2) Copies of Certificate from the bidder to the effect that contents in each case are neither more nor less than those entered in the invoice and packing list and quality of the goods is guaranteed as new and as per the relevant specification.
 - h) Certificate from bidder to the effect that immediately after shipment one complete set of non-negotiable shipping documents has been sent to buyer VCI and another complete set to the Clearing Agents by email. *(VCI will confirm)*
 - i) Certificate issued by the bidder stating that the wooden packing material has been treated to ISPM 15 or equivalent and IPPC special marking has been labelled on the wooden packing material or Declaration in the commercial invoice/packing list for consignment that article mentioned in the invoice/packing list have not been packed with packaging materials of plant origin.

For progress payments related to supply of Equipment against its delivery, the bidder shall raise their Customs invoice corresponding to 100% of the order value of relevant supplied equipment.

- 12.7 Five percent (5%) of Contract Price will be payable upon the issue of Provisional Acceptance Certificate of the plant as per the contract.

- a) Four (4) originals of Invoice duly signed by the bidder
- b) Four (4) copies of Provisional Acceptance certificate issued by the buyer

In case of delay in performance tests for reasons attributable to the buyer, payment for Provisional Acceptance shall be released on submission of

- a) One (1) original and six (6) copies of invoice duly signed by the bidder
- b) Six (6) copies of Declaration issued by the buyer stating that the performance tests for the Project have been delayed.
- c) A Bank Guarantee of 5% of Contract Price valid for twelve (12) months

- 12.8 The last 5% of Contract Price will be payable upon the issue of Final Acceptance Certificate as per the general conditions and on submission of

- a) Four (4) originals of Invoice duly signed by the bidder.



- b) Four (4) copies of Final Acceptance certificate issued by the buyer.

In case of delay in issue final Acceptance Certificate for reasons attributable to the buyer, payment for Final Acceptance shall be released on submission of

- a) One (1) original and six (6) copies of invoice duly signed by the bidder
- b) Six (6) copies of Declaration issued by the buyer stating that the final acceptance tests for the Project have been delayed.
- c) A Bank Guarantee of 5% of Contract Price valid for twelve (12) months

12.9 MODE OF PAYMENT (Foreign bidder)

12.9.1 The Payment as per Clauses 1.5, 1.7, 1.8, 1.9 hereof will be affected by the buyer by telegraphic transfer within thirty (30) days of receipt of correct invoice and other documents as stipulated in respective clauses.

12.9.2 Payments as per clause 1.6 are payable within Thirty (30) days against presentation of the stipulated documents through an irrevocable Letter of Credit as per the format and to be opened by a first-class bank in India in favour of the bidder. The Letter of Credit shall be subject to Uniform Customs and Practice for documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600).

12.9.3 In case the execution of the Agreement is not completed in time, the validity of the letters of credit shall be extended upon bidder's request as mutually agreed. However, in case extension is due to reasons attributable to the bidder, the relevant cost shall be borne by the bidder. In case the extension of Letter of Credit is required due to reason attributable to buyer, the bank charges for such extension shall be borne by the buyer.

13 Securities

Issuance of Securities (Bank Guarantees)

The Bank Guarantee for Foreign Currency payments shall be issued by Scheduled Commercial Bank based on counter Bank Guarantee to be issued by Overseas Bank acceptable to Schedule Indian Bank and the payable by Scheduled Commercial Bank or State Bank of India (SBI)

13.1 Advance bank Guarantee

The Bidder shall, with in 1 (one) month, after signing of Contract Agreement provide a Bank Guarantee (as per Annexure I hereof) for the release of advance payment (10% of the contract value) by the employer in the same currency or currencies. This should be valid up to defect Liability period. (Months 20). Foreign bidder shall submit the bank guarantee in foreign currency only.

13.2 Performance Bank Guarantee

The Bidder shall, with in 10 (ten) months, after signing of Contract Agreement provide a Bank Guarantee (as per Annexure I hereof) for the due performance of the Contract in amount



equivalent to 5% of the Contract Price in the same currency or currencies. This should be valid up to defect Liability period. (Months 34). Foreign bidder shall submit the bank guarantee in foreign currency only.

If the Bidder fails to provide the Performance bank guarantee, the Employer shall have the right to take risk purchase action including forfeiting the bid security, and get the Facilities executed by any other party at the risk and cost of the Bidder, after expiry of the notice for terminating the Contract for such default by the Bidder.

13.3 Bank Guarantee for release of payments towards Performance Guarantee Certificate.

13.3.1 The Bidder shall provide Bank Guarantee (as per Annexure – II hereof) to the Employer for an amount equivalent to the payment under Clause 23 hereof, in the same currency or currencies for a period of 12 months.

13.3.2 The Bank Guarantee shall be returned to the Bidders soon as the Performance Guarantee Test is successfully completed and the guaranteed output and other parameters are met, at the latest, however, on expiry of 12 months from the date of release of payment against Commissioning Certificate.

13.4 Bank Guarantee for release of payments towards Final Acceptance Certificate.

13.4.1 The Bidder shall provide Bank Guarantee as per Annexure –II hereof) to the Employer for an amount equivalent to the payment under **Clause 28** hereof, in the same currency or currencies valid for a period of 12 months.

13.5 Claims under Security (Bank Guarantee)

If the Employer considers itself entitled to any claim under any Bank Guarantee, it shall so not if the Bidder, specifying the default to the Bidder upon which it bases its claim, and it shall require the Bidder to remedy the same If the Bidder fails to remedy or to take steps to remedy the same within fourteen days of receipt of such notice, then the Employer shall be entitled to call Security.

