Section V. Special Conditions of Contract

Notes on the Special Conditions of Contract

Similar to the clauses in the Bid Data Sheet in Section III, the clauses in this Section V are intended to help the Employer to provide contract-specific information in relation to corresponding clauses in the General Conditions of Contract.

The provisions of Section V complement the General Conditions of Contract included in Section IV, specifying contractual requirements linked to the special circumstances of the Employer, the Employer’s country, the sector, and the facilities installed. In preparing Section V, the following aspects should be checked:

(a) Information that complements provisions of Section IV must be incorporated.

(b) Amendments and/or supplements to provisions of Section IV, as necessitated by the circumstances of the specific contract, must also be incorporated.
# Table of Clauses

1. **DEFINITIONS (GCC CLAUSE 1)** ................................................................. 3
2. **NOTICES (GCC CLAUSE 4)** .................................................................... 4
3. **GOVERNING LAW (GCC CLAUSE 5)** .................................................... 4
4. **SETTLEMENT OF DISPUTES (GCC CLAUSE 6)** .................................... 5
5. **SCOPE OF FACILITIES (GCC CLAUSE 7)** ........................................... 5
6. **TIME FOR COMMENCEMENT AND COMPLETION (GCC CLAUSE 8)** .... 5
8. **SECURITIES (GCC CLAUSE 13)** ............................................................. 6
9. **INSTALLATION (GCC CLAUSE 22)** ......................................................... 7
10. **COMMISSIONING AND OPERATIONAL ACCEPTANCE (GCC CLAUSE 25)** .......................... 7
11. **COMPLETION TIME GUARANTEE (GCC CLAUSE 26)** ....................... 7
12. **DEFECT LIABILITY (GCC CLAUSE 27)** ............................................... 7
13. **TEST AND INSPECTION (GCC CLAUSE 23)** ...................................... 7
14. **COMPLETION — GUARANTEE TEST / PERFORMANCE TEST—ACCEPTANCE (GCC CLAUSES 24.3 AND 25.2)** .......................................................... 8
Special Conditions of Contract

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

All the terms not mentioned in this SCC, shall be according to GCC.

1. Definitions (GCC Clause 1)

The Employer: Means Shanghai Wind Power Company (SWPC), which is the end-user of this procurement. The address is: Room 1701, No 310, Chongqing Nanlu, Shanghai, and P. R. China. Post Code: 200025. Tel: 86-21-64453422/64735593, Fax: 86-21-64735687, Email: shwpc@vip.163.com.

The Procurement Agent: Means China International Tendering Company (ITC) who is authorized by the Employer to make the purchase, sign the Contract and execute the Contract. The address of it is: No.21 Xisanhuan Beilu, North Building of Jiuling Daxia, Beijing, P. R. China. Post Code: 100089. Tel: 86-10-68404005, Fax: 86-10-68404833

The Project Manager: to be identified according to GCC.

The Contractor is defined in the Contract Agreement.

The Contractor’s Representative is: The Contractor’s representative will be nominated according to GCC 17.2.

The Adjudicator: Mr. Shi Pengfei. Address: No.2 Liupukang Beixiaojie, Beijing, P.R. China. Post Code: 100011, Tel: 86-10-82070637, Email: pfshi@mail.sparkice.com.cn.

Country of Origin: all countries and territories as indicated in the section of the bidding documents, Eligibility for the Provision of Goods, Works and Services in Bank-Financed Procurement.

Time for Completion for all Facilities: 300 days after the effectiveness date of contract.
**Inspection Bureau**: Means the local branch of the **State Administration for Entry / Exit Inspection & Quarantine of P. R. China** located near the Port of Unloading or the Job Site.

**Installation Services**: means all those services ancillary to the supply of the Plant and Equipment for the Facilities, to be supplied by the Contractor under the Contract; e.g. transportation and provision of marine or other similar insurance, inspection, expediting, sit preparation works, supervision for installation, testing, precommissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training, etc.

### 2. Notices (GCC Clause 4)

GCC 4.1— Any notice in relation to this project and the contract shall be distributed as defined below:

- Any notice of the Contractor shall be sent in original to the China International Tendering Company and as copies to Shanghai Wind Power Company. A notice period shall count from the time when the notice in original is sent to China International Tendering Company.

