

SCHEDULE A

INSTRUCTION TO PERSONS TENDERING

1. The Tender must be made on the accompanying Form of Tender with all blanks therein and all the schedules completed. Tender rates must include all incidental and contingent expenses.
2. No earnest money is required to accompany this Tender. However, if the Tenderer withdraws or modifies his Tender during the bid validity period after having been awarded the Contract, the Company will impose the following:
 - a) Bid bond shall be forfeited
 - b) Where there is no Bid Bond involved, the following penalties shall be imposed:
 - i) 20% loading on the tender prices shall be imposed on all of the tenderer future tenders' submission for a period of two consecutive years, for the first offence.
 - ii) Barring the tenderer from tendering for a period of three consecutive years for the second offence.
 - iii) For any subsequent offence the tenderer, whether participating in his own name or using a company as a guise or using non-participating partners of shareholders in any company whatsoever shall not be allowed to participate in any future tenders and his name and/or the offending company shall be permanently struck off from the Company's Contractor/Supplier Register.
3. The amount of Performance Bond is equal to about 10% of the tendered sum.

The Performance Bond inclusive of guarantees or bonds if any shall be irrevocable and shall be released only upon satisfactory completion of the Contract or the submission of Retention Money equal to the value of the Bond.

The Performance Bond if submitted in the form of Banker's Guarantee shall be submitted in a standard format (PUR/5) as attached and made valid for a period of 2 years from the date of our letter of acceptance of the Contract.

Within 21 days from the date of the letter of acceptance of the Contract, the successful Tenderer will be required to furnish the required Performance Bond and execute the Contract Agreement with the Company.
4. The Company will not be responsible for or pay for expenses or losses which may be incurred by any Tenderer in the preparation of his Tender.
5. The Tender must remain valid and open for acceptance for a period of 6 months from the closing date of the Tender.
6. Bumiputra Tenderers are required to submit certified copies of Trade Registrations showing the proportion of Bumiputra participation in the companies and the names of the Directors of the Company.
7. The Tender marked "**Confidential**" is to be submitted in a sealed cover which should be clearly marked: **'Tender For Supply and Delivery of Test Equipment** but should bear no writing on the outside of the cover which would enable the Tenderer to be identified. The sealed cover must be despatched to:

The Chief Executive Officer,
Sarawak Energy Berhad,
No. 1, The Isthmus,
93050 Kuching,
Sarawak.

and to reach him on or before **3:00pm** on **27th March 2013**

8. Tenders received prior to the time of opening will be securely kept unopened. Tenders received after the time of opening will be rejected. The Company bears no responsibilities for premature opening of Tenders not properly addressed or identified.
9. The Company does not bind itself to accept the lowest or any Tender, nor to assign any reason for the rejection of any Tender.
10. The Tender which has not conformed with the foregoing instructions may not be considered.
11. The official currency for this Contract shall be Malaysian Ringgit and all rates and prices shall be quoted in this currency.
12. Tenderers requiring clarification of the Tender Documents may contact the Company through:

The Chief Executive Officer,
Sarawak Energy Berhad,
No. 1, The Isthmus,
93050 Kuching,
Sarawak.

noted for the attention of Senior Manager (Substation).

SCHEDULE B

GENERAL CONDITIONS OF CONTRACT

1. DEFINITE OF TERMS

In construing these General Conditions and the Specification, the following words shall have the meaning herein assigned to them unless there is something in the subject matter or context inconsistent with such constructions:

- a) The “*Purchaser*” shall mean the Syarikat SESCO Berhad and shall include the Purchaser’s legal personal representatives, successor, and permitted assigns.
- b) The “*Contractor*” shall mean the tenderer whose tender has been accepted by the Purchaser, his successor and permitted assigns.
- c) “*Approved*” or “*Approval*” means approved or approval by the Engineer in writing.
- d) The “*Contract*” shall mean and include the tender, letter of acceptance, the Official Order or Agreement together with any correspondence modifying the terms thereof, the General Conditions, the Specifications and Schedules thereto, annexed, the Drawings annexed hereto or to be provided under the provisions of the Contract respectively.
- e) The “*Contract Price*” shall mean the sum named in the Official Order or Agreement as the Contract Price.
- f) The “*Currency of the Contract*” shall mean the currency in which the Contract Price is expressed.
- g) The “*Engineer*” shall mean the person for the time being or from time to time notified in writing by the Purchaser to the Contractor as the Engineer for the Contract, or in default of any notification the Purchaser.
- h) “*Month*” shall mean calendar month.
- i) The “*Plant*” shall mean all or any part of the machinery, apparatus, materials, articles and things of all kinds to be provided by the Contractor, other than erection equipment.
- j) “*Provisional Sum*” shall mean any sum provided in the Contract for expenditure on a particular service which is foreseen but not specified in detail.
- k) The “*Schedules*” shall mean and include the Schedule of Guarantees, the Schedule of Technical Particulars, the Schedule of Prices and any other Schedule attached to the Specification.
- l) The “*Specification*” shall mean the specification annexed to or issued with these General Conditions.
- m) “*Test on Completion*” shall mean such tests to be made before the Plant is taken over by the Purchaser as provided for, in the Contract or otherwise agreed between the Purchaser and Contractor.
- n) “*Writing*” shall include any manuscript, type-written, or printed statement, under seal or hand as the case may be.

