

**400-MW COMBINED-CYCLE GAS UNITS
EMILE HUCHET POWER PLANT**

REV13 ~ 19.09.2007

EPC CONTRACT

No 140003733

Purpose: Turnkey contract for the construction of combined-cycle gas units for the Emile Huchet Power Plant, 57500 Saint-Avoid.

Turnkey contract between the undersigned:

- La **Société Nationale d'Electricité et de Thermique** (SNET - National Electric and Thermic Company, a subsidiary of the Endesa Group), a listed company with capital of €569,206,335 and registered office at 2 rue Jacques Daguerre, 92565 Rueil-Malmaison, listed in the Register of Companies under number 399 361 468, hereafter called the "**Owner**", and represented by Mr. Alberto MARTIN RIVALS, chief executive officer,

of the First Part,

and

- **Siemens Aktiengesellschaft, Power Generation**, company with a registered capital of 2.665.000.000 €, with registered head offices at Nonnendammallee 101, 13629 Berlin and Wittelsbacherplatz 2, 80333 Munich, Germany, entered in the Trade and Companies' Register respectively under Nos. 12300 (Berlin) and 6684 (Munich), hereinafter referred to as "Contractor", represented by Mr Markus WEBER and Mr Hans-Otto BROSCHE in their respective capacities as Sales Manager and Commercial Sales Manager, duly empowered under these presents,

of the Second Part,

hereafter collectively referred to as "**the Parties**"

Whereas:

- a) Endesa France, which owns four power plants in France totaling 2,500 MW, wishes to install five combined-cycle gas units with a unit power of about 400 MW on open ground at each of its existing sites and/or on newly-acquired ground:

This Contract concerns the Emile Huchet Power-Plant site at 57500 Saint AVOID.

- b) After a request for proposals, the Owner wished to employ the services of the Contractor, in view of its expertise, under a turnkey contract including a strict liability to perform. The Contractor has stated that because of its experience, knowledge and resources, it is in a position to meet the obligations placed upon it under this Contract.
- c) Under this Contract the Owner shall, in particular, be assisted by the following participants: engineering firms, contracted to provide assistance to the contracting owner, various technical-inspection firms under technical-inspection agreements and a coordinator for the prevention of health and safety hazards on the Work Site.
- d) Notwithstanding point b/above, it is hereby agreed between Endesa France and the Contractor that the recovery boilers (HRSG) shall be supplied by the Owner as stipulated in this Contract and its Appendix 16.

It is hereby agreed as follows:

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Recitals:

In this document the Parties intend to set out the provisions governing their agreements.

The recitals and the Appendices shall constitute an integral part of the contract, which shall form an inseparable whole.

In the event of a conflict between this general terms and conditions and the Appendices listed above, the Parties hereby agree that the general terms and conditions shall prevail over said Appendices, which shall be taken into consideration in the following order of priority:

1. the Contract;
2. Appendix 3: Agreed exceptions
3. Appendix 2: the Technical Specifications;
4. the other Appendices; and
5. the Contractor's technical proposal.

1. DEFINITIONS

In this Contract, including its Recital and its Appendices, each of the following terms and expressions shall be understood to have the meaning given to it below:

- **Technical Specifications** means the document entitled "Technical Specifications" attached to the Contract as Appendix 2. This document defines, in particular, the specifications, characteristics and other technical documents concerning the Power Plant and each Unit, the Work and the supplies and services for which the Contractor is responsible, including optional items.
- **Owner** means SNET (Société Nationale d'Electricité), as identified above.
- **Contractor** means the company Siemens AG Power Generation, its assigns and any assignee authorized under the Contract, as identified above
- **Contract** means this turnkey contract, including its Appendices.
- **Contractual Acceptance Date** means the date on which the Owner carries out acceptance.
- **ECW** (End of Civil Work) means the date of completion of the civil engineering Work.
- **EOC** (End Of Commissioning) means the starting date for commercial operation, i.e. the date on which the Owner reserves the right to upgrade the energy generated at the Unit concerned.
- **EOCT** (End Of Completion Trial) means the date on which integrated operating trials end.
- **EOE** (End Of Erection) means the date on which installation ends.

- **EOP** (End Of Pre-commissioning) means the date on which pre-commissioning tests end.
- **Performance Trials** means the tests which the Contractor shall carry out prior to Provisional Acceptance of each Unit, under Article 18 of the Contract and Section 8.1 of Specification 010 of the Technical Specifications, intended to confirm that the Unit has achieved all the Acceptance Performances.
- **Acceptance Trials** means the performances guaranteed by the Contractor, under Article 16 of the Contract and Section 8 of Technical Specification 010 of the Technical Specifications, which shall be achieved by each Unit no later than the Contractual Acceptance Date. Each Unit's achievement of all Acceptance Performances shall be certified as part of the Performance Trials.
- **FAC** (FAC (Final Acceptance Certificate) means Statement of Final Acceptance.
- **Progress payment guarantee** means the first-call guarantee issued by Siemens Financial Services GmbH (SFS) or a leading French bank in an amount equal to ten percent (10%) of the Contract Price (equal to the progress payment amount), designed to cover the failure by the Contractor to meet its obligations up to the date of provisional Acceptance.
- **Performance Bond** means the first-call guarantee issued by Siemens Financial Services GmbH (SFS) or a leading French bank in an amount equal to 10 % of the Contract Price, designed to cover the Contractor's failure to meet its obligations from the Date of provisional Acceptance up to the date of Final Acceptance.
- **GEN** denotes electrical generators (alternators) coupled to gas and steam turbines.
- **HRSG** denotes recovery boilers.
- **Participants** means the Contractor's co-contractors, other than the Subcontractors, involved in the design or the execution of the work, including the various trial and test stages stipulated in the Contract, such as technical or engineering consultants, suppliers, etc.
- **Strict Liability to Perform** means that the Contractor shall deliver a complete turnkey facility fully compliant with the specifications and performance levels established in the Contract.
- **PAC** (PAC (Provisional Acceptance Certificate) means the Statement of Provisional Acceptance.
- **Party or Parties** means the Contractor and/or the Owner, depending on the context.
- **General Schedule** means all the principal activities and events and their respective dates of completion, as defined in Appendix 6.

- **Contract Price** means the inclusive price shown in Article 13 of the Contract, excluding options, payable by the Owner to the Contractor for the performance of all the Work stipulated in Article 3 of the Contract, including those required under the Time Guarantee and the Performance Guarantee.
- **Final Acceptance** means the acceptance by the Owner at the end of the warranty period.
- **Provisional Acceptance** means the acceptance by the Owner of each completed Unit, in accordance with the stipulations of Article 18 of the Contract.
- **Representative** means any person named by the Owner.
- **SDD** (Site Delivery Date) means the date of delivery to the Site.
- **Site** means all the rights-of-way connected to the Work Site for the new units or to investigations, on which the Contractor may have occasion to operate.
- **Subcontractor** means any legal entity or natural person to whom the Contractor may entrust a portion of the performance of the Work under a job contract, as well as their possible licensees and assignees.
- **Work** means all of the studies, supplies, and Work described in Article 3 of the Contract and in Appendix 2 which the Contractor shall provide, under the terms of the Contract.
- **TG** indicates the gas turbines to be installed in each Unit.
- **TP** denotes the main transformers to be installed to service each TG-TV.
- **TV** denotes the steam turbines to be installed in each Unit.
- **Unit** means a set of sub-assemblies enabling the combined-cycle production of electrical energy with a power of 400 MW (including the interfaces between these sub-assemblies and the connections at the supply boundaries), carried out by the Contractor for the Power Plant in accordance with the Stipulations of the Contract and its Appendices.

Additional definitions appear in Appendix 0.

2. CONTRACT DOCUMENTS

2.1 The Contract comprises this Contract (Articles 1 through 43) and the following Appendices, which form an inseparable whole:

Appendix 0	Additional definitions
Appendix 1	Decomposition Contract Price On-Shore / Off-Shore
Appendix 2	Technical Specifications and its appendix (geotechnical report)
Appendix 3	Agreed exceptions
Appendix 4	Documentation

Appendix 5	Contractor's Monitoring program
Appendix 6	General schedule
Appendix 7	List of suppliers and Subcontractors
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Appendix 17	List of required insured certificates

It is hereby expressly laid down that the general terms and conditions of sale and other documents issued by the Contractor shall not be binding on the Owner.

In the event of a conflict between the text of the contract and the Appendices, the parties agree that the text of the contract shall prevail over said Appendices.

2.2 The recitals and the Appendices shall form an integral part of the Contract.

3. OBJECT OF THE CONTRACT

3.1 The object of this Contract shall be the design and turnkey execution by the Contractor - in the context of a strict liability to perform, of two combined-cycle, single-shaft units with a rated unit electric power of about 400 MW, to be installed on the Owner's Site at the Emile Huchet Power Plant, as described in the Technical Specifications.

Notwithstanding the previous paragraph, it is hereby agreed between Owner and Contractor that the recovery boilers (HRSG) shall be supplied by the Owner, as stipulated in this Contract and its Appendix 16.

The performance of the Contract, as described above, shall be carried out independently with respect to the Owner. There shall be no subordination link between the two Parties or between the personnel of the Contractor and the Owner.

3.2 The Contractor's supply shall include the equipment and services specified in the Technical Specifications.

These specifications shall not be restrictive. The Contractor shall undertake to provide all of the equipment essential to the operation of the Contract's production units, including any that may not have been explicitly identified in these specifications but that would nevertheless be necessary for the stability, completion, and normal and fully safe operation of each Unit in all configurations (in service, out of service, transients, etc.) and for meeting guarantees, in accordance with the stipulations of the Contract and its Appendices and of Laws and Usages.

Notwithstanding the Contractor's basic obligation to comply with the laws, usages and other authorizations obtaining, the Parties hereby agree that the Contractor's obligations as specified in Appendix 3 shall apply and shall take precedence over the aforementioned laws, usages and other such authorizations.

In accordance with Article 25 of this Contract, any modification by one of the Parties in the purpose of the Contract, in whole or in part, shall be notified to the other Party. The modification shall be accepted by the Parties and shall be the subject of an amendment to this Contract.

The Parties shall undertake to resolve any disagreement between them amicably, in accordance with Article 36 of this Contract.

Work performed without an order issued by the Owner may not give rise to payment by the Owner. The Contractor may not invoke an exception (even as regards a technical impossibility) if such exception is not covered by a written notice from the Contractor, with a modification order issued by the Owner.

- 3.3** Consequently, even if it is not expressly mentioned in Appendix 2, the Contractor's supply shall include:
- 3.3.1 All materials, tools, apparatus, and equipment, whether or not they are intended to be temporary or final parts of each Unit, as well as all other goods and services including the industrial-property rights necessary for the design, completion, commissioning, and Acceptance of each Unit, the training of Site Personnel intended to operate and maintain it, in accordance with the stipulations of the Contract, its Appendices, and the Contractor's Quality Management System as approved by the Owner.
- 3.3.2 All Work required from the Contractor to correct any defects in the performance of its legal or contractual obligations, especially as regards the Time Guarantee, the Performance Guarantee, and the Construction Guarantee.
- 3.4** The Owner or its appointed Representative shall inspect the correct implementation and compliance of the Quality Management System with respect to the General Schedule.
- 3.5** Each Unit shall run exclusively on natural gas.
- 3.6** The performance of the Contract shall require the implementation of the following activities by the Contractor in particular:

- 3.6.1 Design, study, investigations, and various engineering and project-management services.
- 3.6.2 Authorizations (drafting and presentation of documents and reports, preparation of requests and follow-up actions until the authorization is obtained, interfacing with the Bodies issuing the authorizations, except for the Application for Authorization to Operate, the Construction Permit or other items in accordance with Appendix 9, which are the Owner's responsibility).
- 3.6.3 Supply, transport, stockpiling, and preservation, including security.
- 3.6.4 Supplies (including supervision of Workshop manufacturing, acceptances, and factory testing).
- 3.6.5 Construction (including supervision of construction on the Work Site, under the Quality-Control Plan) of each Unit's various components and systems.
- 3.6.6 Assembly (including supervision of assembly on the Work Site, under the Quality-Control Plan) of each Unit's various components and systems.
- 3.6.7 Start-up (according to the procedures described in the Technical Specifications), in the presence of the Contractor and the Owner or its appointed Representative.
- 3.6.8 Trials and acceptances (according to the Acceptance procedures described in the Technical Specifications). The Owner shall decide on a case-by-case basis whether to attend or to send an appointed Representative. A Quality-Assurance Plan shall be proposed.
- 3.7** The services shown above shall cover all components and systems included in the supply, in accordance with the stipulations of the Technical Specifications, attached as Appendix 2.
- 3.8** The Contractor shall incorporate into its Work Program, especially during Trials and Tests of each Unit, the constraints connected to calls on units of the Owner's Power Plant by the RTE [French power grid], the RTE's own constraints, the constraints connected to tests by GRT GAZ [French gas-supply system], those connected to the raw-water supply, etc.

