



**BIDDING DOCUMENTS
FOR
PACKAGE - 2**

**REHABILITATION PROJECT
OF
THE 4TH THERMAL POWER PLANT
IN
ULAANBAATAR, MONGOLIA
(PHASE-2)**

The 4th Thermal Power Plant

January 2002

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INVITATION FOR BIDS

Date: January 21, 2002

Loan No.: MON-P6

1. The Ministry of Finance and Economy (hereinafter referred to as MOFE) has received an ODA Loan from JAPAN BANK FOR INTERNATIONAL COOPERATION (hereinafter referred to as JBIC), in the amount of 6,139 million Yen towards the cost of Rehabilitation Project of The 4th Thermal Power Plant in Ulaanbaatar, Mongolia (Phase-2), signed on March 26, 2001 and intends to apply a portion of the proceeds of the loan to payments under the contract of Package-2 (Rehabilitation of controls and instrumentation for Boiler No.5 through No.8). Disbursement of an ODA Loan by JBIC will be subject, in all respects, to the terms and conditions of the Loan Agreement, including the disbursement procedures and the "Guidelines for Procurement under JBIC ODA Loans". No party other than MOFE shall derive any rights from the Loan Agreement or have any claim to loan proceeds. The above Loan Agreement will cover only a part of the project cost. As for the remaining portion, MOFE will take appropriate measures for finance.
2. JBIC requires that bidders and contractors, as well as MOFE, under contracts funded with JBIC ODA Loans and other Japanese ODA, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, JBIC;
 - (a) will reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
 - (b) will recognize a contractor as ineligible, for a period determined by JBIC, to be awarded a contract funded with JBIC ODA Loans if it at any times determines that the contractor has engaged in corrupt or fraudulent practices in competing for, or in executing, another contract funded with JBIC ODA Loans or other Japanese ODA.
3. The 4th Thermal Power Plant (hereinafter referred to as Purchaser) now invites sealed bids from eligible bidders from all countries and areas for the supply of the Goods and Services for the purpose of the Project.
4. Interested eligible bidders may obtain further information on the bid form and inspect the bidding documents at the office of;

Ts. Altangadas (Project Manager)

Project Implementing unit
The 4th Thermal Power Plant
P.O Box 37
Ulaanbaatar, Mongolia

Phone : 976-11-633332
Fax : 976-11-633081
E-mail: plu4pp@mongol.net

5. A complete set of bidding documents may be purchased after January 21, 2002 by any interested bidder on the submission of a written application to the address specified in Clause 4 above and upon payment of a nonrefundable fee of US\$ 400 (USD four hundred).
6. The estimated date of award for Package-2 is July 15, 2002
7. All bids must be accompanied by a bid security of US\$ 125,000 (USD one hundred and twenty five thousand only), and must be received in accordance with the Instructions to Bidders before 11:30 (local time) on April 1, 2002, and Envelope other than "B" will be publicly opened at 11:30 (local time) on April 1, 2002.
8. The 4th Thermal Power Plant will not be responsible for any costs or expenses incurred by bidders in connection with the preparation or delivery of bids.

Section I

INSTRUCTIONS TO BIDDERS

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Section I

INSTRUCTIONS TO BIDDERS

A. GENERAL

1. Source of Funds

1.1 The Ministry of Finance and Economy (hereinafter referred to as MOFE) has received an ODA Loan from JAPAN BANK FOR INTERNATIONAL COOPERATION (hereinafter referred to as JBIC) in the amount of 6,139 million Yen toward the cost of Rehabilitation Project of the 4th Thermal Power Plant in Ulaanbaatar, Mongolia (Phase-2), signed on March 26, 2001 and intends to apply a portion of the proceeds of the loan to payments under this contract of Package-2 (Rehabilitation of controls and instrumentation for Boiler No.5 through No.8). Disbursement of an ODA Loan by JBIC will be subject, in all respects, to the terms and conditions of the Loan Agreement, including the disbursement procedures and the "Guidelines for Procurement under JBIC ODA Loans". No party other than MOFE shall derive any rights from the Loan Agreement or have any claim to loan proceeds. The above Loan Agreement will cover only a part of the project cost. As for the remaining portion, MOFE will take appropriate measures for finance.

1.2 JBIC requires that bidders and contractors, as well as the 4th Thermal Power Plant under contracts funded with JBIC ODA Loans and other Japanese ODA, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, JBIC;

- (a) will reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
- (b) will recognize a Supplier as ineligible, for a period determined by JBIC, to be awarded a contract funded with JBIC ODA Loans if it at any times determines that the Supplier has engaged in corrupt or fraudulent practices in competing for, or in executing, another contract funded with JBIC ODA Loans or other Japanese ODA.

2. Scope of Bid

2.1 The 4th Thermal Power Plant (hereinafter referred to as "the Purchaser") wishes to receive Bids for supply and delivery of the Goods, and Services (hereinafter referred to as "the Works") described in Section IV hereof.

2.2 All Bids are to be completed and returned to the Purchaser in accordance with these Instructions to Bidders.

3. Eligible Bidders 3.1 The Invitation for Bids is open to all suppliers from all countries and areas, meeting both of the following requirements:

- (a) a bidder (including all members of a joint venture) shall be from all countries and areas; and
- (b) a bidder (including all members of a joint venture) shall not be one of the followings:
 - (i) a firm or an organization which has been engaged by the Purchaser to provide consulting services for the preparation related to procurement for or implementation of this project;
 - (ii) any associates/affiliates (inclusive of parent firms) of a firm or an organization mentioned in subparagraph (i) above;
 - (iii) a firm or an organization who lends, or temporarily seconds, its personnel to firms or organizations which are engaged in consulting services for the preparation related to procurement for or implementation of the project, if the personnel would be involved in any capacity on the same project.

4. Eligible Goods 4.1 At the Purchaser's request, bidders may be required to provide evidence documents of the origin of the goods.

5. Qualification of the Bidder 5.1 Qualification of the Bidder

To be qualified for award of Contract, bidders shall:

- (a) submit a written power of attorney authorizing the signatory of the bid to commit the bidder; and
- (b) submit documentary evidence establishing that the bidder has adequate experience, financial capacity and technical capability to undertake the Contract.

5.2 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements.