Words importing persons shall include firms and corporations.

Words importing the singular only shall also include the plural, and vice versa.

- o) The “*Inspector*” shall mean the representative of or the person duly authorized by the Purchaser to act as its Inspector under this Contract.

2. **CONTRACTOR TO INFORM HIMSELF FULLY**

The Contractor when making his tender shall be deemed to have examined the General Conditions and Specification, with such schedules, drawings and plans as are annexed thereto or referred to therein and to have obtained on his own responsibility and at his own expense any additional information which he considers necessary for the completion of his tender.

3. **EXPENSES OF AGREEMENT**

The expenses of preparing, completing and stamping the Agreement, if any, shall be paid by the Purchaser, and executed counterpart thereof properly stamped together with copies of all other documents comprising the Contract shall be furnished to the Contractor free of charge.

4. **DRAWING**

- (i) The Contractor shall submit to the Purchaser for approval within the times named in the specifications such drawing, patterns and models as may be called for therein or as the Purchaser may reasonable require, provide that the Contractor shall not be under any obligation to supply copies of shop drawings. Within a reasonable period after receiving such drawings, samples, patterns and models, the Purchaser shall signify its approval or otherwise. Copies of all drawings which require to be approved by the Purchaser shall be provided in duplicate by the Contractor. One of the copies so approved and signed by the Purchaser shall be retained by the Purchaser and the other copy by the Contractor.
- (ii) Drawings signed as above described shall not be departed from except as provided in Clause 9 (Variation and Omissions).
- (iii) The Contractor shall furnish to the Purchaser two complete sets of information, manuals and drawings (for each plant) as being necessary to enable the Purchaser to operate, maintain, dismantle, reassemble and adjust all parts of the Plants after receiving the Plant.

5. **MISTAKES IN INFORMATION**

- (i) Contractor shall be responsible for and shall pay for any such alteration of the Plant due to any discrepancies, errors, or omissions in the drawings and information supplied by him, whether they have been approved by the Purchaser or not, provided that such discrepancies, errors, or omissions be not due to inaccurate drawings or information furnished in writing to the Contractor by the Purchaser or the Engineer.
- (ii) The Purchaser shall be responsible for drawings and information supplied in writing by the Purchaser or the Engineer and for the details of special work specified by either of them. The Purchaser shall pay the extra cost reasonable incurred by the Contractor due to alterations of the work necessitated by reason of inaccurate drawings or information so supplied to the Contractor.

6. **ASSIGNMENT AND SUB-LETTING OF THE CONTRACT**

- (i) The Contractor shall not, without the consent in writing of the Purchaser which shall not be unreasonable withheld, assign or transfer the Contract or the benefits of obligation thereof or any part thereof to any other person, provided that this shall not affect any right of the Contractor to assign, either absolutely or by way of charge, any moneys due or to become due to him, or which may become payable to him under the Contract.
- (ii) The Contractor shall not, without the consent in writing of the Engineer, which shall not be reasonably withheld, sub-let the Contract or any part thereof, or make any sub-contract with any person or persons for the execution of any part of the Contract by the restriction contained in this clause shall not apply to sub-contracts for materials, for minor details, or for any part of

the Plant of which the makers are named in the Contract. Any such consent shall not relieve the Contractor from his obligations under the Contract.

7. **PATENTS RIGHTS, ETC**

- (i) The Contractor shall indemnify the Purchaser against all actions, claims, demands, costs, chargers and expenses arising from or incurred from or incurred by reason of any infringement or alleged infringement of letters patent, design, or copyright protected in the country in which the Plant is to be erected by the use of any Plant supplied by the Contractor, but such indemnify shall not cover any use of the Works otherwise than for the purpose indicated by or reasonable to be inferred from the Specifications.
- (ii) In the event of any claim being made or action brought against the Purchaser arising out of the matters referred to in the clause, the Contractor shall be promptly notified thereof and may at his own expense conduct all negotiations for the settlement of the same, and any litigation that may arise there from. The Purchaser shall not, unless and until the Contractor shall have failed to take over the conduct of the negotiations or litigations make any admission which might be prejudicial thereto.