The Contractor may not be held liable for delays caused by a third party.

4. SUBDIVISION INTO LOTS

Not applicable.

5. ENUMERATION AND DEFINITION OF CONTRACT COMPONENTS (KEY DATES)

5.1 The Contract shall enter into force on

- the date of its signing by both Parties; and
- no later than the date of receipt of the progress payment by the Contractor, where such date differs.

This date shall also be the starting date for the General Schedule, identified as NTP (Notice To Start) in Appendix 6.

5.2 Acceptance:

- Availability of HRSG
For the 1st hot gas flow for Unit 1: **10 September 2009**
- Availability of HRSG
For the 1st hot gas flow for Unit 2: **8 October 2009**
- PAC for Unit 1: **February 15, 2010**
- PAC for Unit 2: **15 March 2010**

6. CONTRACT COMPLETION DEADLINES

The principal completion deadlines consistent with the General Schedule are indicated in Article 5 above. These contractual deadlines may be modified only in writing and by joint agreement between the Parties.

The General Schedule attached as Appendix 6, except for the key dates fixed in Article 5 above, may be modified by the Contractor after authorization from the Owner.

7. SUB-CONTRACTORS

7.1 Selection

The list of authorized Subcontractors and suppliers for the performance of this Contract, as suggested by the Contractor and approved/supplemented by the Owner, appears in Appendix 7. If the Contractor wishes, in the course of the work and by way of exception, to place an order with a subcontractor that does not appear on the list, it shall present an application for approval of this subcontractor and obtain the Owner's written agreement, which shall not be withheld without due cause. The Owner may, however, be deemed to have agreed to all supply or service contracts if the total value of contracts placed with the same sub-contractor does not exceed one million euros (€ 1,000,000).

The Contractor may subcontract the execution of a portion of the Work to companies that have been introduced to the Owner in advance without objections being raised, subject:

- 7.1.1 To detailed confirmation of the qualifications, experience, operational capacity, and solvency of Subcontractors required to participate in the design and execution of the Work.
- 7.1.2 To obtaining, in accordance with the stipulations of French Law No. 75-1334 of December 31, 1975 concerning subcontracting, the acceptance of each Subcontractor by the Owner, as well as the approval by the Owner of the terms of payment under each subcontracting agreement. The Owner shall provide reasons for rejecting a Subcontractor. Note that Decree No. 92-158 of February 20, 1992 implicitly refers to the obligations regarding information and safety incumbent upon a Contractor as regards subcontracting.
- 7.1.3 To imposing on its Subcontractors obligations such that compliance with the Contract's clauses is ensured.
- 7.1.4 To obtaining from its Subcontractors assurances that they shall carry out the checks stipulated in the paragraph above with respect to their own Subcontractors.

The Owner requests the Contractor, in the execution of each of the Contractual Units, to invite as many local companies and suppliers as possible to respond to requests for proposals. At the Contractor's request, the Owner may provide lists of local companies.

Under Article 1 of Law No. 75-1334 of December 31, 1975, the Contractor shall be responsible to the Owner for the proper execution by all Subcontractors of the portion of the Work subcontracted to them, especially as concerns deadlines, quality of services, guarantees of correct execution and performance, and specific Work Site insurance, whatever the circumstances of the subcontracting.

7.2 Payment guarantees for Subcontractors

The Contractor shall submit evidence to the Owner, before signing subcontracts, of the establishment of personal and joint securities payable by the Contractor, under the terms of Article 14 of Law No. 75-1334 of December 31, 1975, for each of the Subcontractors, issued by a qualified establishment for amounts corresponding to each of the sums owed to them from the Contractor.

8. PROVISION OF INFORMATION CONCERNING THE PROJECT

- 8.1 At the Contractor's request, the Owner shall make every effort to provide the Contractor in a timely manner with all the documents and information in its possession, in their current version.

8.2

The Contractor hereby declares that it has received from the Owner or its Representatives, in particular the Owner's Assistant ("AMO"), all necessary information concerning the use that the Owner intends to make of the Unit, so as to enable the Contractor to carry out the Work in accordance with the Contract's stipulations (especially those concerning the General Schedule of Work and Contract Price), and with Laws and Usages.

The Contractor hereby declares that it has studied all the drawings, information and design calculations provided by the Owner and shall assume full liability for their interpretation, checking, use and incorporation into the Work, except in the case of the following information, which the Contractor shall not be responsible for checking:

- (a) the geological report in accordance with Article 8(3)(a) below;
- (b) the on-site reference points and levels for work completion stipulated by the Owner; and
- (c) any information essential to completion of the necessary connections with existing networks.

The Contractor hereby declares that it has examined and checked the contents of all of the Appendices, which it accepts. The Contractor further declares that it has carried out all steps necessary for the proper understanding of the project to construct each Unit, both with regard to the Owner and to all the relevant authorities and departments.

The Contractor hereby declares that it has visited the Site and states that it is satisfied with the physical condition of the Work Site, the means of access and the possibilities for service by road and by various systems, as well as with all the general and local items necessary for performing the Work.

The Contractor hereby declares that it has assessed and taken into consideration all the difficulties and hazards that may reasonably be taken into account by a qualified and experienced contractor and likely to affect the performance by the Contractor of its obligations under the Contract, within the periods stipulated in Article 5 above, and for the Price stipulated in Article 13, in particular as regards operating constraints and the operational procedures of both the existing Power Plant and the new contractual units, pollution caused on site by the Contractor, acoustic risks, possible vibrations and accident risks connected to the Site and to the Work Site.

8.3

The Contractor shall bear all the harmful consequences that may result from the physical condition of the Site and the Work Site, including easements affecting the Workplace revealed by the Owner prior to signature of this document (or that the Contractor shall have been aware of, after visiting the Site and Work Site) with respect to the design and execution of the Work, except in the cases stipulated in the following paragraph. The Contractor relinquishes in advance the right to make any claim to the Owner regarding such consequences. The Contract Price shall not be revised and the completion deadlines shall not be extended to take into account difficulties or costs not foreseen by the Contractor at the time of signing the Contract, except in the cases stipulated in the following paragraph.

Exceptions:

- (a) If the Work Site reveals pollution of the soil or substratum and/or a soil or substratum composition which is other than that known to the Contractor through the Technical Specifications and the geotechnical report made available to it by the Owner pursuant to Appendix 2 above, the Contractor - having duly proved that the reason for such pollution and/or composition predates the conclusion of the Contract, resulting in a more costly extension of the period of performance of its obligations or, indeed, completely ruling out such performance, and does not lie in its own negligence under these presents, - the Parties shall meet to examine all measures enabling the Contractor to perform its obligations as stipulated in the Contract.
- (b) The occurrence of one of the events specified in paragraph (a) above shall be considered to be a legitimate reason for extending the Contractual Acceptance Date. The Owner shall in addition be responsible for duly-justified additional costs generated by the adoption of the measures provided in the above-mentioned paragraph, subject to their having been adequately foreseen during the investigations for which it is responsible.

8.4 It is agreed that the Contractor shall be responsible for the costs of all civil-engineering work for which it has received due information and clarification from the Owner at the time of signature of the Contract, and adaptations connected to each Unit's construction, and that no additional cost or delay shall be accepted on these grounds. It is the Contractor's responsibility, as part of its data-checking activities, to confirm and if need be supplement the results of the soil studies and pollution investigations attached as an appendix to this Contract. The Contractor shall also take into account the recommendations and conclusions of the impact study, presented in an Appendix to the Contract, carried out for the batrachians (protected amphibian species living on the power-plant site), by protecting openings in the ground with nets, following recommendations during backfilling, etc....).

8.5 The Contractor shall undertake to work with the Owner on all start-up activities, including those for equipment outside the supply boundaries that are not part of the operations under the Contract, but that shall be necessary for each Unit's operation and have to be executed in accordance with the Contract, such as, e.g., the GRT-GAZ gas delivery /expansion-metering-compression station.

8.6 Examination, stamping, and/or approval by the Owner or its representatives (Owner's Assistant or other) of technical documents, drawings, samples, or other items submitted to them, and any supervision and inspection performed by the Owner or its representatives (Owner's Assistant, Inspection Office, Authorized or Accredited Body, or other) during the performance of the Contract, shall in no way relieve or reduce the Contractor's responsibility.

The structure and treatment of project information, including content, availability, approval date and classification, are specified in Appendix 4.

9. OBLIGATIONS OF THE PARTIES

9.1 Obligations of the Contractor

9.1.1 In addition to the costs shown in the documents comprising the Contract, all charges arising from the performance of the Contract are also the responsibility of the Contractor, in particular:

9.1.1.1 The provision of personnel of sufficient quantity and quality to carry out the Work to be constructed, and the supply to the Site of the required materials, taking into account the periods required for possible authorizations (as noted, a Contractor responsibility), and for hiring procedures, obligations under the labor regulations, etc.

9.1.1.2 Use of tools and other equipment for carrying out the Work. In this regard, the Contractor shall undertake to use only equipment in perfect condition, in line with the regulations in force.

9.1.1.3 The costs of storage and transport for disposal of site waste and rubble arising from Contractor activity.

9.1.2 The payment of import and customs-clearance duties.

9.1.3 Adjustments to and reinforcement of the transport network to ensure the routing of equipment from its point of supply to the Power-Plant assembly site.

9.1.4 The special nature of Contract operations shall require speed of execution and availability of resources and personnel throughout, over successive continuous workdays. The Work may, where applicable, also continue at night, on Saturdays, Sundays, and holidays (it is the Contractor's responsibility to obtain the necessary administrative authorizations (Labor Inspection)).

The Contractor may not demand any increase of the Contract Price or special payments in this regard, this possibility being included in the normal terms of the performance of the Contract. In any event, the Contractor shall be responsible for obtaining the necessary approvals and exceptions, in accordance with current regulations.

9.1.5 The Contractor shall be liable to third parties under the law.
In accordance with Articles 1147 (effect of obligations), 1382 to 1386 (offences and technical offences) and 1792 et seq. (ten-year warranty) of the French Civil Code, the Contractor shall be liable, under its strict liability clause, for all damage or injury to property or persons possibly affecting the Owner and resulting from completion of work by the Contractor, whether the fault of the latter or its Subcontractors or Representatives or that of both the latter's personnel or that of the goods and equipment belonging to the Contractor or entrusted to it and in its custody.

- 9.1.6 In addition, the Contractor shall, on signing the document, undertake to:
- 9.1.6._ give the Owner a copy of its insurance policies and to provide evidence to the Owner, whenever it is asked, that it has met its obligations concerning insurance.
- 9.1.6.2 provide to the Owner, before or at the time its personnel arrive on the Work Site, a list of the names of its personnel, including their qualifications, their registration numbers, and their status as regards mandatory insurance, including residence and labor permits for any foreign personnel.
- 9.1.6.3 comply with all current regulations on the Work Site and the Sites.
- 9.1.6.4 comply fully with current regulations and legislation concerning accident prevention.
- 9.1.6.5 display signs outside the Work Site carrying the information required by Law.
- 9.1.6.6 remove at its own expense and under its own responsibility all waste, including special waste from the Contractor's construction work, in accordance with current regulations.
- 9.1.6.7 ensure the coordination of its Subcontractors on the Work Site.
- 9.1.6.8 submit to the Owner or Coordinator, for any Work Site operation, the special safety and health-protection plans required under Articles L. 235-7 and R. 238-26 (PPSPS) of the Labor Code, within thirty (30) days of the signature of this document and in any event fifteen (15) days before the start of any Work to be carried out by its Personnel.
- 9.1.6._ supplement the Safety Plan, if necessary, after having submitted it to the Work Coordinator for evaluation, but this shall not lead to a modification and/or adjustment of the Contract Price, given that the Contractor has already evaluated all the conditions and obligations inherent to the Work during the proposal-submission stage.
- 9.1.6.10 In the event that a portion of the Work is performed by one or more Subcontractors, to provide them, in accordance with Article R. 238-29 (PGC) of the Labor Code, with a copy of the General Coordination Plan prepared by the Site Coordinator and, if need be, a document setting out the general organizational measures that it has adopted for the parts of the Work Site under its responsibility which are likely to have an effect on the safety and health of the workers.
Within the Site, also to comply with applicable rules and safety instructions (in particular, safety rules specific to the Power Plant), and to ensure that its Personnel, Subcontractors and Participants comply with the specific safety instructions for the Power Plant issued by the Owner.
- 9.1.7 The Contractor shall provide the Owner with an area of occupation (means and structures) which may be used for offices and which the Owner shall be free to use at any time. The cost of use shall, however, be for the Owner.

