

PART 3 – CONDITIONS OF CONTRACT (CC) AND CONTRACT FORMS

Table of Contents

Part III	Conditions of Contract (CC) and Contract Forms
Section VIII	General Conditions (GC)
Section IX	Particular Conditions (PC)
Section X	Contract Forms

Section VIII. General Conditions (GC)

These Standard Bidding Documents have been designed for use with the Fédération Internationale des Ingénieurs-Conseils (FIDIC) General Conditions of Contract for Plant and Design Build 1st edition, 1999. Due to the FIDIC copyrights, these FIDIC General Conditions are not included in these Tender Documents which contain instructions on how these conditions can be acquired.

Employer: Nepal Electricity Authority (NEA)

Contract / ICB No.: BMZ No. 2016 67 773

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The conditions of Contract are the "General Conditions" which form part of the Conditions of Contract for Plant and Design Build First edition 1999 published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC) and the following "Particular Conditions" which are the Employer created amendments and additions to such General Conditions.

Copies of the FIDIC Contract for Plant and Design Build can be obtained from:

International Federation of Consulting Engineers

World Trade Centre II
P.O. Box 311
CH-1215 Geneva 15
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Section IX. Particular Conditions (PC)

The following Particular Conditions shall supplement the GC. Whenever there is a conflict, the provisions herein shall prevail over those in the GC.

Part A - Contract Data

Conditions	Sub- Clause	Data
Employer's name and address	1.1.2.2 & 1.3	NEPAL ELECTRICITY AUTHORITY (NEA) Attention: <i>Mr. Jagadish Sharma Poudel</i> E-mail: <i>ld220kvtlp@gmail.com</i>
Contractor's name and address	1.1.2.3 & 1.3	Name: tbd Address: tbd Tel.: tbd Fax: tbd E-Mail: tbd
Engineer's name and address	1.1.2.4 & 1.3	Fichtner GmbH & Co. KG, Sarweystr. 3, D-70191 Stuttgart / Germany Attention: Mr. Giacomo Fugazza Email: <i>giacomo.fugazza@fichtner.de</i>
Bank's name	1.1.2.11	KfW Development Bank ("KfW")
Borrower's name	1.1.2.12	Government of Nepal
Time for Completion of the Works	1.1.3.3	The time for completion shall be 730 days
Defects Notification Period	1.1.3.7	730 days
Foreign Currency	1.1.4.6	USD
Grant	1.1.4.13	KfW Development Bank has given the grant of 49,000,000 EUR to Nepal Electricity Authority for Lekhnath Damauli 220 kV Transmission Line Project (for both Packages A and B).
Section	1.1.5.6	No Sections

Conditions	Sub- Clause	Data
Country	1.1.6.2	Republic of Nepal
Electronic transmission systems	1.3	Reference is made Sub-Section VII-1. Project Procedures, forming part of the Employer's Requirements.
Governing Law	1.4	Law of Republic of Nepal
Ruling language	1.4	English
Language for communications	1.4	All communication shall be in writing and in English language with translation to Nepalese language. In any case the English version shall prevail. Refer also to Sub-Section VII-1. Project Procedures.
Time for the Parties entering into a Contract Agreement	1.6	Within 28 days after the Letter of Acceptance is issued or -in case of a Contract Clarifications Meeting (Pre-award Discussions) - 42 days after the Contract Clarifications Meeting takes place, if not otherwise agreed between the Parties.
Care and Supply of Documents No. of copies of Contractor's Documents	1.8	Reference is made to Sub-Section VII-1. Project Procedures, forming part of the Employer's Requirements.
Amount of Performance Security	4.2	The Performance Security will be in the form of an unconditional bank guarantee in the amount(s) of 10% (ten percent) of the Contract Price ("Performance Bond").
Subcontractors	4.4	Direct payment of Sub-Contractors is allowed: NO
Nominated Subcontractor	4.5	"Integration of the 220kV extension in Lekhnath and the forthcoming 220/132/33/11kV New Damauli sub-station into the existing National Load Dispatch Center/Emergency Control Center (LDC /ECC) shall be included in the scope of deliverables and services provided by the Contractor of the Project. as described in

Conditions	Sub- Clause	Data
		<p>PART II, Employer's Requirements, Employer's Re- quirements, Section VII-1 Project Description and Scope of Works."</p> <p>Therefore, for this specific part of work and services, the following subcontractor shall be considered by the Bidder in his Bid:</p> <ul style="list-style-type: none"> • Original Manufacturer Load Dispatch Center, Siemens Ltd, India
Period for notifying unforeseeable errors, faults and defects in the Employer's Requirements	5.1	Within 28 days from the Commencement Date
Normal working hours	6.5	8 hours
Delay damages for the Works	8.7 & 14.15(b)	0.05% of the Contract Price per day, in the currencies and proportions in which the Contract Price is payable.
Maximum amount of delay damages	8.7	10% of the final Contract Price
Critical Equipment	11.12	<p>Add the following new Sub-Clause:</p> <p>Extended Defect Liability Period: 1095 days</p>

Conditions	Sub- Clause	Data																		
Adjustments for Changes in Cost	13.8	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="3" data-bbox="663 421 1362 495">Table of adjustment data</th> </tr> <tr> <th data-bbox="663 495 850 656">Coeffi- cient: Scope of Index</th> <th data-bbox="850 495 1150 656">Source of Indices Used</th> <th data-bbox="1150 495 1362 656">Base Date Indices</th> </tr> </thead> <tbody> <tr> <td data-bbox="663 656 850 745">a = 35% (Fixed)</td> <td data-bbox="850 656 1150 745"></td> <td data-bbox="1150 656 1362 745"></td> </tr> <tr> <td data-bbox="663 745 850 1014">b = 25% (Core steel)</td> <td data-bbox="850 745 1150 1014">Grain Oriented Electrical Steel High Grade GOES T&D Europe (official rate)</td> <td data-bbox="1150 745 1362 1014"></td> </tr> <tr> <td data-bbox="663 1014 850 1137">c = 25% (Copper)</td> <td data-bbox="850 1014 1150 1137">London Metal Ex- change cash (offi- cial rate)</td> <td data-bbox="1150 1014 1362 1137"></td> </tr> <tr> <td data-bbox="663 1137 850 1317">d = 15% (Con- struction steel)</td> <td data-bbox="850 1137 1150 1317">LME Steel Scrap CFR India (Platts) CFR India (official rate)</td> <td data-bbox="1150 1137 1362 1317"></td> </tr> </tbody> </table>	Table of adjustment data			Coeffi- cient: Scope of Index	Source of Indices Used	Base Date Indices	a = 35% (Fixed)			b = 25% (Core steel)	Grain Oriented Electrical Steel High Grade GOES T&D Europe (official rate)		c = 25% (Copper)	London Metal Ex- change cash (offi- cial rate)		d = 15% (Con- struction steel)	LME Steel Scrap CFR India (Platts) CFR India (official rate)	
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Total advance payment	14.2	10% Percentage of the Accepted Contract Amount																		
Number and timing of instalments	14.2	Not applicable:																		
Currencies and proportions	14.2	The complete amount in USD																		
Start repayment of advance payment	14.2(a)	With first Interim Payment Certificate																		
Repayment amortization rate of advance payment	14.2(b)	10%																		

Conditions	Sub- Clause	Data
Application for Interim Payment Certificates Copies of Statement	14.3	To the Employer: One (1) soft (digital) copy, One (1) original (paper) document, and One (1) hard (paper) copy. To the Engineer: One (1) soft (digital) copy and One (1) hard (paper) copy
Percentage of Retention	14.3(c)	15%
Limit of Retention Money	14.3(c)	15% of the Accepted Contract Amount
Minimum Amount of Interim Payment Certificates	14.6	1% of the Contract Amount but not less than 100,000 USD.
Contractor's Bank Account	14.7	To be defined
Delayed Payment - financing charges	14.8	The financing charges shall be one tenth percent (0.1%) of the corresponding unpaid amount per month of delay.
Payment of Retention Money	14.9	First Part (10%) after issuance of Taking-over Certificate. Second Part (5%) after issuance of the Performance Certificate.

Conditions	Sub- Clause	Data
Statement at Completion No. of Copies	14.10	To the Employer: One (1) soft (digital) copy, One (1) original (paper) document, and One (1) hard (paper) copy. To the Engineer: One (1) soft (digital) copy and One (1) hard (paper) copy
Application for Final Payment Certificate No. of Copies	14.11	To the Employer: One (1) soft (digital) copy, One (1) original (paper) document, and One (1) hard (paper) copy. To the Engineer: One (1) soft (digital) copy and One (1) hard (paper) copy
Currency / currencies of payment	14.15	International Portion: US Dollar (USD) Local Portion: Nepalese Rupee (NPR)
Maximum total liability of the Contractor to the Employer	17.6	1.1 times the Accepted Contract Amount.
Periods for submission of insurance: a. evidence of insurance b. relevant policies	18.1	28 days from Commencement Date 42 days from Commencement Date

Conditions	Sub- Clause	Data
Maximum amount of deductibles for insurance of the Employer's risks	18.2(d)	Not applicable
Minimum amount of third-party insurance per occurrence	18.3	not less than 5 million USD per each event
Date by which the DB shall be appointed	20.2	28 days after the Commencement date
The DB shall be comprised of	20.2	The DAB shall comprise one suitably qualified person ("member").
List of potential DB sole members	20.2	None
Appointment (if not agreed) to be made by	20.3	Nepal Council of Arbitration (NEPCA)
Arbitration rules	20.6(a)	Rules of procedure for arbitration proceedings: (a) Contracts with foreign contractors: International arbitration shall be conducted in accordance with the Singapore International Arbitration Centre (SIAC) shall apply. Arbitration shall be administered by SIAC. The place of arbitration shall be the place of the institution administering the arbitration. (b) Contracts with contractors being nationals of the Employer's country: As per procedures of NEPCA.
Place of arbitration	20.6	The place of arbitration shall be the place of the institution administering the arbitration. SIAC, Singapore NEPCA, Kathmandu, Nepal

Table: Summary of Sections

Section Name/Description (Sub-Clause 1.1.5.6)	Time for Completion (Sub-Clause 1.1.3.3)	Damages for Delay (Sub- Clause 8.7)
No Sections Not Applicable - No sections are foreseen for the Works		