The conduct by the Contractor of such negotiations or litigation shall be conditional upon the Contractor having first given to the Purchaser such reasonable security as shall from time to time be required by the Purchaser to cover the amount ascertained or agreed or estimated, as the case may be, of any compensation, damages, expenses, and costs for which the Purchaser may become liable. The Purchaser shall, at the request of the Contractor, afford all available assistance for the purpose of contesting any such claim or action, and shall be repaid all reasonable expenses incurred in so doing.

- (iii) The Purchaser on his part warrants that any design or instructions furnished or given by him shall not be such as will cause the Contractor in the performance of the Contract to infringe any letters patent, registered design, trade mark, or copyright in the country in the performance of the Contract.

8. **MANNER OF EXECUTION**

All Plant to be supplied and all work to be done under the Contract shall be manufactured and executed in the manner set out in the Specification or, where not so set out, to the reasonable satisfaction of the Purchaser.

9. **VARIATIONS AND OMISSIONS**

- (i) The Contractor shall not alter any of the Plant except as directed in writing by the Purchaser, but the Purchaser shall have full power, subject to the proviso hereinafter contained, from time to time during the execution of the Contract by notice in writing to direct the Contractor to alter, amend, add to, or otherwise vary any of the Plant and the Contractor shall carry out such variation, and be bound by the same conditions, so far as applicable, as though the said variations were stated in the Specification; provided that no such variation shall, except with the consent in writing of the Contractor, be such as will, with any variations already directed to be made, involve a net addition to or deduction from the Contract Price of more than 15 per cent thereof, disregarding for this purpose any addition or deduction previously made pursuant to this clause. In any case in which the Contractor has received any such direction from the Engineer which either then or later will, in the opinion of the Contractor, involve an addition to or deduction from the Contract Price, the Contractor shall, as soon as reasonable possible, advise the Engineer in writing to the effect.

The amount to be added to or the rates specified in the schedules or prices, so far as the same may be applicable, and where rates are not contained in the said schedules or are not applicable, such amount as shall be agreed between the Purchaser and the Contractor.

- (ii) If the Purchaser shall make such variation in any part of the Plant such reasonable notice in writing shall be given to the Contractor as will enable him to make his arrangements accordingly, and in cases where Plant is already manufactured or in course of manufacture, or any matter done or drawing or patterns made that require to be alter, a reasonable sum in respect thereof shall be allowed by the Purchaser. If in opinion of the Contractor any such variation is likely to prevent or prejudice the Contractor from or in fulfilling any of his obligations under the Contract, he shall notify the Purchaser thereof in writing, and the Purchaser shall decide forthwith whether or not the same shall be carried out. If the Purchaser confirms its instructions in writing, the said obligations shall be modified to such an extent as may be justified. Until the Purchaser so confirms its instructions they shall be deemed not to have given.

10. **CONTRACTOR'S DEFAULT**

- (i) Should the Plant or any portion thereof not be delivered within the time or times specified in the Contract, the Purchaser shall be liberty, without prejudice to any other remedy for breach of contract, to determine the Contract either wholly or to the extent of such default.
- (ii) If the Contractor shall fail to produce the Plant with due diligence and expedition or shall refuse or neglect to comply with any reasonable orders given to him by the Purchaser in respect of the Contract or shall contravene any provisions of the Contract, the Purchaser may give notice to the Contractor requiring him to make good the said failure, neglect or contravention. Should the Contractor fail to comply with the notice within one calendar month from the date of service thereof, the Purchaser shall be at liberty, without prejudice to any other remedy for breach of contract to determine the Contract either wholly or in part of to the extent of such default.
- (iii) The Purchaser shall be at liberty in any such case to procure elsewhere other items of Plant of the same or similar description in such numbers as shall make good any default, whether the Contract be determined in whole or in part. If the cost to the Purchaser of making good such default shall exceed the Contract value of the Plant conceived in such, the Contractor shall pay to the Purchaser the amount of such excess.
- (iv) Failure to deliver the Plant or any part thereof within the time or times specified in the Contract will, in addition to any other liabilities incurred by the Contractor under the Contract, subject the Contractor to a deduction from the Contract Price, as and for liquidated damages and not as penalty, of a sum to be calculated at the rate of one half of one per cent per week on the value of such items of Plant as are subject to the delay for each week or part of a week which may elapse between the dates or delivery specified in the Contract and the actual date of delivery of the same, up to maximum of 10% of the value of any item of Plant so delayed and provided further that:
 - (a) if it shall be proved to the satisfaction of the Purchaser that any such delay has arisen from causes which were unavoidable and could not have been foreseen, or overcome by the Contractor (including delay in the supply of materials to the Contractor due to causes which were unavoidable and could not have been foreseen or overcome by the manufacturers or vendors of such materials) and provided that notice of the anticipated delay had been given by the Contractor in accordance with Clause (15) (ii) the Purchaser may in its absolute discretion decide the extent (if any) to which the deduction may be remitted, but any deductions not so remitted shall remain in full force;
 - (b) the Contractor shall be relieved of liabilities incurred under this Clause wherever and to the extent to which the fulfilment of such obligations is prevented, frustrated or impeded as a consequence of war or of conforming to any statute, rules, regulations, orders of requisitions issued by an Government Department, Council or other competent authority.