- Any notice of the Procurement Agent/Employer or their authorized representative shall be sent to the Contractor’s address specified in the Contract Agreement and copies shall be distributed to other Chinese parties.

  The mode of distribution can be changed during contract execution through mutual agreement in writing.

  The Addresses of the Chinese Partners are as follows:

  The Procurement Agent’s address is: China International Tendering Company, No.21 Xisanhuan Beilu, North Building of Jiuling Daxia, Beijing, P. R. China, Post Code: 100089. Tel: +86-10-68404005, Fax: +86-10-68404833.

  The Employer’s address is: Shanghai Wind Power Company Ltd., Room 1701, No 310, Chongqing Nanlu, Shanghai, P. R. China, Post Code: 200025. Tel. +86 -(0) 21-64453422, 64735593, Fax: +86-21-64735687

### 3. Governing Law (GCC Clause 5)

GCC 5.1—The Contract shall be interpreted in accordance with the laws of the People’s Republic of China.
4. Settlement of Disputes (GCC Clause 6)


GCC 6.1.4: Appointing Authority for Adjudicator:

GCC 6.2.3 (a)—Contracts with foreign contractors:
Any dispute, controversy or claim arising out of or in connection with this Contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.
GCC 6.2.3 (b)---Contracts with contractor’s national of the Employer’s country:

Any dispute between the Employer and the Contractor who is a national of the Employer’s country arising in connection with the present Contract shall be referred to adjudication or arbitration in accordance with the laws of the Employer’s country.

5. Scope of Facilities (GCC Clause 7)

GCC7.1---Unless otherwise expressly limited in the Technical Specifications, the Contractor’s obligations cover the provision of all Plant and Equipment and the supervision of installation, completion and commissioning of the Facilities in accordance with the plans, procedures, specifications, drawings, codes and any other documents as specified in the Technical Specifications.

GCC 7.3— The Contractor agrees to supply spare parts for a period of three years.

GCC21.2.2 & GCC 21.2.3 ---After inspection of the plant and equipment supplied by the employer, these equipment shall remain under the care, custody and control of the employer and supervision of the contractor.

6. Time for Commencement and completion (GCC Clause 8)

GCC 8.1- The Contractor shall commence work on the Facilities from the Effective Date for determining time for completion as specified in the Contract Agreement.

GCC 8.2 –The Completion of the Facilities shall be attained within 300 days after the contract effectiveness.
7. **Installation**

GCC9.1---The Contractor shall supervise installation of ,not install ,the Facilities.

GCC10.5---The Employer shall install the Facilities under the supervision of the Contractor in addition to undertaking those tasks listed in GCC10.5.

GCC 22.1.1- Substitute Employer for Contractor in GCC 22.1.1.

GCC22.1.3---Labor: The erection/installation shall be instructed, assisted and supervised by the Contractor, and the Employer shall provide site management, labor employment and arrangement. Until operational acceptance, the Contractor shall be responsible for the Facilities including those installed under his supervision by the Employer.

GCC33.1---Subject to GCC Sub-Clause 33.3, the Contractor shall indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney’s fees and expenses, in respect of the death or injury of any person or loss of or damage to any property (other than the Facilities whether accepted or not), arising in connection with the supply and supervision of installation of the Facilities and by reason of the negligence of the Contractor or its Subcontractors, officers or agents, except any injury, death or property damage caused by the negligence of the Employer, its contractors, employees, officers of agents.

8. **Securities (GCC Clause 13)**

GCC 13.3.1- The amount of the Performance Security, as a percentage of the Contract Price for the Facilities shall be 10 %.

GCC 13.3.2 The Performance Security shall be in the form of an Unconditional Guarantee attached hereto in the section on Sample Forms and Procedures.

GCC 13.3.3. The Performance Security shall be automatically reduced by half on the date of Operational Acceptance and shall become null and void at the end of the Defect Liability Period. The Performance Security is to secure the achievement of the functional guarantee figures before Operational Acceptance and to secure the guaranteed performance of the Facilities, namely the guaranteed availability of the Plant and Equipment, after Operational Acceptance, thus securing claims of liquidated damages by the Procurement Agent/Employer as defined in Appendix 9.
9. **Work Program**

GCC 18.2- Program of performance shall be in the form of the critical path method, or the PERT network.

