

Section 3

Contract Forms

LA UNION PORT DEVELOPMENT PROJECT

Bidding Documents for Package B: Cargo Handling Equipment

Volume I

Section 3 Contract Forms

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Form C1

Contract Agreement

No. _____

THIS AGREEMENT made the _____ day of _____, 200.. between the Comisión Ejecutiva Portuaria Autónoma (hereinafter called "the Purchaser") of the one part and _____ of _____ with its registered business office at _____ (hereinafter called "the Supplier") of the other part.

WHEREAS the Purchaser is desirous that certain Works be executed by the Supplier, viz., the supply and erection works for Package B: Procurement of Cargo Handling Equipment for La Unión Port Development Project, and has accepted a Bid by the Supplier for the execution and completion of such Works and the remedying of any defects therein.

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement:
 - (a) the Letter of Acceptance;
 - (b) the Bid submitted by the Supplier, dated _____ and comprising:
 - (i) Bid Forms;
 - (ii) Bid Supplementary Documents;
 - (iii) Priced Bill of Quantities
 - (c) the Conditions of Contract;
 - (d) the Specifications;
 - (e) clarification Addenda, and any other documents submitted by the Supplier during the bidding period;
 - (f) all codes, designations, standards, standard specifications, and other similar requirements which are referred to in the Conditions of Contract and Specifications.
3. In consideration of the payments to be made by the Purchaser to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Purchaser to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
4. The Purchaser hereby covenants to pay the Supplier in consideration of the execution and completion of the Works and the remedying of defects therein the Contract Price or such other

sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

5. It is mutually agreed:

- (1) That the total Contract Price, obtained from the prices and the estimated quantities of the work as indicated in the Bill of Quantities is:

US Dollars _____

(amount in words)
(_____) (amount in figures).

- (2) That the implementation of this Agreement shall start upon issuance of the Notice to Proceed to the Supplier as stipulated in Sub-Clause 1.1.1 of Section 4, Part II: Special Conditions

- (3) That this Agreement shall extend and be binding upon the parties hereto, executors, successors and permitted assigns, who shall jointly and severally be entitled to the benefits of this Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed the day and year first before written.

Signed, sealed, and delivered by THE PURCHASER:

COMISIÓN EJECUTIVA PORTUARIA AUTÓNOMA

Binding Signature and Seal: _____

Name of Signatory: _____

Title of Signatory: _____

In the presence of:

Signature of Witness: _____

Name & Title of Witness: _____

Signed, sealed, and delivered by THE SUPPLIER:

(Name of Supplier)

Binding Signature and Seal: _____

Name of Signatory: _____

Title of Signatory: _____

In the presence of:

Signature of Witness: _____

Name & Title of Witness: _____

Form C2

Performance Security

THIS AGREEMENT is made on the _____ day of _____ 200.. between
_____ [name of bank]

with its head office at _____
[address of bank] (hereinafter called "the Guarantor") of the one part and the Comisión Ejecutiva Portuaria Autónoma with its head office at Blvd. de Los Heroes, Edificio Torre Roble, San Salvador, El Salvador (hereinafter called "the Purchaser") of the other part.

WHEREAS

- (1) this Agreement is supplemental to a contract (hereinafter called "the Contract") made between _____ [name of Supplier] of _____ [address of Supplier] (hereinafter called "the Supplier") of the one part and the Purchaser of the other part whereby the Supplier agreed and undertook to execute the Works of Package B: Procurement of Cargo Handling Equipment for the La Unión Port Development Project for the Contract Price of:

US Dollars _____ (amount in words)
(_____) (amount in figures).

- (2) the Guarantor has agreed to guarantee the due performance of the Contract in the manner hereinafter appearing.

NOW, THEREFORE, the Guarantor hereby agrees with the Purchaser as follows:

- (a) If the Supplier will in any respect fail to execute the Contract or commit any breach of his obligations thereunder then the Guarantor will indemnify and pay the Purchaser the sum of US Dollars _____ (amount of Guarantee in words) (_____) (in figures), representing ten percent (10%) of the total equivalent Contract Price, provided that the Purchaser or his authorised representative has notified the Guarantor to that effect and has made a claim against the Supplier before the issue of the Defects Liability Certificate.
- (b) The Guarantor shall not be discharged or released from his guarantee by an arrangement between the Supplier and the Purchaser, with or without the consent of the Guarantor, or by any alteration in the obligations undertaken by the Supplier, or by any forbearance on the part of the Supplier, whether as to the payment, time, performance, or otherwise, and any notice to the Guarantor of any such arrangement, alteration, or forbearance is hereby expressly waived.

This Guarantee shall be valid until the date 28 days from the date of issuance of the Taking-Over Certificate by the Purchaser to the Supplier.

Given under our hand on the date first mentioned above.

For and on behalf of THE GUARANTOR

For and on behalf of the PURCHASER:

(Name of the Bank)

Comisión Ejecutiva Portuaria Autónoma

Signature and Seal: _____

Signature and Seal: _____

Name & Title of Signatory: _____

Name & Title of Signatory:

.....
.....

in the presence of:

in the presence of:

Signature: _____

Signature: _____

Name & Title of Witness: _____

Name & Title of Witness: _____

Form C3

Warranty Security

WHEREAS _____

_____ (name and address of Supplier)
(hereinafter referred to as "the Supplier") has entered into a contract with the Comisión Ejecutiva Portuaria Autónoma (hereinafter referred to as "the Purchaser") under the Contract No. _____ dated _____ for execution the Works under Package B: Procurement of Cargo Handling Equipment for the La Unión Port Development Project, whereby pursuant to Sub-Clause 10.4 of Section 4, Part II: Special Conditions thereof the Supplier shall deposit with the Purchaser a Warranty Security in an amount of US Dollars _____

_____ (guarantee amount in words)
(US\$ _____) (guarantee amount in figures) to guarantee his fulfillment of the contractual obligations specified in Clause 30 of Section 4, Part I: General Conditions during the Defects Liability Period;

NOW THEREFORE, by this Warranty Guarantee, we _____

_____ (name and address of the Warranty issuing Bank) (hereinafter referred to as "the Guarantor") hereby agree to pay the Purchaser up to a sum of US Dollars _____

_____ (guarantee amount in words)¹
(US\$ _____) (amount in figures) if the Supplier refuses or fails to fulfill his obligations for remedying any defect of or damage to the Works as stipulated in Clause 30 of the Conditions of Contract. The conditions of this Warranty are as follows:

1. Payment of whole or part of the above-mentioned sum shall be made to the Purchaser within seven (7) days from receipt of a written request to do so from the Purchaser and without whatsoever right of objection on our part.
2. No change or addition to or other modification of the terms of the Contract or of Works to be performed thereunder or of any of the Contract documents which may be made between the Purchaser and the Supplier, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.
3. This guarantee shall remain valid and in full effect until the date 28 days from the date of expiry of the last Defects Liability Period.

¹ The amount is to be inserted by the bank or financial institution representing the amount of guarantee equivalent to 10% of the total Contract Price at the date of Warranty Security.

IN WITNESS WHEREOF, we have caused these presents to be signed by our authorized officer and our corporate seal to be hereunto affixed.

Date: _____, 200..

Name of Bank: _____

Signature and Seal: _____

Name and Title of Signatory: _____

in the presence of:

Signature of Witness: _____

Name and Title of Witness: _____

Form C4

Bank Guarantee for Advance Payment

To: Unidad de Adquisiciones y Contrataciones Institucional (UACI)
Comisión Ejecutiva Portuaria Autónoma (CEPA)
Edificio Torre Roble, 5th Floor
Boulevard de Los Héroes
San Salvador, El Salvador

Re.: Contract No. _____ dated _____, 200..
La Unión Port Development Project
Package B: Procurement of Cargo Handling Equipment

Gentlemen:

In accordance with the provisions of Sub-Clause 33.2 of Section 4, Part I: Special Conditions of the Contract No. _____ for Package B: Procurement of Cargo Handling Equipment for La Unión Port Development Project (hereinafter called "the Contract") _____

(name and address of Supplier) (hereinafter called "the Supplier") shall deposit with the Comisión Ejecutiva Portuaria Autónoma, hereinafter called "the Purchaser", a bank guarantee for the Advance Payment in an amount of _____

(Advance Payment amount in words)

(_____) (amount in figures).

to guarantee his proper and faithful performance against the said Advance Payment.

We, the _____
(name of the bank or financial institution), as instructed by the Supplier, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to the Purchaser on his first demand without whatsoever right of objection on our part and without his first claim to the Supplier, in the amount not exceeding _____

(guarantee amount in words)¹¹

(_____) (amount in words).