11. **BANKRUPTCY**

If the Contractor shall become bankrupt or insolvent, or have a receiving order made against him, or compound with his creditors, or, being a corporation, commence to be wound up, not being a member's voluntary winding up for the purpose of amalgamation or reconstruction, or carry on its business under a receiver for the benefit of its creditors or any of them, the Purchaser shall be at liberty to terminate the Contract forthwith by notice in writing to the Contractor or to the receiver or liquidator, or to any person in whom the Contractor may become vested without any compensation whatsoever, provided always that such determination of the Contract shall not prejudice or affect any right or remedy which shall have accrued or shall accrue thereafter to the Purchaser.

12. **INSPECTION, TESTING AND REJECTION**

- (i) The Engineer shall be entitled at all reasonable times during manufacture to inspect, examine, and test on the Contractor's premises the materials and workmanship and performances of all Plant to be supplied under the Contract, and if part of the said Plant is being manufactured on other premises the Contractor shall obtain for the Engineer permission to inspect, examine, and test as if the Plant were being manufactured on the Contractor's premises. Such inspection, examination, or testing, shall not release the Contractor from any obligation under the Contract.
- (ii) Where the Contract provides for tests of the Plant or any part thereof when completely manufactured such tests shall, in the absence of any arrangements to the contrary, take place on the premises of the Contractor.
- (iii) The Contractor shall, after consulting the Purchaser, give the Purchaser 30 days' notice in writing of the date on and the place at which any Plant will be ready for testing as provided in the Contract and unless the Engineer shall attend at the place so named on the date which the Contractor has stated in his notice to the Contractor may proceed with the test, which shall be deemed to have been made in the Engineer's presence, and shall forthwith forward to the Purchaser duly certified copies of the test readings. The Purchaser shall give the Contractor at least 7 days' notice in writing of his intention to attend the tests.
- (iv) Where the Contract provides for tests on the premises of the Contractor or of any sub-contractor the Contractor, except where otherwise specified, shall provide free of charge such assistance, labour, materials, electricity, fuel, stores, apparatus, and instruments as may be requisite and as may be reasonably demanded to carry out such tests efficiently.
- (v) As and when the Engineer is satisfied that any Plant shall have passed the tests referred to in this Clause he shall notify the Contractor in writing to that effect.
- (vi) If after inspecting, examining or testing any Plant the Engineer shall decide that such Plant or any part thereof is defective or not in accordance with the Contract, he may reject the said Plant or part thereof by giving to the Contractor within a reasonable time notice in writing of such rejection, stating therein the grounds upon which the said decision is based.
- (vii) The provisions of Clause 17 (Tests on Completion and Taking Over) shall relate also to inspections, examinations, and test carried out under the clause.
- (viii) If any of the items of Plant, whether completed or in course of production is rejected by the Engineer, it shall be marked or segregated in such a manner satisfactory to the Engineer as to ensure its subsequent identification as rejected work.
- (ix) When independent test and analysis in addition to those made by the Engineer on the Contractor's or sub-contractor's premises, are considered necessary, such tests or analysis will be made by persons appointed by the Purchaser. The costs of such additional tests and analyses will be borne by the Purchaser if such tests or analysis show the material to be in accordance with the Specification; otherwise, such costs shall be borne by the Contractor.

- (x) The Contractor shall not send any of the items of Plant forward for shipment until the Engineer shall have given his consent and such consent shall not release the Contractor from any of his liabilities under Clause 27 (Packing) to make good any defect or to replace any part that may fail.