- 9.1.8 The Contractor hereby declares that it is familiar with the legislation on moonlighting, in particular Articles L. 324-9 et seq. of the Labor Code, and hereby attests that it is up-to-date with its fiscal and social obligations, specifically in regard to Articles L. 143-3, and L. 620-1 et seq., of the Labor Code, and all other current texts.

It shall undertake to enforce the same obligations on its own Subcontractors.

The Contractor hereby certifies that the salaried employees who shall perform the services shall be regularly employed as regards the provisions of the Labor Code.

- 9.1.9 The Contractor shall have an obligation to keep the Owner informed, especially as regards any new regulation on the Contract facilities.
- 9.1.10 The Contractor shall have an obligation to take the necessary steps to protect its personnel from the risks associated with proximity to a Ceveso site.
- 9.1.11 The Contractor shall undertake to provide a technical specification for the HSRG which is consistent with the specifications of this Contract and of the General Schedule.

9.2 Customer's obligations

In accordance with the specifications in this Contract and in the General Schedule:

- 9.2.1 the Owner shall be responsible for the costs of supplying natural gas, raw water (from boreholes or surface), and drinking water from outside systems and for providing electric power to the Work Site from connection points agreed between the Parties, on the basis of a projected consumption schedule approved by the Parties. The Contractor shall be responsible for connections to all the systems within the supply boundaries, at the interface points;
- 9.2.2 it shall supply recovery boilers (HRSG) meeting the technical specification defined in Appendix 16;
- 9.2.3 it shall defray the cost of decanting work pursuant to Appendix 2; and
- 9.2.4 it shall allow the Contractor access to the site.

10. SPECIAL CLAUSES

Not applicable.

11. OPTIONAL SERVICES AND WORK

Not applicable.

12. AVAILABILITY OF WORK SITE

- 12.1** The areas made available for the Contractor on the Work Site are those described in the Technical Specifications.
- 12.2** The areas shall be allocated as is, with no form of involvement by the Owner. The Contractor shall, at its own expense, lay out, develop and manage the areas allocated, using independent services.
- 12.3** If the Contractor requires additional areas, it shall provide adequate space outside the Power-Plant property, by finding, renting and managing them at its own expense.

13. PAYMENT

The price for the study, design, and execution of the Contract Work as defined in Article 3 is fixed at:

€ 359,900,000 excl. tax
(three hundred fifty nine million nine hundred thousand euros, excluding tax.
(the Contract Price).

The Contract Price means the DDP (Delivery Duty Paid) price, under Incoterms 2000, and shall include all Work costs, including taxes and related costs, any customs duties and all non-French and non-deductible taxes, as well as insurance costs, excluding VAT at the French rate applying at the time of the transaction.

The Contract Price is an inclusive, final price which may not be updated or modified, except in the cases expressly provided for in the Contract. It shall not be subject to review on the basis of indices which may be established owing to modifications in the cost of labor and equipment.

On the Contract's entry into force, the value of both the Reservation Right (totaling sixteen million seven hundred and sixty thousand euros - € 16,760,000 -) and the LNTP Agreement (totaling nine hundred and fifty thousand euros -€ 950,000 -) already paid by the Owner shall be deducted from the first progress payment referred to in Article 14.1.1 above.

The Contractor hereby acknowledges that the Contract Price represents a fair return for its obligations under this Contract and shall accept, for this Price, all Work-related risks except in cases expressly specified in the Contract.

As regards the mandatory provisions concerning acquisition of intra-community goods, the Contractor shall find below the Owner's VAT Identification Number: FR 71 399 361 468.

On signing this Contract, the Contractor shall forward its own identification number to the Owner.

To enable the Owner to prepare the declaration of exchange of goods between European Union member states, if necessary, the Contractor's delivery documents and invoices are required to carry:

- the number of the product on the customs list,
- the net mass.
- the item's country of origin.

As regards taxation, invoices shall be sent to the Owner during the month in which the equipment is delivered to the Owner's Sites.

Failure to observe these provisions may lead to delays in payment by the Owner, without prejudice to possible damages resulting in particular from fines which the Owner may incur for failing to produce the information required by the French Authorities.

14. PAYMENT OF PRICE

14.1 Payment procedures

14.1.1 The Owner shall make payments of the Price in several Progress Payments, which shall be payable at the time of effective completion of the events or phases of the Work corresponding to the due dates and amounts specified below, after a joint finding of the performance of the event and drafting of a report by the persons responsible, as indicated in Article 15.

Payment of the first progress payment on the date of the Contract's entry into force may be made only once the Contractor has submitted the Progress Payment Reimbursement Guarantee to the Owner, in accordance with Article 29.1 of this Contract.

It is hereby agreed between the Parties that the monthly periods fixed in the following payment schedule shall be liable to modification over the project completion period to allow for actual Work progress.

No. of payment	No. of General Schedule Activity	Fractions		Event calling for payment
		%	Month	
1	SI0—105	10,00%	1	Date of contract's entry into force (settlement of Progress Payment)
			2	
2	SI-666500	7,00%	3	Start of site installation
			4	
			5	
			6	
3	SI-666525	6,00%	7	End of site leveling work
			8	
4	SI1UMC526	7,00%	9	Start of excavation work
5	SI1UHA506#	5,00%	10	Start of HRSG excavation and foundation work (Unit 1)
			11	
6	SI1UMC540	5,00%	12	1 st UMC foundation flow
7	SI2UMC540	5,00%	13	2 nd UMC foundation flow
8	SI2UHA506	5,00%	14	End of HRSG excavation and foundation work (Unit 2)
9	SI1URA512	2,50%	15	1 st cell of cooling tower -, ready for mechanical erection
10	SI2URA512	2,50%		1 st cell of cooling tower 2 ready for mechanical erection
			16	
10	SI1MKA304	4,00%	17	Generator for Unit 1 Ex Work
11	SI2MKA304	5,00%	18	Generator for Unit 2 Ex Works
12	SI1MBA600	2,50%	19	Installation of TG (Unit 1)
14	SI1MA-604	2,50%		Installation of TV on foundation block (Unit 1)
15	SI1BAT400	2,00%		arrival on DDP site of the generator transformer (Unit 1)
16	SI2MBA600	2,50%	20	Installation of TG (Unit 2)
17	SI2MA-604	2,50%		Installation of TV on foundation block (Unit 2)
18	SI2BAT400	2,00%		arrival on DDP site of the generator transformer (Unit 2)
			21	
			22	
			23	
19	SI1PAD804	2,00%	24	Commissioning of feed pumps (Unit 1)
20	SI2PAD804	2,00%	25	Commissioning of feed pumps (Unit 2)
21	SI1MBA832	4,00%	26	1 st Unit 1 synchronization process
22	SI2MBA832	4,00%	27	1 st Unit 2 synchronization process
			28	
			29	
23	SI1---200	5,00%	30	provisional acceptance of Unit 1
24	SI2---210	5,00%	31	provisional acceptance of Unit 2
		100,00%		

14.3 Invoicing and Payments

14.3.1 Invoicing

14.3.1.1 An invoice for a specific progress payment shall be issued on each due date, in the exact payment amount: only invoices issued on Provisional Acceptance of Work shall be issued in final form.

14.3.1.2 An invoice may be issued only after a joint report signed by the Parties, certifying the performance of the event corresponding to the Progress Payment, except for invoices concerning the start of services, which shall be issued on the dates set out in the "Payment of Price" Article.

14.3.1.3 Each invoice shall show the event being invoiced, with its date of performance, and the corresponding report described above. In the absence of this information the invoice shall be rejected.

14.3.1.4 Invoices shall be issued in the name of the Owner and sent as an original (+ 1 copy) to:

Endesa France
Société Nationale d'Electricité et de Thermique
Service Comptabilité fournisseur
2, Jacques Daguerre
92565 Rueil Malmaison

with copy to the Project Manager

(The invoices shall include the Contract No.)

14.3.1.5 To enable payment to be made, the Contractor undertakes to notify the Owner immediately, and in writing, of the performance of the services justifying the issuance of the invoice. On its side, the Owner undertakes, within 15 days of receiving said notification, to confirm the performance of said services jointly with the Contractor, via its manager, and to sign the report certifying the performance of the invoiced event, or to send its objections to the Contractor, providing reasons.

Failing a reasoned challenge by the Owner in the event of late payment, the Contractor shall be entitled to interest at the Euribor 3 monthly rate, plus 2,5 percentage points. It is hereby agreed that the interest rate referred to in this Article shall apply to both Parties in the event of late payment.

14.3.2 Payments

14.3.2.1 Payment of the invoice shall be made sixty (60) days after the date of the invoice.

14.4 Final payment

In order to obtain final payment from the Owner, the Contractor shall provide, at the same time as its request for final payment, a written sworn declaration stating that all invoices concerning labor, supplies, equipment, and materials and/or fittings provided by the Contractor have been paid for, and that no amount (other than that shown in its request for final payment) is owed to its Subcontractors and Participants under the Contract.

This sworn declaration shall include an undertaking from the Contractor stating that it has satisfied all claims and shall pay all amounts owed or to be owed to its Subcontractors and Participants, as soon as it receives final payment from the Owner.

This sworn declaration shall also state that in return for final payment the Contractor shall undertake to defend and indemnify the Owner, its Representatives and authorized representatives, Personnel, employees, successors and respective assigns against any claim, request, legal proceedings or other third person liability, including labor, Subcontractors and Contractor's Representatives, arising under the Contract due to non-payment of sums owed to these parties pursuant to paragraphs 1 and 2 of this Article 14.4.

The final payment by the Owner shall not be seen as amounting to the forgoing or modification of Contractor obligations under the terms of the Contract, including, but not limited to, its guarantees and liability as defined in the contract documents.

15. COMMUNICATIONS AND REPRESENTATIVES

15.1 The Parties' representatives, for Contract purposes, shall be:

15.1.1 For the Owner:

Project Head: Stéphane Knoll

Endesa France ~ Société Nationale d'Electricité et de Thermique
Emile Huchet Power Plant
57500 SAINT-AVOLD / FRANCE
Tel.: 00 33 3 87 83 38 04
Fax: 00 33 3 87 83 40 20

15.1.2 For the Contractor:

Project Head: Rüdiger Bratzler / Jürgen Horter

SIEMENS AG ~ Power Generation
Kaiserleistraße 10
63067 OFFENBACH am MAIN / GERMANY
Tel.: 00 49 69 807 - 23 44 / - 27 89
Fax: 00 49 91 31 18 79 68 20

15.2 All communications sent to the Owner by the Contractor shall be sent to the following address, while noting that invoices shall be sent to the address provided in Article 14.3

15.2.1 Owner

Endesa France ~ Société Nationale d'Electricité et de Thermique
2 rue Jacques Daguerre
92565 RUEIL-MALMAISON / FRANCE
Tel.: 00 33 1 47 52 39 98
Fax: 00 33 1 47 52 39 99

and

Endesa France ~ Société Nationale d'Electricité et de Thermique
Emile Huchet Power Plant
57500 SAINT-AVOLD / FRANCE
Tel.: 00 33 3 87 83 38 04
Fax: 00 33 3 87 83 40 20

15.3 All official communications sent by the Owner to the Contractor shall be sent to the following addresses:

SIEMENS AG ~ Power Generation
Kaiserleistraße 10
63067 OFFENBACH am MAIN / GERMANY
Tel.: 00 49 69 807 - 23 44 / - 27 89
Fax: 00 49 91 31 18 79 68 20

16. GUARANTEES

16.1 Construction Guarantee

16.1.1 Apart from the legal guarantee in respect of hidden defects, if applicable, and any legal public order guarantees and notwithstanding the specific guarantees provided by suppliers and manufacturers as stated in the Technical Specification, the Contractor shall undertake to guarantee each Unit for a period of 24 (twenty-four) months from the actual date of its Provisional Acceptance against any Unit or Unit component, material or equipment malfunctions. The Contractor's guarantee against malfunction shall extend solely to components and services provided by the Contract pursuant to Article 3. Abnormal wear of an equipment item, material or component of each of the Units shall be assessed particularly on the basis of a Unit service and maintenance schedule drawn up by the Contractor.