Part B - Specific Provisions

Conditions	Sub- Clause	Specific Provisions
Contract	1.1.1	Add under 1.1.1.1 "Contract" the sentence: "The Contract requires the non-objection by KfW for becoming eligible for any disbursement under KfW's Grant."
Appendix to Tender (to be replaced by Contract Data)	1.1.1.9	Delete this Sub-Clause and replace by: "Contract Data" means the completed pages entitled Part A - Contract Data which form part of the Particular Conditions, along with Part B - Specific Provisions. Wherever the term "Appendix to Tender" is used in the Conditions of Contract, it is deemed to be replaced by "Part A - Contract Data".
Parties and Persons	1.1.2.11	Add the following new Sub-Clause: "Bank" means the financing institution (if any) named in the Contract Data.
Borrower	1.1.2.12	Add the following new Sub-Clause: "Borrower" means the person or entity (if any) named as the borrower in the Contract Data.
Defects Notification Period	1.1.3.7	Add, at the end of the Sub-Clause: "or taken over under Sub-Clause 10.2 [Taking Over of Parts of the Works]"
FATs	1.1.3.10	Add the following new Sub-Clause: "FATs" means Factory Acceptance Tests.
Exceptionally Adverse Climatic Conditions	1.1.6.10	Add the following new Sub-Clause: Reference is made to Sub-Clause 8.4 [Extension of Time for Completion] and item (c) pertaining to exceptionally adverse climatic conditions. By "Exceptionally Adverse Climatic Conditions", climatic conditions substantially departing from the ones pertaining to Site, in

Conditions	Sub- Clause	Specific Provisions
		accordance with the relevant information provided under Employer's Requirements, Sub-section VII-2 Project Procedures, are defined.
Non-conformity	1.1.6.11	Deviations, Failure or Refusal to the requirements of the applicable regulations, the Employer's Requirements, Sub-section VII-7 Environmental and Social Requirements, and the Project Area-ESMP (Contractor's ESMP).
Project Area	1.6.1.12	Project Area defines an area within which the Contractor is to comply with environmental, social, health and safety obligations defined in the Employer's Requirements, Sub-section VII-7 Environmental and Social Requirements. Project Area means the Site and its surroundings, i.e. including but not limited to access roads, quarries, borrow areas, stockpiling of backfill material, camps or storage areas.
Environmental and Social Requirements	1.6.1.13	Comprises the document in Part II, Employer's Requirements, Sub-section VII-7 Environmental and Social Requirements
Interpretation	1.2	At the end of Sub-Clause 1.2, insert: Under these Conditions, provisions including the expression "Cost plus reasonable profit" defines this profit to be one twentieth (5%) of these Costs.
Communications	1.3	Add the following sentence at the end of item (a), after "Contract Data" (previously "Appendix to Tender") and before ":", In case of electronic transmission, these communications shall be in the form of an un-editable record attached to an electronic mail, such as a PDF document for instance, and any other communication transmitted in a different manner, such as the email body text, shall not be construed as communication under the Contract.
Law and Language	1.4	Add at the end of the Sub-Clause: All the documentation, correspondence, communication

Conditions	Sub- Clause	Specific Provisions
		<p>and all the documents to be prepared and submitted under the Contract shall be in English and the Contract will be constituted and interpreted in English.</p> <p>The acts, protocols, certificates, as-built documents, operational and maintenance manuals, design documents and all other documents as required by the laws shall be issued in English.</p> <p>Drawings shall be provided bilingual (English).</p> <p>All kind of labels, markers and signs shall be in the English.</p> <p>Documents, which must be submitted to the authorities of the Nepalese Government, shall be in the English.</p> <p>The Contractor shall provide a translator fluent in English and Nepalese language at his own expense during meetings with the Employer.</p>
<p>Priority Documents</p>	<p>of 1.5</p>	<p>Delete Sub-Clause 1.5 and replace by:</p> <p>The documents forming the Contract are to be taken as mutually explanatory of one another. For the purpose of interpretation, the priority of the documents shall be in accordance with the relevant stipulations of the Contract Agreement.</p> <ol style="list-style-type: none"> a. The Contract Agreement b. Minutes of Meeting of Pre-award Discussions (if any) c. The Letter of Acceptance d. The Letter of Bid e. The signed Declaration of Undertaking) f. The Addenda Nos____ and Clarifications to the Bidding Documents g. Particular Conditions of Contract h. General Conditions of Contract i. Employer’s Requirements j. Price Schedules k. Clarification to Contractor’s Proposal l. Contractor’s Proposal <p>Anything mentioned in the Employers’ Requirements and not shown on the Drawings/ Technical Data Sheets or shown on the Drawings/ Technical Data Sheets and</p>

Conditions	Sub- Clause	Specific Provisions
		<p>not mentioned in the Employers' Requirements shall be of like effect as if shown or mentioned in both.</p> <p>In case of any difference between scaled dimensions and figures on the Drawings, the figures shall prevail.</p> <p>If an ambiguity or discrepancy is found in the documents, the Engineer shall issue any necessary clarification or instruction.</p>
Contract Agreement	1.6	<p>The first sentence is revised as follows: The Parties shall enter into an Agreement within the time defined in Contract Data.</p> <p>The second sentence is revised as follows: The Contract Agreement shall be based upon the form annexed under Section X. Contract Forms of the Bidding Document.</p> <p>Add new paragraph under the Sub-Clause: The Contract Agreement shall come into full force the date on which all the following conditions have been fulfilled:</p> <ul style="list-style-type: none"> • The complete set of Contract Documents has received the Bank's non-objection • The Contract Agreement has been signed • The Contractor has submitted to the Employer the Performance Security and the Advance Payment Guarantee • The Advance Payment to the Contractor has been paid.
Confidential Details	1.12	<p>Add at the end of the Sub-Clause: The Contractor shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out obligations under it or to comply with applicable Laws of the Country. The Contractor shall not publish, permit to be published, or disclose any particular detail of the Works in any trade/technical paper or</p>

Conditions	Sub- Clause	Specific Provisions
		elsewhere without the previous consent, in writing, of the Employer.
Inspections and Audit by KfW	1.15	<p>Insert new sub-clause “1.15 Inspections and Audit by KfW” after sub-clause 1.14 as follows:</p> <p>The Contractor shall permit, and shall cause its agents (whether declared or not), sub-contractors, sub-consultants, service providers, or suppliers and any personnel thereof, to permit, KfW and/or persons appointed by the KfW to inspect the Site and all accounts and records relating to the performance of the Contract and the submission of the Bid, and to have such accounts and records audited by auditors appointed by KfW if requested by KfW.</p> <p>The Contractor’s attention is drawn to Sub-Clause 15.6 [Corrupt or Fraudulent Practices] which provides, inter alia, that acts intended to materially impede the exercise of KfW’s inspection and audit rights, provided for under Sub-Clause 1.15, constitute a prohibited practice subject to contract termination.</p>
Right of Access to the Site	2.1	<p>The first sentence of the first paragraph is modified as following</p> <p>The Employer shall give to the Contractor right of Access to, and possession of, all parts of the Site within the time or times stated in the programme submitted under Sub-Clause 8.3 [<i>Programme</i>].</p> <p>After the first paragraph of Sub-clause 2.1, add:</p> <p>Permanent permission to enter and possession of the Site including permanent access roads will be provided with the construction permission. Agreements with the concerned landowners to obtain temporary permission to access the sites fall within the responsibility of the Contractor. As per sub-clause 4.13, the Contractor shall bear all related costs.</p> <p>However, construction works at the site will only be possible after completion of the design and granting of permits for construction by the relevant local authorities. The Contractor shall consider this requirement within</p>

Conditions	Sub- Clause	Specific Provisions
		<p>the Programme.</p> <p>The Contractor shall consider a time window of 8 months between the time the application is placed, and the work permit is issued. The Contractor's Programme shall duly allow for this requirement.</p> <p>In case the prerequisites for the Site or certain parts thereof are received in a period shorter than the aforementioned time, the Employer/Engineer will promptly issue a relevant notice to Contractor. As soon as reasonable and practicable, after receipt of this notice, the Contractor shall mobilize his relevant personnel and initiate his activities on Site.</p>
The Employer's Claims	2.5	<p>The first sentence of the second paragraph is revised as follows:</p> <p>Notice shall be given as soon as practicable but not later than 60 days after the Employer became aware of the event or circumstances giving rise to the claim.</p>
Replacement of the Engineer	3.4	Not applicable
Contractor's General Obligations	4.1	<p>Add under the first paragraph:</p> <p>The drawings included in the Employer's Requirements are intended to be descriptive of the character of the Works and to be used in conjunction with the documents comprising the Employer's Requirements and shall in no way limit the Contractor's responsibility to perform all Works for the intended purpose.</p> <p>Insert the following at the end of the second paragraph:</p> <p>Goods and services from countries under embargo from Germany, the European Union or the United Nations are not eligible and shall not be used by the Contractor.</p> <p>Add new paragraphs at the end of the Sub-Clause:</p> <p>It is the Contractor's obligation to familiarize himself with</p>

Conditions	Sub- Clause	Specific Provisions
		<p>the legislation in the Country and with any laws, regulations etc. that should be observed in relation with the Contractor's activity under the Contract. The failure of the Contractor to do so shall not relieve him from any responsibility or obligation that may arise in relation to such a failure.</p> <p>All duties and taxes levied to the Contractor or his employees and/or his subcontractors or their employees, as per the governing law, including those due and/or payable with respect to Contractor's or his subcontractors' employees and/or personnel, shall be borne by the Contractor. It is Contractor's obligation to issue those documents under this Contract in compliance with the governing tax law.</p>
<p>Performance Security</p>	<p>4.2</p>	<p>Replace first sentence of second paragraph as follows: "The Contractor shall deliver the Performance Security to the Employer within 28 days after the Letter of Acceptance and shall send a copy to the Engineer."</p> <p>Replace last sentence of second paragraph as follows: "The Performance Security shall be issued by a reputable bank or financial institution selected by the Contractor and requiring the KfW's/NEA non-objection and shall be in the form annexed to the Particular Conditions."</p> <p>Add after the second paragraph: If the bank or financial institution issuing the Performance Security is located outside of Nepal, it shall have a correspondent financial institution located in the Nepal (A Class financial institution) to make it enforceable. The Contractor shall ensure that the guarantee is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects.</p>