13. **DELIVERY**

- (i) Delivery of the Plant shall be made by the Contractor in the manner specified in the Contract i.e **5th Floor, Wisma SEB, No. 1, The Isthmus, 93050 Kuching, Sarawak**. The freight for the conveyance of the Plant and Insurance of the Plant to the destination stated by the Purchaser shall be paid by the Contractor and the cost thereof shall be included in the Contract Price. The Plant should be insured for its full value, should cover against all risks, including those of War, Riots, Civil Commotions and Malicious damage. The term "*insured for its full value*" shall be deemed to mean insurance cover to the aggregate value of the replacement cost of the Plant as at the date of shipment or on the date at which becomes the property of the Purchaser as the case may be and the cost of the freight.
- (ii) It shall appear at any time to the Contractor during the performance of the Contract that he will be unable to deliver the Plant within the time or times specified in the Contract, the Contractor shall at once give notice of the delay in writing to the Purchaser with an explanation of the thereof. The submission and acceptance of such notice shall in any way prejudice the right of the Purchaser under Clause 10 (Contractor's Default).
- (iii) If by delay or failure on the part of the Purchaser to give any necessary instructions or from any case for which the Purchaser or some other contractor employed by him is responsible, the Contractor shall be prevented, or at the request of the Purchaser refrains, from delivering any Plant at the time specified for delivery thereof or, if no times is specified, within a reasonable time, and shall have given notice in writing to the Purchaser that such Plant (hereinafter referred to as "*the delayed plant*") is ready for delivery, and shall have suitably and sufficiently marked the delayed Plant as appropriated to the Contract, and shall have given to the Engineer an opportunity of inspection the delayed Plant, then in any such case the following provisions shall have effect:
 - (a) There shall be added to the Contract Price the reasonable additional expense incurred in storing and taking reasonable measures to protect and preserve the delayed Plant from, and insuring it against, loss, deterioration, and damage however caused from the time when but for the said delay, failure, or other cause the delayed Plant would have been delivered (hereinafter referred to as "*the normal delivery date*") until the Contractor shall no longer be prevented from delivering it or shall be relieved of responsibility thereof under paragraph (b) of this clause, whichever shall first happen.
 - (b) If at the expiration to two months from the normal delivery date the Contractor shall still be prevented as aforesaid from delivering the delayed Plant as he still be entitled to be paid the Contract Value of the delayed Plant and he may by notice in writing expiring 30 days after receipt thereof by the Purchaser require the Purchaser to assume responsibility for storing, protecting, and preserving the delayed Plant.

Upon the expiration of the last-mentioned notice the Contractor shall be relieved of any responsibility for the delayed Plant either until the expiration of 30 days after receipt of notice in writing from the Engineer that the delayed Plant may be delivered (hereinafter referred to as "*the notice to deliver*") or until the Contractor, having received the notice to deliver, has proceed to fulfil the obligation imposed by him by paragraph (c) of this clause, whichever shall first occur provided always that if the notice to deliver shall be given within 30 days after the receipt of the last-mentioned notice given by the Contractor that notice shall not have effect.

- (c) After the receipt of the notice to deliver, the Contractor, if he has been relieved of responsibility under the last preceding paragraph of this clause, shall (and in any other case may) examine the delayed Plant and make good any deterioration or defect

therein that may have developed or loss thereof that may have occurred after the normal delivery date.

- (d) There shall be added to the Contract Price any reasonable expense to which the Contractor may be put in making the examination referred to in paragraph (c) in this clause and in making good any deterioration, defect, or loss as therein mentioned, except so far as the same was caused by faulty workmanship or materials or by the Contractor's failure to take the measures referred to in paragraph (a) of this clause. Any expense to which the Contractor may be put in delivering the delayed Plant or in performing his obligations under Clause 18 (Defects after Delivery) which would not have been incurred had the delivery of the delayed Plant not been prevented as aforesaid shall also be added to the Contract Price.
- (e) Without prejudice to the provisions of Sub-Clause (viii) of Clause 18 (Defects after Delivery), the obligations of the Contractor under that Clause with respect to delayed Plant shall not apply to any defect that may develop therein after the expiration of three years from the normal delivery date.

14. **TESTING OF PLANT/DAMAGED BEFORE ERECTION**

- (i) On delivery of the Plant the same shall become the property of the Purchaser and save as provided in these General Conditions the Contractor shall thereupon cease to be liable for loss thereof if damage thereto from whatever cause arising.
- (ii) If for any cause for which the Contractor is not responsible the Plant after delivery and before erection shall suffer deterioration, damage, or loss, the Contractor shall be relieved of his further obligation until the Plant has been put into a satisfactory condition or replaced at the cost of the Purchaser.

15. **CONTRACTOR'S NEGLIGENCE**

- (i) The Contractor shall, subject to Sub-Clause (iii) and (iv) of this Clause and Clause 16 (Limitations on Contractor's Liability), indemnify the Purchaser in respect of all damaged or injury occurring before all the Plant shall have been taken over under Clause 17 (Tests on Completion and Taking Over) to any property or to any person and against all actions, suits, claims, demands, costs, charges, and expenses arising in connections therewith which shall be occasioned by the negligence of or breach of statutory duty by the Contractor or any Sub-contractor, or by defective design (other than a design made, furnished, or specified by the Purchaser and for which the Contractor has disclaimed responsibility in writing within a reasonable time after the receipt of the Purchaser's instructions), materials, or workmanship in the manufacture of the Plant, but not otherwise.

Provided that the Contractor shall not be liable by virtue of this Sub-clause in respect of damage or injury attributable to defects in any section or portion of the Plant taken over under Clause 17 (Test on Completion and Taking Over).