We further agree that no change or addition to or other modification of the terms of the Contract or of Works to be performed thereunder or of any of the Contract documents which may be made between the Purchaser and the Supplier, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

¹¹ The amount is to be inserted by the bank or financial institution representing the amount of the Advance Payment, and denominated in the currency of the Advance Payment as specified in the Contract.

This guarantee shall remain valid and in full effect from the date on which the Advance Payment is received by the Supplier under the Contract until a date 56 days from the date of issuance of the Certificate of Payment for the 2nd Interim Payment pursuant to Sub-Clauses 33.1 and 33.5 of Section 4, Part II: Special Conditions.

Yours truly,

Name of Bank or Financial Institution : _____

Signature and Seal : _____

Name of Signatory : _____

Position of Signatory : _____

Address : _____

Date : _____

Section 4

Conditions of Contract

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Section 4 Conditions of Contract

Part I: General Conditions

Part I: General Conditions of the "Conditions of Contract for Electrical and Mechanical Works including Erection On Site", 3rd Edition 1987, prepared by the Fédération Internationale des Ingénieurs-Conseils (FIDIC) and reprinted in May 1988 with editorial amendments, shall apply as the General Conditions to the Contract for Package B: Cargo Handling Equipment, and shall form an integral part of the Bidding Documents.

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

FIDIC Secretariat
P.O. Box 86
1000 Lausanne 12
Switzerland
Facsimile: 41 21 653 5432
Telephone: 41 21 653 5003

The Contractor shall acquire at his own cost a copy of the above-mentioned FIDIC Conditions of Contract - Part I and refer to those conditions in conjunction with the Preamble and Part II: Special Conditions attached hereafter.

The General Conditions shall be subject to the modifications and additions set out in Part II: Special Conditions, and Part I and Part II together comprise the conditions governing the rights and obligations of the parties to the Contract.

In case of any inconsistency between the conditions contained in Part I and those in Part II, the conditions contained in Part II shall prevail over.

Preamble to Part I: General Conditions

	Conditions of Contract Sub-Clause	
Commencement Date	1.1.1.(i)	The date of commencement of the Works is the date of issuance of the Notice to Proceed by the Engineer
Defects Liability Period	1.1.11	Two years from the date of taking-over.
The Employer	1.1.12	The Employer is the Comisión Ejecutiva Portuaria Autónoma (CEPA)
The Engineer	1.1.15	The Engineer is
Time for Completion	1.1.35	The time for completion of all the Works under the Contract from the commencement date is 18 months plus 2 months of training
Engineer's Authority to Issue Variations	2.1.(b).(iv)	0% of the Contract Price
Ruling Language	5.1	The version in English language (ruling language) shall prevail
Day to Day Communications	5.2	The language for day to day communications is English.
Program to be Furnished	12.1	<p>The program shall be submitted in the form of GANTT/ Critical Path Method (CPM) or a similar type of schedule accepted by the Engineer.</p> <p>Apart from the requirements stated in the Specifications, the work program shall indicate all the major activities of the Contract in their sequence order. The program shall show clearly the expected duration, sequence and relation of all major operations and/or work activities, and highlight all critical operations or work activities which directly affect the Time for Completion. The program shall provide sufficient details and milestones for effectively adopted as the basis for monitoring the progress or otherwise of the Works, and for determining of extension of Time for Completion, if any, as described in Clause 26.</p>
Electricity, Water, Gas and Other Services	14.3	It is the responsibility of the Supplier to make arrangements, at his own cost, for the supply of electricity, water, gas and other services required for the execution of the Works.

	Conditions of Contract Sub-Clause	
Employer's Equipment	14.4	No Employer's equipment is available for use by the Supplier at the site.
Working Hours	18.3	The normal working hours are 08:00 to 17:00 hours, with one hour break at noon, Monday to Saturday.
Delay in Completion	27.1	<p>(a) The following rates of reduction of the Contract Price shall be applied for each day of delay after the completion time prescribed for the whole Works:</p> <ul style="list-style-type: none"> - 0.1% for the first 30 days - 0.125% for the next 30 days - 0.125% from the 61st day <p>(b) The reduction shall in no case exceed the maximum 12% of the Contract Price.</p>
Rate of Exchange	35.3	Not applicable
Payment against Provisional Sums	36.4.(b)	Not applicable
Insurance of Works	43.1.(a)	<p>Deductible limits for replacement value: not applicable.</p> <p>The insurance shall cover all other risks</p>
Third Party Liability	43.3	The amount of insurance against third party liability taken out by the Supplier shall not be less than US\$ 50,000, per occurrence, with the number of occurrences unlimited.
Labor, Materials and Transportation	47.1	No price adjustment is allowed.
Notice to Employer	49.2	<p>The Employer's address for notice is:</p> <p style="margin-left: 40px;">Comisión Ejecutiva Portuaria Autónoma (CEPA) Edificio Torre Roble Boulevard de Los Héroes San Salvador, El Salvador Tel. No. Fax. No.</p>
Notice to Engineer	49.2	<p>The Engineer's address for notice is:</p> <p style="margin-left: 40px;">..... </p>

Application Law	51.1	The applicable law for arbitration is the law in force of the Republic of El Salvador.
	Conditions of Contract Sub-Clause	
Procedural Law for Arbitration	51.2	The procedural law for arbitration is the law in force of the Republic of El Salvador
Language and Place of Arbitration	51.3	The language for arbitration is English and interpretation will be made by a Court-appointed interpreter. The place of arbitration is the Court of Justice of the Republic of El Salvador in San Salvador City

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Part II: Special Conditions

This Part II - Special Conditions amends and supplements the preceding Part I - General Conditions. The clauses of Part II refer to the corresponding clauses of Part I. In case of discrepancy between the conditions stipulated in Part II and those in Part I, the conditions set forth in Part II shall prevail over.

Clauses 1, 2, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 22, 24, 26, 27, 28, 29, 30, 31, 33,35, 36, 37, 43, 44,45 46, 47, 48, and 50 of Part I - General Conditions are revised and new Clauses 52 to 58 are added in this Part II.

Part II: Special Conditions

Sub-Clause 1.1 Definitions

Substitute the corresponding Sub-Clauses in Part I as follows:

- 1.1.1 "Commencement Date" means the date of the Notice to Proceed issued by the Engineer within 14 days after the signed Contract Agreement has been approved by JBIC.
- 1.1.11 "Defects Liability Period" means two (2) years following taking-over of the Plant, during which the Contractor is responsible for making good defects and damage in accordance with Clause 30 of the Conditions of Contract.
- 1.1.19 "Foreign Currency" means the US Dollar; US\$ is the abbreviation of US Dollar.
- 1.1.23 "Plant" means the quayside gantry cranes to be delivered under the Contract, including all equipment, ancillaries, spare parts, and tools.

Add the following Sub-Clauses:

- 1.1.38 "Local currency" means the US Dollar; US\$ is the abbreviation of US Dollar
- 1.1.39 "JBIC" means Japan Bank for International Cooperation (former Overseas Economic Cooperation Fund (OECF)) of Japan.
- 1.1.40 "Government" means the Government of the Republic of El Salvador.
- 1.1.41 "Country where the Site is located" means the Republic of El Salvador.
- 1.1.42 "Project" means the La Unión Port Development Project
- 1.1.43 "Date" and "Time" means El Salvador Standard Date and Time.
- 1.1.44 The word "Bid" is synonymous with "Tender", "Bidder" with "Tenderer", and "Bidding Documents" with "Tender Documents".
- 1.1.45 The word "Purchaser" is synonymous with "Employer" and the word "Supplier" is synonymous with "Contractor".

Sub-Clause 1.6 Costs, Overhead Charges and Profit

Delete Sub-Clause 1.6 in its entirety.

Sub-Clause 2.1 Engineer's Duties and Authority

Substitute Sub-Clause 2.1 as follows:

- (a) The Engineer shall carry out the duties specified in the Contract.

- (b) The Engineer shall obtain prior approval of the Purchaser specifically for taking any of the following actions:
- (i) consenting to the subletting of any part of the Works under Clause 4;
 - (ii) certifying additional cost determined under Clause 11;
 - (iii) determining an extension of time under Clause 26;
 - (iv) issuing a variation under Clause 31, except in an emergency situation as provided for in subparagraph (c) below; and
 - (v) fixing rates or prices under Clause 31.
- (c) Notwithstanding the obligation set out in (iv) above, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Supplier of any of his duties and responsibilities under the Contract, instruct the Supplier to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Supplier shall forthwith comply, despite the absence of consent of the Purchaser, with any such instruction of the Engineer. The Engineer shall determine an addition to the Contract Price, in respect of such instruction, in accordance with Clause 31 and shall notify the Supplier accordingly, with a copy to the Purchaser.
- (d) Except as expressly stated in the Contract, the Engineer shall have no authority to relieve the Supplier of any of his obligations under the Contract.