- 16.1.2 If, during the period referred to in Article 16.1.1 above, it is necessary to replace a component of one of the Units or a component, material or equipment item for the affected Unit due to abnormal wear, failure or operational defect, whether or not such repair leads to the shutdown of the component, material or equipment item concerned, the guarantee period specified in Article 16.1.1. shall in each case run from the commissioning of replacement parts by the Contractor.

Extension of the guarantee period shall apply solely to parts, components or installations which need repair or replacement. The guarantee period for these repaired or replaced parts shall, however, expire no more than forty eight (48) months after provisional Acceptance.

- 16.1.3 The guarantee period for each Unit shall be extended by the amount of time the Unit is not used owing to a defect, breakdown or damage.

- 16.1.4 Moreover, the Contractor shall be responsible to the Owner for the performance of its obligations under Articles 1792 et seq. and 2270 of the French Civil Code (ten-year warranty) for the Contract Work, as applicable.

16.2 Performance Guarantees

- 16.2.1 The guarantees refer to the terms specified in the Technical Specifications.

- 16.2.2 The Parties agree that no tolerance shall be applied to the values shown below. The reference conditions used to define the guaranteed values are those provided in the Technical Specifications.

- 16.2.3 The Contractor guarantees that, for each Unit's Provisional Acceptance, the performance parameters shall have the values shown below.

- 16.2.4 Continuous net rated load

The continuous net rated load of each combined-cycle Unit shall not be less than the value defined in Appendix 2 Chapter 103.

- 16.2.5 Specific net consumption under continuous net rated load

Specific net consumption under continuous net rated load for each combined cycle Unit shall not exceed the value defined in Appendix 2 Chapter 103.

- 16.2.6 Minimum Technical Environmental Load

The min. load at which each combined cycle Unit can operate while complying with emission limits, with the GT operating in MTEL (Minimum Technical Environmental Load) mode, shall not exceed the value defined in Appendix 2 Chapter 103.

- 16.2.7 Startup time
- Startup times shall comply with the values defined in Appendix 2 Chapter 103.
- 16.2.8 Gas emissions
- The gas emissions for each of the Units in the range lying between CMTE (Minimum Environmental Technical Load) and CMC (Maximum Continuous Load), and throughout the range of projected environmental conditions, shall not exceed the following values defined in Appendix 2 Chapter 103.
- 16.2.9 Noise emissions
- Compliance with the requirements indicated in Appendix 2 Chapter 103.
- 16.2.10 Vibrations from rotary machinery
- The vibration levels for the shaft line of the single-shaft TG-TV-Generator shall comply with the levels defined in Appendix 2 Chapter 103.
- 16.2.11 Lighting levels
- Lighting levels shall comply with the levels defined in Appendix 2 Chapter 103.
- 16.2.12 Not applicable.
- 16.2.13 Guarantee of provisional acceptance dates
- The Contractor shall guarantee that provisional acceptance dates for each Unit under Articles 5 and 6 above shall be met or shall fall within the deadlines agreed subsequently, in writing, between the Parties.
- 16.2.14 Operational guarantee: accidental shutdown during the first 24 months of combined-cycle operation.
- The Unit's accidental shutdown rate for the first 24 months of the guarantee as from provisional Acceptance shall not exceed the percentage value indicated in the table in the Technical Specification, in accordance with the calculation procedure defined in Appendix 2 Chapter 103.

17. PENALTIES

17.1 Collection

17.1.1 Amounts due to the Contractor from the Owner shall be settled in accordance with the payments schedule fixed in Article 14. Penalties due from the Contractor shall be invoiced separately by the Owner and shall be subject to the payment procedure laid down in Article 14.

17.1.2 The Owner shall be authorized to invoice the interest provided for in Article 14.3.1.5 should the Contractor fail to pay on the due date any penalty sum invoiced to it pursuant to Article 17.

17.2 Late penalties

17.2.1 The penalties referred to in this Article shall be due only if the events to which they relate are attributable to the Contractor and are not the result of force majeure.

17.2.2 A) Penalties for late Provisional Acceptance dates for the Units referred to in Article 5.2 above shall amount to:

- 0.10% of the Contract Price per full week of delay, from the first to the fourth week of delay, per Unit;
- 0.15% of the Contract Price per full week of delay, from the first to the fourth week of delay, per Unit;
- 0.75% of the Contract Price per full week of delay, from the first to the fourth week of delay, per Unit.

The total amount of such penalties shall be strictly limited to 15% of the Contract price.

B) A bonus of eight hundred and fifty thousand euros (€ 850,000) a month per Unit shall be payable to the Contractor on a complete week basis if a Unit is received before the provisional Acceptance date fixed in Article 5.2 above.

17.2.3 In the event of a delay by the Contractor in submitting one or more of the documents provided for in Appendix 4:

- in connection mainly with the management of interfaces at the supply boundary (GRT-GAZ, RTE, etc.),
- affecting the updating of the construction permit and the Application for Authorization to Operate,
- required for the operator to become familiar with the facilities (P&IDs, operating notes, and commissioning procedures),
- essential for initiating trials and commissioning (report on completion of assembly, trial procedures, etc.),

the Contractor may be subject to penalties calculated on the basis of 500 euros per document per day of delay against the document schedule specified in the Appendix hereto. The ceiling for penalties for late submission of documents shall be 0,5% of the price of the Unit concerned.

17.3 Penalties for accidental outage during the first 24 months of combined-cycle operation

17.3.1 The penalty should the guaranteed rate as fixed in Article 16.2.16 above be exceeded shall amount to 100,000 euros per day of accidental outage per Unit over and above the guaranteed rate. The total amount of penalties for accidental outage shall be strictly limited to 2% of the Contract price.

17.4 Penalty for failure to reach the guaranteed continuous net rated load

17.4.1 The penalty for failing to reach the guaranteed values referred to in Article 16.2.4 above shall amount to 1,000 euros per kW less than the guaranteed value of each Unit's continuous net rated Load.

17.5 Penalty for failure to reach Specific net Consumption at continuous rated Load.

17.5.1 The penalty for failing to reach the guaranteed values referred to in Article 16.2.5 above shall amount to 80,000 euros for every kJ/kWh over and above the guaranteed value for each Unit's Specific net Consumption.

17.6 Penalty for failure to meet the startup times

17.6.1 Where a period exceeds the respective guaranteed value as provided for in Article 16.2.7 above, a penalty of 80,000 euros shall be applied for every percentage point over and above the guaranteed value for each Unit. The total amount of penalties for failure to meet startup times shall be strictly limited to 2% of the Contract price.

17.7 Penalty for failure to meet the Minimum Environmental Technical Load

17.7.1 The penalty for exceeding the guaranteed value, as provided in Article 16.2.6 above, shall amount to 80,000 euros per MW over and above the guaranteed value for each Unit.

17.8 Performance offset

17.8.1 In calculating penalties for failure to achieve performance levels, the Owner shall take into account the offset principle whereby a Unit performance below the guaranteed value shall be offset by the other Unit's performance value if the latter exceeds the guaranteed value.

17.9 Ceiling for penalties

17.9.1 The total amount of penalties referred to in Article 17.2 to 7. shall be strictly limited to 30% of the Contract price.

17.10 Completion obligations

- 17.10.1 To avoid any ambiguity, it is noted that the payment of delay and non-performance penalties specified in Article 17, until their respective ceilings are reached, shall not in any circumstance release the Contractor from its obligation to complete each Unit and to achieve the guaranteed Performances within the deadlines required by the Contract.
- 17.10.2 On the other hand, reaching the ceiling for the delay and non-performance penalties specified in Article 17 shall in no case relieve the Contractor from its obligation to complete the Work, to fully achieve the Acceptance Performances, and to remedy defects in either of the Units under the Guarantee, nor from any of its other obligations and responsibilities under the Contract, specifically in the event of cancellation of the Contract in accordance with the stipulations of Article 22.
- 17.10.3 If the Contractor does not execute the obligations incumbent on it under the terms of Article 17.10.2 above within the period agreed between the Parties, the Owner may notify it of the date by which the Work necessary for completion of each of the Units or the guaranteed performance should be carried out, or the failure or defect repaired. If, on the date fixed by the Owner, the Work necessary for the completion of each of the Units or the achievement of a guaranteed Performance has still not been carried out, or the failure or defect repaired, the Owner may, without prejudice to the application of Article 22, carry out the necessary work itself or have it performed by a third party at the Contractor's risk and expense, as provided in Article 1144 of the French Civil Code. The costs of this Work shall be payable by the Contractor on initial claim by the Owner, and shall be increased, if need be, by interest on arrears.
- 17.10.4 Save in the case of termination pursuant to Article 22, payment of penalties as provided for in this Article 17 shall denote the release from all other claims and liability and in the event that the Contractor is late in complying, or fails to comply, with its performance guarantee obligations the claims defined in this Article shall constitute the Contractor's sole focus of liability and the Owner's sole claim entitlement.

17.11 Rules regarding penalties for failure to achieve HRSG performance levels

If at the time penalties are fixed for each Unit in accordance with Article 17:

- (a) penalties are applied for failure to achieve guaranteed performance levels for one of the Units; and
- (b) performance levels are not met due to malfunction or the failure to meet them by the HRSG of the Unit concerned; and
- (c) such malfunction or such failure shall be logged in the HRSG approval report, countersigned by Siemens as body in charge of boiler engineering,

Any penalty consequently applied to the Unit in question shall be reduced proportionally by an amount equal to the lowest performance level for the HRSG concerned.

18. ACCEPTANCES

18.1 General acceptance criteria for each Unit

- 18.1.1 The Contract Work and services shall be accepted by the Owner according to the criteria and procedures described below ("Provisional" Acceptance is to be understood as acceptance in the sense of Articles 1792 et seq. and 2270 of the French Civil Code).
- 18.1.2 Provisional Acceptance shall be the subject of a report prepared jointly and signed by the Parties. Provisional Acceptance marks the starting point for the legal and contractual guarantees.
- 18.1.3 The Owner takes custody of each of the Units and the accompanying risks on the date of signing the Provisional Acceptance Report.
- 18.1.4 At the expiration of the guarantee period described in Article 16.1.1 above, beginning on the date of Provisional Acceptance, and at the request of the Contractor, Final Acceptance of each Unit shall be delivered.
- 18.1.5 Final Acceptance may not in any case have the effect of exempting the Contractor from the guarantee against hidden defects in its supply, a guarantee for which it shall continue to be responsible under the terms provided by Articles 1641 et seq. of the French Civil Code.

18.2 Provisional Acceptance Criteria for each Unit

- 18.2.1 When all the performance parameters listed in paragraph 18.3 (referred to as "Acceptance Criteria") fall within the limit values indicated in paragraph 18.4 ("Acceptance Ceilings"), within the period fixed in the corresponding article, the Customer shall deliver the Provisional Acceptance of each of the Units, with reservations as applicable.
- 18.2.2 The Parties agree that the Provisional Acceptance Parameters are exclusively those listed in the following paragraph, without prejudice to non-compliances with respect to the contractual instructions that may give rise to rejection of a non-compliant Unit under the procedures provided in paragraph 18.5. Any non-compliance of the services and Work provided by the Contractor, under the terms of the Contract, shall be corrected by the Contractor before each Unit's contractual full completion date. However, it is expressly agreed that without prejudice to any recourse by the Owner against the Contractor, it may not constitute a cause for rejecting a Unit unless said non-compliance constitutes an obvious failure to achieve the purpose of the Contract.

18.3 Provisional Acceptance Parameters

- 18.3.1 Net continuous rated load (Article 16.2.4).
- 18.3.2 Net specific consumption under Net continuous rated load (Article 16.2.5).
- 18.3.3 Gas emissions (Article 16.2.8).
- 18.3.4 Noise emissions (Article 16.2.9).

- 18.3.5 Minimum Environmental Technical Load (Article 16.2.6).
- 18.3.6 Startup time (Article 16.2.7)
- 18.3.7 Machine vibrations (Article 16.2.10).
- 18.3.8 Lighting levels (Article 16.2.11).
- 18.3.9 Exceeding Trial Run (Section 7, Specification 010 of Technical Specifications).