The actual expenditure incurred by the Bidder for extension of BG/Additional Insurance Premium shall be reimbursed to the Bidder in case delay in Completion of project is not attributable to the Bidder.

14 Taxes & Duties

14.1 Except as otherwise specifically provided in the Contract, the Bidder shall bear and pay all taxes, duties, levies and charges assessed on the Bidder, its Sub-Bidders or their employees outside India.

All taxes & duties payable outside Indian in respect of performance of the contract shall be borne & paid by the Bidder. The Employer shall have no liability whatsoever on this account

14.2 Avoidance of Double Taxation.

In case the Overseas Bidder become entitled to receive or receives any tax exemptions, reductions, allowances or privileges in the foreign country on account of taxes & duties paid by the Employer in India, on behalf of the Overseas Bidder for imported supplies & services or due to



Avoidance of Double Taxation Treaty between Governments of Overseas Bidder's Country & Indian then the same shall have to be reimbursed by the Overseas Bidder to the Employer.

14.3 Service Tax & Education Cess

14.3.1 Service Tax and Education Cess shall be applicable as per prevalent Indian government rules.

14.3.2 Inside India, the relevant taxes of above shall be paid by Buyer.

14.4 Income Tax

Any Indian Income Tax Which Employer may be required to deduct by law or statute, shall be deducted at the source under Indian Income Tax Act or account of the Bidder. Employer shall provide the Bidder a certificate for such deduction of Tax. The Bidder shall indicate their Permanent Account Number with the relevant Income Tax Authority to Employer.

D. CONFIDENTIAL INFORMATION

15. Copyright

The copyrights in all drawings, documents and other materials containing data and information including drawings/ordering specifications / catalogues for last wearing parts furnished by the Bidder to the Employer shall remain vested in the Bidder, however the employer shall have the right to use all such drawings, documents and other material, data and information for execution of the Contract and operation and maintenance of the Facilities being subject of the Contract.

If the above-mentioned drawings and documents will be used in other projects, the buyer shall pay to the bidder, the price shall be discussed by both parties.

16. Confidential Information

16.1 The Employer and the Bidder shall keep confidential and shall not without the written consent of the other party hereto, divulge to any third party any document, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to during or following termination of the Contract Notwithstanding the above, the Bidder may furnish to its Sub-Bidder(s) such documents, data & other information it receives from the Employer to the extend required for Sub-Bidder(s) to perform its work under the Contract in which event the Bidder shall obtain from such Sub-Bidder(s) an undertaking of confidentiality similar to that imposed on the Bidder under this clause.

The buyer shall not use such documents, data and other information received from the bidder for any purpose other than the operation and maintenance of the Project. Similarly, the bidder shall not use such documents, data and other information received from the buyer for any purpose other than the design, procurement of Plant and Equipment, construction or such other work and services as are required for the performance of the Contract.



16.1 The Employer shall use such documents, data and other information received from the Bidder Installation, operation and maintenance of the Facilities.

16.2 The obligation of a party under Sub-Clauses 16.1 and 16.2 hereof, however shall not apply to that information which

- a) now or thereafter enters the public domain through no fault of that party.
- b) Can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto.
- c) Otherwise lawfully becomes available to that party from a third that has no obligation of confidentiality.

The above provisions of this clause shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Project or any part thereof.

The provisions of this clause shall survive termination, for whatever reason, of the Contract.

E WORK EXECUTION

17. Representatives

17.1 Engineer

17.1.1 The Employer shall notify the Bidder in writing the name of the Engineer. The Employer may from time to time appoint some other person as the Engineer in place of the person previously so appointed. The Engineer shall represent and act for the Employer at all times during the currency of the contract.

17.2 Bidder's Representative.

17.2.1 The Bidder shall appoint the Bidder's Representative with the consent of Employer

17.2.2 The Bidder shall not revoke the appointment of the Bidder's Representative without the Employer's prior written consent.

17.2.3 The Bidder's Representative shall represent and act for the Bidder at all times during the currency of the Contract and shall give to the Engineer all the Bidder's notices, instructions, information and all other communications under the Contract. All notices instructions information and all other communications given by the Employer or the Engineer to the Bidder under the Contract shall be given to the Bidder's Representative or, in its absence its deputy, except as herein otherwise provided.

18. Work Program

18.1 Program of Performance

18.1.1 Within three (3) weeks after the effective date of signing the Contract Agreement the Bidder shall prepare and submit to the Engineer the Master PERT Network (Hard & soft) for the performance of the Contract, showing the sequence in which, it proposes to design, manufacture



transport and pre-commission to achieve Acceptance of the Facilities in accordance with the Contract.

18.1.2 The Engineer shall approve the Master PERT Network after scrutiny and discussions with the Bidder with two (2) weeks of submission of Master PERT Network. The Bidder shall submit finalized Master PERT network in number of copies as required by the Employer

18.1.3 Bases on the finalized Master PERT Network as per Clause 18.1.3 hereof, the Bidder shall submit L-1 & L-2 Network for each unit of the Facilities progressively with five (5) to twelve (12) weeks from the effective Date of the Contract These Networks shall be approved by the Engineer within three (3) weeks o the submission

18.1.4 The Bidder shall update and revise the finalized Master PERT Network as and when appropriate or when required by the Engineer but without modification in the times for completion.