Conditions	Sub- Clause	Specific Provisions
		<p>Add the following at the end of the Sub-Clause:</p> <p>If the Contractor fails to submit the Performance Security within 28 days after Letter of Acceptance has been signed then these are adequate reasons for the Employer for annulment of the award and forfeiture of the Bid Security, in which event the Employer may make award to the next lowest evaluated Bidder or invite new bids.</p>
Subcontractors	4.4	<p>Add after the first sentence the following:</p> <p>Subcontracting shall be limited to 30% of the total amount of the Contract Price.</p> <p>Add at the end of (a):</p> <p>The list of Subcontractors accepted by the Employer is part of the Contract. Such acceptance by the Employer for any Subcontractor does not release the Contractor from any of his obligations and responsibilities under the Contract.</p> <p>Add at the end of (b):</p> <p>In case that the Contractor intends to modify the list of Subcontractors, he shall submit the required modification, prior to placing any purchase order, for approval to the Employer/Engineer, so as not to obstruct the Works' progress. The Subcontractors/ Manufacturers will be evaluated against the criteria's mentioned in the Bidding Documents, Part I, Section III, Evaluation and Qualification Criteria set out for Subcontractors/ Manufacturers.</p> <p>In case the Employer has reasonable objections to any proposed Subcontractor, the Contractor should propose another Subcontractor. Such approval by the Employer/Engineer for any new Subcontractor does not release the Contractor from any of his obligations and responsibilities under the Contract.</p> <p>Add at the end of the Sub-Clause:</p> <p>Subcontracting any Works is only permitted in case the Contractor can prove that experienced supervisors from his own company supervise the work of the</p>

Conditions	Sub- Clause	Specific Provisions
		<p>Subcontractor. The Contractor’s supervisors shall be specialized for the relevant works to be performed by the subcontractor and shall be available at any time during Subcontractor’s performance of the works. If the subcontractor fails to execute the works in accordance with the requirements of the Contract and the related terms and regulations, the Contractor shall provide his own personnel without delay.</p> <p>Add the following at the end of the Sub-Clause: “Unless explicitly agreed to by the Engineer, the Sub-Section VII-7. Environmental and Social Requirements apply to all Subcontractors and Suppliers used for the execution of the Works. The Contractor is fully liable for all actions, non-compliance and negligence by Subcontractors and Suppliers their representatives, employees and workers, to the same degree as it would be held liable for its own actions, non-compliance or negligence or that of its own representatives, employees or workers.”</p>
Co-operation	4.6	<p>The second last paragraph “The Contractor...Requirements” shall be read as follows:</p> <p>The Contractor shall be responsible for his construction activities on Site but is under the obligation to coordinate his own activities with those of other Contractors (including the Contractor of Package A: Transmission Lines) and all authorities and utilities of the Country. With regard to the latter, the Employer shall provide reasonable assistance to the Contractor, at the request of the Contractor.</p> <p>In particular with regard to coordination with the Contractor of Package A, the Contractor shall put all reasonable coordination and cooperation effort with respect to minimizing outages and optimizing workflow.</p>
Safety Procedures	4.8	<p>Add the following at the end of the Sub-Clause: f) The Contractor shall ensure compliance with the applicable regulations, the Employer’s Requirements, Sub-Section VII-7. Environmental and Social</p>

Conditions	Sub- Clause	Specific Provisions
		Requirements and the Project Area (PA)- ESMP. Non-Conformity can result in a notification to the Contractor by the Engineer subject to Sub-Clause 4.25 [Categories of Non-conformities for Environmental, Social, Health and Safety Management & Quality Assurance System].
Protection of the Environment	4.18	Add the following after the last paragraph: These provisions are complemented by those listed under the Employer's Requirements, Sub-Section VII-7. Environmental and Social Requirements which the Contractor must ensure compliance with. In addition, compliance with the applicable regulations and the PA-ESMP shall be ensured. Non-Conformity can result in a notification to the Contractor by the Engineer subject to Sub-Clause 4.25 [Categories of Non-conformities for Environmental, Social, Health and Safety Management & Quality Assurance System].
Electricity, Water and Gas	4.19	Delete the second and third paragraphs so that the Sub-Clause is read as follows: The Contractor shall be responsible for the provision of all power, water and other services he may require.
Employer's Equipment and Free-Issue Material	4.20	Not applicable.
Progress reports	4.21	At the end of (a), add: The Contractor shall describe major adjustments and deviations between the updated Time Schedule and the Base Line Schedule. Further planned and actual disbursement schedules of the Project (S-graph) shall be provided. Add as sub-point (i): Detailed cash flow estimates of all payments to which the Contractor will be entitled under the Contract.

Conditions	Sub- Clause	Specific Provisions
<p>Categories of Non-conformities for Environmental, Social, Health and Safety Management & Quality Assurance System</p>	<p>4.25</p>	<p>Add the following as new Sub-Clause: Non-conformities are divided into 4 categories as follows:</p> <p>Minor Non-Conformities: The Non-conformity results in a notification to the Contractor, followed-up by a signed notification of the observation prepared by the Engineer. The multiplication of notifications of observation at the Project Area, or absence of corrective actions by the Contractor related to Environmental, Social, Health and Safety as well as Quality Assurance aspects, can result in the severity of the non-conformity being raised to that of level 1.</p> <p>Level 1 Non-conformity: non-conformities that do not represent a serious immediate risk for health, environment, social or, safety or if the Contractor marginally falls short of the requirements to implement the quality assurance system to the Contractor's activities under the Contract. The Non-conformity is the subject of a report addressed to the Contractor and which shall be resolved within 5 days. The Contractor addresses to the Engineer a report explaining how the non-conformity has been corrected. Further to an inspection and a favorable evaluation of effectiveness of the corrective action, the Engineer signs a close-out report for the non-conformity. In all cases where a non-conformity of level 1 is not resolved within 1 month, the severity of the non-conformity is raised to level 2.</p> <p>Level 2 Non-conformities: applies to all non-conformities that represent a risk with major consequences to health and/or the environment,</p> <p>social or safety, or if the Contractor is failing to correctly implement the quality assurance system to the Contractor's activities under the Contract, thus, consequently representing a risk with major consequences to the quality of the works/services. The same procedure as for level 1 non-conformities is applied. Corrective action shall be taken by the Contractor within 3 days. The Contractor addresses a report explaining the corrective actions implemented. All level 2 non-conformities, which</p>

Conditions	Sub- Clause	Specific Provisions
		<p>are not resolved within 1 month, are raised to level 3.</p> <p>Level 3 Non-conformities: applies to all non-conformities that have resulted in damage to health or the environment, or which represent a high safety hazard or high social risk, or if the Contractor fails to implement the quality assurance system to the Contractor's activities under the Contract, thus, consequently representing a damage to the quality of works/services. The highest levels of the Contractor's and Engineer's hierarchies present in Country are informed immediately and the Contractor has 24 hours to bring the situation under control. A level 3 non-conformity results in the staged reduction of interim payments in accordance with Sub-Clause 14.6 until the Non-conformity has been resolved.</p> <p>No interest will be paid on any reductions or suspended payment amounts. If the situation requires, the Engineer can order the suspension of work until the resolution of the non-conformity.</p>
<p>Contractor's Documents</p>	<p>5.2</p>	<p>Add at the end of the first paragraph:</p> <p>The documentation provided during the Contract implementation has to consider the requirements as set out in the Sub-Section VII-2. Project Procedures elsewhere in the Employers' Requirements.</p> <p>Those shall be submitted to the Employer and to the Engineer for review and/or approval.</p> <p>Should it be found at any time after approval has been given by the Employer or the Engineer to any documents submitted by the Contractor that the said documents do not comply with any documents submitted previously, such alternations and additions, as may be deemed necessary by the Employer or the Engineer, shall be made therein by the Contractor and the Works shall be carried out accordingly without extra payment to the Contractor thereof.</p> <p>Add at the end of the second paragraph:</p> <p>Electronic versions of the documents shall be provided to the Employer and to the Engineer, as stipulated in</p>

Conditions	Sub- Clause	Specific Provisions
		<p>Sub-Section VII-1. Project Description and Procedures and elsewhere in the Employer's Requirements.</p> <p>Replace first sentence of fourth paragraph by: The review period shall not exceed 28 days, calculated from the date on which the Employer/Engineer receives a Contractor's Document and Contractor's notice.</p> <p>Add at the end of the Sub-Clause: The Contractor shall, from the start of any activity at site up to issuance of the Taking Over Certificate, correctly keep proper site records in accordance with standard practice and in compliance with the regulations of the Country.</p>
As-Built Documents	5.6	<p>Add at the end of the Sub-Clause: The number of copies and the date of submission of the as-built documents shall be as per Sub-Section VII-1. Project Description and Procedures, under the Employer's Requirements.</p>
Operation and Maintenance Manuals	5.7	<p>Add at the end of Sub-Clause 5.7: The number of copies and date of submission of the Operation and Maintenance Manuals shall be as per Sub-Section VII-1. Project Description and Procedures, under the Employer's Requirements.</p>
Engagement of Staff and Labor	6.1	<p>Replace the first paragraph with following: Except as otherwise stated in the Employer's Requirements, the Contractor shall make arrangements for the engagement of all staff and labor, local or otherwise, and for their payment, feeding, transport, and, when appropriate housing.</p> <p>Insert new second paragraph as follows: The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labor with appropriate qualifications and experience from sources within the Country.</p>

Conditions	Sub- Clause	Specific Provisions
Rates of Wages and Conditions of Labor	6.2	<p>Insert new second paragraph as follows:</p> <p>The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages, allowances and any benefits as are subject to tax under the Laws of the Country for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.</p>
Health and Safety	6.7	<p>Insert after the third paragraph new paragraphs as follows:</p> <p>HIV-AIDS Prevention. The Contractor shall conduct an HIV-AIDS awareness programme via an approved service provider and shall undertake such other measures as are specified in this Contract to reduce the risk of the transfer of the HIV virus between and among the Contractor's Personnel and the local community, to promote early diagnosis and to assist affected individuals.</p> <p>The Contractor shall throughout the contract (including the Defects Notification Period):</p> <ul style="list-style-type: none"> (i) conduct Information, Education and Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labour (including all the Contractor's employees, all Subcontractors and any other Contractor's or Employer's personnel employees, and all truck drivers and crew making deliveries to Site for construction activities) and to the immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance behaviour with respect to, of Sexually Transmitted Diseases (STD) - or Sexually Transmitted Infections (STI) in general and HIV/AIDS in particular; (ii) provide male or female condoms for all Site staff and labour as appropriate; and