- (a) the bid, and in case of a successful bid, the Form of Agreement, shall be signed so as to be legally binding on all partners;
- (b) one of the partners shall be authorized to be in charge; and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized

signatories of all the partners;

- (c) the partner in charge shall be authorized to incur liabilities, receive payments and receive instructions for and on behalf of any or all partners of the joint venture;
- (d) all partners of the joint venture shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms, and a relevant statement to this effect shall be included in the authorization mentioned under (b) above as well as in the Bid Form and the Form of Agreement (in case of a successful bid); and
- (e) a copy of the agreement entered into by the joint venture partners shall be submitted with the bid

- 6 One Bid per Bidder** 6.1 Each bidder shall submit only one bid either by itself, or as a partner in a joint venture.
- 7. Cost of Bidding** 7.1 The bidder shall bear all costs associated with the preparation and delivery of its Bid, and the Purchaser will in no case be responsible or liable for those costs.
- 8. Assurance**
 - 8.1 The successful bidder will be required to give satisfactory assurance of its ability and intention to deliver the Goods, pursuant to the Contract, within the time set forth therein
 - 8.2 The successful bidder will be required to give satisfactory assurance of its ability and intention to deliver his supervising personnel pursuant to the Contract, at the appropriate time and/or upon the request of the Purchaser.
 - 8.3 To assure and confirm the information, the Bidder may request to investigate the Site at the address described in Invitation For Bids.
 - 8.4 The Bidder shall declare full awareness for the Tender, that he has been fully informed himself as to conditions at the Site and elsewhere affecting the performance or execution of the Works for preparation of his Bid.

B. THE BIDDING DOCUMENTS

- 9. Bidding Documents** 9.1 The bidding documents are those stated below, and should be read in conjunction with any Addenda issued in accordance with Clause 11.

Invitation for Bids

- I. Instructions to Bidders
- II. General Conditions of Contract

- III. Special Conditions of Contract
- IV. Technical Specifications
- V. Forms

- 9.2 The bidder is expected to examine the Bidding Documents, including all instructions, forms, terms and specifications. Failure to furnish all information required by the Bidding Documents or submission of a Bid not substantially responsive to the Bidding Documents, will result in the rejection of the Bid.
- 10. Clarification of Bidding Documents**
- 10.1 Prospective bidders requiring any further information or clarification of the Bidding Documents may notify the Purchaser in writing or by fax (hereinafter, the term "fax" is deemed to include electronic transmission such as facsimile, cable, telex, and E-mail), at the Purchaser's mailing address indicated in the Invitation for Bids. The Purchaser will respond in writing to any request for information or clarification of the Bidding Documents, provided that it was received not later than 28 days prior to the deadline for the submission of Bids prescribed by the Purchaser. The Purchaser's response (including an explanation of the query) will be sent in writing or by fax to all prospective bidders who have received the Bidding Documents.
- 11. Amendment of Bidding Documents**
- 11.1 At any time prior to the deadline for submission of Bids, the Purchaser may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective bidder, modify the Bidding Documents by issuing addendum.
- 11.2 The addendum shall be part of the Bidding Documents, pursuant to Clause 9.1, and shall be communicated in writing or by fax to all prospective bidders who have received the Bidding Documents, and will be binding on them.
- 11.3 In order to afford prospective bidders reasonable time in which to take the addendum into account in preparing their Bids, the Purchaser may, at its discretion, extend the deadline for the submission of Bids in accordance with Clause 25.

C. PREPARATION OF BIDS

- 12. Language of Bid**
- 12.1 The Bid prepared by the bidder, and all correspondence and documents relating to the Bid exchanged between the bidder and the Purchaser, shall be written in the English language.
- 13. Documents Comprising the Bids**
- 13.1 The Bid prepared by the bidder shall comprise the following components:
- (a) The bidder shall complete an original and five (5) copies of the Bid Form and the appropriate Price

Schedules furnished in the Bidding Documents, in accordance with Clauses 14 and 15;

- (b) documentary evidence establishing in accordance with Clause 16, that the bidder is qualified to perform the Contract if its Bid is accepted;
- (c) documentary evidence establishing, in accordance with Clause 17, that the Goods to be supplied by the bidder conform to the Bidding Documents; and
- (d) Bid security furnished in accordance with Clause 18.
- (e) power of attorney

14. Bid Prices

14.1 The bidder shall complete the appropriate Price Schedules included herein, stating the unit prices, total price per item, the total amount and the expected countries of origin of the Goods to be supplied under the Contract.

14.2 Prices quoted in the Price Schedules should be entered separately in the following manner.

- (a) For Goods to be offered from within the Purchaser's country:
 - (i) the price of the Goods, quoted ex-factory, ex-warehouse or off-the shelf, as applicable, including all customs duties and sales and other taxes already paid or payable.
 - (ii) the price of inland transportation, insurance and other local costs incidental to delivery of the Goods to their final destination and unloaded at Site.
 - (iii) the price for custody at the Site
- (b) For Goods to be offered from outside the Purchaser's country:
 - (i) the price of the Goods (FOB port of loading).
 - (ii) the price of the Goods (CIF port of entry or DAF)
 - (iii) the price of inland transportation (including transportation cost, tax and duty, etc. which will be incurred by the third countries), insurance and other local costs incidental to delivery of the Goods from the port of entry to their final destination and unloaded at Site;
 - (iv) the price of custody at the Site.

- (c) the price for Supervision (during erection)
- the price for Supervision by the Supplier's Supervisors including all expenses, taxes and duties (if applicable)
- (d) the price for test and commissioning, trial run at the Site
- (Note) All duties and taxes imposed on the Goods by the Government of Mongolia under this contract are exempted.
- 14.3 Prices quoted by the bidder shall remain fixed and valid until completion of the Contract and will not be subject to variation on any account.
- 15. Currencies of Bid and Payment** 15.1 Payment of the contract price shall be made in Japanese yen in which the bid price is expressed in the bid of the successful bidder.
- 16. Documents Establishing the Bidder's Qualifications to Perform the Contract** 16.1 The documentary evidence of the bidder's qualifications to perform the Contract, if its Bid is accepted, shall establish to the Purchaser's satisfaction prior to award of Contract:
- (a) that, in the case of a bidder offering to supply Goods under the Contract which the bidder did not manufacture or otherwise produce, the bidder has been duly authorized by the Goods' manufacturer or producer to supply the Goods to or in the Purchaser's country;
- (b) that the bidder has the financial, technical and production capability necessary to perform the Contract;
- (c) that, in the case of a bidder not doing business within the Purchaser's country, the bidder is, or will be (if the Contract is awarded to it), represented by an agent in that country equipped and able to carry out the maintenance, repair and spare parts-stocking obligations prescribed by the Contract.
- 17. Documents Establishing the Works' Conformity to the Bidding Documents** 17.1 The documentary evidence of the Works' conformity to the Bidding Documents may be in the form of literature drawings and data, and shall furnish:
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- (a) a detailed description of the Goods' essential technical and performance characteristics;
- (b) a list, giving full particulars, including available sources and current prices, of all spare parts, special tools, etc., necessary for the proper and continuing functioning of the Goods for a period of three (3) years and
- (c) a clause-by-clause commentary on the Specifications, demonstrating the Works' responsiveness to those Specifications or a statement of deviations and exceptions to the provisions of the Specifications.