18.2 Progress Report

18.2.1 The Bidder shall submit to the Engineer a progress report along with Computerized Network Analysis Report ever /month

18.2.2The progress report shall be in a form acceptable to the Engineer and shall indicate (a) percentage completion achieved compared with the planned percentage completion for ach activity and (b) where any activity is behind the program, giving comments and they consequences and stating the corrective action being taken consequence and stating the connective action being taken.

18.2.3 Progress Review Meeting

Employer shall arrange progress review meeting periodically (not exceeding 3 months) to monitor the progress of the work.

18.3 Progress of Performance

18.3.1 If at any time the Bidder's actual progress falls behind the Program of Performance hereof, Orit becomes apparent that it will so fall behind. The Bidder shall, at the request of the Engineer, prepare and submit to the Engineer a revised program, taking into account the prevailing circumstances, and shall notify the Engineer of the steps being taken to expedite progress so as to attain Completion of the Facilities within the time for completion.

18.4 Manpower Requirement for Operation & Maintenance of Facilities

18.4.1 The Bidder shall submit to the Employer within a reasonable period but not later than six (6) months from the effective Date of the Contract the recommended manpower requirement category wise and unit wise for the regular operation of the plant.

18.5 Training

18.5.1 The Bidder shall identify the key positions and number of persons both in maintenance and operations department to be trained for efficient running of the plan

18.5.2 The Bidder shall arrange for training of the personnel of the Employer, abroad / in India for the man-days indicated in Table -1 of Appemdix-1 of Contract Agreement.



19 Subcontracting

19.1 The Bidder shall submit list of Vendors for item under his scope of supply for employer's scrutiny and approval. Any change / addition in the vendor list shall require prior approval of the employer.

20 Design and Engineering**20.1 Specifications and Drawings**

20.1.1 The Bidder shall execute the basic and detailed design and the engineering working compliance with the provisions of the Contract or where not so specified, in accordance with good engineering practice.

20.1.2 The Bidder shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Engineer / Consultant or not bidder shall be solely responsible for any loss damages caused due to procurement of improper stock detective plant and equipment by buyer based on drawing stock documents with discrepancies, errors supplied by bidders.

20.2 Codes and Standards

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition the revised version of such codes and standards correct at the date of bid submission shall apply unless otherwise specified During Contract execution, any changes in such codes and standards shall be applied after approval by the Engineer/ Consultant.

20.3 Approval / Review of Technical Documents by Engineer / Consultant

20.3.1 The Bidder shall prepare (or cause its sub Bidders to prepare) and furnish to the Engineer / Consultant by **Microsoft FTP** the drawings / documents listed at Sub-Clause 2.2 of Appendix -2 to the Contract Agreement for approval or review as specified and in accordance with the requirements of Sub-clause 18.1 (Program of Performance) hereof.

20.3.2 To enable the Employer to accord approved and to review documents the Bidder shall submit back-up data / drawings / basic calculations / assumptions as may be required by the Employer / Consultant.

20.3.3 The Engineer / Consultant's approval with or without modification of the document furnished by the Bidder, shall not relieve the Bidder of any responsibility or liability imposed upon it by any provisions of the contract.

21. Inspection & Testing

21.1 All necessary tests and inspection shall be carried out of the materials and equipment as per QAP/ Indian Standard / International code & practice for testing to ensure the quality of material and workmanship. The Employer/Engineer/Consultant shall have option to



witness all the tests. In case of waiver given by Employer, Test certificates for all tests shall be furnished to employer prior to dispatch clearance.

21.2 The successful bidder shall offer all necessary facilities for inspection by employer or his authorized representative. The Bidder shall give fifteen (15) days advance intimation regarding the readiness for inspection and tests.

21.3 No material /equipment shall be dispatched without a provisional acceptance certificate to be supplied by employer. However, mill and shop inspection shall not relieve the supplier of responsibility for replacing at his cost any defective part/material/ equipment and repairing any defective workmanship that may be discovered at site.

21.4 Material which shows injurious defects subsequent to its acceptance, at the manufacturer's works or during erection and testing at site, shall be rejected and the successful bidder notified to their effect and he would be required to furnish new materials or make suitable repairs at his cost within a reasonable time.

21.5 Inspection & Testing of material shall be as per Quality Assurance Plan. Samples shall be taken as per **BIS codes** or equivalent of international standard as required.

21.6 Employer reserves the right to appoint any third party to be associated for testing and inspection of the materials

22. Preliminary Acceptance

22.1 On completion of erection of the Facilities under supervision by the Bidder, trial runs for individual equipment/units shall be conducted jointly by the Buyer & Bidder to prove the facilities.

Trial runs shall comprise idle, no-load and part-load trial runs, as applicable.

Trial runs shall be conducted by the Buyer & Bidder under its responsibility with participation of Employer's supervisory personnel and skilled operating.

On successful completion of trial runs and liquidation of the defects and deficiencies Bidder shall notify the Employer in writing for conducting integrated trial runs.

22.2 On receipt of the notice Employer shall deploy the necessary operating personnel and provide raw materials, utilities & services as per **Clause 7** hereof.

22.3 As mutually agreed between the Bidder and the Employer, the Bidder shall conduct Pre-Commissioning including integrated trial runs of the Facilities.

22.3.1 In case of Facilities involving operation at high temperature, trial runs on individual equipment/ units and integrated trial runs shall be conducted in cold condition.

22.4 As soon as all works in respect of integrated Pre-Commissioning are completed and the Facilities are ready for Commissioning, the Bidder shall so notify the Engineer in writing.