10. **Commissioning and Operational Acceptance (GCC Clause 25)**

GCC 25.2.2—The Guarantee Tests of the Facilities shall be successfully completed within 6 months from the date of Completion.

11. **Completion Time Guarantee (GCC Clause 26)**

GCC 26.2—In case of any delayed Completion being due to the Contractor, the applicable rate of liquidated damages shall be 0.5% of the total contract price per week. Any partial week is considered as a whole week. Maximum amount for liquidated damages shall not exceed 10% of the total contract price.

GCC 26.3—No bonus will be given for earlier Completion of the Facilities or part thereof.

12. **Defect Liability (GCC Clause 27)**

GCC 27.2 – Unless otherwise specified in the Contract the Defect Liability Period shall be 36 months from the date of Completion of the Facilities or 33 months from the date of Operational Acceptance of the Facilities, whichever first occurs.

13. **Test and Inspection (GCC Clause 23)**

GCC 23.8- The Contractor shall afford the Employer and the Project Manager, at the Employer’s expense, access at any reasonable time to any place where the Plant and Equipment are being manufactured, in order to inspect the progress and the manner of manufacture or installation, provided that the Project Manager shall give the Contractor a reasonable prior notice.
GCC 23.10 The foundations will be constructed by the Employer according to the design and under supervision of the Contractor. The Employer’s Project Manager shall give a reasonable notice to the Contractor, whenever foundation works are due for inspection or testing according to the agreed supervisory and testing requirements defined in the contract. The Employer will be responsible for the foundation and other excavations that need to be covered up. The Contractor has no right to cover up anything without the Employer’s prior permission.

14. Completion — Guarantee Test / Performance Test—Acceptance (GCC Clauses 24.3 and 25.2)

14.1 In the event that the Contractor is unable to proceed with the Pre-commissioning of the Facilities pursuant to Sub-Clause 24.3 or with the Guarantee Test / Performance Test pursuant to Sub-Clause 25.2 for reasons attributable to the Employer either on account of non-availability of other facilities under the responsibilities of other contractor(s) or for reasons beyond the Employer’s control, the provisions leading to “deemed” completion of activities such as Completion, pursuant to GCC Sub-Clause 24.6, and Operational Acceptance, pursuant to GCC Sub-Clause 25.3.4, and Contractor’s obligations regarding Defect Liability Period, pursuant to GCC Sub-Clause 27.2, Functional Guarantee, pursuant to GCC Clause 28, and Care of Facilities, pursuant to GCC Clause 32, and GCC Clause 41.1, Suspension, shall not apply. In this case, the following provisions shall apply.

14.2 When the Contractor is notified by the Project Manager that he will be unable to proceed with the activities and obligations pursuant to above Sub-Clause 14.1, the Contractor shall be entitled to the following:

(a) the Time of Completion shall be extended for the period of suspension without imposition of liquidated damages pursuant to GCC Sub-Clause 26.2;

(b) payments due to the Contractor in accordance with the provision specified in the corresponding Appendix (Terms and Procedures of Payment) to the Contract Agreement, which would not have been payable in normal circumstances due to non-completion of the subject activities, shall be released to the Contractor against submission of a security in the form of a bank guarantee of equivalent amount acceptable to the Procurement Agent/Employer, and which shall become null and void when the Contractor will have complied with its obligations regarding those payments, subject to the provision of Sub-Clause 14.3 below;

(c) the expenses towards the above security and extension of other securities under the contract, of which validity needs to be extended, shall be reimbursed to the Contractor by the Procurement Agent/Employer;
(d) GCC32.1--The Contractor shall supervise the care and custody of the Facilities by the Employer, or any part thereof until the date of Completion of Facilities.

14.3 In the event that the period of suspension under above Sub-Clause 14.1 actually exceeds one hundred eighty (180) days, the Employer and the Contractor shall mutually agree to any additional compensation payable to the Contractor.

14.4 When the Contractor is notified by the Project Manager that the plant is ready for precommissioning, the Contractor shall proceed without delay in performing all the specified activities and obligations under the contract.