- (ii) If there shall occur any loss or damage to any property or injury to any person while the Contractor is on the site for the purpose of making good a defect in any section or portion of the Plant pursuant to Clause 18 (Defects after Delivery) the Contractor shall be liable, subject to the provisions of Sub-clause (iii) and (iv) of this Clause and Clause 16 (Limitations on Contractor's Liability) as follows:
 - (a) In respect of loss or damage to the said section or portion the Contractor's liability shall be as defined in Clause 18 (Defects after Delivery).
 - (b) In respect of damage or injury to any other property or to any person of any actions, claims, demands, costs, charges and expenses arising in connection therewith the Contractor shall be liable to the extent that such damaged or injury was caused by the negligence or breach of statutory duty of the Contractor or a Sub-contractor while on the site as aforesaid or by defective materials or workmanship used in making good the said defect but not otherwise.

The said section or portion of the Plant shall be defined by reference to the taking over certificate issued in respect thereof pursuant of Clause 17 (Tests on Completion and Taking Over).

- (iii) The Contractor shall not be liable to the Purchase for:
 - (a) Any loss, damage or injury to the extent that it is caused by or arises from the acts or omission of the Purchaser or of others (not being the Contractor's servant or Sub-contractor).
 - (b) Any loss, damage or injury in circumstances over which the Contractor has no control.
- (iv) Except in respect of personal injury or damage to property conferring on a person other than the Purchaser a good cause of action against the Contractor, the liability of the Contractor for any one act or default shall not exceed the Contract Price.
- (v) In the event of any claim being made against the Purchaser arising out of the matters referred to in and in respect of which the Contractor may be liable under this Clause, the Contractor shall be promptly notified thereof, and may at his own expense conduct all negotiations for the settlement of the same and any litigations that may arise therefrom. The Purchaser shall not, unless until the Contractor, shall have failed to take over the conduct of the negotiations or litigations, make any admission which might be prejudicial thereto. The conduct by the Contractor or such negotiations or litigations shall be conditional upon the Contractor having first given to the Purchaser to cover the amount ascertained or agreed or estimated, as the case may be, of any compensation, damages, expenses, and costs for which the Purchaser may become liable. The Purchaser shall, at the request of the Contractor, afford all available assistance for any purpose, and shall be repaid all reasonable expenses incurred in so doing.

16. **LIMITATIONS ON CONTRACTOR'S LIABILITY**

Subject as provided for the deduction of liquidated damages, the Contractor shall not be liable to the Purchaser by way of indemnify or be reason of any breach of the Contract for loss of use (whether complete of partial) of the Plant or of profit or of any contract that may be suffered by the Purchaser.

17. **TESTS ON COMPLETION AND TAKING OVER**

- (i) Where the Contract provides for Tests on Completion, they shall be carried out the Purchaser in the presence of the Contractor as and if required, who shall be given reasonable notice thereof.
- (ii) The Tests on Completion (if any) shall be carried out promptly after the erection of the Plant has been completed (except in minor respects that do not effect the use of the Plant for the purpose for which it is intended).
- (iii) If for any reason for which the Contractor is responsible any portion of the Plant fails to pass the Tests on Completion, tests of the said portion shall, if required by the Purchaser or by the Contractor, be repeated within a reasonable time upon the same terms and conditions, save that all reasonable expenses to which the Purchaser may be put by the repetition of the tests shall be deducted from the Contract Price.
- (iv) As soon as the erection of the Plant has been completed (except as aforesaid) and the Plant has passed the Tests on Completion (if any), the Purchaser shall issue a certificate (herein called a "*taking-over certificate*") in which he shall certify the date on which the erection of the Plant has been so completed and on which the Plant has passed the said tests and the Purchaser shall be deemed to have taken over the Plant on the date so certified.
- (v) If the Plant is divided into two or more sections, Sub-clause (iv) hereof shall apply to each section as it applies to the entire Plant. If by agreement between the Purchaser and the Contractor any portion of the Plant (other than a section or sections) shall be taken over before

he remainder of the Plant, the Purchaser shall issue a taking-over certificate in respect of that portion.

- (vi) If by reason of any default on the part of the Contractor the issue of a taking-over certificate in respect of any portion of the Plant has been delayed and such portion is reasonably capable of being used without endangering the safety of the Plant or persons, then the Purchaser shall be at liberty to use such portion of the Plant, provided that the Contractor shall afforded reasonable opportunity of taking such steps as may be necessary to permit the issue of the taking-over certificate.
- (vii) If for any reason for which the Purchaser is responsible the Tests on Completion (if any) have not been carried out promptly after the erection of the Plant has been completed as provided in Sub-Clause (ii) of this Clause, or has not been carried out successfully within three months after erection has been so completed, then the Purchaser shall be deemed to have taken over the Plant. Any additional expense to which the Contractor may be put in attending any tests delayed in circumstances to which this sub-clause applies, shall be added to the Contract Price, and such allowances shall be made from the performances required to be attained in the said tests as may be reasonable having regard to any use of the Plant by the Purchaser prior to the Test.