22.5 The Engineer shall, within seven (7) days after receipt of the Bidder's notice either issue a Preliminary Acceptance Certificate (PAC) stating that the Facilities are fit for start-up and commissioning, as at the date of the Bidder's notice or notify the Bidder in writing of any defect and/or deficiencies.



If the Engineer notifies the Bidder of any defects and/or deficiencies, the Bidder shall then correct such defects and/or deficiencies, and shall repeat the procedure described in **Sub-Clause 24.4** hereof.

If the Engineer is satisfied that the defects and/or deficiencies, indicated/listed by the Employer to the Bidder have been liquidated and the Facilities are fit for start-up and commissioning, the Engineer shall, within seven (7) days after receipt of the Bidder's notice, issue a Preliminary Acceptance Certificate.

23. Performance Guarantee Test

23.1 The Bidder shall guarantee that during the performance guarantee test, the Facilities and all parts thereof within his scope shall attain the performance guarantee parameters specified in Appendix-5.

23.2 If, for reasons attributable to the bidder, the performance guarantee parameters specified in Appendix-5 to the Contract Agreement are not attained either in whole or in part, after first campaign of performance guarantee test, the Bidder shall at its own cost make good any deficiencies within his scope and the Bidder shall be allowed by the Employer to repeat the performance guarantee tests twice after first campaign of guarantee test and the Bidder must establish the performance guarantee parameters.

23.3 In case the Bidder expresses its inability to achieve the performance guarantee parameters but attains above the minimum acceptance level of performance guarantee parameters, as specified in Appendix-5 to the Contract Agreement, either in whole or in part in spite of repeated performance guarantee tests conducted by the Buyer & Bidder, the Employer shall recover the amount of Liquidated Damages, but not by way of penalty, by making deductions from the Bidder's account or as a last resort by encashment of Bidder's Bank Guarantee(s) at the rate specified in Appendix-5 to the Contract Agreement for the respective items, subject to a maximum of five percent (5%) of the Contract Price, in respect of the failure to meet the minimum level of performance guarantee in accordance with the provisions in Appendix-5 to Contract Agreement.

23.4 The Employer shall not reject the plant & equipment after commissioning and achievement of minimum acceptance level of performance guarantee parameters. After successful commissioning and achievement of the minimum acceptance level of performance guarantee parameters, the total liability of the bidder on account of delay and demonstration of maximum PG parameters shall not be more than Liquidated Damages. In case even after all possible repairs and replacements the Bidder fails to attain the minimum level of performance guarantee parameters, the Employer may reject the Facility and recover the entire cost paid to the Bidder or alternatively the Employer may proceed for commercial settlement with the Bidder for acceptance of the Facilities at the negotiated Price.

23.5 In case, the performance guarantee test has not been carried out for reasons attributable to the Employer within a period of six month from the date of commissioning mentioned in Commissioning Certificate, the Bidder shall receive payment towards Performance Guarantee, against Bank Guarantee of equal value to be valid for a period of 12 (twelve) months beyond aforesaid six (6) months period and conducting of the Performance Guarantee Tests and its commercial implications, if any, shall be mutually finalized between the parties.



24. Final Acceptance

24.1 Final Acceptance shall occur in respect of the Facilities when:

a) The performance guarantee tests have been successfully completed or the number of Liquidated Damages, if recoverable, has been recovered by the Employer from the Bidder.

b) The Bidder has submitted all final drawings & documents for the respective Facilities in accordance with the provisions of this Contract as given in Appendix-2.

c) The Bidder has fulfilled all the obligations under the Contract.

24.2 At any time after the events set out in **Sub-Clause 24.1** hereof, have occurred, the Bidder may give a notice to the Engineer requesting for the issue of Final Acceptance Certificate (FAC).

24.3 The Engineer shall, within seven (7) days after receipt of the Bidder's notice, issue a Final Acceptance Certificate.

24.4 Payment for Final Acceptance may be released against BG of equal value valid for 12 months after fulfillment of clause-24.1 a & b.

F. GUARANTEES AND LIABILITIES**25. Completion Time Guarantee**

25.1 The Bidder guarantees that it shall attain "Completion of the Facilities" as defined in appendix enclosed with ITB, within the Time for Completion.

25.2 Bonus for completion of the Facilities before Time Schedule

If the Bidder attains Completion of the Facilities before the Time for Completion, the Employer shall pay to the Bidder a bonus at the rate of 0.5% of the Contract Price plus escalation, if any, excluding taxes and duties per complete month ahead of Time Schedule up to a maximum of 2.5% of the Contract Price plus escalation, if any, excluding taxes and duties.

26. Defect Liability

26.1 The Bidder shall warrant that the Facilities or any part thereof shall be free from defects in the design, engineering and workmanship of the Plant & Equipment.

26.2 The Defect Liability Period shall be twelve (12) months from the date of commissioning mentioned in the Commissioning Certificate or eighteen (18) months from the date of Preliminary Acceptance Certificate (PAC), whichever is earlier, provided the delay in commissioning after PAC is not due to reasons attributable to the Bidder.

If during the Defect Liability Period any defect be found in the design, engineering, and workmanship by the Bidder, the Bidder shall promptly, in consultation and agreement with the Employer and at its cost, repair, replace or otherwise make good such defect as well as any damage to the Facilities caused by such defect.

26.3 If the repair, replacement or making good is of such a character that it may affect the efficiency of the Facilities or any part thereof, the Employer may give to the Bidder a notice requiring that tests of the defective part of the facilities shall be made by the Bidder immediately upon completion of such remedial work, whereupon the Bidder shall carry out such tests.



