

# Section IV. Contract Forms

## Table of Forms

A. Letter of Acceptance .....	CF-2
B. Contract Agreement .....	CF-3
C. Conditions of Contract .....	CF-5
D. Performance Security .....	CF-18
E. Advanced Payment Security .....	CF-21



## A. Letter of Acceptance

*[on letterhead of the Buyer]*

*[insert date]*

To: *[insert name and address of the Supplier]*

Subject: *[Notification of Award Contract No]*

This is to notify you that your Bid dated *[insert date]* for execution of the *[insert name of the Contract and identification number]* for the accepted Contract Price of the equivalent of *[insert amount in numbers and words] [insert name of currency]*, as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by *[insert name of the Buyer]*.

You are requested to sign, date and return to us the Contract Agreement attached hereto, within twenty-eight (28) days of receipt of this Letter, in accordance with Clause 34 of the Instruction to Bidders included in the Bidding Documents.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of the Buyer: .....



## B. Contract Agreement

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

### BETWEEN

- (1) *[insert name of Buyer]*, a *[insert description of type of legal entity, for example, an agency of the Ministry of {insert name of Ministry}, of the Government of {insert name of Buyer's Country}, or corporation incorporated under the laws of {insert name of Buyer's Country}]* and having its principal place of business at *[insert address of Buyer]* (hereinafter called “the Buyer”), and
- (2) *[insert name of Supplier]*, a corporation incorporated under the laws of *[insert country of Supplier]* and having its principal place of business at *[insert address of Supplier]* (hereinafter called “the Supplier”).

WHEREAS the Government of *[insert name of the Recipient country]* has received a grant from the Japan International Cooperation Agency (hereinafter called “JICA”) towards the cost of *[insert name of Project]* (hereinafter called “the Project”), on the basis of the Grant Agreement (hereinafter called “G/A”) signed on *[insert day, month and year]* between the Government of *[insert name of the Recipient country]* and JICA concerning the Project.

WHEREAS the Buyer invited bids for certain Goods and Related Services, viz., *[insert brief description of Goods and Related Services]* for the Project hereof, and has accepted a Bid by the Supplier for the supply of those Goods and Related Services in the sum of *[insert Contract Price in words and figures, expressed in the Contract currency]* (hereinafter called “the Contract Price”).

The Buyer and the Supplier agree as follows:

1. In this Contract Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract.
2. The following documents shall constitute the Contract between the Buyer and the Supplier, and each shall be read and construed as an integral part of the Contract:
  - (a) This Contract Agreement
  - (b) Conditions of Contract
  - (c) Price Schedules
  - (d) Bidding Forms submitted with the Bid
  - (e) Technical Specifications and Drawings
3. This Contract Agreement shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, the documents shall prevail in the order listed above.
4. In consideration of the payments to be made by the Buyer to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Buyer to provide the Goods and Related Services before the date of *[insert the date of the last delivery of the goods or completion of the related works, whichever later]*, and to remedy defects therein in conformity in all respects with the provisions of the Contract.

5. The Buyer hereby covenants to pay the Supplier, in consideration of the provision of the Goods and Related Services and the remedying of defects therein, the Contract Price at the times and in the manner prescribed by the Contract. For this purpose, the Buyer shall obtain JICA's concurrence to make the grant eligible for payment of the Contract Price.
6. This Contract, and any major amendment or termination of this Contract, shall be verified by JICA as eligible for a grant on the bases of the G/A.

IN WITNESS whereof the parties hereto have caused this Contract Agreement to be executed in accordance with the laws of *[insert the name of country]* in force on the day, month and year indicated above.