For purposes of the commentary to be furnished pursuant to subclause (c) above, the bidder shall note that standards for workmanship, material and equipment, and references to brand names or catalogue numbers, designated by the Purchaser in the Specifications, are intended to be descriptive only and not restrictive. Equipment or materials meeting the Japan Industrial Standards or other internationally accepted standards which ensure quality to or higher than the standards specified will also be accepted. The bidder may substitute other authoritative standards, brand names and/or catalogue numbers in its Bid, provided that it demonstrates to the Purchaser's satisfaction that the substitutions are equivalent or superior to those designated in the Specifications.

Brand names shall be specified only when specific spare parts are required or standardization is necessary.

- 17.2 In order to prove that the Goods offered are of acceptable quality and standard, the bidders shall furnish the manufacturer's experience having at least 2 years production and also having two (2) units of similar capacity in the manufacturing application and installation of the control equipment.

18. Bid Security

- 18.1 The bidder shall furnish, as part of its bid, a bid security in the amount of US \$ 125,000 (USD one hundred and twenty five thousand).
- 18.2 The bid security shall, at the bidder's option, be in the form of a certified check, bank draft, standby letter of credit or guarantee from a reputable bank. The format of the bank guarantee shall be in accordance with the sample form of bid security included in Section V; other formats may be permitted, subject to the prior approval of the Purchaser. Letters of credit and bank guarantees issued as surety for

the bid shall be valid for 28 days beyond the validity of the bid.

- 18.3 Any bid not accompanied by an acceptable bid security shall be rejected by the Purchaser as nonresponsive.
- 18.4 The bid securities of unsuccessful bidders will be returned as promptly as possible, but not later than 28 days after the expiration of the period of bid validity.
- 18.5 The bid security of the successful bidder will be returned when the bidder has signed the Agreement and furnished the required performance security.
- 18.6 The bid security may be forfeited
 - (a) if the bidder withdraws its bid during the period of bid validity; or
 - (b) if the bidder does not accept the correction of its bid price, pursuant to Sub-Clause 31.3; or
 - (c) in the case of a successful bidder, if it fails within the specified time limit to
 - (i) sign the Agreement, or
 - (ii) furnish the required performance security

19. Period of Validity of Bid

- 19.1 Bids shall remain valid for 120 days after the date of bid closing prescribed by the Purchaser, pursuant to Clause 25.
- 19.2 Notwithstanding Clause 19.1 above, the Purchaser may solicit bidder's consent to an extension of the period of bid validity. The request and the responses thereto shall be made in writing or by fax. If the bidder agrees to the extension request, the validity of the bid security provided under Clause 18 shall also be suitably extended. A bidder may refuse the request without forfeiting its bid security. A bidder granting the request will not be required or permitted to modify its Bid.

20. Alternative Bids

- 20.1 Bidders may offer specified alternatives and options for the Specification provided that the offers pursuant to the requirements of the Technical Specification are submitted. The attention of bidders is drawn to the provisions of Clause 31.4 regarding the rejection of Bids, which are not substantially responsive to the requirement of the Bidding Documents.

- 21. Bids for Plural Packages** 21.1 The bids for plural packages (two to four packages) by one bidder is acceptable. In this case, the bidders may offer any discount for the total bid prices. The discount will be considered at the last stage of evaluation provided that the discount is clarified in Tender Form.
- 22. Pre-bid Meeting** 22.1 The bidder or its nominated representative is invited to attend a pre-bid meeting which will take place at
- No.1 Conference room
Project Implementing Unit
The 4th Thermal Power Plant
P.O.Box -37, Ulaanbaatar, Mongolia
- Phone : 976-11-633332
Fax : 976-11-633081
E-mail : piu4pp@mongol.net
- in around February 2002.
- 22.2 The purpose of meeting will be clarify issues and to answer questions on any matter that may be raised at that stage.
- 22.3 The bidder is requested to submit any questions in writing or by fax, to reach the Purchaser not later than one week before the meeting.
- 22.4 Minutes of meeting, including the text of the questions raised and the responses given, will be transmitted without delay to all purchasers of the bidding documents.
- 23. Format and Signing of Bid** 23.1 The original Bid Form and accompanying documents (as specified in Clause 13), clearly marked "Original Bid", plus five (5) copies together with a Floppy Diskette or CD in which to enter the price schedules must be received by the Purchaser at the date, time and place specified pursuant to Clauses 24 and 25. In the event of any discrepancy between the original and the copies, the original shall govern. The input to the Floppy Diskette or CD should be in Windows 98 and Excel 97 or later edition. The data contained in the Floppy Diskette or CD will be used for ease of evaluation only.
- 23.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by the bidder or a person or persons duly authorized to sign on behalf of the bidder. Written power-of-attorney accompanying the Bid shall indicate such authorization. All pages of the Bid, except for unamended printed literature, shall be initialed by the person
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or persons signing the Bid. The name and position held by each person signing must be typed or printed below the signature.

- 23.3 The Bid shall contain no interlineations, erasures or overwriting except as necessary to correct errors made by the bidder, in which case such corrections shall be initialed by the person or persons signing the Bid.

D. SUBMISSION OF BIDS

24. Sealing and Marking of Bids

- 24.1 The Bids shall be composed of the following four (4) kinds of sealed inner envelopes

(1) Envelope "A" (Technical Proposal)

Technical proposal includes all technical information on the equipment, system, characteristics and technical schedule included in Section IV.

(2) Envelope "B" (Bid Price Proposal)

The bid prices of the offer and specified alternatives shall be included (Refer Form-1 of Section V)

The CD or Floppy Diskette for the Envelope "B" should be included in one of the envelope for the copies of the Bid.

(3) Envelope "C" (Forms other than those enclosed in Envelope "B" above).

(4) Envelope "D" (Other Documents)

If necessary, the general information such as general catalogue, etc. shall be enclosed in this Envelope.