If such part fails the tests, the Bidder shall carry out further repair, replacement or making good (as the case may be) until that part of the Facilities passes such tests. The tests shall be agreed upon by the Employer and the Bidder.

If the Bidder does not commence the rectification either by repair or replacement of such defects within 30 (thirty) days from the date of notice by the Employer or does not complete the rectification with reasonable diligence and within a reasonable time, the Employer may, at its option, rectify the defects at the Bidders expense. The Employer shall, in such case, deduct from payment due to the Bidder the expenses incurred by the Employer for remedy of such defects without prejudice to the other rights of the Employer under the Contract.

26.4 If the facilities or any part thereof cannot be used by reason of such defect and/or making good of such defect Liability Period of the Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the employer because of any of the aforesaid reasons.

26.5 In addition, the Bidder shall also provide an extended warranty for any such replaced or repaired component of the Facilities for the period of minimum 12 months but not more than 36 months cumulatively or as it may be stipulated in Contract Technical Specifications.

27. Patent Indemnity

27.1 The Bidder shall, 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 whatsoever 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 by reason of the installation of the Facilities by the Bidder.

Such indemnity shall not cover any use of the Facilities or any part thereof other than for the purpose indicated by or to be reasonably inferred by from the contract, any infringement resulting from the use of the Facilities or any part thereof, or any products thereby in association or combination with any other equipment, plant or materials not supplied by the Bidder, pursuant to the Contract Agreement.

27.2 If any proceedings are brought or any claim is made against the Employer arising out of the matters, the Employer shall promptly give the Bidder a notice thereof, and the Bidder 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.

If the bidder 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 at the risk & cost of the Bidder.

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

27.3 The employer shall indemnify and bid harmless the Bidder and its employees, officers and Sub bidder from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Bidder 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 by the Employer.

28.0 FORCE MAJEURE

If at any time during the continuance of this Contract the performance by either party under this Contract shall be prevented by reasons of any declared war, hostility, acts of the public or enemy, civil commotion, sabotage, fire, flood, earthquake, explosion, epidemic, quarantine restrictions or other Acts of God, (hereinafter referred to as 'eventuality') affecting the performance and respective obligation of the parties provided that notice of the happening of any such eventuality is given by either party to the other within fifteen (15) days from the date of the occurrence of such eventuality, neither party shall, by reason of such eventuality be entitled to terminate this Contract, nor shall either party have any claim for damages against the other in respect of such non-performance and the work under this Contract. The performance shall be resumed as soon as practicable after such eventuality has come to an end or ceased to exist. Under such circumstances the contractual delivery period shall be extended by a period equal to that during which such eventuality operated plus an additional period, if any, as may be considered reasonable by buyer. Whether the eventuality has come to an end or ceased to exist will be deliberated and mutually settled. Should one or both parties be prevented from fulfilling their contractual obligations by a state of force majeure lasting continuously for a period of at least three (3) months, both the parties shall consult each other regarding the further implementation of the Contract, provided always that, if no mutually agreed arrangement is arrived at within a period of one (1) month from the expiry of the three (3) months referred to above, the Contract shall be deemed to have expired at the end of the said three (3) months referred to above. The above-mentioned expiry of the Contract will imply that both the parties have the obligation to reach an Agreement regarding the winding up and financial settlement of the Contract.

29.0 SUSPENSION AND TERMINATION

29.1 SUSPENSION

29.1.1 The buyer may, by notice to the bidder, order the bidder to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the Effective Date of the suspension and the reasons therefor. The bidder shall thereupon suspend performance of such obligation until ordered in writing to resume such performance by the buyer. All work so stopped shall be resumed by the bidder based on a schedule to be mutually agreed upon between the buyer and the bidder.

Such suspension shall not exceed in aggregate for a period of seven (7) months. However, if the period of suspension exceeds seven (7) months, the cost and time aspect shall be mutually discussed and decided.

29.1.2 For any work, which is executed by the bidder during the suspension, the buyer shall neither pay the bidder nor shall be liable to the bidder for any damage or loss caused by such suspension.

29.2 TERMINATION

29.2.1 TERMINATION FOR BUYERS CONVENIENCE



29.2.1.1 The buyer may at any time terminate the Contract for any reason by giving the bidder a notice of termination that refers to **Clause 29.2.1** hereof.

29.2.1.2 Upon receipt of the notice of termination under **Sub-Clause 29.2.1.1** hereof, the bidder shall either immediately or upon the date specified in the notice of termination

- a) cease all further work, except for such work as the buyer may specify in the notice of termination for the sole purpose of protecting that part of the Project already executed, or any work required to leave the Site in a clean and safe condition
- b) terminate all subcontracts, except those to be assigned to the buyer pursuant to paragraph (d) (ii) below
- c) remove all bidder's Equipment from the Site, repatriate the bidder's and its Sub-bidders' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition
- d) In addition, the bidder, subject to the payment specified in **Sub-Clause 29.2.1.3** hereof, shall
 - (i) deliver to the buyer the parts of the Project executed by the bidder up to the date of termination
 - (ii) to the extent legally possible, assign to the buyer all right, title and benefit of the bidder to the Project and to the Plant and Equipment as at the date of termination, and, as may be required by the buyer, in any subcontracts concluded between the bidder and its Sub-bidders
 - (iii) deliver to the buyer all drawings, specifications, Equipment and other documents prepared by the bidder or its Sub-bidders as at the date of termination in connection with the Project.