Sub-Clause 4.1 Subcontracting

Add the following paragraphs at the end:

In the event of approved subcontracting, the Supplier shall make sure that it is not allowed for Subcontractors to further sublet their subcontract, and that the value of the subcontract work shall be less than 25% of the Contract Price. The Supplier shall be responsible for keeping a log showing following information of all Subcontractors engaged in the Works:

- (a) Name and address
- (b) Date of subcontract
- (c) Works included in the subcontract
- (d) Commencement date of subcontract
- (e) Completion date of subcontract
- (f) Value of subcontract
- (g) Payments
- (h) Details of labors, temporary works and Subcontractor's equipment
- (i) Progress of the Subcontractor's work

The Supplier shall supply a copy of this log to the Engineer on monthly basis or upon request to do so.

The Supplier shall guarantee that the performance of all of his Subcontractors for any part of the Works or Plant shall fully comply with the terms and conditions applicable to such part of Works or Plant under the Contract. The Supplier shall be responsible for supervision / observance of his Subcontractors.

Sub-Clause 5.3 Priority of Contract Documents

Substitute Sub-Clause 5.3 as follows:

Unless otherwise provided in the Contract, the priority of the Contract Documents shall be as follows:

- (1) the Contract Agreement;
- (2) the Letter of Acceptance;
- (3) the completed Form of Bid;
- (4) the Preamble to Part I: General Conditions;
- (5) the Part II: Special Conditions;
- (6) the Part I: General Conditions;
- (7) the Specifications;
- (8) the Approved Supplier's Drawings;
- (9) the priced Bill of Quantities; and
- (10) other documents forming part of the Contract.

Sub-Clause 5.4 Documents Mutually Explanatory

Substitute Sub-Clause 5.4 as follows:

Subject to Sub-Clause 5.3, the Contract shall be taken as mutually explanatory. The Specifications and the priced Bill of Quantities describe and provide for a complete work or finished installation, ready for use or service. They are co-operative and mutually explanatory, and what is called for by one shall be as binding as if called for by others.

The work therein described shall be complete in every detail, although every item necessarily involved is not particularly mentioned. The Supplier shall provide all labor and materials necessary for the entire completion of the work intended to be described, and shall not avail himself of any error or omission, should such exist.

All requirements called for by the Specification or design criteria shall be binding upon the Supplier. The Supplier shall not take advantage of, and shall promptly call the attention of the Engineer with full supporting details to any error in the design criteria and Specification, or any ambiguities or discrepancies. The Engineer shall make such corrections and interpretations as may be required for the completion of the work in a satisfactory manner.

Sub-Clause 6.1 Supplier's Drawings

Add the following paragraph after sub-clause 6.1 (b), before the 2nd paragraph:

The Supplier shall submit to the Engineer in sufficient time as notified by the Engineer to prevent delays in execution of the Works or the delivery of equipment and materials. The drawings prepared by the Supplier or his Subcontractor shall be carefully checked and endorsed by the Supplier's qualified staff prior to submitting to the Engineer, to ensure the conformity to the requirements of the Contract, and shall be prepared with sufficient details for effective execution of the Works. Any error in the design criteria and Specifications, or any ambiguities or discrepancies shall be promptly informed and resolved prior to the preparation of the Supplier's drawings. The drawings prepared by his Subcontractor shall be checked and approved by the Supplier before submitting to the Engineer. Any and all such

Subcontractor's drawings submitted to the Engineer shall be deemed prepared by the Supplier for which he shall bear full responsibility.

Sub-Clause 6.6 Operation and Maintenance Manuals

Substitute the 2nd paragraph as follows:

The Supplier's drawings and operation and maintenance manuals shall be in the English language. In addition, Spanish translations of the operation and maintenance manuals for the quayside gantry crane shall be furnished along with the English versions.

The Supplier shall propose for the Engineer's prior approval the format of his drawings and operation and maintenance manuals.

The drawings and operation and maintenance manuals shall be submitted in one original and two copies for each unit of quayside gantry crane and the identity of the crane shall be clearly indicated on such documents.

Sub-Clause 6.9 Manufacturing Drawings

Substitute Sub-Clause 6.9 as follows:

The Supplier shall disclose to the Engineer or the Purchaser any such confidential information, drawings, basic data and relevant calculation/analysis methodology as necessary to prove the Plant's performance, durability and stability meeting the requirements of the design and specifications under the Contract.

Sub-Clause 7.2 Errors by Employer or Engineer

Add the following paragraph at the end:

The Supplier shall give prompt notice to the Engineer, with a copy to the Purchaser of any error, omission, fault, ambiguities, discrepancies or other defect in the design of or specifications for the Works which he discovers when reviewing the Contract preparing his drawings or executing the Works.

Sub-Clause 10.1 Performance Security

Substitute Sub-Clause 10.1 as follows:

Within 28 days from the date of the Letter of Acceptance, the Supplier shall provide to the Purchaser a security for the proper performance of his duties under the Contract. The Performance Security shall cover an amount in US Dollar equal to 10% of the total Contract Price in this currency.

The Performance Security shall be established in the form provided in Section 3 (Form C2), and issued as a bank guarantee by a reputable bank or a bonding or insurance company authorized by the Financial System Superintendence (Superintendencia del Sistema Financiero) of the Republic of El Salvador. The Supplier shall notify the Engineer when providing the Performance Security to the Purchaser.

Without limitation to the provisions of the preceding paragraph, whenever the Engineer determines an addition to the Contract Price as a result of a change in cost and/or legislation or as a result of a variation amounting to more than 20% of the Contract Price,

the Supplier, at the Engineer's written request, shall promptly increase the value of the Performance Security by an equal percentage.

The Performance Security of a joint venture shall be in the name of the joint venture.

The cost of complying with the requirements of this Clause shall be borne by the Supplier.

Sub-Clause 10.2 Period of Validity of Performance Security

Substitute Sub-Clause 10.2 as follows:

The Performance Security shall be valid until a date 28 days from the date of issuance of the Taking-Over Certificate in accordance with Clause 29 and submission of a Warranty Security by the Supplier in accordance with Sub-Clause 10.4.

The Performance Security shall be returned to the Supplier within 14 days of expiration.

Sub-Clause 10.4 Warranty Security

Add Sub-Clause 10.4 as follows:

Upon issuance of the Taking-Over Certificate in accordance with Clause 29, and prior to the expiration of the Performance Security pursuant to Sub-Clause 10.2, the Supplier shall provide a Warranty Security in an amount in US Dollar equivalent to 10% of the total Contract Price at the time of its issuance, to guarantee the fulfillment of his contractual obligations during the Defects Liability Period in accordance with Clause 30. The Supplier shall notify the Engineer when providing the Warranty Security to the Purchaser.

The Warranty Security can be issued in the form of a bank guarantee issued by a reputable bank or a bonding or insurance company authorized by the Financial System Superintendence (Superintendencia del Sistema Financiero) of the Republic of El Salvador.

The Warranty Security shall be valid until a date 28 days from the date of issuance of the Defects Liability Certificate for the Works. The Warranty Security shall be returned to the Supplier within 14 days of expiration.

The Warranty Security of a joint venture shall be in the name of the joint venture.

The cost of complying with the requirements of this Clause shall be borne by the Supplier.

Sub-Clause 11.1 Site Data

Add the following paragraph at the end:

The Supplier shall incorporate the Site data and Site condition in the design criteria for each Plant to meet the requirements of the Specifications in terms of performance, durability and stability, and shall prepare the drawings and operation and maintenance manuals reflecting the said conditions. The Supplier shall correct such design and/or modify the Plant at no cost to the Purchaser if the Plant fails to incorporate the necessary precautions to suit the installation or operation at the Site.

Sub-Clause 11.3 Physical Obstructions and Conditions

Substitute the 2nd paragraph as follows:

The Engineer shall certify and there shall be added to the Contract Price the additional cost of complying with any instruction which the Engineer, after due consultation with the Purchaser and the Supplier, issue to the Supplier in connection therewith.

Delete subparagraphs (a) and (b).

Sub-Clause 12.1 Program to be Furnished

Delete subparagraph (c) (iv) in its entirety.

Add the following paragraph under subparagraph (c):

The Supplier shall note that, in order to ensure proper timing of delivery of the Plant at the Site in accordance with the progress of the civil and foundation works under Package A, such delivery shall take place only after the 16th month from the Commencement Date of the Works for Package B under this Contract, subject to approval by the Engineer.