- 24.2 The outer envelope shall:

- (a) be addressed to the Purchaser at the following address

Ts. Aftangadas (Project Manager)

Project Implementing Unit
The 4th Thermal Power Plant
P.O.Box -37, Ulaanbaatar, Mongolia

Phone : 976-11-633332
Fax : 976-11-633081
E-mail : plu4pp@mongol.net

- (b) bear the words "Package-2 of Rehabilitation Project of the 4th Thermal Power Plant in Ulaanbaatar, Mongolia (Phase-2).
; and
- (c) bear the name and address of the bidder.
- 24.3 In addition to the information required in Clause 24.2 above, the inner envelope shall indicate the name and address of the bidder, to enable the Bid to be returned unopened in case it is declared "Late" pursuant to Clause 26.
- 25. Deadline for Submission of Bids**
- 25.1 The original Bid, together with the required copies, must be received by the Purchaser at the address specified in Clause 24.2 before 11:30 (local time) on April 1, 2002.
- 25.2 The Purchaser may, at its discretion, extend the deadline for the submission of Bids by amending the Bidding Documents in accordance with Clause 11, in which case all rights and obligations of the Purchaser and bidders previously subject to the deadline will thereafter be subject to the deadline as extended.
- 26. Late Bids**
- 26.1 Any Bid received by the Purchaser after the deadline for submission of Bids prescribed by the Purchaser, pursuant to Clause 25, will be declared "Late" and rejected and returned unopened to the bidder.
- 27 Modification and Withdrawal of Bids**
- 27.1 The bidder may modify or withdraw its Bid after the Bid's submission; provided that written notice of the modification or withdrawal is received by the Purchaser prior to the deadline prescribed for submission of Bids.
- 27.2 The bidder's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with provisions of Clause 24, with the outer and inner envelopes additionally marked "MODIFICATION" or "WITHDRAWAL", as appropriate. A withdrawal notice may also be sent by fax but must be followed by a signed confirmation copy.
- 27.3 No Bid may be modified subsequent to the deadline for submission of Bids.
- 27.4 No Bid may be withdrawn in the interval between the deadline for submission of Bids and the expiration of the period of bid validity specified by the bidder on the Bid Form.

E. BID OPENING AND EVALUATION

- 28. Opening of Bids by Purchaser**
- 28.1 The Purchaser will open Bids except Envelope "B" (Bid Price Proposal), in the presence of bidders' representatives attended at 11:30 on April 1, 2002 and at the following location,
- No.1 Conference Room
- Project Implementing Unit
The 4th Thermal Power Plant
P.O.Box -37, Ulaanbaatar, Mongolia
- Phone : 976-11-633332
Fax : 976-11-633081
E-mail : plu4pp@mongol.net
- The bidders' representatives attended shall sign a register evidencing their attendance.
- 28.2 The bidders' names, technical modifications and bid withdrawals, and the presence or absence of the requisite bid security, and such other details as the Purchaser, at its discretion, may consider appropriate will be announced and recorded at the opening. The bidder's representatives will be required to sign the record.
- 28.3 Withdrawal of a bid during the interval between the deadline for submission of bids and the expiration of the period of bid validity specified in the Form of Bid may result in the forfeiture of the bid security pursuant to Clause 18.
- 28.4 Based on the criteria established on the delivery period, the life of the consumable equipment, etc., the technical evaluation will be carried out.
- 28.5 Subsequent to the Technical Evaluation, the Envelope "B" (Bid Price Proposal) for the qualified bidder will be opened and evaluated.
- 29.Process to be Confidential**
- 29.1 Information relating to the examination, clarification, evaluation and comparison of Bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process. Any efforts by a bidder to influence the Purchaser's processing of Bids or award decisions may result in the rejection of the bidder's Bid. The request for clarification and the response shall be in writing or by fax, but no change in

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- the price or substance of the bid shall be sought, offered or permitted except as required to confirm the correction of arithmetic errors discovered by the Purchaser in the evaluation of the bids in accordance with Clauses 31.2/31.3.
- 30. Clarification of Bids**
- 30.1 To assist in the examination, evaluation and comparison of Bids, the Purchaser may, at its discretion, ask the bidder for a clarification of its Bid. All responses to request for clarification shall be in writing, and no change in the price or substance of the Bid shall be sought, offered or permitted.
- 31. Preliminary Examination of Bids**
- 31.1 The Purchaser will examine the Bids to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the Bids are generally in order.
- 31.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price per item that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price per item will be corrected. If there is a discrepancy between the Total Amount and the sum of the total price per item, the sum of the total price per item shall prevail and the Total Amount will be corrected.
- 31.3 The amount stated in the Form of Bid will be adjusted by the Purchaser in accordance with the above procedure for the correction of errors and, shall be considered as binding upon the bidder. If the bidder does not accept the corrected amount of bid, its bid will be rejected, and the bid security may be forfeited in accordance with Sub-Clause 18.6 (b).
- 31.4 Prior to the detailed evaluation, pursuant to Clause 32, the Purchaser will determine the substantial responsiveness of each Bid to the Bidding Documents including acceptable quality of the Goods offered, pursuant to Clause 17.2. A substantially responsive Bid is one which conforms to all the terms and conditions of the Bidding Documents without material deviation.
- 31.5 A Bid determined as not substantially responsive will be rejected by the Purchaser and may not subsequently be made responsive by the bidder by correction of the non-conformity.
- 32. Evaluation and Comparison of Bids**
- 32.1 The Purchaser will evaluate and compare the Bids previously determined to be substantially responsive pursuant to Clause 31.
- 32.2 The Purchaser's evaluation of a Bid will exclude and not take into account:
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- (a) in the case of Goods partially or wholly manufactured within the Purchaser's country or Goods of foreign origin already located in the Purchaser's country; sales and other similar taxes which may be levied on the finished Goods if the Contract is awarded to the bidder;
- (b) in the case of Goods to be offered from outside the Purchaser's country; customs duties and other similar import duties and taxes which may be levied on the Goods by the Government of Mongolia if the Contract is awarded to the bidder; and
- (c) any allowance for price adjustment during the period of execution of the contract, if provided in the bid.

32.3 The comparison shall be of

- (a) the ex-factory / ex-warehouse / off-the-shelf price of the Goods to be offered from within the Purchaser's country (such price to include all costs as well as duties and taxes paid or payable on components and raw material incorporated or to be incorporated in the Goods) and
- (b) the DDP and unloaded at the Site price of the Goods to be offered from outside the Purchaser's country.
- (c) price for custody at the Site.
- (d) price for supervision for erection, test and commissioning and trial run at the Site.
- (e) the expense necessary during Warranty Period.

32.4 The envelope other than "B" will be publicly opened on the date and hours stipulated in Clause 28.1. After the technical evaluation, the envelope "B" will be opened at the informed time, date and place for the qualified bidder.