29.2.1.3 In the event of the termination of the Contract under **Sub-Clause 29.2.1.1** hereof, the buyer shall pay to the bidder only the direct cost incurred by bidder, the properly attributable to the parts of the Project executed by the bidder as of the date of termination.

29.2.2 TERMINATION FOR BIDDER

29.2.2.1 The buyer, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefor to the bidder, referring to this **Sub-Clause 29.2.2** hereof:

- a) if the bidder becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the bidder is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the bidder takes or suffers any other analogous action in consequence of debt.

29.2.2.2 If the bidder

- a) has abandoned or repudiated the Contract



-
- b) has without valid reason failed to commence work on the Project promptly or has suspended the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from the buyer to proceed
 - c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause
 - d) refuses or is unable to provide sufficient / adequate resources to execute and complete the Project, at rates of progress that give reasonable assurance to the buyer that the bidder can attain Completion of the Project by the Time for Completion.

then the buyer may, without prejudice to any other rights it may possess under the Contract, give a notice to the bidder stating the nature of the default and requiring the bidder to remedy the same. If the bidder fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the buyer may terminate the Contract forthwith by giving a notice of termination to the bidder that refers to this **Sub-Clause 29.2.2** hereof.

29.2.2.3 Upon receipt of the notice of termination under **Sub-Clauses 29.2.2.1 or 29.2.2.2** hereof, the bidder shall, either immediately or upon such date as is specified in the notice of termination,

- a) cease all further work, except for such work as the buyer may specify in the notice of termination for the sole purpose of protecting that part of the Project already executed, or any work required to leave the Site in safe condition
- b) terminate all subcontracts, except those to be assigned to the buyer pursuant to paragraph (d) below
- c) deliver to the buyer the parts of the Equipment executed by the bidder up to the date of termination
- d) to the extent legally possible, assign to the buyer all right, title and benefit of the bidder to the Project as at the date of termination, and, as may be required by the buyer, in any subcontracts concluded between the bidder and its Sub-bidders
- e) deliver to the buyer all drawings, specifications and other documents prepared by the bidder or its Sub-bidders as at the date of termination in connection with the Project.

29.2.2.4 The buyer may complete the Project itself or by employing any third party at the risk and cost of the bidder. The buyer may, to the exclusion of any right of the bidder over the same, take over and use any design, services and inputs in connection with the Project for such reasonable period as the buyer considers expedient for the Project.

29.2.2.5 Subject to **Sub-Clause 29.2.2.6** hereof, the bidder shall be entitled to be paid the Price attributable to the Part of the services executed as at the date of termination. Any sums due to the buyer from the bidder accruing prior to the date of termination shall be deducted from the amount to be paid to the bidder under this Contract.

29.2.2.6 If the buyer completes the Project, the cost of completing the Project by the buyer shall be determined.



If the sum that the bidder is entitled to be paid, pursuant to Sub-Clause 29.2.2.5 hereof, plus the reasonable costs incurred by the buyer in completing the Project, exceeds the Contract Price, the bidder shall be liable for such excess.

If such excess is greater than the sums due to the bidder under Sub-Clause 29.2.2.5 hereof, the bidder shall pay the balance to the buyer, and if such excess is less than the sums due the bidder under Sub-Clause 29.2.2.5 hereof, the buyer shall pay the balance to the bidder.

The buyer and bidder shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

- 29.2.3 In this Clause 29.2 hereof, the expression “Project executed” shall include all work/ services executed, by the bidder and used or intended to be used for the purpose of the Project, up to and including the date of termination.
- 29.2.4 In this Clause 29 hereof, in calculating any money due from the buyer to the bidder, account shall be taken of any sum previously paid by the buyer to the bidder under the Contract, including any advance payment paid.

**ANNEXURE-1****ADVANCE BANK GUARANTEE**

(On Non-Judicial Stamp paper of appropriate value)

----- (Name of the Bank)

Address-----
-----**Guarantee No.**-----**A/c. Messrs**----- **(Name of Bidder)****Date of Expiry**-----**Limit to liability (Currency & amount)**-----**Invitation for bid no.**----- **dated**-----**For**----- **(name of Facilities)****Sub: Advance Bank Guarantee.****To,****Date:-----2023**

VCI CHEMICAL INDUSTRIES PRIVATE LIMITED

49, Industrial Estate, Kalpi Road

Kanpur (U.P) 208012

Dear Sir,

In consideration of the _____ (name of Employer) (hereinafter called "Employer") which expression shall unless repugnant to the subject or context include his successors and assigns having agreed to exempt M/s. _____ (hereinafter called "Bidder") from demand under the terms & conditions of the tender (hereinafter called the said "Bidding document") issued by the Employer vide No. _____ for the works _____ (Name of the Facilities) for advance payment in the form of Telegraphic Transfer for the due fulfillment by the Bidder of the terms and conditions contained in the said Bidding document including any amendments thereto on production of Bank Guarantee for USD. / ____ **(US dollar / or equivalent amount in any freely convertible foreign currency) (____ only) (Figure in words).**

1. We _____ (name of the Bank) do hereby expressly irrevocably and unreservedly undertake to unconditionally pay to you merely on your written demand, without referring it to the Bidder and without protest and demur an amount not exceeding _____ (currency and amount). Any such demand made on us shall be conclusive as regards the amount due and payable by us under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding _____
2. Notwithstanding anything to the contrary, we agree that your decision as to whether the Bidder has committed a breach of any terms and conditions of the contract shall be final and binding on us and we shall not be entitled to ask you to establish your claims or claims under this Guarantee but shall pay the same forthwith without any objection or excuse.
3. We undertake to pay to you any money so demanded notwithstanding any dispute or disputes raised by the Bidder(s)/supplier(s) in any suit or proceeding pending before any court or Tribunal or arbitration relating thereto, our liability under these presents being absolute and unequivocal.
The payment so made by us under this guarantee shall be a valid discharge of our liability for payment there under.