Sub-Clause 12.4 Monthly Progress Reports

Add Sub-Clause 12.4 as follows:

Within the first week of every month from the 2nd month of execution of the Works, the Supplier shall submit to the Engineer a monthly report on the progress of the Works. The monthly reports shall be submitted in the number of copies and in such form and details as the Engineer will reasonably prescribe.

Sub-Clause 13.1 Supplier's Representative

Add the following paragraph at the end:

The Supplier's Representative shall have full technical knowledge of materials and Plants and the progress of manufacturing, delivery, installation, erection, testing of all Plant. When Plant or parts of Plant are delivered to the Site, he shall be stationed on the Site and have full authority in managing the Site works and responding to the Engineer's instructions in the name of the Supplier.

Sub-Clause 14.2 Safety Precautions

Add the following paragraph at the end:

- (c) take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to public and private property resulting from pollution, noise or other causes arising as a consequence of his methods of operation on Site.

Sub-Clause 14.8 Information for Import Permits and Licences

Substitute Sub-Clause 14.8 as follows:

The Supplier shall, at his own cost, be solely responsible for obtaining all necessary import permits or licences to clear any equipment being imported into the Republic of El Salvador under this Contract from the port of entry in El Salvador and taking the said equipment into safe custody in order to fulfil the requirements for issuance of the Taking-Over Certificate.

Sub-Clause 14.9 Supplier's Meetings

Add Sub-Clause 14.9 as follows:

At such times as the Engineer may direct, the Supplier shall meet with the Engineer and other contractors to discuss the status of the Works and measures to be taken to further the progress thereof.

The Supplier shall submit to the Engineer immediately upon his request, all available up-to-date information concerning the construction program, schedule of works, condition and progress of his works.

Sub-Clause 14.10 Interference with Traffic and Adjoining Properties

Add Sub-Clause 14.10 as follows:

All operations necessary for the execution and completion of the Works including the training program in accordance with Sub-Clause 28.10, and remedying of any defects therein shall, so far as the Contract permits, be carried out so as not to interfere unnecessarily or improperly

- (a) the convenience of the public, or
- (b) the access to, use and occupation of the Port facilities, public or private roads and footpaths to or of properties whether in the possession of the Purchaser or of any other person.

The Supplier shall save harmless and indemnify the Purchaser in respect of all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of, or in relation to, any such matters insofar as the Supplier is responsible therefor

Sub-Clause 14.11 Sunken Equipment, Plant or Materials

Add Sub-Clause 14.11 as follows:

If any Plant, part of Plant or equipment (floating or otherwise) belonging to the Supplier or any Subcontractor or any person employed by the Supplier or by any Subcontractor or any materials or things therein or therefrom sink from any cause whatsoever, such occurrence shall immediately be reported by the Supplier to the competent authorities and the Engineer's Representative, and the Supplier shall forthwith, at his own cost, raise and remove any such equipment, materials or things or otherwise deal with the same as the Engineer may direct.

The fact that such sunken equipment, materials, Plant, parts of Plant or things are insured or have been declared a total loss or do not represent any further value shall not absolve the Supplier from his obligations under this Clause to raise and remove the same.

Until such sunken equipment, materials, Plant or part of Plant or things have been raised and removed, the Supplier shall set such buoys and display at night such lights and do all such things for the safety as may be required by the competent authorities or by the Engineer's Representative. In the event of the Supplier not carrying out the obligation imposed upon him by this Sub-Clause, the Purchaser may cause to set buoys and display at night lights on such equipment and raise and remove the same without prejudice to the right of the Purchaser to hold the Supplier liability and all expenses and all consequences thereon and incidental thereto shall be borne by the Supplier and shall be recoverable from him as a debt by the Purchaser or may be deducted by the Purchaser from any payment due to or which may become due to the Supplier.

Sub-Clause 14.12 Avoidance of Damage to Roads and Existing Structures

Add Sub-Clause 14.12 as follows:

The Supplier shall use every reasonable means to prevent any of the roads, highways, bridges or any existing structures communicating with or on the routes to the Site from being damaged by any traffic of the Supplier or any of his Subcontractors and, in particular, shall select routes, choose and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of materials, Plant, Supplier's Equipment or Temporary Works from and to the Site shall be limited, as far as reasonably possible, and so that no unnecessary damage may be occasioned to such roads, bridges or existing structures.

Sub-Clause 14.13 Transport of Supplier's Equipment, Temporary Works, Material or Plant

Add Sub-Clause 14.13 as follows:

Save insofar as the Contract otherwise provides, the Supplier shall be responsible for and shall pay the cost of strengthening any bridges or altering any existing structures or civil works, or improving any road communicating with or on the routes to the Site to facilitate the movement of the Supplier's Equipment, Plant or Temporary Works and the Supplier shall indemnify and keep indemnified the Purchaser against all claims for damage to any such road, bridge or existing structures/civil works caused by such movement, including such claims as may be made directly against the Purchaser, and shall negotiate and pay all claims arising solely out of such damage.

If it is found necessary for the Supplier to move one or more loads of heavy equipment, materials, Plant or pre-construction units of the Works or parts of Plant over roads, highways, bridges or any kind of existing structures / civil works on which such oversized and overweight items are not normally allowed to be moved, the Supplier shall obtain prior permission from the authorities or parties concerned. Payments for complying with the requirements, if any, for protection or strengthening of the roads, highways, bridges or such structures shall be deemed to be included in the Contract Price.

If any damage occurs to any bridge, road, highway or any existing structures communicating with or on the routes to the Site arising from the transport of materials or

Plant, the Supplier shall notify the Engineer with a copy to the Purchaser, as soon as he becomes aware of such damage or as soon as he receives any claim from the authority entitled to make such claim. The Supplier shall save harmless and indemnify the Purchaser in respect of all claims, proceedings, loss, damages, costs, charges and expenses whatsoever arising out of or in relation to any claim made by the authorities concerned in respect of damage of bridges, roads, highways or any existing structures. In case of failure of the Supplier to settle such claims and in case the Purchaser is held responsible for payment to the authorities, the Purchaser shall settle the claims and the Purchaser's expenses in this regard, as certified by the Engineer, shall be deducted by the Purchaser from any payments due to or which may become due to the Supplier, and the Engineer shall notify the Supplier accordingly with a copy to the Purchaser. Provided also that the Purchaser shall notify the Supplier whenever a settlement is to be negotiated and, where any amount may be due from the Supplier, the Purchaser shall consult with the Supplier before such settlement is agreed.

Sub-Clause 14.14 Traffic Waterborne

Add Sub-Clause 14.15 as follows:

Where the nature of the Works is such as to require the use by the Supplier of waterborne transport, the foregoing provisions of Sub-Clauses 14.10, 14.12 and 14.13 shall be construed as though "road" includes a lock, dock, seawall berth or other structure related to a waterway and "vehicle" includes craft and ship, and shall have effect accordingly.

Sub-Clause 17.4 Consents and Wayleaves

Delete Sub-Clause 17.4 in its entirety.

Sub-Clause 17.5 Import Permits and Licences

Delete Sub-Clause 17.5 in its entirety.

Sub-Clause 18.1 Engagement of Labor

Add the following paragraph at the end:

The Supplier is encouraged, to the extent practicable and reasonable, to employ staff and labor with appropriate qualifications and experience from sources within the Site and its surrounding areas.

Sub-Clause 18.5 Labor, Rates of Wages, Hours and Conditions of Labor

Add Sub-Clause 18.5 as follows:

For any work under the Contract to be executed within the Republic of El Salvador:

- (a) The Supplier shall not employ in connection with the Works any person who has not completed his or her eighteenth year of age
- (b) The Supplier shall, with respect to his employees who are employed by him pay rates of wages, observe hours of labor and provide conditions, amenities and facilities not less favorable than the provisions set out by Republic of El Salvador and those

required by the appropriate wage fixing authority and generally recognized by the other employees in the District whose general circumstances in the trade or industry in which the Supplier is engaged are similar

- (b) The Supplier shall pay to all staff and labor employed by him, wages and other benefits at the rate and to the timing agreed upon
- (d) The Supplier shall not recruit or attempt to recruit his staff and labor from among persons in the service of the Purchaser or the Engineer
- (e) The Supplier shall be responsible for making all arrangements for and shall bear all costs relating to the obtaining of all necessary permits, documents or other official permission for the movement of staff or labor from place to place as may be necessary in connection with the execution and maintenance of the Contract
- (f) The Supplier shall in all dealings with his staff and labor have due regard to all recognized festivals, days of rest and religious or other customs
- (g) The Supplier shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst his staff and labor and to preserve the peace and to protect persons and property in the neighbourhood of the Works against the same;
- (h) The Supplier shall provide and maintain efficient sanitary latrine wherever required on the Site, all at his own cost;
- (i) The Supplier shall, so far as is reasonably practicable with regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of his staff and labor;
- (j) Due precautions shall be taken by the Supplier, at his own cost, to ensure the safety of his staff and labor and, in collaboration with and to the requirements of the local health authorities, provide and maintain adequate and easily available first aid facilities on the Site
- (k) The Supplier shall be responsible for observance by his Subcontractors and Nominated Subcontractors of the foregoing provisions

Sub-Clause 19.1 Manner of Execution

Add the following paragraph at the end:

The Supplier shall, at his own cost, prepare all the required surface treatment or cleaning prior to fixing or installing parts. He also shall do such slight alterations as may be necessary to make adjustable parts fit to fixed parts, leaving all complete and in proper shape when done (for field adjustment only). The Supplier shall take all required field measurements and shall assume responsibility for their accuracy.