18. **DEFECTS AFTER DELIVERY**

- (i) The Contractor shall be responsible for making good with all possible speed any defect in or damage to any portion of the Plant which may appear or occur during a period of 12 months after that portion has been delivered.
 - (a) from defective materials, workmanship or design (other than a design made, furnished or specified by the Purchaser and for which the Contractor has disclaimed responsibility in writing within a reasonable time after receipt or the Purchaser's instructions), or
 - (b) from any act or omission of the Contractor done or omitted during that said period of 12 months as the case may be provided always that the said period of 12 months shall be extended by the length of period not exceeding 6 months, as and if required in writing by the Purchaser.
- (ii) If any such defect shall appear or damages occur, the Purchaser shall inform the Contractor thereof stating in writing the nature of the defect or damage. If the Contractor replaces or renews any part of the Plant, the provisions of this clause shall apply to the part of the Plant so replaced or renewed, except that the period during which the Contractor's responsibility pursuant to Sub-clause (I) of this clause shall subsist shall be 12 months from the date of replacement or renewal.
- (iii) The periods mentioned in Sub-Clause (I) and (ii) of this Clause shall be extended by a period equal to the period during which the Plant or portion thereof in which a defect to which this clause applies has appeared cannot be used by reason of that defect.
- (iv) The supply to the Purchaser carriage paid of a defective or damaged part or the Plant properly repaired or of a part in replacement thereof shall constitute fulfilment by the Contractor of his obligation under Sub-Clause (I) of this clause in respect of that defective or damaged part. If it is reasonably practicable for a defective or damaged part to be returned to the Contractor and the Contractor shall call for its return the Purchaser shall cause it to be returned to the Contractor at the Contractor's expense.
- (v) Where pursuant to this clause the Contractor supplies a part in replacement of a defective or damaged part the defective or damaged part shall become the property of the Contractor.
- (vi) If any such defect or damage be not remedied within a reasonable time, the Purchaser may proceed to do the work at the Contractor's risk and expense.
- (vii) In respect of any part of the Plant specified by the Contractor in his tender as not manufactures by him and in respect of which it is not practicable to procure that the supplier or such part

shall be under the same liability to the Contractor as the liability undertaken by the Contractor in this clause the Contractor shall notify the Purchaser to that effect and the foregoing provisions of this clause shall apply subject to the proviso that the liability of the Contractor in respect of such part shall not exceed a liability in the same terms as the liability of the supplier to him.

- (viii) The Contractor's liability under this clause shall be in lieu of any conditions or warranty implied by law as to the quality or fitness for any particular purpose of any portion of the Plant delivered and save as in this clause expressed neither the Contractor nor his Sub-contractors, servant or agents shall be liable, whether in contract, tort or otherwise in respect of defects in or damage to such portion, or for any injury, damage or loss of whatsoever kind attributable to such defects or damage. For the purposes of this sub-clause the Contractor contracts on his own behalf and on behalf of and as trustee for his contractors, servants and agents.

19. **PAYMENT DUE FROM THE CONTRACTOR**

Without prejudice to any other remedy which the Purchaser may have he shall be entitled to deduct from any moneys due, or becoming due to the Contractor under the Contract, all Costs, damages or expenses for which under the Contract the Contractor is liable to the Purchaser.

20. **PAYMENT**

The full amount of invoice based on rates quoted in the schedule for each shipment will be paid within 45 days after the receipt of the Plant in good condition, at the store designated, provided that the validity period of the performance bond required under Clause 23 is sufficient to cover the contractor's obligation under Clause 18 of the General Condition of Contract.

Damaged Plant upon receipt shall be assessed by the Purchaser. Part payment of the invoice amount may be released of damages on plant are not substantial to impair functioning of the said Plant, otherwise full payment of the damaged plant shall be withheld.

21. **ARBITRATION**

If at any time any question, dispute, or difference shall arise between the Purchaser and the Contractor, either party shall, as soon as reasonably practicable, give to the other notice in writing of the existence of such question, dispute, or difference specifying its nature and the point at issue, and the same shall be referred to the arbitration of a person to be agreed upon, or failing such agreement within six weeks, to some person appointed on the application of either of the parties hereto by the President for the time being of the Institution of Engineers of Malaysia. The award of the Arbitrator shall be final and binding on the parties. Upon every or any such reference, the costs of and incidental to the reference and award respectively shall be in the discretion of the Arbitrator, who may determine the amount thereof or the basis upon which the same shall be ascertained.

Any such reference shall be deemed to be submission to arbitration under the provisions of the Arbitration Committal Ordinance, 1950 of Sarawak and/or any statutory modifications or re-enactment thereof for the time being in force.