18.4 Limit acceptance values

- 18.4.1 Net continuous rated load: no less than 95 % of the value guaranteed in Article 16.2.4.
- 18.4.2 Specific net consumption under continuous rated load: not more than 105 % of the value guaranteed in Article 16.2.5.
- 18.4.3 Gas emissions: not more than 100 % of the value authorized by prefectural decree.
- 18.4.4 Noise emissions: no more than 100 % of the value guaranteed in Article 16.2.9.
- 18.4.5 Minimum Environmental Technical Load: no more than 108 % of the value guaranteed in Article 16.2.6.
- 18.4.6 Startup time: no more than 120 % of the value guaranteed in Article 16.2.7.
- 18.4.7 Not applicable.
- 18.4.8 Lighting levels: no less than 100 % of the value guaranteed in Article 16.2.11.
- 18.4.9 Machine vibrations: no more than 100 % of the values guaranteed in Article 16.2.10.

18.5 Provisional Acceptance Procedures

- 18.5.1 If all of the following conditions are satisfied:
 - contractual operating tests conducted in accordance with the procedure and criteria indicated in the Technical Specification;
 - Provisional acceptance parameters, as indicated in the Provisional Acceptance Report, fall within the Limit Values for acceptance (Article 18.4);
 - list of reservations agreed to (punch list);
 - agreement on penalties;
 - Progress Payment Reimbursement Guarantee returned and replaced by the Performance Bond for the period between provisional and final acceptance; and

- a preliminary version of operating and maintenance manuals shall be available one (1) month prior to the start of commissioning. The final version shall be available four (4) months after provisional Acceptance. See Appendix 10, Chapter 17.3.5 (operating and maintenance documentation) for further information. This final version, which cannot be provided earlier, shall also contain as built information.

The Contractor shall ask the Owner to sign the corresponding Provisional Acceptance report. The Owner, within a period of ten (10) days after receiving the Contractor's request, shall either sign the Provisional Acceptance report or provide a written refusal to sign said report, giving the reasons.

From provisional Acceptance, the Contractor may be given the opportunity by the Owner to proceed with action required to rectify under-performance over a period of restoration not exceeding six (6) months. The Parties hereby agree on how such action should proceed. It is hereby agreed that payments scheduled on provisional Acceptance shall be made at the end of such period of restoration.

18.5.2 If one or more of the Provisional Acceptance parameters do not fall within their respective Limit Values for acceptance, Provisional Acceptance shall not be granted and the Owner shall consent, in written agreement with the Contractor, to a period of time ("Restoration period") which may not be longer than six (6) months, renewable once for four (4) months after written consent from the owner, during which the Contractor shall implement at its own risks and expenses the measures necessary to bring these parameters within the respective Limit Values for acceptance. The result of these operations shall be logged in a report. It is hereby agreed that during the Period of restoration the Contractor shall be subject to the penalties described in Article 17.

18.5.3 The Owner shall not be authorized to operate Units prior to their acceptance. Notwithstanding this principle, the Owner shall reserve the right to upgrade the energy generated at each Unit during operational trials.

18.5.4 If, at the end of the Restoration Period, one or more of the Acceptance parameters does not satisfy the Limit Value for acceptance, the Owner may reject all or part of each Unit. In that case, the Contractor shall be liable for any corresponding loss or damage suffered by the Owner and the latter may demand a reasonable reduction in the contract price, to be jointly agreed between the Parties or, where appropriate, established by arbitration as stipulated in Article 36. In that case, the Owner shall be authorized to draw on the progress payment reimbursement guarantee.

18.6 Rules on acceptance limit values for failure to achieve HRSG performance levels

If at the time such values are recorded for each Unit pursuant to Article 18:

- (a) one or more is not achieved and

- (b) the failure to achieve such limit is due to malfunction or the failure to achieve the limit acceptance value for the HRSG of the Unit concerned and
- (d) such malfunction or such failure is logged in the HRSG acceptance report and countersigned by Siemens as the body responsible for HRSG engineering,

any such value not achieved shall be proportionally reduced by an amount equal to the lowest acceptance limit value for the HRSG in question.

18.7 Rules on acceptance limit values for failure to achieve guaranteed gas emission values

If recorded gas emission values for each Unit are between guaranteed values (see Article 16.2.8) and acceptance limit values (see Article 18.4.3), provisional Acceptance shall be announced. The Contractor shall, however, have a max. period of three (3) months from the date of provisional Acceptance in which to restore gas emissions to guarantee value levels in accordance with Article 16.2.8.

19. AUTHORIZATIONS PLAN

- 19.1** A list of the main authorizations required for the performance of the Contract, with the scheduled dates for submitting the applications to the relevant authorities, is presented in Appendix 9.
- 19.2** The Contractor shall take responsibility for requesting the authorizations provided in the General Terms and Conditions and in the Technical Specifications and, until Provisional Acceptance, make all necessary efforts to monitor the progress of the administrative procedures and to inform the Owner about the requests sent to the relevant Authorities.
- 19.3** It is understood that the Contractor is responsible for any possible harm suffered by the Owner owing to non-compliance with the rules applying to each administrative procedure, and resulting from an error by the Contractor.

19.4 Permits, licenses, and authorizations

The Owner shall be responsible for obtaining the Plant building permit and the authorization to operate the Plant as a Classified Environmental Protection Facility in accordance with the dates specified in the General Schedule. A copy of the documentation concerning the acquisition of all of these documents shall be submitted to the Contractor, who shall provide relevant comments in its capacity as an engineering expert.

Considering that the construction permit shall have been obtained before the signing of the Contract, an amended construction permit shall be necessary. The Contractor shall be responsible for providing the necessary data for obtaining the amended construction permit.

20. QUALITY SYSTEM, ENVIRONMENTAL PROTECTION, AND SAFETY

20.1 Quality Assurance

The Contractor shall establish a Quality Assurance plan, according to the ISO 9001 Standard, enabling verification of the compliance of the Work performed by its Personnel, its Subcontractors, and Participants with the stipulations of the Contract. A copy of this Quality Assurance plan shall be submitted to the Customer no later than 60 (sixty) days after the date of signing the Contract.

The Contractor shall also establish a Quality Assurance plan according to the ISO 14001 Standard, to be included in its Site-specific activities.

20.2 Environmental-protection Plan

20.2.1 The Contractor undertakes to adopt an Environmental-Protection Plan (or Manual) for managing and monitoring environmental aspects concerning the performance of the Contract, in accordance with the guidelines given in the document attached as Appendix 5. This plan shall be provided in its operational version as soon as possible, and no later than fifteen (15) days before the start of Work on the Site, for approval by the Owner.

20.2.2 Protective measures

The Contractor shall introduce all necessary means of control and shall take all appropriate steps to prevent, avoid or contain contamination or pollution (whether ground, air, water or other) originating in the materials or equipment stored on the Work Site (whether these items are used temporarily for Work purposes or are intended for final incorporation in each Unit), in the components of each Unit already completed or in Work completion operations. In particular, the Contractor shall be responsible for any non-compliance with Laws on aqueous effluents from the Power Plant.

20.2.3 Maintenance in good condition

20.2.3.1 Until the Provisional Acceptance Date of each Unit, the Contractor shall emphasize and ensure that the Subcontractors and Participants maintain the Work Site, the Work Site facilities, and the already-completed components of each Unit in good condition.

20.2.4 In particular, the Contractor shall be responsible for removing all wastes it generates on the site and shall not discharge anything into the Power Plant's wastewater systems or any other systems (communal systems, rivers, etc.) that might damage or obstruct these drains or cause pollution.

20.2.5 Pollution

20.2.5.1 All operations necessary for the performance of Work on the Site shall be carried out so as not to adversely affect the activities, the comfort, or the movement of third parties, in particular the public, the Owner – the owner and operator of the Power Plant – and the owners of property adjacent to the Power Plant, within the constraints imposed in this regard by the stipulations of the Contract.

20.2.5.2 In particular, the Contractor shall be held responsible by the Owner, for the duration of the Work, for all levels of noise and emissions of pollution greater than the maximum levels imposed by the Law.

20.2.5.3 The Contractor shall reimburse to the Owner all sums which the latter may be required to pay to the administrative authorities or competent departments or to third parties by way of penalty, damages, fines or other sanctions for the Contractor's failure to meet its obligations under paragraph 20.2.4 of this Article.

20.2.5.4 The Owner shall inform the Contractor of any request issued by a third party and shall keep it regularly informed.

20.3 Safety

20.3.1 The Contractor's Contract equipment and facilities shall meet general safety requirements as regards design, construction, assembly, use, and maintenance.

20.3.2 The Contractor shall present to the Owner, no later than the time of delivery, or if appropriate on completing assembly of the equipment or facility concerned, an "EC Certificate of Compliance", in which it certifies that its supply complies with the technical regulations and meets the procedural rules applicable: declaration of compliance under the provisions of the Labor Ministry Decree of December 18, 1992 as amended, and subsequent texts, for machinery, work equipment, safety components, protection measures, personal protection equipment and/or any other "certificates", "declarations", and documents required by current French legislation, accompanied by instruction notes in French; supplies shall carry the required markings.

20.3.3 At the Work design and completion stage, the Owner shall appoint and pay (a) Security Coordinator(s) in accordance with Articles L.235-1 et seq. (general principles of prevention) and R.238-1 et seq. (preliminary declaration) of the Labor Code. The Coordinator(s) shall be responsible for establishing a general risk-prevention plan regarding health and safety on the Work Site.

- 20.3.4 The fees of the Technical Inspector(s) for the services that the Customer may decide to contract shall be payable by the Customer, except as concerns any technical inspections made necessary by a finding of non-compliance by the Contractor with its obligations, in which case the Contractor alone shall pay the costs of any new series of technical inspections. It should be noted that in any event the Contractor has a responsibility as turnkey developer, requiring it to conduct its own inspections, and that the technical-inspection consultancies that may be contracted by the Owner may in no event constitute a cause for delay.
- 20.3.5 The Contractor shall recommend a provisional program of inspections by the Technical Coordinator(s), which it shall submit to the Owner at least 1 (one) month before the projected date of the visit. Final notification shall be provided five (5) days before the date of inspection.
- 20.3.6 The Contractor shall be required to facilitate the execution of the missions of the Technical Coordinator(s), to provide the documents concerning the matter to be inspected, for information purposes, and to provide full access to the Work Site for the inspection visits at any time.
- 20.3.7 The Contractor shall comply with any reasonable advice and recommendations, issued by the Technical Coordinator(s) within the narrow framework of the mission, which the Owner or the Coordinator(s) may present. It shall see that these comments are taken into account, it being expressly agreed between the Parties that the Work resulting from this advice and recommendations are not to be considered as Modifications in the sense of Article 16, and that their cost shall be included in the Contract Price.
- 20.3.8 The execution of these inspections shall in no way reduce the Contractor's responsibility under the terms of this document.

21. GOOD-FAITH PERFORMANCE

- 21.1** Under this Contract, the Parties mutually undertake to:
- 21.1.1 Maintain a constant monitoring of the progress of the Work, avoiding any disingenuous or calculated behavior that could lead to unjustified gains, e.g., failure to perform or late performance of the Acceptance for the purpose of creating late penalties, etc.).
- 21.1.2 Cooperate in good faith so that the Work is carried out under optimum conditions and with all necessary flexibility, so as to protect to the extent possible the interests of each Party and, above all, the need for electric power, particularly in view of the Owner's status as a provider of an important public service.
- 21.1.3 Perform additional services not covered by the Contract -- within reasonable limits and upon written agreement between the Parties as to the financial, scheduling and technical terms concerning the provision of these services - where they appear essential for the performance of the Contract.

21.1.4 Communicate immediately concerning situations of which they become aware and which are relevant to the performance of the Contract.

21.2 The Parties shall undertake to renegotiate in good faith possible modifications in this Contract where they are both in prior agreement regarding the importance of modifications which may have taken place in the initial commercial or technical terms underlying the Contract.

21.3 Notwithstanding other provisions of this Contract, it is agreed that compliance with the provisions of a new law, regulation or other governmental measure, any interference and/or action by the civil or military authorities and the requirements of the Director of National Grids or any other authority legally empowered to interfere with the Owner's production schedules to the point that they would entail a modification in Contract costs and/or terms and conditions shall be deemed to be a modification to be dealt with in accordance with Article 25 below.