The Supplier shall assign full-time qualified personnel to supervise the assembly, installation, and erection of Plant and all other related work activities on Site.

Sub-Clause 19.4 Use of Local Services and Materials

Add Sub-Clause 19.4 as follows:

Foreign contractors and subcontractors are advised to use local materials, plant, equipment, subcontractors and supplies to the largest extent possible according to the existing production, processing and service capacity in the Republic of El Salvador, but in any case the value of such services and materials shall not exceed 25% of the Contract Price.

Sub-Clause 19.5 Standards of Plant and Materials

Add Sub-Clause 19.5 as follows:

The Plant and materials shall conform to standards, international regulations, etc. as stated in the Specifications (Volume II, Part II).

The Supplier shall furnish to the Engineer in due time upon the latter's request, a list of all standards for Plant and materials, standards and codes used in design and material specifications under this Contract, whether or not indicated in the Specifications

Sub-Clause 19.6 Design Documents

Add Sub-Clause 19.6 as follows:

Before starting the manufacture of any major Plant or part of Plant, the Supplier shall furnish to the Engineer the detailed design of such Plant or part of Plant with all calculations, shop drawings and supporting documents to demonstrate their appropriateness and conformity with the technical specifications of the Contract. Within 21 days after receiving the detailed design, the Engineer shall give written design approval to the Supplier or shall instruct him to make any such modifications to the design as deemed necessary, in which case the Supplier shall comply with such instruction and re-submit the revised design for the Engineer's approval. Any Plant or part of Plant manufactured without prior design approval by the Engineer may be rejected. The Engineer's design approval, however, shall not in any way relieve the Supplier of his obligations under the Contract with respect to soundness of design, materials and workmanship, and performance of the Plant.

Sub-Clause 20.1 Independent Inspection

Add the following paragraph at the end:

The cost of making arrangements for engagement of independent inspector and his service fee, operation and all related expense shall be borne by the Supplier if such test is considered necessary to verify the Supplier's test results which provide unclear/ambiguous test result or interpretation of test result, or to retest of rejected Plant in accordance with Sub-Clause 21.1.

Sub-Clause 20.3 Dates for Inspection and Testing

Add the following paragraph at the end:

Where the test method and/or samples are not clearly particularised or provided for in the Contract, the Supplier shall submit details of such test method and/or material and any related calculation or supported documents for the Engineer's approval prior to setting up the dates for inspection and/or testing.

The Supplier shall submit operation instruction manuals and/or maintenance manuals relating to any materials or Plant proposed for inspection and testing, to the Engineer for review and approval in sufficient time prior to the dates for inspection and testing.

Sub-Clause 20.4 Facilities for Testing

Add the following paragraph at the end:

The tests shall be conducted under close supervision by the Supplier's qualified personnel at all time.

If the manufacturing premise or factory for the Plant where the inspection and/or testing takes place is located outside the Site or outside the Republic of El Salvador, the Supplier shall, at his own cost, provide transportation and accommodation and any related assistance for the Engineer's and/or the Purchaser's Representatives to attend such inspection and/or testing, in accordance with Section 1007 of the Specifications (Volume II, Part II).

The cost of making any test, or providing any samples, required by the Contract shall be borne by the Supplier.

Immediately after any test or trial, the Supplier shall submit to the Engineer's Representative who attends the test the test raw data and written preliminary test result / conclusion endorsed by the Supplier's qualified and authorised personnel. Within 7 days thereafter, the Supplier shall submit to the Engineer a formal test report indicating whether the test or trial has been successful or not and showing the final detailed results thereof, in the form and number of copies as instructed by the Engineer.

Sub-Clause 22.1 Permission to Deliver

Add the following paragraphs at the end:

Prior to the moving of any Plant or part of Plant from the manufacturing place for delivery, the Supplier shall submit to the Purchaser, with a copy to the Engineer, a certified copy of the insurance policy provided in accordance with Sub-Clause 43.1. Failure to do so will constitute a valid cause for the rejection by the Purchaser of such Plant or part of Plant in accordance with Sub-Clause 21.1.

Furthermore, the Supplier shall inspect the installation position and the route to transport such Plant or part of Plant, as stipulated in Sub-Clauses 14.10, 14.12 to 14.14, and any requirements stated in the Specifications. The Supplier shall submit to the Engineer in writing the details of such inspection, together with any required arrangements as needed, for the Engineer's approval prior to the delivery of Plant or part of Plant.

Sub-Clause 22.2 Origin and Quality of Part of Plant or Plant

Add Sub-Clause 22.2 as follows:

Within 14 days of completing manufacture of any item or part of Plant or Plant, ready for transport to the Site, the Supplier shall deliver to the Purchaser, with a copy to the Engineer, a certificate, completed and signed by the manufacturer of the part or Plant, quoting part or Plant identification number, country and date of manufacture, and stating

that the part of Plant or Plant is brand new and has been completed and complies with all requirements of the Specifications.

Sub-Clause 22.3 Right to Approve or Reject

Add Sub-Clause 22.3 as follows:

Any observance or inspection by the Engineer's or Employers Representatives or authorised persons of any material, part or component of the Plant during construction, manufacturing, tests, trials and inspection, or issuance of the Certificate of Testing by the Engineer shall not prejudice the Purchaser's right to approve or reject the Plant after delivery at the Site and shall not in any way relieve the Supplier of his obligations under the Contract with respect to soundness of design, materials and workmanship, and performance of the Plant.

Sub-Clause 24.2 Payment in Event of Suspension

Substitute the words "28 days" by "56 days" in the third line of the 1 paragraph.

Sub-Clause 24.4 Resumption of Work

Delete the words "together with profit" from the last sentence of the 2 paragraph.

Add the following paragraph at the end:

The Employer shall be entitled to instruct the Supplier to maintain the risk and responsibility for the suspended Works under this Sub-Clause. In such a case, cost incurred by the Supplier for protection, storage, security and insurance of the suspended Works shall be added to the Contract Price

Sub-Clause 26.1 Extension of Time for Completion

Substitute subparagraph (h) as follows:

- (h) any industrial dispute at the place of manufacture of part of Plant or Plant; The claim for an extension of Time for Completion under this category shall not exceed 28 days in total,"

Add the following paragraph and subparagraphs at the end:

The Supplier shall not be entitled to an extension of Time for Completion of the Works, or any Section or part thereof, in the event of:

- (a) inadequate or poor management of his manpower, equipment, finance or Site operation;
- (b) temporary interruption or suspension of his work to enable other contractors to perform their work in the case of work which is required to be sequently executed by more than one contractor;
- (c) delay of delivery of materials, Plant or part of Plant;

- (d) shortage of supply of materials, Plant or part of Plant either inside or outside the Republic of El Salvador;
- (e) extra or additional work instructed to the Supplier under Clause 31, when at the time of execution the amount or nature of work do not alter the sequence or the related operations/work activities to become critical operation/work activities directly affecting the Time for Completion.

Sub-Clause 27.1 Delay in Completion

Substitute Sub-Clause 27.1 as follows:

In the following cases:

- (a) the Supplier fails to meet the requirements for issuance of the Taking-Over Certificate of the Plant by the times stipulated in Sub-Clause 1.1.35;
- (b) some items or part of Plant which are not essential to operation of the Plant have been rejected for not meeting the Specifications or are not delivered on schedule and the Supplier requests for time extension to replace the rejected item or part to complete the Plant or Works;
- (c) the Supplier meets the requirements for issuance of the Taking-Over Certificate on schedule, with the exception only of spare parts and/or tools of which delivery is behind schedule;

the Purchaser shall be entitled to a reduction in the Contract Price. The reduction shall be the percentage per day stated in the Preamble and shall be applied for each of the above cases as follows:

- (a) the reduction shall be computed for each day between the actual date of issuance of the Taking-Over Certificate and the date prescribed in Sub-Clause 1.1.35;
- (b) the reduction shall be computed for each day between the actual date of acceptance of such item or part and the date it was rejected or scheduled to be delivered;
- (c) the reduction shall be computed for each day between the actual date of delivery of such spare parts and/or tools and the date it was scheduled to be delivered.