33. Contacting the Purchaser

- 33.1 Subject to Clause 30, no bidder shall contact the Purchaser on any matter relating to its Bid, from the time of bid opening to the time the Contract is awarded.
- 33.2 Any effort by a bidder to influence the Purchaser in the Purchaser's decision in respect of bid evaluation, bid comparison or Contract award will result in the rejection of the bidder's Bid.

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- 34. Purchaser's Right to Accept Any Bid and to Reject Any or All Bids** 34.1 The Purchaser reserves the right to accept or reject any Bid and to annul the bidding process and reject all Bids at any time prior to award of Contract, without thereby incurring any liability to the affected bidder or bidders or any obligation to inform the affected bidder or bidders of the grounds for the Purchaser's action.

F. AWARD OF CONTRACT

- 35. Determination of Award** 35.1 The determination will take into account the bidder's financial, technical and production capabilities. It will be based upon an examination of the documentary evidence of the bidder's qualification submitted by the bidder, pursuant to Clause 16, as well as such other information as the Purchaser deems necessary and appropriate.
- 35.2 An affirmative determination will be a prerequisite for award of the Contract to the bidder. A negative determination will result in rejection of the bidder's Bid.
- 35.3 The Purchaser will award the Contract to the successful bidder whose Bid has been determined to be the lowest evaluated, responsive Bid, provided further that the bidder is determined to be qualified to satisfactorily perform the Contract.
- 36. Notification of Award** 36.1 The Purchaser will notify the successful bidder in writing by registered letter, or by fax to be confirmed in writing by letter, that its Bid has been accepted and on which basis the Bid has been accepted.
- 36.2 The notification of award will constitute the formation of a contract, until the Contract has been effected pursuant to Clause 37.
- 37. Signing of Contract** 37.1 At the time of notification of award, the Purchaser will send the successful bidder the Contract Form provided in those Bidding Documents, incorporating all agreements between the parties.
- 37.2 Within fourteen (14) days of receipt of such Contract Form the successful bidder shall sign and date the Contract and return it to the Purchaser.
- 38. Performance Security** 38.1 Within twenty-eight (28) days of the receipt of notification of award from the Purchaser, the successful bidder shall furnish the performance security, in accordance with the Conditions of Contract, in the Performance Security Form provided in the Bidding Documents or another form acceptable to the Purchaser.

38.2 Failure of the successful bidder to comply with the requirements of Clauses 37 or 38 shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security

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Section II

GENERAL CONDITIONS OF CONTRACT

- 1. Definitions**
- 1.1 In this Contract, the following terms shall be interpreted as indicated:
- (a) "The Contract" means the agreement entered into between the Purchaser and the Supplier, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
 - (b) "The Contract Price" means the price payable to the Supplier under the Contract for the full and proper performance of its contractual obligations.
 - (c) "The Goods" means all the equipment, machinery, and/or materials which the Supplier is required to supply to the Purchaser under the Contract.
 - (d) "The Services" means those services ancillary to the supply of the Goods, such as transportation and insurance, provision of technical assistance, training, and other such obligations of the Supplier covered under the Contract.
 - (e) "The Purchaser" means the organization purchasing the Goods, as named in the Special Conditions of Contract.
 - (f) "The Purchaser's country" is the country named in the Special Conditions of Contract.
 - (g) "The Supplier" means the individual or firm supplying the Goods and Services under this Contract.
 - (h) "JBIC" means Japan Bank for International Cooperation.
 - (i) "The Project Site", where applicable, means the place or places named in the Special Conditions of Contract.
 - (j) "Day" means calendar day.
- 2. Use of Contract Documents and Information**
- 2.1 The Supplier shall not, without the Purchaser's prior written consent, disclose the Contract, or any provision thereof or any specification, drawings, pattern, sample of information furnished by or on behalf of the Purchaser in connection therewith, to any person other than a person employed by the Supplier in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

- 2.2 The Supplier shall not, without the Purchaser's prior written consent, make use of any document or information specified in Clause 2.1 above, except for purposes of performing the Contract.
- 2.3 Any document, other than the Contract itself, specified in Clause 2.1 above, shall remain the property of the Purchaser and shall be returned (in all copies) to the Purchaser, on completion of the Supplier's performance under the Contract, if so required by the Purchaser.
- 3. Change Orders**
- 3.1 The Purchaser may at any time, by a written notice to the Supplier, 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 Purchaser; or
 - (b) the method of shipment or packing; or
 - (c) the place of delivery.
- 3.2 Upon notification by the Purchaser of such change, the Supplier shall submit to the Purchaser an estimate of cost for the proposed change (hereinafter referred to as the Change) within ten (10) calendar days of receipt of notice of the Change, and shall include an estimate of the impact (if any) of the Change on the delivery dates under the Contract, as well as a detailed schedule for the execution of the Change, if applicable.
- 3.3 The Supplier shall not perform changes in accordance with Clause 3.1 above until the Purchaser has authorized a Change Order in writing on the basis of the estimate provided by the Supplier as described in Clause 3.2 above.
- 3.4 Changes mutually agreed upon as a Change shall constitute a part of the Works under this Contract, and the provisions and conditions of the Contract shall apply to said Change.
- 4. Contract Amendments**
- 4.1 Subject to Clause 3, no variation in or modification of the conditions and terms of the Contract shall be made except by written amendment signed by the parties.
- 5. Subcontracts**
- 5.1 Supplier shall not subcontract all or any part of the Contract without first obtaining the Purchaser's approval in writing of the subcontracting and the subcontractor.
- 5.2 The Supplier guarantees that any and all subcontractors of the Supplier for performance of any part of the work under the Contract will comply fully with the terms of the Contract applicable to such part of the work under the Contract.
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- 6. Eligibility of Goods**
- 6.1 Any contract under which Goods and Services are procured from countries other than the eligible source countries for the implementation of the project will be eligible for financing under JBIC ODA Loans if the combined costs of such Goods and Services are less than 50 percent of the price of the said contract.
- 7. Inspection and Tests**
- 7.1 The Purchaser or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Specifications. The Special Conditions of Contract and/or the Specifications shall specify what inspections and tests the Purchaser requires and where they are to be conducted. The Purchaser shall notify the Supplier in writing of the identity of any representatives retained for these purposes.
- 7.2 The inspections and tests may be conducted on the premises of the Supplier or its subcontractor(s), at point of delivery and at the Goods' final destination. Where conducted on the premises of the Supplier or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data shall be furnished to the inspectors at no charge to the Purchaser.
- 7.3 Should any inspected or tested Goods fail to conform to the Specifications, the Purchaser may reject them, and the Supplier shall either replace the rejected Goods or make all alterations necessary to meet the requirements of the Specifications, free of cost to the Purchaser.
- 7.4 The Purchaser's right to inspect, test and, where necessary, reject the Goods after the Goods' arrival in the Purchaser's country shall in no way be limited or waived by reason of the Goods' having previously been inspected, tested and passed by the Purchaser or its representatives prior to the Goods' shipment from the country of origin.
- 7.5 Nothing in this Clause 7 shall in any way release the Supplier from any Warranty or other obligations under the Contract.
- 8. Packing**
- 8.1 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. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, 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.
- 8.2 The packing, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional
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requirements, if any, specified in the Special Conditions of Contract and in any subsequent instructions ordered by the Purchaser.