For and on behalf of the Buyer

Signed: *[insert signature]*  
in the capacity of *[insert title or other appropriate designation]*

For and on behalf of the Supplier

Signed: *[insert signature of authorized representative(s) of the Supplier]*  
in the capacity of *[insert title or other appropriate designation]*

## C. Conditions of Contract

### Table of Clauses

1. Definitions
2. Contract Documents
3. Corrupt or Fraudulent Practices
4. Interpretation
5. Language
6. (Omitted)
7. Notices
8. Governing Law
9. Settlement of Disputes
10. Supplier's Responsibilities
11. Contract Price
12. Inspection on Delivery by the Buyer
13. Terms of Payment
14. Taxes and Duties
15. Performance Security
16. Copyright
17. Confidential Information
18. Specifications and Standards
19. Packing and Documents
20. Insurance
21. Inspections and Tests
22. Liquidated Damages
23. Warranty
24. Patent Indemnity
25. Limitation of Liability
26. Change in Laws and Regulations
27. Force Majeure
28. Change Orders and Contract Amendments
29. Extensions of Time
30. Termination
31. Assignment
32. Export Restriction
33. After-Sales Services

- 1. Definitions**
- 1.1 The following words and expressions shall have the meanings hereby assigned to them.
- (a) “Completion” means the Goods or any portion thereof, including Related Services, if applicable, have been delivered by the Supplier in accordance with the terms and conditions set forth in the Contract.
  - (b) “Contract” means the contract for the procurement or any other relevant services entered into between the Buyer and the Supplier for the Project.
  - (c) “Contract Agreement” means the contract agreement signed by the Buyer and the Supplier for the Project referred to in Clause 2 (a) of the Contract Agreement. For the avoidance of doubt, the Contract Agreement does not include the agreements referred to in Clause 2 (b) through (e).
  - (d) “Contract Documents” means the documents listed in the Contract Agreement, including any amendments thereto.
  - (e) “Contract Price” means the price payable to the Supplier as specified in the Contract Agreement.
  - (f) “CC” means the Conditions of Contract.
  - (g) “day” means calendar day.
  - (h) “Goods” means all commodities, raw material, machinery, equipment, and/or other materials that the Supplier is required to supply to the Buyer under the Contract.
  - (i) “JICA” means Japan International Cooperation Agency.
  - (j) “Project Site” means the final destination of the Goods to be delivered, namely, *[insert name(s) and detailed information on the location(s) of the site(s)]*.
  - (k) “Related Services” means the services incidental to the supply of the Goods, such as insurance, installation, training, initial maintenance and other such obligations of the Supplier under the Contract, excluding inland transportation and other services required to convey the Goods to their final destination.
- 2. Contract Documents**
- 2.1 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Contract Agreement shall be read as a whole.
- 3. Corrupt or Fraudulent Practices**
- 3.1 If the Buyer determines, based on reasonable evidence, that the Supplier has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for or executing the Contract, then the Buyer may, after giving fourteen (14) days notice to the Supplier, terminate the Supplier’s employment under the Contract and cancel the Contract. The provisions of CC Clause 30 shall apply as if such expulsion had been made under CC Sub-Clause 30.1.
- 3.2 Should any employee of the Supplier be determined, based on reasonable evidence, to have engaged in corrupt, fraudulent,



collusive, coercive, or obstructive practice during the execution of the Contract, then that employee shall be removed.

#### 4. Interpretation

- 4.1 In the Contract, except where the context requires otherwise:
- (a) words indicating one gender include all genders;
  - (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
  - (c) provisions including the word “agree,” “agreed” or “agreement” require the agreement to be recorded in writing;
  - (d) the word “Tender” is synonymous with “Bid,” “Tenderer” with “Bidder,” and “Tender Documents” with “Bidding Documents”; and
  - (e) “written” or “in writing” means hand-written, type-written, printed or electronically made (including a PDF file or facsimile, but excluding mere exchange of e-mails or other electronic messages), and resulting in a permanent record.
- The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.
- 4.2 Entire Agreement  
The Contract constitutes the entire agreement between the Buyer and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of Contract.
- 4.3 Amendment  
No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.
- 4.4 Non-Waiver
- (a) Subject to CC Sub-Clause 4.4(b) below, no relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
  - (b) Any waiver of a party’s rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.
- 4.5 Severability  
If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions or conditions of the Contract.
- 4.6 Country of Origin  
“Origin” means the place where the Goods have been grown, mined, cultivated, produced, manufactured or processed; or through manufacture, processing or assembly, another commercially

recognized article results that differs substantially in its basic characteristics from its components.