The Employer shall within a reasonable time give the Supplier notice of his intention to claim a reduction.

The reduction shall in no case exceed the maximum percentage stated in the Preamble.

Sub-Clause 27.2 Prolonged Delay

Substitute the 2nd paragraph from the end (under subparagraph (c)) as follows:

If the Purchaser terminates the Contract, he shall be entitled to recover from the Supplier any loss he had suffered up to a maximum amount estimated by the Engineer according to the actual completion status of the Works, and agreed upon by the Purchaser and the Supplier.

Sub-Clause 28.1 Notice of Tests

Add the following paragraph at the end:

Before giving the Notice of Tests, the proposed Plant unit shall be delivered, installed and tested at the designed position in accordance with the specifications and to the satisfaction of the Engineer. Three sets of approved drawings and operation and maintenance manuals in English and Spanish versions as prescribed in Sub-Clause 6.6, with the identity of the test unit being clearly marked, shall be furnished to the Engineer at the time the Supplier gives the Notice of Tests.

Sub-Clause 28.2 Time for Tests

Add the following paragraph at the end:

Prior to the date or time for tests, the Supplier shall prepare or set up the test unit and any required labor, specialist, materials, tools, apparatus or the likes in conformity with the sequence/method and conditions approved by the Engineer. The test shall be conducted under close supervision by the Supplier's qualified personnel at all time. Failure to meet such requirements would enable the Engineer to cancel the test.

Sub-Clause 28.4 Facilities for Tests on Completion

Substitute Sub-Clause 28.4 as follows:

The Supplier shall prepare, at his own cost, such labor, specialist, materials, electricity, fuel, water, stores, apparatus and the likes as may be required to carry out the Tests in conformity with the approved method / sequence / conditions. The Supplier shall be entitled to use for the purposes of the Tests such supplies of electricity, water, gas and other services as may be available on the Site. The Supplier shall pay the Purchaser a fair price for such use. The Supplier shall at his own cost provide any apparatus necessary for such use, and the use of such supply shall be on his own risk.

Immediately after the Tests, the Supplier shall submit to the Engineer's Representative who attends the test the tests raw data and written preliminary test result/conclusion endorsed by the Supplier's qualified and authorised personnel. Within 7 days thereafter, the Supplier shall submit to the Engineer a formal test report indicating whether the tests have been successful or not and showing the final detailed results thereof, in the form and number of copies as instructed by the Engineer.

Sub-Clause 28.7 Consequences of Failure to Pass Tests on Completion

Add the following paragraph at the end:

If the Purchaser rejects the Works or any Section, the Supplier shall make good, or make modifications aimed at rectifying the shortcoming with prior consent of the Purchaser, or replace the rejected Works or any Section to the satisfaction of the Purchaser within 14 days from the date of notice of rejection, at no cost to the Purchaser. The Supplier shall reimburse to the Purchaser all cost reasonably incurred by him as a result of the rejection, including the cost of any additional supervision or operation of related Plant or any Section.

Sub-Clause 28.9 Test Certificate

Add the following paragraph at the end:

Approval by the Engineer of the formal test report will be required prior to the issuance of the Test Certificate.

Sub-Clause 28.10 Training of Employer's Personnel

Add Sub-Clause 28.10 as follows:

A training program for the Purchaser's operation and maintenance personnel shall be prepared by the Supplier and submitted for the Engineer's approval within 28 days after the Commencement Date. This program shall be carried out by qualified experts who shall be subject to approval by the Purchaser. They shall be experienced in the work on which training is to be provided and in explaining/ demonstrating in English or Spanish language (if necessary through a competent interpreter to be provided by the Supplier) to the personnel to be trained. The training program shall cover at least the items stipulated in the Specifications. The training program shall include a final evaluation session to demonstrate the effectiveness of the training program for each trainee. The evaluation session shall cover both technical knowledge and practical skills in operation and maintenance of all Plant in actual working condition, in both day and night working hours. The criteria for the evaluation shall be submitted for the Engineer's approval prior to implementation of the training program.

The Supplier shall provide all necessary facilities to effectively conduct the training program. All expenses in connection with the training program, including travelling and accommodation charges and per-diem of trainees, shall be borne by the Supplier.

As soon as the training evaluation results have passed the basis set out in the approved criteria, the Engineer shall issue the Training Certificate to the Supplier, with a copy to the Purchaser.

Sub-Clause 28.11 Local Agent

Add Sub-Clause 28.11 as follows:

Within 14 days from the date of the Letter of Acceptance and before signing the Contract Agreement, the Supplier shall officially appoint a local agent in the Republic of El Salvador, preferably in San Salvador City or La Unión Province, and submit the details with certification of this appointment to the Purchaser. The duties of this local agent shall cover at least:

- (a) making arrangements for the provision of spare parts and maintenance service;
- (b) providing other services as detailed in the Contract; and
- (c) acting as the Supplier's agent for all communications between the Purchaser and the Supplier.

Any change in legal status or scope of duty of the local agency shall be subject to the Purchaser's consent.

Sub-Clause 28.12 Spare Parts and Maintenance Service

Add Sub-Clause 28.12 as follows:

The spare parts to be provided under the Contract are divided into two categories:

- (a) Compulsory spare parts as set out in the Specifications for the respective Plant;
- (b) Optional spare parts, to be proposed by the Supplier, which the Purchaser might purchase in addition to the compulsory spare parts, in part or in whole. Payment for optional spare parts shall be made in US Dollar.

Prior to the issuance of the Taking-Over Certificate, the Supplier shall submit to the Engineer for approval a schedule of spare parts and service facilities for all items of the Plant forming part of the Works. In each case, the named stockists and agents must be capable of ensuring the delivery of a spare part to the La Unión Port within a period of 5 working days from the date on which the Purchaser's notification of the need for such spare parts or service reaches the Supplier's local agent stipulated in Sub-Clause 28.11. The schedule shall comprise a list of all items of Plant, and at least the following information shall be provided for each item of Plant:

- (a) names and addresses of spare part stockists;
- (b) extent (value or other relevant indicator) of spare parts held in stock;
- (c) names and addresses of service agents;
- (d) the number of years that each spare part stockist and/or service agent has been representing the company supplying the Plant.

In addition to the above, the Supplier shall attach a letter guaranteeing that all essential spare parts which affect the operation and performance of any or all of the Plant forming part of the Works will be available at all times for a period of at least 15 years from the date of Taking-Over Certificate.

Sub-Clause 29.2 Taking-Over Certificate

Add the following paragraph and subparagraphs at the end:

The issuance of the Taking-Over Certificate will be subject to the following minimal requirements:

- (a) issuance of the Test Certificate for such Plant or Section in accordance with Sub-Clause 28.9;
- (b) approval and submission of the operation and maintenance manual in accordance with Sub-Clause 6.6;
- (c) the Plant or Section has been completed, delivered and installed at the designed position on Site, fully complying with the operational and functional condition of the design;
- (d) acceptance of site clearing in accordance with Sub-Clause 14.5 and repair of all damage to other works, e.g. civil works, architectural works, finishing works,

- interior works, other mechanical and electrical works, caused by the Supplier's Site operation;
- (e) delivery to the Purchaser's store of all required spare parts or tools associated with such Plant or Section;
 - (f) delivery of any required approval, permission, authorisation, license, patent, copyright or any other intellectual property right relevant to the operation and possession of such Plant or Section; and
 - (g) Issuance of the Training Certificate.

Sub-Clause 29.4 Interference with Tests on Completion

Add the following paragraph at the end:

The condition in this Sub-Clause shall not be applied if it can be reasonably concluded from the circumstance by the Engineer that such prevention of the Tests on Completion could have been avoided if the Supplier should have taken sufficient precaution or protection.

Sub-Clause 29.5 As-built Drawings

Add Sub-Clause 29.5 as follows:

The Contractor shall, prior to the date of Taking-Over, submit to the Engineer for his approval a list and three complete sets of as-built drawings including one original and two copies for each Plant, as well as the computer files of those list and drawings. The drawings shall be signed by the Supplier's Representative or authorized personnel.

Upon approval by the Engineer, all the drawings submitted under this Sub-Clause shall become the property of the Purchaser, and the Supplier shall not publish or disclose the same or any particulars thereof in any trade or technical paper or elsewhere without the previous consent in writing of the Purchaser

The provision of all drawings under this Sub-Clause shall not be paid for in the Contract and shall be considered incidental to the Works.