- 9. Delivery and Documents**
- 9.1 The Supplier in accordance with the terms specified in the Technical Specifications shall make delivery of the Goods. The details of shipping and/or other documents to be furnished by the Supplier are specified in the Special Conditions of Contract.
- 9.2 For purposes of the Contract, "EXW", "FOB", "FCA", "CIF", "CIP", and other trade terms used to describe the obligations of the parties shall have the meanings assigned to them by the International Chamber of Commerce, Paris, in the current edition of its publication commonly referred to as Incoterms.
- 10. Patent Rights**
- 10.1 The Supplier shall indemnify and hold the Purchaser harmless against all third-party claims of infringement of patent, trademark or industrial design rights arising from use of the Goods or any part thereof.
- 11. Performance Security**
- 11.1 The Supplier shall cause performance security to be furnished to the Purchaser in the amount indicated in the Special Conditions of Contract. Such performance security shall be provided, in a form satisfactory to the Purchaser and as indicated in clause 11.3 below, within thirty (30) days after the Supplier's receipt of the notification of award of contract.
- 11.2 The proceeds of the performance security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its work under the Contract. The Supplier shall cause the validity period of the performance security to be extended for such period(s) as the contract performance may be extended pursuant to Clause 16.2.
- 11.3 The performance security shall be denominated in a currency of the Contract, or in a freely convertible currency acceptable to the Purchaser, and shall be in one of the following forms:
- (a) a bank guarantee, issued by a bank acceptable to the Purchaser, or in such other form as is acceptable to the Purchaser; or
 - (b) a cashier's check, certified check, or cash, and/or
 - (c) Retention Money.
- 11.4 The performance security will be discharged/returned by the Purchaser not later than the warranty period as stated in clause 13.2.

- 12. Insurance** 12.1 All Goods supplied under the Contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery, in the manner specified in the Special Conditions of Contract.
- 13. Warranty**
- 13.1 The Supplier warrants to the Purchaser that the Goods supplied under the Contract will comply strictly with the Contract, shall be first class in every particular case and shall be free from defects. The Supplier further warrants to the Purchaser that all materials, equipment and supplies furnished by the Supplier or its subcontractors for the purpose of the Goods will be new, merchantable of the most suitable grade, and fit for their intended purposes.
- 13.2 This Warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof, as the case may be, have been delivered and commissioned or for eighteen (18) months after the date of shipment from the port of loading in the country of origin, whichever period concludes earlier, unless specified otherwise in the Special Conditions of Contract.
- 13.3 The Purchaser shall promptly notify the Supplier in writing of any claim arising under this Warranty.
- 13.4 Upon receipt of such notice, the Supplier shall promptly repair or replace the defective Goods or parts thereof, without cost to the Purchaser other than, where applicable, the cost of inland delivery of the repaired or replaced Goods or parts from the port of entry to the final destination.
- 13.5 Without prejudice to Clauses 13.2 and 13.4 above, the Supplier shall promptly correct, at no cost to the Purchaser, any defect in any work of correction performed pursuant to Clauses 13.2 and 13.4 above, upon receipt of written notice of defect within twelve (12) months from acceptance of the corrected defect.
- 13.6 If the Supplier, having been notified, fails to remedy the defect(s) in accordance with the Contract, the Purchaser may proceed to take such remedial action as may be necessary, at the Supplier's expense. The Supplier's Warranty pursuant to this Clause 13 is without prejudice to any other rights or remedies, which the Purchaser may have against the Supplier under the Contract.
- 14. Payment**
- 14.1 The method and conditions of payment to be made to the Supplier under this Contract shall be specified in the Special Conditions of Contract.
- 14.2 The Supplier's request(s) for payment shall be made to the Purchaser in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and Services performed, and by

documents submitted pursuant to Clause 9 and upon fulfillment of other obligations stipulated in the Contract.

- 14.3 Payments shall be made promptly by the Purchaser, but in no case later than sixty (60) days after submission of an invoice or claim by the Supplier.
- 14.4 The currency or currencies in which payment is made to the Supplier under this Contract will be made in the currency or currencies specified in the Bid Form.
- 15. Prices**
 - 15.1 Prices charged by the Supplier for Goods delivered and Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid, with the exception of any change in price resulting from a Change Order issued in accordance with Clause 3, or if applicable, adjustments authorized in accordance with the price adjustment provisions specified in the Special Conditions of Contract.
- 16. Extensions in the Supplier's Performance**
 - 16.1 Delivery of the Goods shall be made by the Supplier in accordance with the Contract Execution Schedule, pursuant to the Special Conditions of Contract.
 - 16.2 The Supplier may claim extension of the time limits as set forth in the Contract Execution Schedule in case of:
 - (a) changes in the Goods ordered by the Purchaser pursuant to Clause 3;
 - (b) delay of any materials, drawings or services which are to be provided by the Purchaser; services provided by the Purchaser shall be interpreted to include all approvals by the Purchaser under the Contract;
 - (c) Force Majeure pursuant to Clause 23; and
 - (d) delay in performance of work caused by orders issued by the Purchaser.

The Supplier shall demonstrate to the Purchaser's satisfaction that it has used its best endeavors to avoid or overcome such causes for delay, and the parties will mutually agree upon remedies to mitigate or overcome such causes for delay.

- 16.3 Notwithstanding Clause 16.2 above, the Supplier shall not be entitled to an extension of time for completion unless the Supplier, at the time of such circumstances arising, immediately has notified the Purchaser in writing of any delay that it may claim as caused by circumstances pursuant to Clause 16.2 above; and upon request of the Purchaser, the Supplier shall substantiate that the delay is due to the circumstances referred to by the Supplier.