- 5. Language** 5.1 The Contract, as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Buyer, shall be written in the [English] language.
- 6. (omitted)** (omitted)
- 7. Notices** 7.1 Any notice given by one party to the other pursuant to the Contract shall be in writing to the following addresses. The term “in writing” means communicated in written form with proof of receipt.
- [The Buyer]  
 Attention: *[insert full name of person, if applicable]*  
 Address: *[insert address of the Buyer]*  
 Telephone: *[insert telephone number]*  
 E-mail address: *[insert e-mail address]*
- [The Supplier]  
 Attention: *[insert full name of person, if applicable]*  
 Street Address: *[insert address of the Supplier]*  
 Telephone: *[insert telephone number]*  
 E-mail address: *[insert e-mail address]*
- 7.2 A notice shall be effective when delivered or on the notice’s effective date, whichever is later.
- 8. Governing Law** 8.1 The Contract shall be governed by and interpreted in accordance with the laws of the Buyer’s country.
- 9. Settlement of Disputes** 9.1 The Buyer and the Supplier shall make every effort to resolve amicably, by direct informal negotiation, any disagreement or dispute arising between them under or in connection with the Contract.
- 9.2 If, after twenty-eight (28) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Buyer or the Supplier may give notice to the other party of its intention to commence arbitration regarding the matter in dispute, as hereinafter provided. No arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference, for which a notice of intention to commence arbitration has been given, in accordance with this Clause, shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract.
- 9.3 Proceedings for arbitration shall be administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration by one or more arbitrators appointed in accordance with said arbitration rules.
- 9.4 The place of arbitration shall be a neutral location determined in accordance with the applicable rules of arbitration; the arbitration shall

- be conducted in the language for communication defined in CC Clause 5.
- 9.5 Notwithstanding any reference to arbitration herein,  
 (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and  
 (b) the Buyer shall pay the Supplier any monies due the Supplier.
- 10. Supplier's Responsibilities** 10.1 The Supplier shall supply and deliver all Goods and Related Services specified in the Contract Documents.
- 11. Contract Price** 11.1 Prices charged by the Supplier for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its Bid.
- 12. Inspection on Delivery by the Buyer** 12.1 Upon delivery of the Goods and completion of Related Services, an inspector appointed by the Buyer shall conduct an inspection of the Goods and Related Services. When all the Goods and Related Services are found to be in compliance with the Contract Documents, the Goods and Related Services are deemed delivered and completed.
- 12.2 Should any inspected Goods or Related Services fail to conform to the Contract Documents, the Buyer may reject the Goods and Related Services, and the Supplier shall either replace the rejected Goods and Related Services or make alterations necessary to meet the Contract Documents at its own expense.
- 13. Terms of Payment** 13.1 After passing the inspection of the delivered Goods and completed Related Services as prescribed in CC Sub-Clause 12.1, the Supplier may request payment from the Buyer in writing. The request for payment shall be accompanied by the following documents;  
 [for Goods]  
 - an invoice for Goods  
 - the Receipt for the Goods issued by the inspector and approved by the Buyer, declaring that the Goods have been delivered and accepted, pursuant to CC Sub-Clause 12.1.  
 [for Related Services]  
 - the Completion Certificate for Related Services issued by the inspector and approved by the Buyer, declaring that the Related Services have been completed and accepted, pursuant to CC Sub-Clause 12.1.
- 13.2 *If the Supplier requests such, an advance payment for [ten (10)] percent of the Contract Price shall be accepted. The advance payment shall be paid upon the signing of the Contract and the receipt of a bank guarantee for the equivalent amount, valid until the Goods and Related Services are delivered, or in a form acceptable to the Buyer. The request for advance payment shall be accompanied by a photocopy of such bank guarantee. The amount of the advance payment shall be repaid at the time of the payment prescribed in Sub-Clause 13.1.*

- 13.3 All payments to the Supplier by the Buyer shall be made upon a request for payment from the Supplier to the Buyer, accompanied by the necessary certificates and/or documents, pursuant to CC Sub-Clause 13.1.
- 13.4 Payments shall be made by bank transfer from a bank in Japan designated by the Government of *[insert name of the recipient country]*. Any surcharges or expenses related to the bank transfer, other than those covered by the Government of *[insert name of the recipient country]*, shall be borne by the Supplier.
- 13.5 Payment shall be made to the following bank account of the Supplier.  
*Name of the Bank:*  
*Name of the branch of the Bank:*  
*Address of the Bank:*  
*Name of the account holder:*  
*Number of the account / IBAN:*  
*Address of account holder:*  
*Swift Code:*
- 13.6 Payments to the Supplier shall be made in the currency expressed in the Contract Agreement. The currency of the payments shall be in *[insert US Dollar or any other internationally traded foreign currency acceptable to JICA. Locally traded currencies shall not be accepted.]*
- 13.7 When the Goods are delivered in multiple deliveries, a partial payment is acceptable for each delivery.