4. This guarantee shall come into force from the date of signing contract and shall remain irrevocably valid and inforce initially upto 20 months
5. We _____ Bank Ltd. Further agree with you that you shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Bidding document and we shall not be relieved from our liability by reason of any such variation.
6. It shall not be necessary for the Employer to proceed against the Bidder before proceeding the Bank and the Guarantee herein contained shall be enforceable against the Bank, notwithstanding any security which Employer may have obtained from the Bidder at this time when proceedings are taken against Bank hereunder be outstanding or unrealized.
7. We _____ Bank Ltd. Further undertake to unconditionally pay the amount claimed by the Employer merely on demand and without protest or demur to the extent aforesaid.
8. Notwithstanding anything contained herein before our liability under this guarantee is restricted upto a sum _____ (currency and amount) and shall expire on _____ unless a claim or demand is made on us in writing within the three months of expiry date all your rights shall be forfeited and we shall stand relieved and discharged from our liabilities hereunder.
9. We, the said Bank lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Employer in writing and agree that any change in the constitution of the Employer or the Bidder or the said bank shall not discharge our liability hereunder dated _____ day of _____ 200 .____ for _____ Bank Ltd.

Yours faithfully,

For _____ **(Name of the Bank)**



ANNEXURE - II

PERFORMANCE BANK GUARANTEE

(To be executed on Non-Judicial Stamp Paper of appropriate value)

..... (Name of the Bank)

Address

Guarantee No.

A/c Messrs (Name of Bidder)

Date of Expiry

Limit to liability (currency & amount)

Contract No.

For (Name of Facilities)

Subject : Performance Bank Guarantee.

Date 2023

To
.....

Dear Sir,

Date:-----

We refer to the Contract Agreement (hereinafter called the "Contract") Reference No. Dated between you and M/s. (Name of the Bidder) (hereinafter called the "Bidder") for the design, supply of plant & equipment and supervision during erection, testing, commissioning and performance guarantee tests of . (Name of the Facilities)

Whereas the Bidder has undertaken to produce a Bank guarantee under the Contract including any amendment thereto, to secure its obligations to you for the performance of Contract including the guarantees and warranty of the Facilities & the equipment supplied.

1. We (Name of the Bank) do hereby expressly irrevocably and unreservedly undertake to unconditionally pay to you merely on your written demand, without referring it to the Bidder and without protest and demur an amount not exceeding (currency and amount). Any such demand made on us shall be conclusive as regards the amount due and payable by us under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding
2. Notwithstanding anything to the contrary we agree that your decision as to whether the Bidder has committed a breach of any terms and conditions of the contract shall be final and binding on us and we shall not be entitled to ask you to establish your claim or claims under this Guarantee but shall pay the same forthwith without any objection or excuse.
3. We undertake to pay to you any money so demanded notwithstanding any dispute or



disputes raised by the Bidder(s) / supplier(s) in any suit or proceeding pending before any court or Tribunal or arbitration relating thereto, our liability under these presents being absolute and unequivocal.

The payment so made by us under this Guarantee shall be a valid discharge of our liability for payment thereunder.

4. This guarantee shall come into force from the date of issue of this guarantee and shall remain irrevocably valid and inforce initially upto 10 months.
5. This guarantee shall not in any way be affected by you taking any securities from the Bidder or by the winding up, dissolution, insolvency or death as the case may be of the Bidder. We shall not be entitled to proceed against the assets of the Bidder at your site
6. In order to give full effect to the Guarantee herein contained, you shall be entitled to act as if we were your principal debtors in respect of all your claims against the Bidder, hereby guaranteed by us as aforesaid and we hereby expressly waive all our suretyship and other rights, if any, which are in any way inconsistent with the above or any other provisions of this Guarantee.
7. This guarantee is in addition to any other guarantee or guarantees given to you by us.
8. This guarantee shall not be discharged by any change in the constitution of the Bidder or us, nor shall it be affected by any change in your constitution or by any amalgamation or absorption thereof or therewith but will ensure for and be available to and effaceable by the absorbing or amalgamated company or concern.
9. Notwithstanding anything contained herein before our liability under this guarantee is restricted upto a sum (currency and amount) and shall expire on unless a claim or demand is made on us in writing within three months of the expiry date all your rights shall be forfeited and we shall stand relieved and discharged from our liabilities hereunder.
10. We have full power to sign this guarantee under the delegations of powers and notification made under general regulation and resolutions in this regard.

Your faithfully

Dated day of 2023.
For
(Name of the Bank)



BANK GUARANTEE FOR RELEASE OF PAYMENT AGAINST COMMISSIONING
CERTIFICATE/ PERFORMANCE GUARANTEE CERTIFICATE/ FINAL
ACCEPTANCE CERTIFICATE

ANNEXURE - III

(To be executed on Non-Judicial Stamp Paper of appropriate value)

..... (Name of the Bank)
Address

Guarantee No.