22. TERMINATION OF THE CONTRACT

22.1 Termination at the Owner's instigation

22.1.1 The Owner shall reserve the right to terminate the Contract and shall in that case pay the Contractor the amount of the Price for Work carried out up to that point by the Contractor in the performance of said Contract, as well as other duly-justified costs incurred in the performance of the Contract, after deduction - in the event of Contractor fault - of additional costs assumed by the Owner in connection with Work performance and completion and with the repair of all defects or failures, without prejudice to any damages which it may be entitled to claim.

22.1.2 The Owner may terminate the Contract at any time by notifying the Contractor by registered letter with acknowledgement of receipt, particularly in the event of the notified rejection of Acceptance of each Unit in accordance with Articles 18.5.2 and 18.5.4 above, should the Site be finally abandoned, Contractor obligations not be met or insurance not be taken out by the Contractor and should a reasonable period for rectifying the situation run out. Termination shall take effect on the 15th day following receipt of said notice.

22.1.3 Other aspects concerning termination of the Contract

In return for the payments provided under the terms of the "Payment of the Price" article, the Contractor shall hand over to the Owner all the materials, components, work, paper and electronic documents, and any other product or purchase resulting from activities under the Contract, up to the date of its termination.

The Contractor undertakes to hand over to the Owner, if the Owner expressly requests it in writing, all or part of the contracts that it has signed with suppliers and/or Subcontractors that are current on the date of termination of the Contract. For this purpose The Contractor hereby declares that it may act in this way with respect to its Subcontractors and/or suppliers of equipment, components, and services.

The Contractor shall have the obligation to leave the Work in a suitably-protected condition, in accordance with the stipulations contained in the Technical Specifications,

Upon any notification of termination of the Contract, the Contractor shall provide the Owner with the assistance that the Owner may reasonably require in writing, and in return for any payment agreed in advance between the parties, so as to ensure that the Work may continue without interruption, and to facilitate the orderly transfer of the performance of its Work to the Owner or to the person appointed by it for this purpose.

22.2 Termination at the Contractor's instigation

The Contractor shall also be authorized to terminate the Contract in the following cases:

- failure by the Owner to meet its main obligations
- Unwarranted refusal to pay the Contractor beyond sixty (60) days from the due date of payment
- Owner bankruptcy or insolvency;
- The Owner shall suspend work for longer than the time stated in Article 27.2.4 (for reasons other than Contractor default) or
- in the event of a continuing force majeure situation as provided for in Article 27.3.4

The effect of this shall be to:

- cease scheduled Contract Work
- the Contractor shall be entitled to the Contract price due for Work completed up to the time of termination;
- the Contractor shall be entitled to compensation for reasonable costs incurred by it in implementing the object of the Contract or arising in the wake of the Contract's termination.

The Contractor shall also be entitled to suspend work in the event of late payment following formal notification to the Owner not acted upon within thirty (30) days. Any costs arising from such suspension of work shall be for the Owner. Suspension shall not be possible if the owner provides reasons for its refusal, pursuant to Article 14.3.1.5.

23. CONTRACTOR'S RESPONSIBILITY

23.1 The Contractor shall be responsible, under its strict liability clause, for all damages affecting the Owner which may arise from the Contractor's performance of this Contract and are the fault of the Contractor, its Subcontractors or its representatives or of the personnel of the Contractor or its Subcontractors or representatives or of goods and equipment belonging to the Contractor or entrusted to the latter and in its custody.

23.2 The Contractor shall be solely responsible for the personnel employed by it on the Work Sites and for its terms of employment. It shall guarantee the Owner against the financial consequences of any sentence which may be handed down in connection with either shady dealings by the said personnel or the latter's terms of employment. It shall be jointly and severally liable for the personnel of its Subcontractors and other participants on the Site and for their terms of employment.

23.3 The Contractor may in no way take advantage of the provisions of this Article in order to obstruct the application of late, non-availability and non-performance penalties specified in Article 17.

23.4 Notwithstanding any other provisions of this Contract, the following provisions shall exclusively govern Contractor liability, irrespective of the legal basis therefor, including, inter alia, contractual liability, non-contractual liability (including in particular the failure to act swiftly) and liability under a guarantee or other.

In no way shall the Contractor be liable for loss of production, loss of earnings or loss of income or profit, payment of interest or other financial costs or any consequential indirect damage.

The Contractor's total liability to the Owner under the Contract may in no circumstance exceed the Contract Price.

Contractor liability for damage caused by the Contractor to the Owner's existing goods shall be limited to five million euros (€ 5,000,000) per claim. Such limitation shall concern only the Parties to this Contract.

Limitations on and exemptions from liability as stipulated in this Contract shall not apply in the event of tort or serious fault or where public order provisions preclude them.

If a third party assumes ownership of all or part of the Work or acquires any other right thereto, the Owner shall obtain a written assurance from such third party confirming that total Contractor liability to it and to the Owner thereunder will not exceed the liability limitations agreed in the Contract.

Contractor liability specifically for engineering services provided by Siemens pursuant to the HRSG specifications defined in Appendix 16 shall be limited to three million eight hundred thousand euros (€ 3,800,000).

24. BAN ON TRANSFER

The Contracting Parties may in no circumstance transfer this Contract and all its related obligations - even partially, including transfer of a company branch, particularly following a demerger, contribution of assets, etc. - without the prior written agreement of the other Party; such agreement shall not be withheld unreasonably.

The Parties shall be authorized to transfer all or part of the Contract or to grant their affiliated companies specified rights and obligations (if the financial and technical guarantees put up by both companies are equivalent) without the prior written agreement of the other Party; such agreement shall not be withheld unreasonably.

25. MODIFICATIONS

- 25.1** The Owner shall be entitled to request the Contractor, in writing, to make modifications, reductions and additions to the equipment, materials and Work to be carried out by the Contractor. The Contractor shall provide the Owner with an assessment of the consequences of said modifications in terms of costs and delay. The Parties shall reach a negotiated agreement. In any event, the Contractor shall follow up these variants as requested by the Owner, as long as the assumed amount of this variation does not exceed 1 % of the value of the Contract.
- 25.2** Any modification in the nature or volume of the Work specified in Article 3 occurring after the date of signing of these presents which is (a) required to satisfy a New Law or a soil or substratum type or composition other than as provided for in the Contract (see Article 8.3.(a)) or an express request from the Owner or which (b) does not amount to:
- 25.2.1 Work which, although not expressly provided for in the Contract, is essential to the stability, completion and normal and entirely safe operation of each Unit and is included in the Contract Price.
- 25.2.2 Work which is intended to rectify errors or omissions by the Contractor in the performance of its mission under the terms of this Contract or which relates more generally to the fulfillment by the Contractor of its obligations under the Contract, in order particularly to meet the various guarantees described above.
- 25.3** If the modification requested by the Owner should prevent the Contractor from carrying out its own obligations or from complying with the guarantees provided in this Contract, the Contractor shall inform the Owner of all the consequences caused by such modification, such as price, delivery deadlines, guaranteed values or duration of guarantee. In that case the Contractor shall not be obliged to implement the modification unless the Owner agrees in writing to stand the consequences arising therefrom.
- 25.4** The Owner shall issue a written amendment to this Contract and, after prior agreement between the Parties, any price difference arising from it shall be added to or deducted from the contract prices and the delivery deadlines adjusted appropriately.

- 25.5** The Parties hereby agree to apply the same procedure laid down in this Article to any modification to the Laws, rules and/or regulations and the state of technology which may occur after the date of Contract signing and with which the Contractor shall comply and which it shall implement.
- 25.6** The Contractor shall, within thirty (30) days of its recording, notify the Owner in writing of any circumstance leading the Contractor to request an increase in costs or scheduled work completion deadlines affecting any of the Contractor's contractual obligations. The Contractor shall provide the Owner with the documentation supporting its claim within a reasonable period from the appearance of this event. This shall include a detailed description of the additional costs and completion periods and any other aspect modifying the original Contract.
- 25.7** The Owner shall inform the Contractor of its decisions in the matter within thirty (30) days of receiving this documentation; this period shall be reduced to fifteen (15) days in the event of an impact on progress towards completing the plant.
- 25.8** The Contractor may propose to the Owner any modification deemed necessary or desirable to improve the quality, efficiency or safety of all units. The Owner may, in its assessment, approve or reject the Contractor's proposed modification.
- 25.9** For any proposed modifications, the Contractor shall provide the Owner as quickly as possible with:
- 25.9.1 A description of the improvements to be carried out and a schedule for their implementation.
- 25.9.2 The Contractor's proposal concerning modifications which should be made in the General Schedule and the impact of such work on the Contractor's contractual obligations.
- 25.9.3 The Contractor's proposal regarding the prices to be added to the Contract.
- 25.10** Following the Contractor's proposal, the Owner shall decide as soon as possible whether it agrees to take into account the proposed modification.
- 25.11** If the Owner decides to accept the proposal, it shall regularize this decision in writing, by an amendment to the Contract in accordance with the Contractor's proposal, which may then be adjusted by agreement of the Parties.
- 25.12** In the event of a Work Modification requirement under a new law or decided by the Owner as stipulated in the preceding Articles, an amendment to the Contract shall be issued by the Owner prior to any modification work clearly stating the purpose of the modification and its effect in terms of both delay, in particular on each Unit's Contractual Acceptance Date, and costs. This Contract amendment shall be signed jointly by the Parties. It shall be for the Contractor to inform the Owner of such a new law as soon as it becomes aware of its existence and to do so as soon as possible.

26. REPORTING AND INSPECTION CONCERNING THE PROGRESS AND QUALITY OF THE WORK

26.1 The Contractor shall prepare and submit to the Owner a monthly progress report on the Work, in accordance with the stipulations of the Technical Specifications, throughout the duration of the Contract. These reports shall provide a basis for discussion at the monthly progress meetings; these shall be scheduled regularly and shall be held in the Owner's offices or in any other place that it may designate; the monthly report shall be submitted at least one week before the progress meeting. As from the commencement of Site Work, weekly Work Site meetings shall be held, along with specific CISSCT [Contractors' Health and Work Safety Coordination Committee] and safety meetings.

26.2 The Contractor shall submit to the Owner, each month, a technical, economic and management report concerning the progress of the Work and the authorization procedures, in accordance with the stipulations of the Technical Specifications.

26.3 In any event, the Owner shall have the option of conducting inspections (in any form, through its own personnel and/or other persons appointed for this purpose) of the progress and quality of the Work of the Contractor and/or its Suppliers and Subcontractors, as provided in Chapter 1.2.3 of Specification 009 of the Technical Specifications. For this purpose, the Contractor shall authorize the free access of the Owner's personnel and/or persons appointed for this purpose, without any restriction, to all documentation inherent to the project, whether prepared by the Contractor or its Suppliers and Subcontractors, to its premises and/or the premises of its Suppliers and Subcontractors, to the Work Site and, more generally, to all places where such inspections may be carried out.

Submission of these reports to and inspections carried out by the Owner may in no way be interpreted as constituting Owner interference in the performance of Work or as a reason to exempt the Contractor from its professional responsibility as defined in French common law and as specified in the Contract.

With regard to any Owner action during manufacture, the Owner shall be entitled to inspect, scrutinize and test any materials or any work completed and to check on the progress of manufacture of the installation to be delivered under the Contract. Such inspections shall take place during working hours at the Contractor's place of work. The Contractor shall agree with the Owner on the venues for such inspections, as stipulated in the Contract. The Owner shall inform the Contractor of its intention to proceed with such inspections at least 24 hours in advance.

The Contractor shall not be asked to pass on to the Owner confidential manufacturing plans, drawings, know-how and technique or details of its manufacturing processes and operations.

27. SUSPENSIONS

27.1 General

- 27.1.1 The Owner may at any time and for any reason decide, by registered letter with acknowledgement of receipt, on temporary suspensions of all or part of the Work.
- 27.1.2 This suspension takes effect on the date of receiving the above letter. >From the date of this suspension the Contractor shall halt the indicated Work, leaving the status of the Work Site intact. At the Owner's expense, it shall arrange to protect, preserve, and maintain the Work, materials, equipment, and facilities, as well as the Work Site itself.
- 27.1.3 A request to resume work shall be sent by the Owner in a registered letter with acknowledgement of receipt. The Contractor undertakes to ensure that the resumption of work, in compliance with the performance procedures of the Contract, takes place as soon as possible, and in any event no later than two weeks after receiving the corresponding letter.
- 27.1.4 The resumption of work shall be certified by a suitable report signed by the Parties, the date of which shall serve to determine the duration of the suspension.
- 27.1.5 The Contract Deadlines shall be automatically postponed for a period at least equivalent to the duration of suspension.
- 27.1.6 If the Contractor is unable to deliver or assemble the Work in accordance with the General Schedule due to an act or omission on the part of the Owner, the latter shall be deemed to have issued the instruction to suspend Work unless Contractor error is the root cause.