#### **14. Taxes and Duties**

- 14.1 For Goods supplied from outside the Buyer's country to be imported, the Supplier shall take necessary measures to absolve the Buyer from customs duties imposed on the Goods. Upon receipt of a copy of the shipping documents, the Buyer shall provide the Supplier with official documents and/or any relevant documents necessary for exemption, if such documents are required.

*[Option 1]*

- 14.2 *The Supplier shall take necessary measures to exempt the Goods from [insert the name of indirect tax, such as Value Added Tax (VAT)] that may be imposed by the Government of the Buyer's country with respect to the purchase of the Goods. The Buyer shall provide the Supplier with official documents and/or any relevant documents necessary for exemption, if such documents are required.*

*[Option 2]*

- 14.2 *The Buyer shall take necessary measures to obtain a refund for [insert the name of indirect tax, such as Value Added Tax (VAT)] that may be imposed by the Government of the Buyer's country with respect to the purchase of the Goods. The Supplier shall assist the Buyer with the procedure.*

*[It is strongly advised that Clause 14, Taxes and Duties, be reviewed and revised based on the actual procedure for tax exemptions and/or refunds thereof in the Buyer's country.]*

- 15. Performance Security**
- 15.1 The Supplier shall, within twenty-eight (28) days of the notification of Contract award, provide a Performance Security for the performance of the Contract in the amount of *[insert amount in figures and words]*.
- 15.2 The proceeds of the Performance Security shall be payable to the Buyer as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.
- 15.3 The Performance Security shall be discharged by the Buyer and returned to the Supplier not later than twenty-eight (28) days following the date on which the Supplier's performance obligations under the Contract, including any warranty obligations, have been completed.
- 16. Copyright**
- 16.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Buyer by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Buyer directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.
- 17. Confidential Information**
- 17.1 The Buyer and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, 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 completion or termination of the Contract.
- 17.2 The Buyer shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the Contract. Similarly, the Supplier shall not use such documents, data, and other information received from the Buyer for any purpose other than the performance of the Contract.
- 17.3 The obligation of a party under CC Sub-Clauses 17.1 and 17.2 above, however, shall not apply to information that:
- (a) the Buyer or Supplier need to share with JICA or other institutions participating in the financing of the Contract;
  - (b) now or hereafter enters the public domain through no fault of that party;
  - (c) 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; or
  - (d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- 17.4 The above provisions of CC Clause 17 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 supply or any part thereof.
- 17.5 The provisions of CC Clause 17 shall survive completion or termination, for whatever reason, of the Contract.

- 18. Specifications and Standards**
- 18.1 Technical Specifications and Drawings
- (a) The Goods and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in the Supply Requirements (Section V of the Bidding Documents) and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Goods' country of origin.
- (b) The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Buyer, by giving a notice of such disclaimer to the Buyer.
- (c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Supply Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Buyer and shall be treated in accordance with CC Clause 28.
- 19. Packing and Documents**
- 19.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of heavy handling facilities at all points in transit.
- 19.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract and in any other instructions ordered by the Buyer.
- 20. Insurance**
- 20.1 If Goods supplied from outside the Buyer's country are to be imported by shipment, the Goods supplied under the Contract shall be fully insured by the Supplier at its own expense in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery.
- 21. Inspection and Test**
- 21.1 The Supplier shall, at its own expense and at no cost to the Buyer, carry out all such tests and/or inspections of the Goods and Related Services as specified in the Contract Documents.
- 21.2 The Supplier shall provide the Buyer with a report of the results of any such tests and/or inspections.
- 22. Liquidated Damages**
- 22.1 Except as provided under CC Clause 27, if the Supplier fails to deliver any or all of the Goods by the delivery date or complete the Related Services within the period specified in the Contract, the Buyer may, without prejudice to all its other remedies under the

Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to five-tenths of one (0.5) percent of the Contract Price of the delivered price of the delayed Goods or Related Services for each week until actual delivery or completion, up to a maximum deduction of ten (10) percent. Once the maximum is reached, the Buyer may terminate the Contract pursuant to CC Clause 30.