22. **LAW GOVERNING CONTRACT**

- (i) Notwithstanding that the Contract and correspondence in connection with the Contract shall be in English Language, the Contract shall be and be deemed to be a Contract of the State of Sarawak and shall accordingly be governed by and construed according to the laws for the time being in force in the State of Sarawak and the Courts of Sarawak shall have exclusive jurisdiction to hear and determine all actions and proceedings arising out of the Contract and the Contractor shall submit to the jurisdiction of the Courts in the State of Sarawak, for the purpose of all such actions and proceedings.
- (ii) The Contractor shall bind himself to acknowledge and accept as final in all respects within the country of domicile of the Contractor or elsewhere any decision or award of an arbitrator or judgement in any court in the State of Sarawak in relation to any dispute between the parties

under the Contract whether in respect of payments to be made hereunder or in other matters. This undertaking shall be valid in all respects in case any such decision, award or judgement is to be enforced in the court of the country of domicile of the Contractor or elsewhere in any manner.

23. **PERFORMANCE BOND**

- (i) The Contractor shall provide to the Purchaser a Performance Bond in a form of Banker's Guarantee issued by a bank registered in Malaysia within 21 days after the issuing of Letter of Acceptance from the Purchaser for the due and proper performance of the Contract and observance of all provisions, covenants, conditions and stipulations therein contained with good and sufficient sureties as hereinafter provided in a sum equal to 10% of the Contract Price and the Performance Bond shall be submitted in the format at the attached Form for Performance Bond (PUR/5).

The full amount of the Bond shall be maintained for the period from the date of Letter of Acceptance to the date of the taking over of the Plant and a further one year from the date mentioned thereof. Notwithstanding anything herein above contained the Bond shall not be released until the Purchaser shall have given a certificate in writing that all outstanding matters in dispute between the Purchaser and the Contractor have been settled.

24. **MAINTENANCE PERIOD**

The Contractor shall be required to carry out any adjustment or maintenance as deemed necessary by the Company's representative for a period of 12 months after the official taking over which shall be given in writing by the Company or the Company's representative. All materials and labour costs for this adjustment and maintenance shall be borne by the Contractor.

25. **PRICE STRUCTURE**

The prices quoted should be firm in Malaysian currency.

26. **PACKING**

The Contractor shall be held responsible that the items of Plant are packed so as to ensure as far as possible that they reach their destination intact and undamaged. The packing shall comply strictly with any such special requirements as shall be expressly specified in the Contract. Subject thereto, the Contractor shall protect the items of Plant in packages which will withstand rough handling in transit and which will be further suitable for export to and for storage in the tropics. The Contractor shall provide and include in the Contract Price the cost of all necessary packing cases (which shall be considered as non-returnable), material and labour.

27. **CUSTOMS IMPORT DUTIES**

The Contract Price shall include all duties, and taxes imposed by the Government of Malaysia.

28. **FREIGHT FORWARDING AGENT/INSURANCE BROKER**

Tenderer is to take note that it is mandatory requirements for him to give preference to the use of the following forwarding agents and insurance broker appointed by the State Government of Sarawak for the purposes of Shipping and Insurance Cover.

The full addresses of these are as follows:

(A) **Forwarding Agents:**

1. Kotena Nasional Sdn. Bhd.
Batu 9, Jalan Kelang Lama
Peti Surat 6503
47307 Seri Setia
Selangor Darul Ehsan

Malaysia.
Tel No.: 03-7761933

2. Universal Shipping Sdn. Bhd.
250, Padungan Road
93100 Kuching
Sarawak Malaysia.

Telex No. MA 70380, 70642
Tel No. 082-416523, 416524, 416525
Fax No.: 082-429760

3. Malaysia Shipping Agencies Sdn. Bhd.
No.7, Tingkat 2, West Wing
Wisma Tractors
Jalan SS 16/1, Subang Jaya
47500 Petaling Jaya
Selangor Darul Ehsan, Malaysia

Tel. No.: 03-7343034

(B) Insurance Broker

Insurepro Sdn. Bhd.
Lot 269-270, Tingkat Bawah, Jalan Chan Chin Ann,
93100 Kuching, Sarawak, Malaysia.

Tel: +6082-416919 / 414919
Fax: +6082-426919
E-mail: iprosb@po.jaring.my

Tenderer is required to fill in clearly in the Schedule Summary of Tender Price, the breakdown price viz F.O.B freight and insurance. If the Tenderer deems it a definite cost advantage to him to use his traditional agents for the purposes of shipping and insurance cover, he must submit a break-down cost for these items as an alternative to the costs as offered by **Kotena Nasional Sdn. Bhd. or Universal Shipping Sdn. Bhd. or Malaysia Shipping Agencies Sdn. Bhd. and Inscape Insurance Broker (M) Sdn. Bhd.** for shipping and insurance cover. The Purchaser, however, reserves the right to award the Contract in whatever manner with regard to the items of shipping and insurance cover as he deems advantageous.