Conditions	Sub- Clause	Specific Provisions
		<p>(iii) (provide for STI and HIV/AIDS screening, diagnosis, counselling and referral to a dedicated national STI and HIV/AIDS programme, (unless otherwise agreed) of all Site staff and labour.</p> <p>The Contractor shall include in the programme to be submitted for the execution of the Works under Sub-Clause 8.3 an alleviation programme for Site staff and labour and their families in respect of Sexually Transmitted Infections (STI) and Sexually Transmitted Diseases (STD) including HIV/AIDS. The STI, STD and HIV/AIDS alleviation programme shall indicate when, how and at what cost the Contractor plans to satisfy the requirements of this Sub-Clause and the related specification. For each component, the programme shall detail the resources to be provided or utilised and any related sub-contracting proposed. The programme shall also include provision of a detailed cost estimate with supporting documentation. Payment to the Contractor for preparation and implementation this programme shall not exceed the Provisional Sum dedicated for this purpose.</p>
Foreign Personnel	6.12	<p>Insert new sub-clause “6.12 Foreign Personnel” after sub-clause 6.11 as follows:</p> <p>The Contractor may bring into the Country any foreign personnel who are necessary for the execution of the Works to the extent allowed by the applicable Laws. The Contractor shall ensure that these personnel are provided with the required residence visas and work permits. The Employer will, if requested by the Contractor, use his best endeavors in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national or government permission required for bringing in the Contractor’s personnel.</p> <p>The Contractor shall be responsible for the return of these personnel to the place where they were recruited or to their domicile. In the event of the death in the Country of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial.</p>

Conditions	Sub- Clause	Specific Provisions
Supply of Food-stuffs	6.13	<p>Insert new sub-clause “6.13 Supply of Foodstuffs” after new sub-clause 6.12 as follows:</p> <p>The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Specification at reasonable prices for the Contractor’s Personnel for the purposes of or in connection with the Contract.</p>
Supply of Water	6.14	<p>Insert new sub-clause “6.14 Supply of Water” after new sub-clause 6.13 as follows:</p> <p>The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor’s Personnel.</p>
Measures against Insect and Pest Nuisance	6.15	<p>Insert new sub-clause “6.15 Measures against Insect and Pest Nuisance” after new sub-clause 6.14 as follows:</p> <p>The Contractor shall at all times take the necessary precautions to protect the Contractor’s Personnel employed on the Site from insect and pest nuisance, and to reduce the danger to their health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.</p>
Alcoholic Liquor or Drugs	6.16	<p>Insert new sub-clause “6.16 Alcoholic Liquor or Drugs” after new sub-clause 6.15 as follows:</p> <p>The Contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift, barter or disposal thereof by Contractor's Personnel.</p>
Arms and Ammunition	6.17	<p>Insert new sub-clause “6.17 Arms and Ammunition” after new sub-clause 6.16 as follows:</p> <p>The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.</p>

Conditions	Sub- Clause	Specific Provisions
Festivals and Religious Customs	6.18	<p>Insert new sub-clause “6.18 Festivals and Religious Customs” after new sub-clause 6.17 as follows:</p> <p>The Contractor shall respect the Country's recognized festivals, days of rest and religious or other customs.</p>
Funeral Arrangements	6.19	<p>Insert new sub-clause “6.19 Funeral Arrangements” after new sub-clause 6.18 as follows:</p> <p>The Contractor shall be responsible, to the extent required by local regulations, for making any funeral arrangements for any of his local employees who may die while engaged upon the Works.</p>
Prohibition of Forced or Compulsory Labor	6.20	<p>Insert new sub-clause “6.20 Prohibition of Forced or Compulsory Labour” after new sub-clause 6.19 as follows:</p> <p>The Contractor shall not employ forced labor, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsory labor, such as indentured labor, bonded labor or similar labor-contracting arrangements.</p>
Prohibition of Harmful Child Labor	6.21	<p>Insert new sub-clause “6.21 Prohibition of Harmful Child Labour” after new sub-clause 6.20 as follows:</p> <p>The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Where the relevant labor laws of the Country have provisions for employment of minors, the Contractor shall follow those laws applicable to the Contractor. Children below the age of 18 years shall not be employed in dangerous work.</p>
Employment Records of Workers	6.22	<p>Insert new sub-clause “6.22 Employment Records of Workers” after new sub-clause 6.21 as follows:</p> <p>The Contractor shall keep complete and accurate records of the employment of labor at the Site. The records shall include the names, ages, genders, hours worked, and wages paid to all workers. These records shall be summarized on a monthly basis and submitted to the</p>

Conditions	Sub- Clause	Specific Provisions
		Engineer. These records shall be included in the details to be submitted by the Contractor under Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment].
Workers' Organizations	6.23	<p>Insert new sub-clause "6.23 Workers Organisation" after new sub-clause 6.22 as follows:</p> <p>In countries where the relevant labor laws recognize workers' rights to form and to join workers' organizations of their choosing without interference and to bargain collectively, the Contractor shall comply with such laws. Where the relevant labor laws substantially restrict workers' organizations, the Contractor shall enable alternative means for the Contractor's Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. In either case described above, and where the relevant labor laws are silent, the Contractor shall not discourage the Contractor's Personnel from forming or joining workers' organizations of their choosing or from bargaining collectively and shall not discriminate or retaliate against the Contractor's Personnel who participate, or seek to participate, in such organizations and bargain collectively. The Contractor shall engage with such workers' representatives. Workers' organizations are expected to fairly represent the workers in the workforce.</p>
Non-Discrimination and Equal Opportunity	6.24	<p>Insert new sub-clause "6.24 Non-Discrimination and Equal Opportunity" after new sub-clause 6.23 as follows:</p> <p>The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. In countries where the relevant labor laws provide for non-discrimination in employment, the Contractor shall comply with</p>

Conditions	Sub- Clause	Specific Provisions
		<p>such laws.</p> <p>When the relevant labor laws are silent on non-discrimination in employment, the Contractor shall meet this Sub-Clause's requirements. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination.</p>
Remedial Work	7.6	<p>Add new paragraph at the end of the Sub-Clause:</p> <p>the Contractor shall be held responsible for all damage that is caused by his work, or anyone employed by him. The Contractor shall take all necessary precautions to protect the work and/or Landowners' property from damage caused by his operations. The Contractor shall remedy and/or replace all damage caused by his operation to the Landowners' satisfaction and at no expense to the Employer. Should the Contractor unable to carry out the work, the Employer may arrange others to do the work; however, the Contractor shall compensate the Employer all the costs of carrying out the work and/or shall provide Landowners' with compensation. Furthermore, if Contractor is fails to carry the cost and compensation, the Employer shall deduct the relevant amount from Interim Payments Certificate.</p>
Commencement of Works	8.1	<p>The complete sub-clause is deleted and replaced by the following:</p> <p>The Commencement Date is the date on which all the following conditions have been fulfilled:</p> <ul style="list-style-type: none"> • The complete set of Contract Documents has received KfW's non-objection • The Contract Agreement has been signed • The Contractor has submitted to the Employer the Performance Guarantee and the Advance Payment Guarantee, in line with the provisions of the Contract • The Advance Payment to the Contractor has been made.

Conditions	Sub- Clause	Specific Provisions
		<p>The Contractor shall establish the local branch office in Nepal within 56 days after the Contractor receives the Letter of Acceptance.</p> <p>In case the above-mentioned conditions will not be fulfilled due to the fault of the Contractor latest 3 months after the receipt of the Letter of Acceptance, the Employer reserves the right to cancel the whole Award.</p> <p>Add the following at the end of the Sub-Clause: “As defined in the Employer’s Requirements, Sub-Section VII-7. Environmental and Social Requirements, no physical work may commence on any Project Area until such time the Contractor has prepared and submitted to the Engineer the PA-ESMP, and the Engineer has approved this.”</p>
Programme	8.3	<p>Add after the first sentence of the first paragraph: The approved time programme (Time Schedule), as the Baseline Time Schedule, shall form the basis for reviewing the progress of Works.</p> <p>After second sentence of first paragraph, add: This revised program shall compare the update version with the Base Line. After Contract signature the Contractor shall monthly update the Time Schedule assuring a safe and continuous operation of the plant. If not otherwise agreed the Contractor shall apply for outages <u>three weeks</u> in advance. However, a tentative outage schedule shall be included to the progress reports.</p> <p>After the last paragraph, add: The Contractor shall give his best efforts and consider the interface coordination with the Transmission Line or Substation Package Contractor in his programme. Further details are included in Employer’s Requirements, VII-1 Project Description and Scope of Works.</p>

Conditions	Sub- Clause	Specific Provisions
Delay Damages	8.7	<p>Add new paragraph at the end of the Sub-Clause:</p> <p>The resulting amount shall be paid according to the Employer's instructions.</p>
Suspension of Work	8.8	<p>Add the following after the last sentence of the Sub-Clause:</p> <p>Without limitation to other possible causes, any suspension of work caused by any failure from the Contractor to comply with the obligations stated</p> <ul style="list-style-type: none"> (a) Under the Employer's Requirements, Sub-Section VII-7. Environmental and Social Requirements (if any), in the event of a level 3 non-compliance (b) Under Sub-Clause 4.8 as to safety procedures (c) Under Sub-Clause 4.9 as to the quality assurance (d) Under Sub-Clause 4.18 as to the protection of the environment; or (e) Under Sub-Clause 6.7 as to health and safety <p>shall be considered as cause of suspension under the responsibility of the Contractor.</p>
Taking Over of the Works and Sections	10.1	<p>The complete last paragraph of the Sub-Clause is deleted and replaced as follows:</p> <p>The date on which the Works or Sections were completed in accordance with the Contract (including the Tests on completion as per Clause 9) will be the date applied for by the Contractor in accordance with this Sub-Clause.</p> <p>The procedure for reduction of Delay Damages of Sub-Clause 10.2 shall apply.</p>
Extension of Defects Notification Period	11.3	<p>Add after the first paragraph of the Sub-Clause:</p> <p>In case any defects or damages are found during the Defects Notification Period, the reasonable time for remedying of the defects or damages will be made known by the Contractor to the Employer. The necessary period of remedying of the defects or damages will be added to the Defects Notification Period for the</p>

Conditions	Sub- Clause	Specific Provisions
		damaged, as well as for other affected equipment or component of the Works. The Contractor shall extend the validity of Performance Security accordingly.
Critical Equipment	11.12	<p>Add the following new Sub-Clause:</p> <p>The following components of the Facilities, GIS, Power/Autotransformers, Control relays panel, Substation Automation System (SAS) and Communication System are defined to be the Critical Equipment.</p> <p>For time period as stipulated in the Contract Data 11.12, they shall be subject to an extended Defect Liability Period.</p> <p>Such obligation of the Contractor shall be in addition to the Defect Liability Period specified under Sub-Clause 1.1.3.7 Part A Contract Data.</p>
Right to Vary	13.1	<p>Add at the end of the Sub-clause:</p> <p>Any changes can only be made by means of a formal Amendment to the Contract (i), and non-objected by the KfW (ii) signed by both Parties.</p>
Payment in Applicable Currencies:	13.4	<p>At the end of Sub-Clause 13.4, add:</p> <p>Schedule I and Schedule III shall be paid in USD. Schedule II, Schedule IV and Schedule V shall be paid in NPR.</p> <p>(i) Plant, Equipment, Material, Works, Supplies or Services supplied from within the Employer's country and the corresponding VAT shall be paid in local currency (NPR).</p>
Provisional Sum	13.5	Not applicable. Delete entire sub-clause 13.5.
Adjustments for Changes in Cost	13.8	<p>The third paragraph is deleted and replaced as follows:</p> <p>The Price adjustment for Transformer is specified in Part I, Section IV in Preamble / Schedules of Rates and Prices and is only applicable for Price Schedule I.</p>