27.2 Contract suspension at the Owner's request

- 27.2.1 This shall include the suspension of all or part of the Contract Work at the Owner's instigation.
- 27.2.2 In the event of a suspension of Work, the Contractor shall be entitled to one-off overall fixed-sum compensation, payable at the end of the suspension period, in an amount equal to all reasonable duly documented costs incurred. These costs shall include, among others, suspension-related expenses which the Contractor is in its turn required to pay to its own suppliers and Subcontractors. It is hereby understood that the Contractor shall take all suitable steps to reduce the above costs.
- 27.2.3 However, manufacturing processes shall not be interrupted. Payment of manufactured equipment items shall be due on completion. Payment terms and schedule shall also be adjusted in the event of suspension.
- 27.2.4 If the Owner has not served notice of the resumption of Work within three (3) months of the cessation of work or has failed to notify the Contractor of a further period of suspension, the Contractor shall be authorized to terminate the Contract. However, the total suspension period may not exceed twelve (12) months.

27.3 Suspension resulting from force majeure.

- 27.3.1 This shall include suspension of all or part of the Contract Work due to events resulting from force majeure within the meaning of Article 40 below.
- 27.3.2 Should the suspension affecting all or part of the Work referred to in this Article extend beyond three (3) months, the Parties shall negotiate in good faith the fixing of new contract terms covering both the financial aspect and contract deadlines. In that case, failing agreement, the Parties may terminate the Contract subject to the obligations arising from the services provided by them.
- 27.3.3 The contract completion Deadlines shall be automatically put back by a period equal to the duration of the suspension. Suspension shall mean no specific financial compensation for the Contractor over the first three (3) months.
- 27.3.4 A suspension period within the meaning of this Article may not exceed 3 (three) months; beyond this period, each of the Parties may terminate the Contract under the terms of the "Termination" Article (22).

28. ENVIRONMENTAL CLAUSE

- 28.1 In the event of contamination or pollution originating in the Contractor's materials or equipment stored on the Work Site (whether these items are used temporarily for Work purposes or are intended for final incorporation in each Unit), in the components of each Unit already completed or in Work in progress, the Contractor shall reimburse to the Owner all sums which the Owner is required to pay to the administrative authorities or competent departments or to third parties by way of penalty, damages, fines or other sanctions for failure to comply with the environmental-protection laws, or owing to personal, tangible or intangible damage caused to third parties by such contamination or pollution. The Owner shall inform the Contractor of any request issued by a third party and to keep it regularly informed.
- 28.2 Pending the Provisional Acceptance Date of each Unit, the Contractor shall emphasize and ensure that the Subcontractors and Participants maintain the Work Site, the Work Site facilities and already-completed components of each Unit in good condition.

29. BANK GUARANTEE

29.1 Progress Payment Reimbursement Guarantee

29.1.1 Nature and amount

In order to guarantee the fulfillment of its obligations under these presents, the Contractor shall submit to the Customer, with the request for settlement of the progress payment, a first-call bank guarantee issued by Siemens Financial Services GmbH or a leading French bank approved by the Customer, in an amount equal to 10 % (ten percent) of the Contract Price, pursuant to the specimen model attached in Appendix 12a (Progress Payment Reimbursement Guarantee).

29.1.2 Terms of call

The Progress Payment Reimbursement Guarantee may not be called until a period of 7 (seven) working days has elapsed without an answer following the Owner's formal notification to the Contractor by registered letter with acknowledgement of receipt, stating the amounts owed to the Owner by the Contractor under the Contract.

29.1.3 Duration

29.1.3.1 The Contractor shall undertake to ensure that the Progress Payment Reimbursement Guarantee shall remain in force until provisional Acceptance of the last Unit received.

29.1.3.2 The Owner shall undertake to release the Progress payment Reimbursement Guarantee no later than fifteen (15) days after fulfillment of the condition specified in the above paragraph.

29.1.3.3 All costs directly or indirectly in connection with the establishment of the Progress Payment Reimbursement Guarantee or its possible application shall be for the Contractor.

29.1.3.4 If the Contractor submits an application to stop payments or an application of assignment by debtor or forced bankruptcy or for any other reason faces insolvency, the Owner may automatically terminate this Contract, in which case it shall also be authorized to enforce execution of the entire Progress Payment Reimbursement Guarantee by way of compensation for the losses caused by a Contractor change in the context of work completion pursuant to the Contract.

29.2 Performance Bond

29.2.1 Nature and amount

In order to guarantee the performance of its obligations under these presents, the Contractor shall submit to the Customer, on the provisional acceptance date of the last accepted Unit, an first-call bank guarantee issued by Siemens Financial Services GmbH or a leading French bank approved by the Customer, for an amount equal to 10 % (ten percent) of the Contract Price, pursuant to the specimen attached in Appendix 12b (Performance Bond).

29.2.2 Terms of call

The Performance Bond may not be called until a period of 7 (seven) working days has elapsed without answer following the Owner's formal notification to the Contractor by registered letter with acknowledgement of receipt, stating the amounts owed to the Owner by the Contractor under the Contract.

29.2.3 Duration

29.2.3.1 The Contractor shall undertake to ensure that the Performance Bond remains in force up to the end of the guarantee period for the last Unit received, as referred to in Article 16.1.

29.2.3.2 The Owner shall undertake to release the Performance Bond no later than fifteen (15) days after fulfillment of the condition specified in the above paragraph.

29.2.3.3 All costs directly or indirectly in connection with the establishment of the Performance Bond or its possible application shall be for the Contractor.

29.2.3.4 If the Contractor submits an application to stop payments or an application of assignment by debtor or forced bankruptcy or for any other reason faces insolvency, the Owner may automatically terminate this Contract, in which case it shall also be authorized to enforce execution of the entire Performance Bond by way of compensation for the losses caused by a Contractor change in the context of work completion pursuant to this Contract.

30. INSURANCE

30.1 Subject to the other terms of this clause, notwithstanding the Contractor's liability under the Contract, which shall not be limited by this Chapter, the Contractor shall, for its own account and at its own expense, take out and maintain in force for the duration of the Contract the insurance cover as described below with leading credit-worthy insurers legally authorized to issue insurance policies in the European Union and under terms and conditions of coverage which the Owner considers satisfactory, on the understanding that the amounts shall never be lower than those required by current laws and standards and that the maintenance of such insurance cover shall in no way affect the compensation obligations established by Contract:

- a) **Manufacturer's ten-year liability** Within a reasonable period from the actual date of the Contract's entry into force, the Contractor shall provide evidence that it holds an insurance contract guaranteeing its Contractor's third party ten-year structural stability liability, as provided for in Article 1792 of the Civil Code. The Contractor shall submit to the Owner an insurance certificate specifically relating to the Contract. Such ten year liability insurance cover shall be issued subject to available conditions and in accordance with French insurance market standards for this type of cover.

The extra cost of this insurance premium and associated management costs shall be subject to agreement between the Owner and the Contractor as to amount and coverage procedure.

The above obligation shall be cancelled should the Owner decide to implement the "Purchaser Clause" – see Article 30.3 above.

- b) Transport insurance covering the entire transport process up to the Work Site, including loading and unloading and intermediate transport, with a compensation limit per transport operation equal to or greater than the maximum value of goods transported per operation. This guarantee shall cover the risks of any breakage, loss or damage caused to machinery and materials during their handling and their transportation to their place of installation.
- c) Legally due industrial-accident and Social-Security insurance for the term of the Contract, covering all personnel, whether its own or that of Subcontractors.
- d) Mandatory or voluntary third-party liability insurance for the term of the Contract covering the movement of vehicles and machinery, in accordance with the terms and limits required by current legislation.
- e) Employer's third party insurance covering the liability of the Contractor as employer for personal injury to or the decease of any member(s) of its personnel, pursuant to the law applying on the Project Site.
- f) Any other mandatory insurance cover for the term of the Contract, pursuant to current Legislation.

Independently of the above insurance cover, the Contractor may take out additional policies which it considers necessary for full coverage of its interests and liability pursuant to this Contract.

The Owner shall not refuse or delay unreasonably confirmation of the terms and conditions of insurance cover taken out by the Contractor.

30.2

The Contractor shall, within sixty (60) days of the actual Contract date, submit with its bid - as a separate Appendix - a proposal for ten-year all-risk insurance cover for construction/assembly and third-party liability, as follows:

- a) All risk cover (construction and assembly) against damage to and loss of the goods comprising part of the structure forming the subject of this Contract (and including the tools and machinery used, together with the HRSGs, a technical description of which shall be provided by the Owner), from the date of work commencement up to Provisional Acceptance by the Owner (including the pre-commissioning period and operating trials), plus the "extended maintenance" period prescribed in the insurance policy.

- b) General third-party liability cover against claims for property damage and/or personal injury and the consequences thereof arising from or related to the Contract Work, including, inter alia, guarantees of third-party liability for accidental pollution and contamination and cross-third party liability. The general limit for damage compensation shall not be less than twenty million euros (€ 20,000,000) per claim.

General third party cover, third party road vehicle cover and Employer cover may be the subject of separate policies and certificates.

The policies shall include as insured parties the Contractor, its Subcontractors, the Owner and its subsidiary and associated companies participating in the Contract work. Similarly, the list of additional insured parties shall include engineering firms, consulting firms, and other third parties, but only for activities at the Project's location and in relation to the project.

30.3

The insurance proposal described in clause 30.2 above shall include details of coverage, the indemnity limits, deductibles, and other terms, as well as the amount of the premium offered, the Owner having the option (Buyer's Clause) to take out this insurance itself and to inform the Contractor in writing before the work begins, applying the corresponding refund to the Contract Price. In the event that the Owner does not exercise the above option, the Contractor shall be responsible for this insurance, on the terms offered.

Whichever is the policy holder, it shall include as insured parties the Contractor, its Subcontractors, the Owner and its subsidiary and associated companies participating in the Contract work. Similarly, the list of additional insured parties must include engineering firms, consulting firms, and other third parties, but only for activities at the Project's location and in relation to the project.

The risk of tangible damage to the Work caused by explosive devices shall be for the Owner provided that it is not covered by the Contractor's insurance, including mandatory insurance cover for risks located in France, in particular the GAREAT program. Each party shall, in accordance with the option adopted under this Article, endeavour to include these risks in the All-Risk Site Work Insurance Cover taken out in accordance with available insurance market conditions.

The Owner shall advise the Contractor of its choice of the Purchaser Clause option no later than thirty (30) days from the date of the Contractor's submission of the insurance proposal.

30.4

Prior to the conclusion of any sub-contracting contract, the Contractor shall, with a view to completion of part of the Work, undertake to require its Subcontractors and, more generally, all Representatives present or active on the Site to take out third party liability insurance in a sufficient amount for the duration of Work. The Contractor shall ensure that this policy is actually taken out by Subcontractors and site representatives by providing all necessary documentary proof. It shall provide a copy of certificates for the Owner prior to the commencement of Work. This shall not exempt the Contractor from its responsibilities to the Owner under the above agreements.

If any one of the Subcontractors or Participants mentioned above is unable to produce satisfactory third-party liability insurance, the Contractor shall make every effort to meet these third-party liability conditions at its own expense.

The Contractor shall undertake to ensure that any person acting on its behalf on site is possessed of the road vehicle insurance cover required by law.

30.5 All insurance cover taken out by the Contractor and/or its Subcontractors pursuant to Article 30.2 shall mention the waiving of claims against the Owner; the Contractor and its Subcontractors shall advise insurers accordingly.

30.6 The Contractor and its Subcontractors shall provide their partner with the insurance certificates required under Appendix 17. This check shall continue for the term of the Contract. Non-submission of the above certificates shall authorize the Owner to invalidate the Contract for reasons attributable to the Contractor.

Similarly, if the option described in the Purchaser Clause in Article 30.3 above is taken up, the Owner shall provide the Contractor with the insurance certificates taken out by the Owner.