Sub-Clause 30.11 Defects Liability Certificate

Add the following sentence at the end:

Prior to the issuance of the Defects Liability Certificate, the Supplier shall obtain the training certificate for all Plant in accordance with Sub-Clause 28.10.

Sub-Clause 31.6 Daywork

Add Sub-Clause 31.6 as follows:

The Engineer may, if in his opinion it is necessary or desirable, issue an instruction that any varied work or training shall be executed on a daywork basis. The Contractor shall then be paid for such varied work or training under the terms set out in the Contract and at the rates and prices indicated in the Preamble to the Bill of Quantities in Volume II, Part I.

In respect of such of the Works executed on a daywork basis, the Supplier shall, at the end of each month, deliver to the Engineer a priced statement in duplicate with a list of personnel and equipment used. The Engineer shall be entitled to authorize payment for such work or training according to the daywork rates and prices, on being satisfied as to the time employed and personnel and equipment used on such work or training.

Certificates and Payment

Delete and substitute Sub-Clauses 33.1 to 33.8 as follows:

Sub-Clause 33.1 Terms of Payments

Payment to the Supplier for the Works under the Contract shall be made in accordance with the following schedule:

- (a) Advance Payment: 20% of the final Contract Price, upon approval by JBIC of the signed Contract Agreement.
- (b) First Interim Payment: 30% of the final Contract Price, upon completion of the load test of the Plant at the manufacturer's factory.
- (c) Second Interim Payment: 30% of the final Contract Price, upon delivery of the Plant on Site.
- (d) Third Interim Payment: 10% of the final Contract Price, upon taking-over of the Plant.
- (e) Final Payment: 10% of the final Contract Price, upon expiration of the Defects Liability Period.

All payments shall be made against the Certificates of Payment issued by the Engineer pursuant to Sub-Clauses 33.5 and 33.10, and in accordance with the procedure set forth in Sub-Clause 33.7.

Additional payment, if any, shall be made in accordance with Clause 34.

Sub-Clause 33.2 Application for Payment

Applications by the Supplier for payment shall be submitted to the Engineer in one original and five copies each, in accordance with the terms of payment set forth in Sub-Clause 33.1, and accompanied by the following documents and by such documents as the Engineer may require:

- (a) Advance Payment:
 - copy of the signed Contract Agreement, approved by JBIC
 - copy of the Performance Security pursuant to Sub-Clause 10.1; and
 - the Bank Guarantee for Advance Payment, pursuant to Sub-Clause 33.3.
- (b) First Interim Payment:
 - the Load Test Certificate issued by the manufacturer and endorsed by the Engineer pursuant to Sub-Clause 20.5

- (c) Second Interim Payment:
 - the shipping documents including invoice, bill of lading, packing list, insurance certificate, manufacturer's warranty certificate, inspection certificate and certificate of origin; and
 - the Permission to Deliver issued by the Engineer pursuant to Sub-Clause 22.1; and
- (d) Third Interim Payment:
 - the Taking-Over Certificate issued by the Engineer pursuant to Sub-Clause 29.2.
- (e) Final Payment:
 - the Defects Liability Certificate issued by the Engineer pursuant to Sub-Clause 30.11
- (f) For Additional Payment:
 - particulars prescribed in Sub-Clause 34.1 or any such documents as required by the Engineer.

Any applications for payment shall state the amounts claimed and the detailed particulars in respect of which the application is made.

Sub-Clause 33.3 Guarantee for Advance Payment

Along with the application for Advance Payment pursuant to Sub-Clause 33.2(a), the Supplier shall furnish a Bank Guarantee for Advance Payment in an amount in US Dollar equivalent to 20% of the final Contract Price.

The Bank Guarantee for Advance Payment shall be established according to the form provided in Section 3 (Form C3) and issued by a bank or a bonding or insurance company authorized by the Financial System Superintendence (Superintendencia del Sistema Financiero) of the Republic of El Salvador.

The Bank Guarantee for Advance Payment shall be valid until a date 56 days from the date of issuance of the Certificate of 2nd Interim Payment pursuant to Sub-Clauses 33.1 and 33.2.

The Bank Guarantee for a joint venture shall be in the name of the joint venture. The cost of complying with the requirements of this Sub-Clause shall be borne by the Supplier.

Sub-Clause 33.4 Issuance of Certificate of Payment

Within 14 days after receiving an application for payment which the Supplier was entitled to make, the Engineer shall issue a Certificate of Payment to the Purchaser showing the amount due, with a copy to the Supplier.

A Certificate of Payment, other than the Final Certificate of Payment, shall not be withheld on account of:

- (a) defects of a minor character which are not much as to affect the use of the Plant, or

- (b) any part of the payment applied for being disputed. In such case a Certificate of Payment for the undisputed amount shall be issued.

Sub-Clause 33.5 Corrections to Certificate of Payment

The Engineer may in any Certificate of Payment make any correction or modification that should properly be made in respect of any previous certificate

Sub-Clause 33.6 Payment Procedure

Payment to the Supplier shall be made in US Dollar in the amounts determined in the Contract Documents, by means of an irrevocable Letter of Credit (L/C) to be established by the Purchaser in favour of the Supplier. The cost of confirmation of the L/C shall be borne by the Supplier.

The Employer shall pay the amount certified within 28 days from the date of issuance of each Certificate of Payment, and within 56 days from the date of issuance of the Final Certificate of Payment. Within 14 days of receipt of each payment, the Supplier shall deliver to the Purchaser by hand or by registered mail a cash receipt signed by the Supplier with a copy to the Engineer.

Sub-Clause 33.7 Retention Money

A retention of ten percent (10%) shall be made on the amounts of the 1st, 2nd and 3rd Interim Payments mentioned in Sub-Clause 33.2 in the relevant Interim Payment Certificates issued by the Engineer pursuant to Sub-Clause 33.4.

The sum of the retention money thus deducted from the above-mentioned payments shall be certified by the Engineer in the Final Certificate of Payment pursuant to Sub-Clause 33.10, for payment along with the amount of the Final Payment mentioned in Sub-Clause 33.2 and other additions to or deductions from the Contract Price as have been agreed between the two parties until the date of issuance of the Defects Liability Certificate specified in Sub-Clause 30.11.

Sub-Clause 33.8 Price Adjustment

There shall be no readjustment whatsoever for alteration in any rates or costs in the Bill of Quantities. Prices given in the Contract are fixed for the duration of the Contract and any extension thereto which may be granted by the Purchaser.

Clause 35 Foreign Currency and Rates of Exchange

Delete Sub-Clauses 35.1, 35.2 and 35.3 in their entirety.

Sub-Clause 36.4 Payment against Provisional Sums

Substitute the whole text of Sub-Clause 36.4 as follows:

For all work executed or goods, materials or services supplied or purchased by the Supplier under Sub-Clause 36.2 (b), there shall be included in the sums paid to the Supplier the actual price paid or due to be paid to the Supplier.

Sub-Clause 37.2 Employer's Risks

Delete subparagraph (g) of Sub-Clause 37.2

Sub-Clause 43.1 The Works

Delete and substitute the 1st paragraph as follows:

The Contractor shall insure the Works in the joint names of the Supplier and Employer to 110 % of their full replacement cost and profit. The insurance shall be in the Japanese Yen currency with the insured amount payable in the Republic of El Salvador. The Contractor shall notify the insurance company of any change in the nature and extent of the Works and to ensure the adequacy of the insurance coverage at all times during the period of the Contract. The insurance shall cover:

Sub-Clause 43.5 General Requirements of Insurance Policies

Add the following subparagraph (e):

- (e) within 28 days after the date of the Notice to Proceed issued by the Engineer, furnish the policies of all insurance effected in accordance with Clause 43 to the Employer with a copy to the Engineer.

Sub-Clause 43.9 Source of Insurance

Add Sub-Clause 43.9 as follows:

The Contractor shall be entitled to place all insurances relating to the Contract, including but not limited to the insurances referred to in Clauses 43.1, 43.2, 43.3 and 43.4, with any major local insurers or foreign insurers that are associated with or represented by local insurers or are registered in El Salvador. The Contractor shall inform the name of insurer to and get the Purchaser's consent before placing any insurance.

Sub-Clause 43.10 Insurance Notices

Add Sub-Clause 43.10 as follows:

The Contractor shall be responsible for including a provision in each policy of insurance effected by the Supplier for the purpose of the Contract that the insurance company shall have a duty to give notice in writing to the Supplier and the Purchaser

- (a) of the date when a premium becomes payable not more than thirty (30) days before the date and the policy shall remain in force until thirty (30) days after the giving of such notice;
- (b) when the Supplier intends to make alternations to the terms of any insurance.