Conditions	Sub- Clause	Specific Provisions
		<p>the formula is Replace by:</p> $P_n = P_0 \times \left(a + b \frac{Fe}{Fe_0} + c \frac{Cu}{Cu_0} + d \frac{Fei}{Fei_0} \right) - P_0$ <p>Where:</p> <p>P_n = adjustment amount payable to the Contractor</p> <p>P_0 = Contract price (base price)</p> <p>a = percentage of fixed element in Contract price ($a = 35\%$)</p> <p>b = percentage of core steel component in Contract price ($b = 25\%$)</p> <p>c = percentage of copper component in Contract price ($c = 25\%$)</p> <p>d = percentage of construction steel in Contract price ($d = 15\%$)</p> <p>M_{FE0}, M_{FE1} = International Core Steel Index on the base date and the date for adjustment, respectively</p> <p>M_{CU0}, M_{CU1} = International Copper Price Index on the base date and the date for adjustment, respectively</p> <p>M_{Fei0}, M_{Fei1} = International Construction Steel Price Index on the base date and the date for adjustment, respectively</p> <p>The base date shall be the date thirty (30) days prior to the Bid closing date.</p> <p>The date of adjustment shall be the mid-point (180 days) of the period of manufacture or installation of component or Plant.</p>

Conditions	Sub- Clause	Specific Provisions
Contract Price	14.1	<p>Add as new items (e) and (f) the following:</p> <p>(e) All prices quoted in the Price Schedules (including prices of Mandatory Spare Parts and Tools and Prices of Recommended Spare Parts and Tools) are fixed and firm prices up to the date of issuing the Performance Certificate.</p> <p>(f) The Employer reserves the right to order additionally or to reduce the supply of material and services up to an amount of plus/minus 10% -15% of the goods and services of the total value of the contract price prior to contract signature, without the variation of the Unit Price items quoted in Price Schedule.</p>
Advance Payment	14.2	<p>Replace the last sentence of third paragraph as follows:</p> <p>This guarantee shall be issued by a reputable bank or financial institution selected by the Contractor and requiring the KfW's no objection and shall be in the form annexed to the Particular Conditions.</p> <p>If the bank or financial institution issuing guarantee is located outside of Nepal, it shall have a correspondent financial institution located in the Nepal (A Class financial institution) to make it enforceable.</p> <p>At the end of the third paragraph add the sentence:</p> <p>The guarantee shall be made payable to the account mentioned in the annexed form.</p> <p>At the beginning of fourth paragraph, add:</p> <p>The Advance Payment Guarantee's validity must exceed twenty-eight (28) days the Time of Completion.</p> <p>At fifth paragraph, replace sub-paragraph a) and b) with following:</p> <p>a) The deduction shall commence from the first invoice submitted by the Contractor (excluding Advance Payment invoice) and</p> <p>b) The deduction shall be made at the amortization rate of ten percent (10%) of the amount of each invoice (excluding Advance Payment invoice), until such time as</p>

Conditions	Sub- Clause	Specific Provisions
		the Advance Payment has been repaid.
<p>Application for Interim Payment Certificates</p>	14.3	<p>The first paragraph is deleted and replaced as follows:</p> <p>The Contractor shall submit Monthly Statements to the Employer and the Engineer (in the number of copies specified in the Contract Data), showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the relevant report on progress in accordance with Sub-Clause 4.21 [Progress Reports and Progress Meetings] and in the form approved by the Employer. The Interim Payments will be made in accordance with the conditions mentioned in the Contract.</p> <p>Replace (a) by:</p> <p>(a) The estimated Contract value of the Works executed in accordance with the Price Schedules and the Contractor's Documents produced up to the end of the month (including Variations but excluding items described in sub-paragraphs (b) to (g) below</p> <p>(e) Not applicable.</p>
<p>Schedule for Payments</p>	14.4	<p>Delete the Sub-Clause entirely and replace by:</p> <p>The Contractor shall be paid the Contract sum in the following manner, adjusted so as to give effect to such additions thereto and such deductions there from as per the provisions of the General and Particular Conditions of Contract:</p> <p>Plant and Mandatory Spare Parts Supplied from Abroad:</p> <p>In respect of Plant and Equipment supplied the following payments shall be made:</p> <p>Ten percent (10%) of the total CIP amount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of the Plant and Equipment shipped or delivered</p>

Conditions	Sub- Clause	Specific Provisions
		<p>to the site, as evidenced by shipping and delivery documents.</p> <p>Seventy percent (70%) of the total or pro rata CIP amount upon delivery to site within 56 days after receipt of invoice and shipping documents shall be paid through irrevocable Letter of Credit. This Letter of Credit shall be subject to the Uniform Customs and Practice for Documentary Credits 2007 Revision, ICC Publication No. 600</p> <p>KfW shall pay the amount certified for each Interim Payment Certificate until KfW's funds dedicated to the interim payment are used. After the complete utilization of these KfW funds, NEA shall pay to the Contractor the amount certified for each Interim Payment Certificate until the 70% of Price Schedule I Plant and Mandatory Spare Parts Supplied from Abroad is reached.</p> <p>Five percent (5%) after the erection of the supplied part</p> <p>Ten percent (10%) of the total or pro rata CIP amount upon issue of the Taking Over within 56 days after receipt of invoice.</p> <p>Five percent (5%) of the total or pro rata CIP amount upon issue of the Performance Certificate, within 56 days after receipt of invoice</p> <p>Plant and Mandatory Spare Parts Supplied from within the Employer's Country: In respect of Plant and Equipment supplied the following payments shall be made:</p> <p>Ten percent (10%) of the total EXW amount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of the Plant and Equipment shipped or delivered to the site, as evidenced by shipping and delivery documents.</p>

Conditions	Sub- Clause	Specific Provisions
		<p>Seventy percent (70%) of the total or pro rata EXW amount upon delivery to site within 56 days after receipt of invoice.</p> <p>Five percent (5%) after the erection of the supplied part</p> <p>Ten percent (10%) of the total or pro rata EXW amount upon issue of the Taking Over within 56 days after receipt of invoice.</p> <p>Five percent (5%) of the total or pro rata EXW amount upon issue of the Performance Certificate, within 56 days after receipt of invoice.</p> <p>Design Services: In respect of other items and services, the following payments shall be made:</p> <p>Ten percent (10%) of the total amount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer.</p> <p>Ninety percent (90%) of the total or pro rata amount other items and services amount, as listed in Schedule No. 3, performed by the Contractor, evidenced by the Employers' authorization of the Contractor's application, will be made within 56 days after receipt of invoice.</p> <p>Installation and other Works: In respect of erection, installation, commissioning services and other works, the following payments shall be made:</p> <p>Ten percent (10%) of the total services amount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of Work performed by the Contractor as evidenced by the invoices for services.</p> <p>Seventy-five percent (75%) of the measured value of Work performed by the Contractor, as identified in the</p>

Conditions	Sub- Clause	Specific Provisions
		<p>said Program of Performance, during the preceding month, as evidenced by the Employer’s authorization of the Contractor’s application, will be made monthly within 56 days after receipt of invoice.</p> <p>Ten percent (10%) of the total or pro rata value of services performed by the Contractor as evidenced by the Employer’s authorization of the Contractor’s monthly applications, upon issue of the Taking Over Certificate, within 56 days after receipt of invoice.</p> <p>Five percent (5%) of the total or pro rata value of services performed by the Contractor as evidenced by the Employer’s authorization of the Contractor’s monthly applications, upon issue of the Performance Certificate, within 56 days after receipt of invoice.</p> <p>ESMP Requirements: Ten percent (10%) of the total services amount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of Work performed by the Contractor as evidenced by the invoices for services.</p> <p>Seventy-five percent (75%) of the measured value of ESMP Requirements performed by the Contractor, as identified in the said Program of Performance, during the preceding month, as evidenced by the Employer’s authorization of the Contractor’s application, will be made monthly within 56 days after receipt of invoice.</p> <p>Ten percent (10%) of the total or pro rata value of ESMP services performed by the Contractor as evidenced by the Employer’s authorization of the Contractor’s monthly applications, upon issue of the Taking Over Certificate, within 56 days after receipt of invoice.</p> <p>Five percent (5%) of the total or pro rata value of ESMP services performed by the Contractor as evidenced by the Employer’s authorization of the Contractor’s monthly applications, upon issue of the Performance Certificate,</p>

Conditions	Sub- Clause	Specific Provisions
		<p>within 56 days after receipt of invoice.</p> <p>Application for payments Applications for payments are not acceptable if the net amount thereof after all retentions and deductions would be less than the amount mentioned in the Contract Data.</p> <p>Application for payment upon shipment Applications for payment upon arrival of shipment of Plant on site shall be in accordance with the conditions of GCC and PCC Sub-Clause 14.3.</p> <p>A statement in respect of Plant shipped or en route for delivery to the final destination broken down by each separate shipment for which payment is claimed, clearly identifying the Plant and its value in the order of the Price Schedules shall be submitted to the Employer together with the following documents:</p> <ul style="list-style-type: none"> • original invoice with two copies • one original and two copies of clean, non-negotiable sets of International Railway Bill (CIM) or Airway Bill (AWB) or Bill of Lading (BOL), or CMR, marked "Freight Prepaid" to final destination • Certificates of Origin certified by an authorized agency in the Contractor's country for major components (for all other components, the origin of the goods must be stated elsewhere) • two copies of Cargo Insurance Policy in compliance with Clause 18.2 • one original and one copy of packing lists • one original and one copy of pre-shipment inspection certificate • one original and one copy of export declaration • confirmation of Employer/Engineer certifying the complete arrival of the shipment on site. This confirmation does not relieve the Contractor from any obligation regarding the condition and completeness of the equipment. <p>One set of these documents (copies only) shall be submitted to the Engineer.</p>