30.7 If the Contractor does not take out and/or maintain the insurance cover provided for in the Contract, the Owner shall be entitled to take out similar cover, the cost of which shall be debited to the Contractor or may, at its own discretion, terminate the Contract for reasons attributable to the Contractor. This Article shall also apply to the Owner if the latter is required to take out such insurance cover.

30.8 The Contractor may not ask insurers to cancel, modify or adjust policies taken out without the Owner's prior written authorization, and vice versa if the Purchaser Clause is implemented.

30.9 The Owner may request a change of insurer if the insurer's business and/or financial situation points to insolvency and/or in any other circumstance casting doubt on the validity of coverage, and vice versa if the Purchaser Clause is implemented..

30.10 For the purposes of Contract completion, each Party shall remain liable for damage attributable to it pursuant to the obligations and liability arising under this Contract in the event of a claim the financial implications of which are not, for whatever reason, covered under insurance guarantees.

30.11 The Contractor shall inform the Owner, during the performance of the Contract, of any incident which might affect the validity and terms of the insurance described in the preceding clauses and of any modification which might imply non-implementation of the said clauses and shall agree to collaborate with the employees, agents or representatives of the Owner or of persons authorized by the Owner. The Owner shall, however, comply with insurance policy obligations.

30.12 Implementation of the above Articles and taking out of the policies described shall not release the Contractor from its obligations and responsibilities under this Contract.

31. PERSONNEL TRAINING

- 31.1** The Contractor shall provide for the overall training of the Owner's Personnel in all matters concerning the operation and maintenance of the facilities and in all the systems provided, in accordance with the procedure described in the Technical Specifications.
- 31.2** The agreed training plan is shown in Appendix 15; related documentation referred to therein does not cover all the services to be provided by the Contractor under these presents.

32. MEASURES TO PREVENT INDUSTRIAL ACCIDENTS

- 32.1** The Contractor, as a Professional in Contract performance, shall take all necessary steps required by Law to prevent accidents on the Work Site and shall take appropriate action to ensure the stability and safety of all operations carried out on the Work Site and, if need be, on the Site, as well as all construction methods employed in the course of Work.
- 32.2** The Contractor shall comply scrupulously and strictly with the pertinent stipulations laid down in current regulations in the field of accident-prevention, health and safety in the workplace.
- 32.3** The Contractor shall, in completing the Work, act in accordance with the Law and ensure that its Subcontractors and Participants act in accordance with the Law, especially those concerning construction, the environment, labor and personal safety.
- 32.4** The Contractor shall, in particular, submit to the Owner within 30 (thirty) days of the signing of the Contract and thereafter every six months until the end of its performance all documents listed in Articles R.324-4 and R.324-7 of the French Labor Code relating to action to combat moonlighting.

33. WORKPLACE SAFETY

- 33.1** The Contractor shall ensure, under its management, inspection and full responsibility, the completion of Work by its Personnel, its Subcontractors and Representatives along with the coordination and supervision of Site Work.
- 33.2** The Owner shall provide detailed information on specific risks present in the environment where the Contract work is being carried out and on the prevention and emergency measures which should be adopted.
- 33.3** The Contractor shall inform the Owner of the specific risks to which workers may be exposed during the course of Work. In its capacity as general contractor, it shall also promote specific cooperation and coordination designed to eliminate risks due to Work interference caused by the simultaneous presence of several companies in the same working environment.

34. LANGUAGE AND DOCUMENTATION

The required documents shall be drawn up and submitted by the Contractor to the Owner in French, in every case in accordance with Appendix 4.

35. APPLICABLE LAW

This whole Contract shall be exclusively subject to French law.

36. DISPUTES – COMPETENT COURT

36.1 Amicable settlement

36.1.1 In the event of a disagreement between the Parties over this Contract, the Parties shall first attempt to resolve it through conciliation. If no solution is found within 15 (fifteen) days of notification from one Party to the other of its disagreement or of a claim, the dispute shall be referred to the Directors of the Parties or to their authorized representatives.

36.1.2 If the Directors of the Parties or their authorized representatives are unable to reach agreement within the next 15 (fifteen) days, the disagreement may be brought before the tribunal named in Article 36.2 below, at the request of either Party.

36.2 Competent court

The Parties hereby agree that, failing amicable settlement as previously indicated, they shall refer the dispute in the first instance to a Combined Dispute Board (CDB), pursuant to the International Chamber of Commerce's Dispute Board Regulations. The Dispute Board shall be comprised of three members. Each Party shall appoint one member.

The Party having initiated recourse to DB proceedings shall appoint one of the three members in writing at the time of lodging its application. The other Party shall appoint the second DB member in writing within thirty (30) days of notification of the first member's appointment. Appointment of the third member shall be in accordance with Article 7(5) of the ICC's DB Regulations. If the third DB member is not appointed or one of the Parties has not appointed its member within the time fixed, the ICC's DB Center shall proceed to make the missing appointment.

The DBC shall issue a recommendation pursuant to the ICC's DB Regulations. It is hereby agreed between the Parties that in the case of disputes over an amount not exceeding three million euros (€ 3,000,000) the DBC shall hand down a decision which shall have legal force for the Parties.

On the completion of proceedings, the Owner shall reimburse to the Contractor costs commensurate with the level of liability attributed to it by the DBC in its recommendation.

In the case of disputes involving higher amounts one Party may refer the matter directly for arbitration in accordance with the following procedure should the other party fail to comply with the DBC's decision.

If the dispute is not settled amicably or before the DBC, the Paris International Chamber of Commerce's conciliation and arbitration procedure shall apply. Three arbiters shall be appointed. Each Party shall appoint an arbiter and the third arbiter shall be appointed by the other two. If one Party fails to designate an arbiter within thirty (30) days or if no agreement is reached on the appointment of the third arbiter within thirty (30) days, the respective arbiter shall be appointed in accordance with ICC Regulations. The seat of arbitration shall be in Paris. Where no provision is made in the ICC Regulations, the procedural law of that venue shall apply. The language of arbitration shall be French.

37. INTERPRETATION OF THE CONTRACT

The provisions of this Contract shall express the full agreement reached between the Parties. They shall replace and cancel any agreement, understanding, order or other provision relating to equipment or supply of services in connection with the object of this Contract concluded between the Parties prior to the signing of these presents.

38. CONFIDENTIALITY

The Parties hereby undertake to preserve the strict confidentiality of this Contract and not to disclose or use for purposes other than those of the Contract, during or after its expiry, information of a commercial, administrative or industrial nature inherent in the Contract or belonging to the other Party or information, whether or not confidential, of which they may gain knowledge under this Contract.

Information which the Contractor is able to prove

1. already to have in its possession at the time of receiving it from Endesa France; or
2. to belong in the public domain at the time of its communication by Endesa France or to have subsequently entered the public domain through no fault of the Contractor; or
3. to have received from a third party free agent shall be exempt from consideration as contractual information.

This Article shall remain in force throughout the duration of the Contract and for five (5) years following its expiry.

39. INTELLECTUAL PROPERTY

The Contractor shall compensate the Owner for any claimed infringement of a patent, registered trademark, copyright, commercial brand or commercial label or any other intellectual property right.

The Contractor shall be notified without delay of any claim on the Owner, as defined in this clause. The Contractor may negotiate a settlement of such claim and any likely resultant proceedings at its own cost.

The Owner shall recognize nothing which may harm the Contractor's interests unless the Contractor has failed to negotiate proceedings within a reasonable time of being requested to do so.

The Contractor may not, however, so negotiate before having put up a reasonable guarantee for the Owner should the latter require it. The amount of such guarantee shall allow for estimated compensation, damages, outlay and costs in respect of which the Owner's liability may be involved.

The Owner shall, at the Contractor's request, provide all available assistance in challenging such claim or action and shall be reimbursed for any reasonable costs incurred for that purpose. If, following a defended claim as referred to above, any section of the Plant is recognized as constituting an infringement of a patent, registered trademark, copyright, commercial brand or commercial label or any other intellectual property right when used by the Owner, the Contractor may, at its own expense and convenience:

1. acquire for the Owner the right to use the Plant
2. replace non- complying Plant components with basically equivalent complying equipment; or
3. modify them so that they conform.

40. FORCE MAJEURE

- 40.1** The Parties shall not be held responsible for failures in their respective obligations resulting from force majeure. Force majeure shall cover events such as: natural disasters, interference and/or intervention by the civil or military authorities, strikes (except those by the Contractor's personnel or that of its Subcontractors), instructions from the Administrator of the National Grid or any authority legally authorized to interfere in the Owner's shutdown and production schedules, insurrection, acts of war or similar, embargos or any other event or circumstance which combines the threefold characteristics of unpredictability, irresistibility and extraneity.
- 40.2** Subject to the Contract stipulations, a Party notified by the Party invoking force majeure definitively affecting all contractual service provision and lasting long enough to damage its own interests to a significant extent may terminate this Contract as of the date on which it receives the aforesaid notification.
- 40.3** If after six (6) months force majeure is not a definitive or partial event, the Parties may agree to continue the Contract by renegotiating new terms and conditions or Contract termination.
- 40.4** It is hereby agreed that there shall be no payment or compensation in such cases.
- 40.5** The Party taking advantage of a Force Majeure situation shall inform the other Party as soon as possible of:
- 40.5.1 (a) the circumstances surrounding the occurrence of the aforesaid Force Majeure situation and shall attach all supporting documentary evidence relating thereto. The Contractor shall also inform the Owner of the steps which it intends to take to protect the Work Site and each of the Units.
- 40.5.2 (b) its proposed measures to avoid or limit any adverse effect on Work completion due to Force Majeure.
- 40.5.3 or the date of cessation of the Force Majeure situation, where appropriate.

41. TRANSFER OF OWNERSHIP – TRANSFER OF RISKS

The Owner shall acquire ownership of each of the Units as it is completed.

The Owner shall acquire ownership of the equipment, machinery and supplies essential to work completion as and when they are incorporated into the Units or are paid for.

For the purpose of establishing an inventory of its property, the Owner shall reserve the right to require the Contractor to provide all necessary documents.

Since the transfer of risks occurs on Provisional Acceptance, the Contractor shall have custody of the Units and the equipment, machinery and supplies essential to work completion, whether or not they are intended for incorporation in the Units, up to the date of such Acceptance.

In its capacity as guardian, the Contractor shall take all appropriate steps to identify by sight individual equipment items, machinery and supplies the ownership of which shall redound to the Owner, particularly if they are designed, produced or taken delivery of off-site.

If the Units or one of the components, materials, equipment items or supplies intended for incorporation in the Units or essential to work completion is lost, stolen or damaged for whatever reason, including force majeure, the Contractor shall, in its capacity as guardian pending Provisional Acceptance of the Units by the Owner, make good such losses, thefts and damages at its own cost so as to ensure that the Units are completed in accordance with their purpose and with the Contract stipulations.

42. MISCELLANEOUS PROVISIONS

All Appendices and other documents attached to the contract shall form an integral part of the contract for all practical purposes.

The Parties hereby agree that all remodification components provided for in this Contract pursuant to Article 11 shall be transferred to the Heavy Maintenance Contract. The Owner shall undertake to acquire such remodification components under the Heavy Maintenance Contract within the period required by the Contractor in order that the latter may maintain the provisional Acceptance deadline (see Article 5.2) and meet its obligation to guarantee combined cycle operation pursuant to Article 16.2.14 of the Contract. Any reference to remodification components, whether in the Contract or in its Appendices, shall therefore be null and void.

The invalidity of one or more expressions, sentences, clauses, paragraphs or Articles of the Contract shall in no way affect the validity of the other parts of the contract while the main Contract objectives can be determined and met. Any invalid or absent Contract provision shall be deemed to have been replaced by the valid provision which the Parties would have inserted had they been informed of such invalidity or absence on the Contract date.

If one Party is slow to ensure or refrains at any time from ensuring that any contract provision is complied with, such attitude shall not be construed as waiving the provision in question and shall in no way affect the validity of all or part of the contract or the right of either Party to ensure that each of the contract provisions is complied with.

In witness whereof the Parties have signed this Contract as testimony to their agreement.

43. ORIGINALS – DOUBLE SIGNATURE

This Contract, excluding its Appendices the originals of which shall be kept for the Owner, is hereby drawn up in two original copies, one for each Party.

Done in two original copies,
at Rueil-Malmaison, September 20, 2007

For the Contractor

For the Customer

Name: Hans Koemeester
Title: Executive Leading Vice-President

Name: Alberto Martin Rivals
Title: General Manager