A/c Messrs (Name of Bidder)

Date of Expiry

Limit to liability (currency & amount)
.....

Contract No.

For (Name of Facilities)

Sub: Release of Payment against Commissioning Certificate/ Performance Guarantee
Certificate/ Final Acceptance Certificate.

Date 2023.

To

.....
.....
.....
[Name and Address of Employer]

Dear Sir,

We refer to the Contract Agreement (hereinafter called the "Contract") Reference No. Dated between you and M/s. (Name of the Bidder) (hereinafter called the "Bidder") for the design, civil, manufacture, supply of plant & equipment, refractories and structures, storage, insurance & handling, erection, testing, commissioning and performance guarantee tests of. (Name of the Facilities).

Whereas, the Bidder has undertaken to produce additional Bank guarantee under the provisions of the Contract to secure Bidder's obligations to you for conducting the Commissioning/ Performance Guarantee Tests/ Final Acceptance Certificate (FAC) [strikeout whichever is not applicable] as per the provision of the Contract.

1. We (Name of the Bank) do hereby expressly irrevocably and unreservedly undertake to unconditionally pay to you merely on your written demand, without referring it to the Bidder and without protest and demur an amount not exceeding (currency and amount). Any such demand made on us shall be conclusive as regards the amount due and payable by us under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding
2. Notwithstanding anything to the contrary, we agree that your decision as to whether the



Bidder has committed a breach of any terms and conditions of the contract shall be final and binding on us and we shall not be entitled to ask you to establish your claim or claims under this Guarantee but shall pay the same forthwith without any objection or excuse.

3. We undertake to pay to you any money so demanded notwithstanding any dispute or disputes raised by the Bidder(s) / supplier(s) in any suit or proceeding pending before any court or Tribunal or arbitration relating thereto, our liability under these presents being absolute and unequivocal.

The payment so made by us under this Guarantee shall be a valid discharge of our liability for payment thereunder.

4. This guarantee shall come into force from the date of issue of this guarantee and shall remain irrevocably valid and in force upto the issue of the Commissioning/ Performance

Guarantee Tests/ Final Acceptance Certificate (FAC)

5. This guarantee shall not in any way be affected by you taking any securities from the Bidder or by the winding up, dissolution, insolvency or death as the case may be of the Bidder. We shall not be entitled to proceed against the assets of the Bidder at your site
6. In order to give full effect to the Guarantee herein contained, you shall be entitled to act as if we were your principal debtors in respect of all your claims against the Bidder, hereby guaranteed by us as aforesaid and we hereby expressly waive all our suretyship and other rights, if any, which are in any way inconsistent with the above or any other provisions of this Guarantee.
7. This guarantee is in addition to any other guarantee or guarantees given to you by us
8. This guarantee shall not be discharged by any change in the constitution of the Bidder or us, nor shall it be affected by any change in your constitution or by any amalgamation or absorption thereof or therewith but will ensure for and be available to and effaceable by the absorbing or amalgamated company or concern.
9. Notwithstanding anything contained herein before our liability under this guarantee is restricted upto a sum (currency and amount) and shall expire on unless a claim or demand is made on us in writing within three months of the expiry date all your rights shall be forfeited and we shall stand relieved and discharged from our liabilities hereunder.
10. We have full power to sign this guarantee under the delegations of powers and notification made under general regulation and resolutions in this regard.

Your faithfully

Dated day of 2023.
For
(Name of the Bank)



ANNEXURE – IV

FORM OF PRELIMINARY ACCEPTANCE CERTIFICATE

Ref No. : _____

Date : _____

To :

.....

[Name and address of Bidder]

Contract Agreement No : _____

[Name of the Facilities]

Dear Sirs,

Pursuant to Clause 22 (Preliminary Acceptance) of the General Conditions of the Contract entered into between yourselves and the Employer dated _____ [date], relating to the _____ [brief description of the facilities], we hereby notify you that the erection, testing & trial runs of the individual unit of the following part(s) of the Facilities was completed successfully on the date specified below. The Facilities are fit for start-up and commissioning. However, you shall liquidate all the outstanding defects and / or deficiencies and complete the balance items listed in the attachment hereto, as soon as possible, so that the Facilities are fully in accordance with the requirements of the Contract and commissioning activities of the Facilities can be started. Further, you shall be fully responsible for care and custody of the Facilities and the risk of loss thereof till the issue of commissioning certificate in terms of the Contract.

1. Description of the Facilities or part thereof : _____ [description]

2. Date of Completion of Trial runs: _____ [date]

This letter does not relieve you of your obligation to complete the execution, commissioning, establishment of performance guarantee parameters of the Facilities in accordance with the Contract nor of your obligations during the Defects Liability Period.

Yours faithfully,

 Title
 (Project Manager)



FORM OF FINAL ACCEPTANCE CERTIFICATE

ANNEXURE – V

Ref No. : _____

Date : _____

To :

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

[Name and address of Bidder]

Contract Agreement No : _____

[Name of the Facilities]

Dear Sirs,

Pursuant to Clause 25 (Final Acceptance of the Facilities) of the General Conditions of the Contract entered into between yourselves and the Employer dated _____ [date], relating to the _____ [brief description of the facilities], we hereby notify you that the following part(s) of the Facilities was (were) completed satisfactorily including completion of Defects Liability Period of twelve months after commissioning, on the date specified below, and that, in accordance with the terms of the Contract.

1. Description of the Facilities or part thereof : _____ [description]
2. Date of Completion : _____ [date]

Yours faithfully,

Title