### **23. Warranty**

- 23.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 23.2 Subject to CC Sub-Clause 18.1(b), the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the Buyer's country where the Project Site is located.
- 23.3 Unless otherwise specified in the Contract Documents, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to the Project Site and accepted by the Buyer.
- 23.4 The Buyer shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Buyer shall afford all reasonable opportunity for the Supplier to inspect such defects.
- 23.5 Upon receipt of such notice, the Supplier shall, within a reasonable period, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Buyer.
- 23.6 If having been notified, the Supplier fails to remedy the defect within a reasonable period, the Buyer may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Buyer may have against the Supplier under the Contract.

### **24. Patent Indemnity**

- 24.1 The Supplier shall indemnify and hold harmless the Buyer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs and expenses of any nature, including attorney's fees and expenses, which the Buyer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of the installation of the Goods by the Supplier or the use of the Goods in the Buyer's country. Such indemnity shall not cover any use of the Goods or any part thereof, other than for the purpose indicated by or to be reasonably inferred from the Contract, nor any infringement resulting from the use of the Goods or any part thereof, in association or combination with any other equipment, plant or materials not supplied by the Supplier, pursuant to the Contract.

- 25. Limitation of Liability**
- 25.1 Except in cases of criminal negligence or willful misconduct,
- (a) the Supplier shall not be liable to the Buyer, whether in contract, tort or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Buyer, and
  - (b) the aggregate liability of the Supplier to the Buyer, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Supplier to indemnify the Buyer with respect to patent infringement.
- 26. Change in Laws and Regulations**
- 26.1 Unless otherwise specified in the Contract, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated or changed (which shall be deemed to include any change in interpretation or application by the competent authorities) in the Buyer's country that subsequently affects the delivery date and/or the Contract Price, then such delivery date and/or Contract Price shall be correspondingly adjusted, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract.
- 27. Force Majeure**
- 27.1 The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 27.2 For purposes of this clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Buyer in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 27.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Buyer in writing of such condition and the cause thereof. Unless otherwise directed by the Buyer in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.
- 28. Change Orders and Contract Amendments**
- 28.1 The Buyer may at any time order the Supplier, through notice in accordance CC Clause 7, to make changes within the general scope of the Contract in any one or more of the following:
- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Buyer;



- (b) the method of shipment or packing;
- (c) the place of delivery; and
- (d) the Related Services to be provided by the Supplier.

- 28.2 If any such change causes an increase or decrease in the cost of, or the time required for the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the delivery/completion schedule or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Buyer's change order.
- 28.3 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.
- 28.4 Subject to the above, no variation in or modification of the terms of the Contract shall be made, except by written amendment signed by the parties.

## **29. Extensions of Time**

- 29.1 If at any time during performance of the Contract, the Supplier should encounter conditions impeding timely delivery of the Goods or completion of Related Services, the Supplier shall promptly notify the Buyer, in writing, of the delay, its likely duration and its cause. As soon as practicable after receipt of the Supplier's notice, the Buyer shall evaluate the situation and may, at its discretion, extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.
- 29.2 Except in case of Force Majeure, as provided under CC Clause 27, a delay by the Supplier in the performance of its delivery and completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to CC Clause 22, unless an extension of time is agreed upon, pursuant to CC Sub-Clause 29.1.

## **30. Termination**

- 30.1 Termination for Default
- (a) The Buyer, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part, if the Supplier, in judgment of the Buyer, has engaged in fraud and corruption, as defined in CC Clause 3, in competing for or in executing the Contract.
  - (b) If the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Buyer pursuant to CC Clause 29, or fail to perform any other obligation under the Contract, the Buyer may, without prejudice to any other rights it may possess under the Contract, give notice to the Supplier stating the nature of the default and requiring the Supplier to remedy such. If the Supplier fails to

remedy or to take steps to remedy such within fourteen (14) days of its receipt of such notice, then the Buyer may terminate the Contract forthwith by giving notice of termination to the Supplier, pursuant to CC Sub-Clause 30.1.