Conditions	Sub- Clause	Specific Provisions
		<p>The Contractor shall notify the Employer and Engineer in writing about the date of shipments, the description of Plant and Material, the name of ship or other means of transport, the date of the ship's departure and scheduled arrival together with other documents mentioned below, and shall furnish a copy thereof to the Employer and Engineer at least three weeks before the departure.</p> <p>The notification shall include (i) pro-forma invoice and (ii) border of entrance.</p> <p>Should the Contractor fail to comply with the request above, the Employer will not release the goods from the customs and the Contractor will bear all extra-costs and the consequences.</p> <p>Application for Payment on Erection and Construction Works A certificate of completion of all Works on site providing evidence that the conditions of Sub-Clause 14.3 have been fulfilled shall be provided, certified by the Employer and Engineer.</p> <p>Disbursement Schedule The Contractor shall submit, together with each application for payment/invoice, a disbursement schedule showing invoice number, type of invoice, invoicing date, invoiced amount, amount received, and date received. An updated version shall be added to the Progress Reports.</p> <p>The Contractor shall submit the current status of invoicing for each item of the supply & services, by extending the price sheets by the following: already invoiced amount, current invoice and invoiced amount, remaining amount to be invoiced. An electronic copy of the modified price sheets shall be submitted together with each invoice.</p>
<p>Plant and Materials intended for the Works</p>	<p>14.5</p>	<p>The entire Sub-Clause is deleted and replaced by the following:</p> <p>The Employer shall pay to the Contractor the relevant Plant and Materials intended for the Works in</p>

Conditions	Sub- Clause	Specific Provisions
		<p>accordance with the prices mentioned in the Price Schedules, the General and Particular Conditions of Contract and under the condition that Plant and Materials have been delivered to and properly stored on the site, are protected against loss, damage or deterioration and appear to be in accordance with the Contract.</p>
<p>Issue of Interim Payment Certificates</p>	<p>14.6</p>	<p>After (b), new item (c) is added, as follows:</p> <p>In the event of an unresolved major non-conformity with the requirements of VII -7 Environmental and Social Requirements (forming part of the Employer’s Requirements), i.e. a non-conformity that has resulted in damage to health or the environment, or which represent a high safety hazard or high social risk, the Engineer shall reduce the value of the Interim Payment Certificates as follows:</p> <ul style="list-style-type: none"> (i) If Level 3 non-conformity is not resolved after the first occurrence: by 33.3% for the first Interim Payment Certificate (ii) If Level 3 non-conformity is still not resolved: by 66.6% for the second Interim Payment Certificate (iii) If Level 3 non-conformity is still not resolved: by 100% for the third Interim Payment Certificate <p>If the major non-conformity is still not resolved after the last Interim Payment Certificate in (iii) above, then payments will be suspended indefinitely until such time as the major non-conformity has been resolved.</p> <p>Following the resolution of the major non-conformity, the reduction(s) will be included in the next Interim Payment Certificate for payment. No interest will be paid on any reductions or suspended payment amounts.</p>
<p>Payment</p>	<p>14.7</p>	<p>In (b) after “56 days” and before “after” insert: “, or such time as may be stated in the Contract Data,” Delete the last paragraph of Sub-Clause 14.7 and replace by: All the payments to the Contractor, and as stated in the</p>

Conditions	Sub- Clause	Specific Provisions
		<p>Contract Data, will be made in the currency mentioned in the Contract and under the conditions mentioned in the Contract.</p> <p>Add at the end of Sub-Clause 14.7:</p> <p>Part of payments shall be conducted in accordance with the Direct Disbursement Procedure of KfW Development Bank. The remaining part of payments shall be conducted in accordance with NEA Procedures.</p> <p>KfW shall disburse both the Advance Payment for Price Schedule I and III and the retention money to the Contractor for Price Schedule I Plant and Mandatory Spare Parts Supplied from Abroad.</p> <p>For 70% of the payment of Price Schedule I, KfW shall pay the amount certified in each Interim Payment Certificate until the funds from KfW, namely the one dedicated to the interim payment, are used. After the complete utilization of KfW funds the rest of the amount certified in each Interim Payment Certificate shall be paid by NEA (via Letter of Credit).</p> <p>70% of the total or pro rata CIP amount upon delivery to site payment of Price Schedule I shall be conducted in accordance with Letter of Credit.</p> <p>NEA shall instruct a Bank to issue an irrevocable Letter of Credit for the 70% of Price Schedule I made available to the Contractor after the Contract award.</p> <p>For KfW portion of the 70% of the Price schedule I, an irrevocable Letter of Credit shall be issued, whereas an irrevocable confirmed Letter of Credit shall be issued for the remaining payments (the ones from NEA).</p> <p>The cost for issuing the Letter of Credit is borne by NEA. However, the cost of the confirmation of the Letter of credit (for NEA portion of payments) from a second bank (i.e. the confirming Bank) shall be borne by the Contractor.</p>

Conditions	Sub- Clause	Specific Provisions
Delayed Payment	14.8	<p>Replace the second paragraph by the following: These financing charges shall be calculated on the basis of the amount defined in Contract Data.</p>
Payment of Retention Money	14.9	<p>Insert at the beginning of Sub-Clause 14.9: The amount of the Retention Money shall be as stated in the Contract Data. The Retention Money shall be certified by the Employer for payment to the Contractor upon the occurrence of the following conditions:</p> <p>The Taking-Over Certificate has been issued and the Works have been passed successfully all specified tests.</p> <p>Replace the words “first half of the Retention Money” in the first paragraph by “the first part of the Retention Money”.</p> <p>Replace the words “the second half” in the second paragraph by “the second part”.</p> <p>In the first paragraph, delete first sentence and replace by: Unless otherwise stated in the Particular Conditions, when the Taking-Over Certificate has been issued for the Works, and the first part of the Retention Money has been certified for payment by the Engineer, the Contractor may substitute a guarantee issued by a reputable bank or financial institution selected by the Contractor and requiring KfW’s non-objection, for the second part of the Retention Money. The guarantee for the release of the Retention Money has to be acceptable in form (in line with the relevant Retention Money Security provided with the Contract Forms) and substance to KfW.</p> <p>In the fourth paragraph, replace the words “of either half” with the words “of either part”.</p>
Statement at Completion	14.10	<p>In the 1st paragraph, replace “six copies” by “the number of copies stated in the Contract Data”.</p>

Conditions	Sub- Clause	Specific Provisions
Application for Final Payment Certificate	14.11	In the 1st paragraph, replace “six copies” by “the number of copies stated in the Contract Data”.
Taxation	14.16	<p>Add the following sub-clause,</p> <p>Tax Deduction at Source (TDS)</p> <p>The applicable TDS rates will be the following:</p> <p>a. 1.5% TDS is applicable if the Contractor’s Permanent Establishment (PE) receives the payment through Letter of Credit (LC) in the Employer’s country.</p> <p>b. 5% Tax Deduction is applicable if the Contractor’s Permanent Establishment (PE) receives the payment through Letter of Credit (LC) outside of the Employer’s country in the account of the parent company (non-resident entity).</p> <p>General:</p> <p>(a) Unless otherwise specifically declared in the contract documents, the prices quoted by the bidder in their bid and its suppliers and subcontractors shall include business taxes and other taxes that may be levied in accordance with the laws and regulations in force or in effect in Nepal as of 28 days prior to the closing date for submission of tenders in the Employer's country on the Equipment, Plant, Materials and Supplies (permanent, temporary and consumables) acquired for the purpose of the Contract and on the services performed under the Contract. Whatever provisions made in the Contract document shall not relieve the Contractor, its suppliers and subcontractors from their responsibility to pay income tax that may be levied in the Employer's country on profits made by the Contractor, its suppliers and subcontractors in respect of the Contract.</p>

Conditions	Sub- Clause	Specific Provisions
		<p>(b) Value Added Tax (VAT): the Contractor, Sub-contractor or its nominated Subcontractor, shall be eligible for refund Value Added Tax (VAT) on all imported equipment and materials to be supplied and delivered exclusively for use in the Project.</p> <p>(c) In the event that the origin of any of the Contractor's or its Subcontractor's or the nominated Subcontractor's plant, equipment and materials is India, the provisions for the exemption of customs duties, and VAT as is mentioned in this clause shall be applied only under the following conditions. Failure to comply with these conditions will result in application of normal customs duties, VAT as per prevailing rules and regulation of Government of Nepal (GoN).</p> <p>i) should the Contractor request payment in Indian Currency, the equipment and materials must have been imported under the 'Duty Refundable Procedures (DRP)'. (Not Applicable)</p> <p>ii) should the Contractor request payment in other convertible currencies, the equipment and materials must have been imported under 'In Bond Transfer Procedures'.</p> <p><u>Staff Income Tax:</u> The Contractor's staff, personnel and laborers, and those of its subcontractors, will be liable to pay personal income taxes in the Employer's country, irrespective of whether they are local or foreign nationals on income earned including salaries and wages as applicable under the laws and regulations of Nepal. The Contractor shall perform such duties in regard to Tax Deduction at Source (TDS) thereof as may be applicable by such laws and regulations.</p> <p><u>Import License:</u> The Contractor shall inform the Employer and the Project Manager in writing the details of the equipment and materials to be imported into Nepal for use on the Works</p>

Conditions	Sub- Clause	Specific Provisions
		<p>at least 56 days prior to arrival of shipment at disembarkation port, and shall submit a formal written request for assistance from the Employer for importation processing. The Employer will assist the Contractor to obtain necessary permits for import of such equipment and materials into Nepal. Import license fees or any other charges shall be at the cost of the Contractor. The Contractor shall be responsible for transport from the Port of disembarkation to the Site or location of the Works. The Contractor shall be fully responsible to determine these rates and the amount payable at the time of preparing tender document and include such costs in its bids. In failing to do so, the Employer shall not be liable to pay such costs and the Contractor shall pay such charges as local or any customs authorities en-route may impose, which will not be an eligible item for refund from the Employer.</p> <p><u>Duties on Equipment, Plant, Materials and Supplies:</u></p> <p>(a) Notwithstanding the provisions of this document, the Contractor's Plant and Equipment, including essential tools thereof, imported for the sole purpose of executing the Contract on condition of re-export upon completion of the Works, shall be exempt from payment of customs duties, VAT and applicable taxes. However, the Contractor shall deposit the amount or provide a Bank Guarantee to the GoN Customs office equal to the amount of customs duties and other taxes as per the prevailing laws, rules and regulations of Nepal for those imported equipment, plant, materials and supplies at the time of import. Such deposited amounts shall be refunded, or the Bank guarantee cancelled by the Customs Office after Re-export of those imported equipment, plant, materials and supplies.</p> <p>(b) Any plant, materials or supplies imported (e.g. for temporary use) by the Contractor for the performance of the Works but not incorporated in the Works shall be taken out of Nepal within 90 (Ninety) days from the date of issuance of the Performance Certificate. If the Contractor disposes off or consumes any equipment, spare parts, materials or supplies within Nepal, it shall</p>