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- 17. Liquidated Damages** 17.1 Subject to Clause 23, Force Majeure, if the Supplier fails to deliver any or all of the Goods or to perform the Services within the period(s) specified in the Contract, the Purchaser shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the Special Conditions of Contract of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery of performance, up to a maximum deduction of the percentage specified in the Special Conditions of Contract. Once the maximum is reached, the Purchaser may consider termination of the Contract pursuant to Clause 18, Termination for Default.
- 18. Termination for Default** 18.1 The Purchaser may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, terminate the Contract in whole or in part:
- (a) If the Supplier fails to deliver any or all of the Goods within the time period(s) specified in the Contract, or any extension thereof granted by the Purchaser, pursuant to Clause 16; or
 - (b) If the Supplier fails to perform any other obligation(s) under the Contract; and
 - (c) If the Supplier, in either of the above circumstances, does not cure its failure within a period of ten (10) calendar days (or such longer period as the Purchaser may authorize in writing) after receipt of a notice of default from the Purchaser specifying the nature of the default(s).
- 18.2 In the event the Purchaser terminates the Contract in whole or in part, pursuant to Clause 18.1 above, the Purchaser may procure, upon such terms and in such manner as it deems appropriate, goods similar to those undelivered, and the Supplier shall be liable to the Purchaser for any excess costs for such similar goods. Notwithstanding the above, the Supplier shall continue performance of the Contract to the extent not terminated.
- 19. Termination for Insolvency** 19.1 The Purchaser may at any time terminate the Contract by giving written notice to the Supplier, without compensation to the Supplier, if the Supplier becomes bankrupt or otherwise insolvent. Notwithstanding the above, such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser.
- 20. Termination for Convenience** 20.1 The Purchaser may, by written notice sent to the Supplier, 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 Purchaser's convenience, the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.
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- 20.2 The Goods that are complete and ready for shipment within thirty (30) days after the Supplier's receipt of notice of termination shall be purchased by the Purchaser at the Contract prices and on the other Contract terms. For the remaining Goods, the Purchaser may elect:
- (a) to have any portion thereof completed and delivered at the Contract prices and on the other Contract term; and/or
 - (b) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and for materials and parts previously procured by the Supplier for the purpose of the Contract, together with a reasonable allowance for overhead and profit.
- 21. Resolution of Disputes**
- 21.1 The Purchaser 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
- 21.2 If, after thirty (30) days from the commencement of such informal negotiations, the Purchaser and the Supplier have been unable to resolve amicably a Contract dispute, either party may require that the dispute be referred for resolution by arbitration by the mechanism described in the Special Conditions of Contract. The award shall be final and binding on the parties.
- 22. Applicable Law**
- 22.1 The Contract shall be governed by and interpreted in accordance with the laws of the Purchaser's country.
- 23. Force Majeure**
- 23.1 In the event that the Supplier or any of its subcontractors or the Purchaser is delayed in performing any of their respective obligations under the Contract, and such delay is caused by Force Majeure, including but not limited to war, civil insurrection, fires, floods, epidemics, earthquakes, quarantine restrictions and freight embargoes, such delay may be excused as provided in Clause 16, and the period of such delay may be added to the time of performance of the obligation delayed.
- 23.2 If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser 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.
- 24. Assignment**
- 24.1 The Supplier shall not assign, in whole or in part, its obligations to perform under the Contract, except with the Purchaser's prior written consent.

- 25. Contract Language**
- 25.1 The Supplier hereby represents that it has sufficient knowledge of the English language fully to understand the Contract. The Contract shall be in the English language, and all documentation related hereto will also be in the English language, except if otherwise specifically agreed in writing between the parties.
- 25.2 The Supplier shall bear all costs of translation to English and all risks of the accuracy of such translation.
- 26. Taxes and Duties**
- 26.1 The Supplier shall be entirely responsible for all taxes, stamp duties and other such levies imposed outside the Purchaser's country.
- 27. Headings**
- 27.1 Headings, whether of clauses or of other parts of the Contract, are for reference only and are not to be construed as part of the Contract.
- 28. Waiver**
- 28.1 Failure of either party to insist upon strict performance by the other party of any provision of the Contract shall in no way be deemed or construed to affect in any way the right of that party to require such performance.

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Section III

SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract (GCC). Since the Special Conditions of Contract (SCC) refer to or amend the provisions in the GCC, for easy reference, the corresponding clause number of the GCC is indicated in parentheses.

**1. Definitions
(GCC Clause
1)**

GCC 1.1 (c) – Add "and spare parts" between "—material" and "which the Supplier —"
GCC 1.1 (d) – " — technical assistance —" shall be read as " — technical assistance and supervision —"

GCC 1.1 (e) – The Purchaser means "The 4th Thermal Power Plant" and "the Goods" shall be read as "the Goods and Services".

GCC 1.1 (f) – The Purchaser's country is: Mongolia

GCC 1.1 (l) – The Project Site is: The 4th Thermal Power Plant in Ulaanbaatar, Mongolia and such other places as will be designated by the Purchaser from time to time

"The Project Site " shall be read as "The Project Site or The Site".

Add the following definitions

GCC 1.1 (k) – " The Works " means "the Goods" and "the Service"

GCC 1.1 (l) – "The Engineer" means the personnel appointed by the Purchaser to act as Engineer for the purposes of the Contract.

GCC 1.1 (m) – " The Trial Run " means the 5 days' continuous full load operation for each Boiler.

GCC 1.1 (n) – " The Provisional Acceptance " means the successful fulfillment of the Trial Run for each Boiler.

GCC 1.1 (o) – "The Specification" means the Technical Specification (Section IV) and technical information/data which, during the Contract, will be furnished by the Purchaser.