### 30.2 Termination for Insolvency

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

### 30.3 Termination for Convenience

- (a) The Buyer, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Buyer's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- (b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the Buyer at the Contract terms and prices. For the remaining Goods, the Buyer may elect:
- (i) to have any portion delivered and completed at the Contract terms and prices; and/or
  - (ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services, and for materials and parts previously procured by the Supplier.

## 31. Assignment

- 31.1 Neither the Buyer nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

## 32. Export Restriction

- 32.1 Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Buyer, the Buyer's country, or to the use of the products/goods, systems or services to be supplied, which arise from trade regulations from a country supplying those products/goods, systems or services, and which substantially impede the Supplier from meeting its obligations under the Contract, shall release the Supplier from the obligation to provide deliveries or services, always provided, however, that the Supplier can demonstrate to the satisfaction of the Buyer that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the export of the products/goods, systems or services under the terms of the Contract. Termination of the Contract on this basis shall be for the Buyer's convenience pursuant to Sub-Clause 30.3.

## 33. After-Sales Services

- 33.1 Unless otherwise specified in the Contract Documents, the Supplier shall ensure its capability to provide after-sales services, including

supply of the spare parts and making repairs, for at least five (5) years after the Goods, or any portion thereof as the case may be, have been delivered to the Buyer at the Project Site.

- 33.2 The Supplier shall be required to submit a list of entities which are to provide after-sales services (Form DAS: Description of After-Sales Services), and certify that the entities listed thereof can provide after-sales services for the Goods.

## D. Performance Security

### Option 1: (Bank Guarantee)

*[Guarantor letterhead or SWIFT identifier code]*

Beneficiary: *[insert name and address of Buyer]*

Date: *[insert date of issue]*

PERFORMANCE GUARANTEE No.: *[insert guarantee reference number]*

Guarantor: *[insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[insert name of Supplier]* (hereinafter called “the Applicant”) has entered into Contract No. *[insert reference number of the Contract]* dated *[insert date]* with the Beneficiary, for the supply of *[insert description of Goods and Related Services]* (hereinafter called “the Contract”).

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

At the request of the Applicant, we as Guarantor hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount in words]*), such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in default under the Contract, without the Beneficiary needing to prove or to show grounds for its demand or the sum specified therein.

This guarantee shall expire no later than the *[insert number]* day of *[insert month]*, *[insert year]*, and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 4583, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

\_\_\_\_\_ [signature(s)]

*[Note: All italicized text is for use in preparing this form and shall be deleted from the final product.]*

## Option 2: Performance Bond

By this Bond, *[insert name of Principal]* as Principal (hereinafter called “the Supplier”) and *[insert name of surety]* as Surety (hereinafter called “the Surety”), are held and firmly bound unto *[insert name of the Buyer]* as Obligee (hereinafter called “the Buyer”) in the amount of *[insert the amount in words and figures]*, for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Supplier and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Supplier has entered into a written Agreement with the Buyer dated the *[insert date]* day of *[insert month]*, *[insert year]*, for *[insert name of contract and brief description of Goods and Related Services]*, in accordance with the documents, plans, specifications and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

NOW, THEREFORE, the Condition of this Obligation is such that, if the Supplier shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Supplier shall be, and declared by the Buyer to be, in default under the Contract, the Buyer having performed the Buyer’s obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a Bid or Bids from qualified Bidders for submission to the Buyer for completing the Contract in accordance with its terms and conditions, and upon determination by the Buyer and the Surety of the lowest responsive Bidder, arrange for a Contract between such Bidder and Buyer and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph), sufficient funds to pay the cost of completion, less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the total amount payable by Buyer to Supplier under the Contract, less the amount properly paid by Buyer to Supplier; or
- (3) pay the Buyer the amount required by Buyer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the acceptance certificate issued by the Buyer.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Buyer named herein or the heirs, executors, administrators, successors and assigns of the Buyer.