Conditions	Sub- Clause	Specific Provisions
		<p>pay all customs duties, VAT, income tax on the sales proceeds and taxes applicable on such items under the laws and regulation of Nepal in force.</p> <p>(c) Equipment, plant, materials and supplies, imported by the Contractor for execution of the Works, shall be subject to payment of customs duty at a special rate of one percent (1%) of CIP or Customs entry point value. This customs duty shall be paid by the Contractor at the time of import and will be reimbursed by the Employer to the Contractor upon submission of the original receipt issued by the Customs Department.</p> <p>(d) VAT shall be exempted on all imported materials & equipment purchased for the use in the Works (shall be reimbursed by the Employer in case the Employer is unable to avail exempt facility).</p> <p>(e) VAT applicable on plant & equipment supplied directly from manufacturing plant in the Employer's country shall be reimbursed.</p> <p>(f) The Contractor shall maintain records satisfactory to the Employer documenting use of all Plant, Materials and Supplies imported into and/or procured for the performance of the Works. If any of such Plant, Materials and/or Supplies, imported into Nepal or otherwise supplied to the Project at a special or preferential rate of Customs Duties or taxes, are misused or found to be used or appropriated for any purpose other than the Project, the Contractor shall be held fully responsible, and liable to pay customs duties, VAT and other taxes and/or any penalties as may be imposed in accordance with the prevailing laws and regulations of Nepal.</p> <p>(g) Income tax assessed in accordance with the prevailing Income Tax Act of Nepal and as per the provision of any specific Double Taxation Agreement, shall be imposed on the Contractor, its sub-contractors and nominated sub-contractors. An advance income tax as per the prevailing income Tax Act and Finance Act shall be deducted from the monthly progress payment of</p>

Conditions	Sub- Clause	Specific Provisions
		<p>the Contractor.</p> <p>(h) Except Custom Duty & VAT as specified above, the Contractor shall pay all duties, taxes, fees and contributions levied in Nepal in Nepalese Rupees as directed by the relevant governmental department or office, or any other local statutory agency or body in accordance with the relevant rules and regulations.</p> <p>(i) The provisions of this clause shall apply equally to foreign subcontractors or nominated subcontractors of the Contractor employed for the Works.</p> <p>(j) The Contractor and any foreign subcontractors or nominated subcontractors employed on the Works, if not already registered in Nepal, shall be required to get registered with the Inland Revenue Department (IRD) for the purpose of the Contract, which shall be undertaken within 28 days after signing of the Contract Agreement. The Contractor, sub-contractor or the nominated subcontractor shall submit Certified copies of the Registration Certificate(s) to the Project Manager within 14 days of registration.</p> <p>Other local fees and charges (toll taxes) shall be applied in accordance with the prevailing laws and regulations of Nepal.</p>
<p>Repayment Clause</p>	<p>14.17</p>	<p>New Sub-clause to be inserted after the new Sub-clause 14.16 as follows:</p> <p>If payments due under this Contract for goods and services are to be made from the funds provided by the Bank, any reimbursement, guarantee or similar claimable payments and any insurance payments shall be effected to KfW, Frankfurt am Main, BIC: KFWIDEFF, IBAN: DE53 5002 0400 3800 0000 00.</p> <p>Such funds may be re-utilized for the execution of the Contract with the consent of the Bank.</p>

Conditions	Sub- Clause	Specific Provisions
Corrupt and Fraudulent Practices	15.6	<p>Insert new sub-clause “15.6 Corrupt and Fraudulent Practices” after sub-clause 15.5 as follows:</p> <p>“In addition to the provisions of this Sub-Clause, the Contractor is also bound by the provisions found under Appendix 1 to the Particular Conditions of Contract, named “KfW Policy - Sanctionable Practice - Social and Environmental Responsibility”.</p>
Contractor's Entitlement to Suspend Work	16.1	<p>At the end of the second paragraph add the sentence: "KfW has no legal obligations towards the Contractor and is not obliged to inform the Contractor about suspension of disbursements or any other circumstances or conduct."</p>
General Requirements for Insurance	18.1	<p>In the sixth paragraph, replace the sentence</p> <p>“The relevant insuring Parts shall, within the respective periods stated in the Appendix to Tender (calculated from the Commencement Date), submit to the other Party”</p> <p>by:</p> <p>“Within the period stated in the Contract Data (calculated from the Commencement Date), the Contractor shall submit to the Employer:”</p> <p>Add at the end of the Sub-Clause:</p> <p>All insurance policies shall be valid from the date by which the evidence and policies are to be submitted (as per Contract Data), until the date of issue of the Performance Certificate. The insurance shall cover an amount of a minimum of 110% of the contract value of the goods.</p>
Insurance for Works and Contractor's Equipment	18.2	<p>Replace the second sentence of the first paragraph by:</p> <p>This insurance shall be effective from the date by which the evidence and policy are to be submitted (in line with Contract Data), until the date of issue of the Performance Certificate.</p>

Conditions	Sub- Clause	Specific Provisions
		<p>Add at the end of the Sub-Clause:</p> <p>The Contractor shall arrange an all-risk cargo insurance, in the contractual currency, from a reputable insurance company, covering all costs and expenditures for insurance until the material is covered by the inland transportation insurance.</p> <p>Cargo insurance:</p> <p>The contracted insurance shall be in accordance with the Institute Cargo Clauses (A) or (AIR) or (All Risks) and if necessary, the Institute War Clauses (Cargo) or (AIR CARGO) and the Institute Strikes Clauses (Cargo) or (AIR CARGO) of the Institute of London Underwriters, 1982 edition, or any similar set of clauses.</p> <p>Inland transport insurance:</p> <p>The Contractor shall arrange an all-risk insurance for inland transportation from a reputable insurance company against loss and damage during customs clearance and inland transport, i.e. covering the materials from unloading, handling, customs clearance etc. until the material is covered by the erection insurance.</p> <p>Shipment of imported goods on deck or by any chartered vessel over 15 years of age is prohibited and the suppliers will be made liable to compensate losses, damages and short deliveries etc., should they fail to comply with the above terms and conditions.</p> <p>In addition, the Contractor will replace short and damaged deliveries etc., of goods to ensure completion of project erection work on time.</p> <p>Insurance coverage shall be in accordance with the prevailing laws and regulations of the Country.</p> <p>Insurance costs and payments:</p> <p>Insurance cover has to be taken out in freely convertible currency as far as foreign exchange costs are concerned.</p>

Conditions	Sub- Clause	Specific Provisions
		<p>The insurance cover note shall provide for payments to be made for the account of the Employer directly to KfW, Frankfurt am Main, BIC: KFWIDEFF, IBAN: DE53 5002 0400 3800 0000 00.</p>
<p>Insurance against Injury to Persons and Damage to Property</p>	<p>18.3</p>	<p>The first paragraph is replaced by:</p> <p>The Contractor in accordance with governing law shall effect and maintain a professional indemnity insurance, which shall cover his and his Subcontractors' (if any) professional negligence liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-clause 18.2) or to any person (except persons insured under Sub-clause 18.4).</p> <p>This insurance shall be in full force and effect per each year during the performance of the Contract until the issue of the Performance Certificate. The Contractor undertakes to notify the Employer promptly of any difficulty in extending, renewing or reinstating this insurance.</p> <p>Sub-paragraph (b) is revised as follows:</p> <p>(b) shall be in the name of the Contactor as party insured.</p> <p>Add at the end of the sub-clause:</p> <p>The insured liability limit per event shall be the Contract Price. When the event causing insurance payments has been occurred, the Contractor shall recover the balance up to the amount of insured liability limit. Deductible limits shall be no more than 5% of the amount for each event.</p> <p>Validity: from the Commencement Date of the Contract until the issue of the Performance Certificate.</p>
<p>Claims, Disputes and Arbitration</p>	<p>20.1</p>	<p>Insert at the end of the first paragraph:</p> <p>The notice shall include a reference to this sub-clause 20.1. The notice shall be in writing (fax or letter and will not be accepted as such if submitted and/or included in another document, e.g. progress report etc.). For each Claim a separate Claim Notice shall be submitted by the Contractor.</p>

Conditions	Sub- Clause	Specific Provisions
		<p>Any notice not fulfilling these requirements will be considered as failure to notify a claim.</p> <p>The approval time of the Engineer and NEA (42 days) does not include any approval time required by KfW.</p>
Failure to Agree Dispute Adjudication Board	20.3	<p>Add at the end of the first sentence of the last paragraph after the words "of the DAB" the words "out of the international or related national lists of certified adjudicators"</p> <p>Add at the end of the Sub-Clause: The appointing entity or official shall be as indicated in Contract Data.</p>
Arbitration	20.6	<p>Insert before the first words of the first paragraph the words "Subject to the provisions of Sub-Clause 20.7"</p>
Failure to Comply with Dispute Adjudication Board's Decision	20.7	<p>Replace Sub-Clause 20.7 as follows:</p> <p>If a Party fails to comply with the Decision of the Dispute Adjudication Board, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Sub-Clause 20.6 [Arbitration].</p> <p>Sub-Clause 20.4 [Obtaining Dispute Adjudication Board's Decision] and Sub-Clause 20.5 [Amicable Settlement] shall not apply to this reference.</p>

Appendix 1 to Particular Conditions of Contract KfW Policy - Sanctionable Practice - Social and Environmental Responsibility

1. Sanctionable Practice

The PEA and the Contractors (including all members of a Joint Venture and proposed or engaged Subcontractors) must observe the highest standard of ethics during the Tender Process and performance of the Contract.

By signing the Declaration of Undertaking the Contractors declare that (i) they did not and will not engage in any Sanctionable Practice likely to influence the Tender Process and the corresponding Award of Contract to the PEA's detriment, and that (ii) in case of being awarded a Contract they will not engage in any Sanctionable Practice.

Moreover, KfW requires to include in the Contracts a provision pursuant to which Contractors must permit KfW and in case of financing by the European Union also to European institutions having competence under European law to inspect the respective accounts, records and documents relating to the Tender Process and the performance of the Contract, and to have them audited by auditors appointed by KfW.