Sub-Clause 44.3 Notice of Occurrence

Add the following paragraph at the end:

If the Supplier considers that the circumstances of Force Majeure occurred outside the Republic of El Salvador have prevented the Supplier from performing his obligations under the Contract, he shall notify the Purchaser in writing at once with evidence of the fact involving such case of Force Majeure. Such evidence shall be verified by an agency acceptable to the Purchaser or by the El Salvadoran Embassy or Consulate in the country where such case of Force Majeure occurs.

Sub-Clause 45.5 Effect on Liability for Delay

Delete Sub-Clause 45.5 in its entirety.

Sub-Clause 46.1 Employer's Default

Substitute the words "28 days" by "56 days" in the 2nd line of subparagraph (a).

Add the following paragraph at the end:

Without prejudice to the Supplier's entitlement to terminate under Sub-Clause 46.1, the Supplier may suspend the work or reduce the rate of work within 56 days after notification by JBIC to the Government that JBIC has suspended disbursements from its loan or credit, pursuant to Sub-Clause 52.1.

Sub-Clause 46.3 Payment on Termination for Employer's Default

Delete the last paragraph in its entirety.

Sub-Clause 47.2 Statutory and Other Regulations

Delete Sub-Clause 47.2 in its entirety.

Sub-Clause 48.1 Customs and Import Duties

Substitute Sub-Clause 48.1 as follows:

Customs and import duties levied on temporarily imported equipment and materials for the Works will be exempted in accordance with Decree No. 43 dated May 18, 1994 of the Central American Uniform Customs Code (CAUCA), provided that the Supplier shall fill the procedures required for such temporary exemption.

It is the responsibility of the Supplier to make sure of all the regulation and procedures regarding temporary import duty exemption and to abide thereby in the execution of the Contract. Any information provided herein will not in any way relieve the Supplier from such responsibility.

Sub-Clause 48.2 Clearance through Customs

Substitute Sub-Clause 48.2 as follows:

The Contractor or his appointed agent shall be solely responsible for the completion of all customs formalities for the import clearance of all materials, Plant, machines, and equipment required for the Works.

Sub-Clause 50.2 Arbitration

Substitute Sub-Clause 50.2 as follows:

Any dispute or difference arising out of or in connection with the Contract or the implementation of any of the provisions of the Contract, which cannot be settled amicably, shall be referred to arbitration.

Unless both parties agree in the appointment of a single arbitrator, either party shall serve upon the other a notice of intention to submit the dispute or difference to arbitration and specify the name of an arbitrator to be appointed by him. Then, the dispute or the difference shall be referred to two arbitrators, one to be appointed by the issuing party as aforesaid and the other one to be appointed by the other party within 28 days after receipt of the said notice. If the two arbitrators are unable to agree on such dispute or difference, an umpire shall be appointed by the two arbitrators within 28 days from the date of disagreement. The umpire so appointed shall resolve the dispute or difference.

Should either party be unable to appoint an arbitrator or in case of disagreement with regards to the appointment of an umpire, each party is entitled to refer the matter to the Court of Justice of the Republic of El Salvador in San Salvador City for the appointment of an arbitrator or umpire as the case may be.

Any decision or award given by the single arbitrator or the two arbitrators jointly, or the umpire in case the two arbitrators disagree, shall be final, conclusive and binding upon the parties hereto. The arbitration proceedings shall follow the Rule of Arbitration of the Ministry of Justice's Arbitration Office or any rule as agreed by both parties and shall be conducted in San Salvador City.

Each party shall bear the cost of his own arbitrator's service and share equally other costs of all proceedings. In case a single arbitrator or an umpire is appointed, the cost of the single arbitrator's service or the cost of the umpire's service shall be decided by the arbitrator, or the umpire, as the case may be.

The submission of any matter in dispute or difference to the arbitration proceedings as aforesaid, shall be a condition precedent to the right of institution of court action.

The Contract shall be construed according to the laws of the Republic of El Salvador. Each party shall have the right to institute suit against the other in the Court of Justice in San Salvador City, the Republic of El Salvador, to enforce any decision or award rendered in arbitration proceedings.

Sub-Clause 50.4 Time Limit for Arbitration

Substitute the words "84 days" in the 2nd line by "28 days".

ADDITIONAL CLAUSES

Add the following Sub-Clauses 52.1, 53.1, 53.2, 53.3, 54.1, 55.1, 56.1, 57.1, and 58.1:

Sub-Clause 52.1 Suspension of JBIC Loan

In the event the JBIC suspends the loan to the Purchaser from which part or whole of the payment to the Supplier is being made:

- (a) The Employer is obligated to notify the Supplier of such suspension within 4 days of having received the suspension notice from the JBIC; and
- (b) If the Supplier has not received sums due to him upon the expiration of the 56 days for payment provided for in Sub-Clause 33.7, the Supplier may immediately issue a 14-day termination notice.

Sub-Clause 53.1 Foreign Taxation

All taxes, duties, levies and other charges imposed outside the Republic of El Salvador on the production, manufacture, sale and transport of the Supplier's Equipment, Plant, materials and supplies to be used on or furnished under the Contract, and on the services performed under the Contract, shall be deemed as included in the Contract Price rates and prices entered in the Bill of Quantities

Sub-Clause 53.2 Local Taxation

The amount of taxes and duties entered in the Bill of Quantities shall be deemed as inclusive of all local taxes and duties such as IVA (Impuesto al Valor Agregado), municipal tax, business income tax, customs duty, import duty and others that may be levied in accordance with the laws and regulations in the Republic of El Salvador on the Supplier's Equipment, Plant, materials and supplies (permanent, temporary and consumable) acquired for the purpose of the Contract and on the services performed under the Contract.

Customs and import duties levied on temporarily imported equipment and materials for the Works are exempted in accordance with Decree No. 43 dated May 18, 1994 of the Central American Uniform Customs Code (CAUCA). Payment or exemption of IVA and other taxes and duties shall be decided during the contract negotiation between the Purchaser and the successful bidder, and incorporated in the final Contract Price.

Notwithstanding the above provisions, it is the responsibility of the Supplier to inquire himself with Tax authorities about all taxes and duties to which he shall be subjected in the execution of the Works under the Contract. Nothing in the Contract shall relieve the Supplier and his Subcontractors from their responsibility to pay any taxes and duties that may be levied on them in the Republic of El Salvador in respect of the Contract.

Sub-Clause 53.3 Income Tax on Staff

The Contractor's staff, personnel and labor will be liable to pay personal income tax in the Republic of El Salvador in respect of such of their salaries wages and benefits as are chargeable under the laws and regulations for the time being in force, and the Supplier shall perform such duties in regard to such deduction thereof as may be imposed on him by such laws and regulation.

Sub-Clause 54.1 Illegal Payments

If the Supplier, or any of his Subcontractors, agents or servants gives or offers to give to any person any payment, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any action in relation to the Contract or any other contract with the Purchaser, or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or to any other contract with the Purchaser, then the Purchaser may enter upon the Site and the Works and expel the Supplier and the provisions of Clause 45 hereof shall apply as if such entry and expulsion had been made pursuant to that Clause.

Sub-Clause 55.1 Termination of Contract for Employer's Convenience

The Employer shall be entitled to terminate this Contract at any time for the Purchaser's convenience after giving a 56-days prior notice to the Supplier, with a copy to the Engineer. In the event of such termination, the Supplier:

- (a) shall proceed as provided in Sub-Clause 46.2; and
- (b) shall be paid by the Purchaser as provided in Sub-Clause 46.3.

Sub-Clause 56.1 Joint and Several Liability

If the Supplier is a joint venture of two or more persons, all such persons shall be jointly and severally bound to the Purchaser for the fulfilment of the terms of the Contract and shall designate one of such persons to act as a leader with authority to bind the joint venture. The composition or the constitution of the joint venture shall not be altered without the prior consent of the Purchaser.

Sub-Clause 57.1 Details to be Confidential

The Contractor shall treat the details of the Contract as private and confidential, save insofar as may be necessary for the purposes thereof, and shall not publish or disclose the same or any particulars thereof in any trade or technical paper or elsewhere without the previous consent in writing of the Purchaser or the Engineer. If any dispute arises as to the necessity of any publication or disclosure for the purpose of the Contract, the same shall be referred to the Purchaser whose determination shall be final.

Sub-Clause 58.1 Supplier's Responsibilities Not Affected By Approval

Where under the terms of this Contract the approval of the Purchaser or the Engineer is required, such approval, if any, shall not relieve the Supplier of any obligation, duty, responsibility or liability, either in law or under the terms of this Contract.