In testimony whereof, the Supplier has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this *[insert day]* day of *[insert month]*, *[insert year]*.

SIGNED ON    on behalf of

By    in the capacity of

In the presence of

SIGNED ON    on behalf of

By    in the capacity of

In the presence of

*[Note: All italicized text is for use in preparing this form and shall be deleted from the final product.]*

## E. Advance Payment Security

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** *[insert name and address of the Buyer]*

**Date:** *[insert date of issue]*

**ADVANCE PAYMENT GUARANTEE No.:** *[insert guarantee reference number]*

**Guarantor:** *[insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[insert name of the Supplier]* (hereinafter called “the Applicant”) has entered into a Contract dated *[insert date]* with the Beneficiary, for the execution of *[insert name of the Contract and brief description of the Works]* (hereinafter called “the Contract”).

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of *[insert amount in figures]* (*[insert amount in words]*) is to be made against an advance payment guarantee.

At the request of the Applicant, we as Guarantor hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount in words]*), upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant has used the advance payment for purposes other than the costs of mobilization in respect of the Works.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary’s bank stating that the advance payment referred to above has been credited to the Applicant on its account number *[insert number]* at *[insert name and address of Applicant’s bank]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates that shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of documentation indicating full repayment by the Applicant of the amount of the advance payment, or on the *[insert day]* day of *[insert month]*, *[insert year]*, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

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*[signature(s)]*





# Section V. Supply Requirements

## Table of Forms

- 1. List of Goods and Delivery Schedule .....SR-2
- 2. List of Related Services and Delivery Schedule .....SR-3
- 3. Technical Specifications .....SR-4
- 4. Drawings .....SR-5





### 3. Technical Specifications

*The purpose of the Technical Specifications (TS) is to define the technical characteristics of the Goods and Related Services required by the Buyer. The Buyer shall prepare the detailed TS, taking into account that:*

- ✓ *The TS constitute the benchmarks against which the Buyer will verify the technical responsiveness of bids and subsequently evaluate the bids. Therefore, well-defined TS will facilitate preparation of responsive bids by Bidders, as well as examination, evaluation and comparison of the bids by the Buyer.*
- ✓ *The TS shall require that all Goods and materials to be incorporated in the Goods be new, unused and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided for otherwise in the contract.*
- ✓ *The TS should be broad enough to avoid restrictions on workmanship, materials and equipment commonly used in manufacturing similar kinds of goods.*
- ✓ *Standards for equipment, materials and workmanship specified in the Bidding Documents shall not be restrictive.*
- ✓ *Reference to brand names and model (catalogue) numbers should be avoided to the greatest extent possible; where unavoidable, the words “or at least equivalent” shall always follow such references.*
- ✓ *The TS shall be fully descriptive of the requirements in respect of, but not limited to, the following:*
  - (a) *Standards of materials and workmanship required for the production and manufacturing of the Goods;*
  - (b) *Detailed tests required (type and number);*
  - (c) *Other additional work and/or Related Services required to achieve full delivery/completion;*
  - (d) *Detailed activities to be performed by the Supplier, and participation of the Buyer thereon;*
  - (e) *List of detailed functional guarantees covered by the Warranty.*
- ✓ *When the Buyer requests that the Bidder provides in its bid a part or all of the Technical Specifications, the Buyer shall specify in detail the nature and extent of the required information and the manner in which it must be presented by the Bidder in its bid.*
- ✓ *The Buyer shall describe any detailed testing and/or inspections required before shipping, installation work or other additional work required to achieve full delivery, and the detailed functional guarantees covered by the Warranty.*

### 4. Drawings

*The purpose of drawings is to specify locations, dimensions, materials to be used, stages of manufacturing and other characteristics of the Goods and Related Services. The Buyer should prepare such drawings, as needed, and include them in the Bidding Documents. It is essential that the Buyer prepares the List of Drawings in the form provided below, showing all drawings supplied and issued as part of the Bidding Documents.*

These Bidding Documents includes *[insert “the following” or “no”]* drawings.

<b>List of Drawings</b>		
<b>Drawing No.</b>	<b>Drawing Name</b>	<b>Purpose</b>