KfW reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

- (a) reject an Offer for Award of Contract if during the Tender Process the Bidder who is recommended for the Award of Contract has engaged in Sanctionable Practice, directly or by means of an agent in view of being awarded the Contract
- (b) declare misprocurement and exercise its rights on the ground of the Funding Agreement with the PEA relating to suspension of disbursements, early repayment and termination if, at any time, the PEA, Contractors or their legal representatives or Subcontractors have engaged in Sanctionable Practice during the Tender Process or performance of the Contract without the PEA having taken appropriate action in due time satisfactory to KfW to remedy the situation, including by failing to inform KfW at the time they knew of such practices.

KfW defines, for the purposes of this provision, the terms set forth below as follows:

Coercive Practice	The impairing or harming, or threatening to impair or harm, directly or indirectly, any person or the property of the person with a view to influencing improperly the actions of a person.
Collusive Practice	An arrangement between two or more persons designed to achieve an improper purpose, including influencing improperly the actions of another person.
Corrupt Practice	The promising, offering, giving, making, insisting on, receiving, accepting or soliciting, directly or indirectly, of any illegal payment or undue advantage of any nature, to or by any person, with the intention of influencing the actions of any person or causing any person to refrain from any action.
Fraudulent Practice	Any action or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial benefit or to avoid an obligation.
Obstructive Practice	Means (i) deliberately destroying, falsifying, altering or concealing evidence material to the investigation or the making of false statements to investigators, in order to materially impede an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice, or threatening, harassing or intimidating any Person to prevent them from disclosing their knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) any act intended to materially impede the exercise of KfW's access to contractually required information in connection with an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice.
Sanctionable Practice	Any Coercive Practice, Collusive Practice, Corrupt Practice, Fraudulent Practice or Obstructive Practice (as such terms are defined herein) which is unlawful under the Financing Agreement.

2. Social and Environmental Responsibility

Projects financed in whole or partly in the framework of Financial Cooperation have to ensure compliance with international Environmental, Social, Health and Safety (ESHS) standards (including issues of sexual exploitation and abuse and gender-based violence) Contractors in KfW-financed projects shall consequently undertake in the respective Contracts to:

- (a) comply with and ensure that all their Subcontractors and major suppliers, i.e. for major supply items comply with international environmental and labor standards, consistent with applicable law and regulations in the country of implementation of the respective Contract and the fundamental conventions of the International Labor Organization (ILO) and international environmental treaties and;
- (b) implement any environmental and social risks mitigation measures, as identified in the environmental and social impact assessment (ESIA) and further detailed in the environmental and social management plan (ESMP) as far as these measures are relevant to the Contract and implement measures for the prevention of sexual exploitation and abuse and gender-based violence.

Section X. Contract Forms

Table of Forms

Notification of Award	60
Contract Agreement	61
Performance Security	63
Advance Payment Security	65
Retention Money Security	67

Notification of Award

Letter of Acceptance

[Letterhead paper of the Employer]

[Date]

To: *[name and address of the Contractor]*

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

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included in Section X, Contract Forms, of the Bidding Documents.

Authorized Signature: _____

Name and Title of Signatory: _____

Name of institution: _____

Attachment: Contract Agreement

Contract Agreement

Contract Agreement No.:

THIS AGREEMENT made the _____ day of _____, _____, between _____ of _____ (hereinafter “the Employer”), of the one part, and _____ of _____ (hereinafter “the Contractor”), of the other part:

WHEREAS the Employer desires that the Works known as _____ shall be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein, in the sum of [*insert Contract Price or Ceiling in words and figures, expressed in the Contract currency(ies)*] (hereafter called “the Contract Price”).

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents. The precedence of the documents shall be as follows:
 - (i) The Contract Agreement
 - (ii) Minutes of Meeting of Contract Clarifications
 - (iii) Letter of Acceptance
 - (iv) The Letter of Bid (T
 - (v) he signed Declaration of Undertaking
 - (vi) The Addenda nos. _____ and Clarifications to the Bidding Documents
 - (vii) Particular Conditions of Contract
 - (viii) General Conditions of Contract
 - (ix) Employer’s Requirements
 - (x) Price Schedules
 - (xi) Clarifications to Contractor’s Bid
 - (xii) Contractor’s Bid
3. In consideration of the payments to be made by the Employer to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor 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.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of _____ on the day, month and year specified above.

Signed by _____ (for the Employer)

Signed by _____ (for the Contractor)

Performance Security

Beneficiary: *[Insert name and Address of Purchaser]*

Date: *[Insert date of issue]*

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

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

We have been informed that *[Insert name and address of contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called “the Applicant”) has entered into Contract No. *[Insert reference number of the contract]* dated *[Insert contract date]* with the Beneficiary, for the execution of *[Insert object of the contract and brief description of Works]* (hereinafter called “the Contract”). Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required for *[Insert percentage in words and figures]* % of the contract price.

Waiving all objections and defenses, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[Insert guarantee amount and currency in words and figures]*¹ upon receipt by us of the Beneficiary’s first demand, supported by the Beneficiary’s statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for the demand or the sum specified therein.

[For guarantees issued in foreign currency insert the following:

In the event of any claim under this guarantee, payment shall be effected to *[Either insert the account on which payments are to be made with prior approval from KfW or, if no particular account is provided, insert instead:]*

KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00),

for the account of *[Insert name of the Purchaser and the Purchaser’s country]*.

[For guarantees issued in local currency insert the following:

In the event of any claim under this guarantee, payment shall be effected to *[Insert the account on which payments are to be made]*, for the account of *[Insert name of the Purchaser and the Purchaser’s country]*.

This guarantee shall expire not later than *[Insert expiry date]*².

By this date we must have received any claims for payment by letter or encoded telecommunication.

¹ This guarantee shall be issued in the contract currency only.

² This guarantee shall be valid for at least 28 days from the date of contractual contract completion (including warranty obligations).

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

[As preferred option regarding guarantee rules insert³: This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.]

Place, date

Guarantor's authorized signature(s)

³ In the case the issuing bank will not add the preferred option, the following must be added instead:
This guarantee is governed by the laws of *[Insert country of jurisdiction]*. Note: the country of jurisdiction shall be the country where the bank's branch issuing the guarantee is physically located.

Advance Payment Security

Beneficiary: *[Insert name and Address of Purchaser]*

Date: *[Insert date of issue]*

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

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

We have been informed that *[Insert name and address of contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called “the Applicant”) has entered into Contract No. *[Insert reference number of the contract]* dated *[Insert contract date]* with the Beneficiary, for the execution of *[Insert object of the contract and brief description of Works]* (hereinafter called “the Contract”). Furthermore we understand that, according to the conditions of the Contract, an advance payment in the sum of *[Insert amount and currency in words and figures]*⁴, representing *[Insert percentage in words and figures]* % of the contract price, is to be made against an advance payment guarantee.

Waiving all objections and defenses, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary, any sum or sums not exceeding in total an amount of *[Insert guarantee amount and currency in words and figures]* upon receipt by us of the Beneficiary’s first demand, supported by the Beneficiary’s statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for the demand or the sum specified therein.

The advance payment guarantee shall come into force and effect as soon as the advance payment has been credited to the Applicant on its account. Minor deductions of the above-mentioned amount notably due to bank fees shall have no effect on the entry into force.

[For guarantees issued in foreign currency insert the following:

In the event of any claim under this guarantee, payment shall be effected to *[Either insert the account on which payments are to be made with prior approval from KfW or, if no particular account is provided, insert instead:]*

KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00),

for the account of *[Insert name of the Purchaser and the Purchaser’s country]*.

[For guarantees issued in local currency insert the following:

In the event of any claim under this guarantee, payment shall be effected to *[Insert the account on which payments are to be made]*, for the account of *[Insert name of the Purchaser and the Purchaser’s country]*.

⁴ This guarantee must be issued in the contract currency only.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) per cent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the *[Insert date]*, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date, by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

[As preferred option regarding guarantee rules insert⁵: This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.]

Place, date

Guarantor's authorized signature(s)

⁵ In the case the issuing bank will not add the preferred option, the following must be added instead: This guarantee is governed by the laws of *[Insert country of jurisdiction]*. Note: the country of jurisdiction shall be the country where the bank's branch issuing the guarantee is physically located.

Retention Money Security

Beneficiary: *[Insert name and Address of Purchaser]*

Date: *[Insert date of issue]*

RETENTION MONEY GUARANTEE No.: *[Insert guarantee reference number]*

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

We have been informed that *[Insert name and address of contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called “the Applicant”) has entered into Contract No. *[Insert reference number of the contract]* dated *[Insert contract date]* with the Beneficiary, for the execution of *[Insert object of the contract and brief description of Works]* (hereinafter called “the Contract”).

Furthermore we understand that, according to the conditions of the Contract, the Beneficiary retains moneys up to the limit set forth in the Contract (“the Retention Money”), and that when the Taking-Over Certificate has been issued under the Contract and the first part of the Retention Money has been certified for payment, payment of the second part of the Retention Money is to be made against a Retention Money guarantee.

Waiving all objections and defenses, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert guarantee amount and currency in words and figures]*⁶ upon receipt by us of the Beneficiary’s first demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or show grounds for the demand or the sum specified therein.

The retention money guarantee shall come into force and effect as soon as the second part of the Retention Money has been credited to the Applicant on its account. Minor deductions of the above-mentioned amount notably due to bank fees shall have no effect on the entry into force.

[For guarantees issued in foreign currency insert the following:

In the event of any claim under this guarantee, payment shall be effected to [either insert the account on which payments are to be made with prior approval from KfW or, if no particular account is provided, insert instead:]

KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00),

for the account of *[Insert name of the Purchaser and the Purchaser’s country]*.

⁶ The Guarantor shall insert an amount representing the amount of the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and denominated in the contract currency(ies) only.

[For guarantees issued in local currency insert the following:

In the event of any claim under this guarantee, payment shall be effected to *[Insert the account on which payments are to be made]*, for the account of *[Insert name of the Purchaser and the Purchaser's country]*.

This guarantee shall expire not later than *[Insert expiry date]*⁷.

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

[As preferred option regarding guarantee rules insert⁸: This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.]

Place, date

Guarantor's authorized signature(s)

⁷Insert the same expiry date as set forth in the performance security, representing the date twenty-eight days after the completion date described in the Appendix to Bid. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

⁸In the case the issuing bank will not add the preferred option, the following must be added instead: This guarantee is governed by the laws of *[Insert country of jurisdiction]*. Note: the country of jurisdiction shall be the country where the bank's branch issuing the guarantee is physically located.