**2. Contract
Execution
Schedule**

As specified in Technical Specifications

- 3. General Requirements** The Supplier shall have in Ulaanbaatar a local agent or office vested with sufficient power to deal with the performance of the Contract until the completion of the Contract.
- 4. Use of Contract Document and Information (GCC Clause 2)** 2.4 Add the following Clause 2.4
 2.4 Contract Documents
 The several documents forming the Contract are to be taken mutually explanatory of one another, but in case of ambiguities or discrepancies the same shall be explained and adjusted by the Engineer who shall thereupon issue to the Contractor instructions thereon and in such event, unless otherwise provided in the Contract, the priority of the documents forming the Contract shall be as follows:
 (1) the Contract Agreement (if completed);
 (2) the Minutes of Meeting of contract negotiation
 (3) the Letter of Acceptance;
 (4) the Bid Form and Price Schedules;
 (5) the Conditions of Contract Part II – Special Conditions;
 (6) the Conditions of Contract Part I – General Conditions;
 (7) the Specifications and Drawings;
- 5. Subcontracts (GCC Clause 5)** 5.1 Delete the sentence "of the subcontracting and the subcontractor"
- 6. Eligibility of Goods (GCC Clause 6)** All countries and areas are eligible.
- 7. Inspection and Tests (GCC Clause 7)** 7.2 "Inspectors" shall be read as "the inspectors nominated by the Purchaser"
 7.6 Add the following Clauses
 The Purchaser shall be entitled at all times to inspect, examine and witness tests on the Goods supplied under the Contract before each delivery. Notwithstanding such inspection, examination and witnessing of tests, the Supplier shall be responsible for the Works.
 7.7 All expenses including business class air fare, board and lodging, etc. to be incurred to the Purchaser's representatives to attend the tests and inspections carried out outside Mongolia shall be born by the Supplier.
- 8. Packing (GCC Clause 8)** 8.2 "the Special Conditions of Contract" shall be read as "the Special Conditions of Contract and/or the Specification".

9. Delivery and Documents (GCC Clause 9)

9.1 "the Special Conditions of Contracts" shall be read as "the Special Conditions of Contract and/or Technical Specification"

Add the following Clause.

9.3 For Goods supplied from outside the Purchaser's country DDP (Delivered Duty Paid), unloaded and in custody at the Site.

Upon shipment, the Supplier shall notify the Purchaser and Insurance Company by fax the full details of the shipment, including Contract number, description of Goods, quantity, the vessel, the bill of lading number and date, port of loading, date of shipment, port of discharge, etc. The Supplier shall mail the following documents to the Purchaser, with a copy to the Insurance Company:

- (i) 7 copies of the Supplier's invoice showing Goods' description, quantity, unit price, and total amount;
- (ii) original and 2 copies of the negotiable, clean, on-board bill of lading marked "freight prepaid" and 5 copies of non-negotiable bill of lading;
- (iii) two (2) originals and five (5) copies of the packing list identifying contents of each package;
- (iv) insurance certificate;
- (v) Manufacturer's or Supplier's warranty certificate;
- (vi) Inspection certificate, issued by the nominated inspection agency, and the Supplier's factory inspection report; and
- (vii) Country of origin.

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

10. Performance Security (GCC Clause 11)

11.1 "in the Special Conditions of Contract" shall be read as "in Clause 11.5" and "within thirty (30) days" shall be read as "within twenty eight (28) days".

11.4 "—— not later than warranty period ——" shall be read as "—— within thirty (30) days after the expiration of the Warranty Period ——".

11.5 Add the following Clause

The amount of performance security, as a percentage of the Contract Price, shall be ten (10) percent of the Contract Price.

11. Insurance
(GCC Clause
12)

12.1 "Goods" shall be read as "Works" and insert sentence "unloading and storage at the Site," after " — storage and delivery,".

Particular Insurance Requirements:

Marine cargo insurance in the currency of the Contract cover 110% of CIF price of the Goods against All Risks under Institute Cargo Clause and Wars, Strikes, Riots and Civil Commotions under Institute War Clauses, with Special Clause for Concealed Damage, taken out from an insurance company acceptable to the Purchaser.

12. Warranty
(GCC Clause
13)

Particular Guarantees or Warranties:

Clause 13.2 shall be read as follows;

13.2 The Warranty shall remain valid for twenty four (24) months for No.5 and No.6, eighteen (18) months for No.7 and twelve (12) months for No.8, after the issue of Provisional Acceptance Certificate for the Works of each Boiler.

13.4. Delete the sentence "other than, where applicable, the cost of — to the final destination"

13. Payment
(GCC
Clause 14)

Disbursement procedures of JBIC ODA Loans shall be applied for disbursement of the proceeds of JBIC ODA Loans for eligible payment under this contract.

Add the following Clause:

14.5 For Works supplied from outside the Purchaser's country, the Purchaser will pay to the Supplier as follows:

(a) **Advance Payment:** Ten (10) percent of the Contract Price shall be paid within thirty (30) days of signing of the Contract, and upon submission of claim and an unconditional bank guarantee issued by a Bank which is acceptable to the Purchaser for the equivalent amount valid until the Goods are delivered and in the form provided in the bidding documents or another form acceptable to the Purchaser.

- (b) **On Shipment:** Fifty (50) percent of the Price of Works for each Boiler shall be paid through irrevocable confirmed letter of credit opened in favor of the Supplier in a bank in its country under the commitment procedure for JBIC ODA Loans, upon submission of documents specified in Clause 9 of the General Conditions of Contract.
- (c) **On unloaded at the Site:** Twenty five (25) percent of the Price of Works for each Boiler shall be paid within thirty (30) days after the confirmation of the notification of unloaded issued by the Supplier.
- (d) **On Provisional Acceptance:** Ten (10) percent of the Price of Works for each Boiler shall be paid within thirty (30) days after the date of Provisional Acceptance Certificate issued by the Purchaser of the Goods accepted upon submission of claim supported by the Provisional Acceptance Certificate.
- (d) **On Expiration of Warranty:** Five (5) percent of the Price of the Works for each Boiler shall be paid within thirty (30) days upon expiration of the Warranty Period specified in Clause 13 of the General Conditions of Contract, upon submission of claim supported by the Final Acceptance Certificate issued by the Purchaser, unless otherwise specified in these Special Conditions of Contract.
- 14. Extensions in the Supplier's Performance (GCC Clause 16)**
- 16.1 "Goods" shall be read as "Works".
- 16.2 Delete sub-clause (b).
- 15. Liquidated Damages (GCC Clause 17)**
- 17.1 Applicable rate: as specified in the Specifications.
 "the Special Conditions of Contract" shall be read as " the Special Conditions of Contract and/or Specifications".
 Maximum deduction: as specified in the Specifications.
- 16. Resolution of Disputes (GCC Clause 21)**
- Add the following Clause
- 21.3 The arbitration shall be carried out in an international forum under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three arbitrators selected in accordance with said Rules and subject to the following: the place for arbitration in Ulaanbaatar, Mongolia; *the applicable law; English Law*, the language for arbitration English; and the arbitration award shall be final and binding on the parties.
- 17. Taxes and Duties (GCC Clause 26)**
- 26.1 All taxes and duties imposed on the Goods in Mongolia under this Contract are exempted.

18. Spare Parts

As specified in the Technical Specifications.

19. Compatible Production

The Supplier is requested to be able to supply equipment and materials compatible with Goods during ten (10) years after the expiration of Warranty Period.